

November 22, 2021

Submitted via Regulations.gov

The Honorable Brenda Mallory
Chair, Council on Environmental Quality
730 Jackson Place, N.W.
Washington, D.C. 20503

Re: Docket No. CEQ–2021–0002, Council on Environmental Quality Notice of Proposed Rulemaking, National Environmental Policy Act Implementing Regulations Revisions

Dear Chair Mallory:

On behalf of our millions of members and supporters across the country, the undersigned **232 conservation, faith, justice, and community organizations and businesses** appreciate the opportunity to comment on the Council on Environmental Quality (CEQ)'s Notice of Proposed Rulemaking (NPRM) for the National Environmental Policy Act (NEPA) Implementing Regulations Revisions, which we understand constitutes the first Phase in CEQ's efforts to restore robust NEPA protections.¹

Our organizations appreciate the importance that CEQ has placed on restoring essential protections that were eliminated by the disastrous 2020 NEPA Rule enacted by the Trump administration.² However, we urge CEQ to use this Phase 1 rulemaking to fully restore the 1978 CEQ NEPA implementing regulations as the baseline for NEPA planning. A Phase 2 rulemaking should then build on the 1978 CEQ NEPA regulations to facilitate robust participation in the NEPA process by vulnerable communities and ensure that NEPA reviews equitably evaluate impacts on public health, safety, and wellbeing.

CEQ Should Fully Restore the 1978 CEQ NEPA Regulations as the Baseline for NEPA Planning

The 1978 CEQ NEPA regulations correctly implemented NEPA's critical action-forcing procedures that include giving the public a voice in major federal decisions that affect the environment, carefully reviewing the environmental impacts of proposed actions, and rigorously and objectively investigating less environmentally harmful alternatives. Reviews carried out under the 1978 CEQ NEPA regulations helped expose the true cost of environmentally damaging and ill-conceived proposals, leading to better solutions and substantial savings for federal taxpayers.³

As noted above, we urge CEQ to use this Phase 1 rulemaking to vacate the 2020 NEPA Rule and fully restore the 1978 CEQ NEPA implementing regulations as the baseline for NEPA planning. The deeply flawed and illegal changes in the 2020 NEPA Rule are stifling public input, dramatically limiting evaluation of alternatives, and purging informed, science-based decision-making from the federal environmental review process. These changes threaten the health, safety, and well-being of people and wildlife across the country. These changes should not be allowed to stand.

¹ Many of our organizations will also be submitting individual comments and/or joining other group comments.

² Council on Environmental Quality. "Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act." 85 Fed. Reg. 43304, (Jul. 16, 2020).

³ While NEPA implementation has been far from perfect, the information and public involvement obtained through the NEPA process has provided enormous benefits to people, wildlife, and the environment across the country.

We also urge CEQ to move swiftly to a Phase 2 rulemaking to build on the 1978 CEQ NEPA regulations to facilitate robust participation in the NEPA process by vulnerable communities and ensure that NEPA reviews equitably evaluate impacts on public health, safety, and wellbeing. We also urge that CEQ ensure robust public input opportunities in that Phase 2 rulemaking.

Comments on the Changes Proposed in the NPRM

As noted above, our organizations strongly support the prompt reinstatement of the 1978 CEQ NEPA regulations in their entirety. We also provide the following comments on the changes proposed in the NPRM:

- 1. Reinstatement of the 1978 CEQ NEPA Regulation language on Purpose and Need (§ 1502.13):** Our organizations strongly support this change, which requires federal agencies to consider the interests of the public and environmental objectives in NEPA reviews. The 2020 NEPA Rule improperly revised the “Purpose and Need” language to prioritize the goals of private industry over the public interest by requiring federal agencies to base a proposed project’s purpose and need on the goals of the project applicant.
- 2. Reinstatement of the 1978 CEQ NEPA Regulation definitions of direct, indirect and cumulative effects (§ 1508.1(g)) and the elimination of the various limitations on the analysis of impacts imposed by the Trump administration:** Our organizations strongly support these changes, which require federal agencies to assess the full suite of impacts from a proposed action, including such things as: climate change, rising sea levels, stronger and more frequent storms, the long term impacts of toxic pollution, the risks of new levees diverting floodwaters onto other communities, and the loss of wetlands caused by reservoir management practices that starve a river of the water flows needed to sustain those wetlands. Critically, the assessment of cumulative (and other impacts) are essential for assessing whether the siting or operation of a project or facility will disproportionately impact Tribes, communities of color, and economically disadvantaged communities. The 2020 NEPA Rule improperly eliminated the language requiring these critical impact assessments.
- 3. Reinstatement of the 1978 CEQ NEPA Regulations requirement that the CEQ Rules are the floor for other agencies’ NEPA regulations:** Our organizations strongly support this change, which restores the ability of federal agencies to develop more protective agency-specific NEPA regulations to better meet the program requirements within which those agencies operate. The 2020 NEPA Rule eliminated this agency flexibility by directing that the CEQ regulations represented the “ceiling” for NEPA implementation which could not be exceeded.
- 4. Proposed changes to the definition of “Reasonable Alternatives” (§ 1508.1(z)):** Our organizations strongly urge CEQ to use this Phase 1 rulemaking to reinstate the entirety of the 1978 CEQ NEPA Regulations description of Alternatives (§1502.14 of the 1978 CEQ NEPA Regulations). The NPRM’s proposed definition of alternatives (while better than the definition in the 2020 NEPA Rule) excludes key language that will allow agencies to ignore effective and environmentally sound alternatives in their NEPA analyses. The proposed language will also lead to substantial confusion and unnecessary delays as agencies and the courts grapple with the requirements established by the new definition. Critically, CEQ should reinstate the

requirements for agencies to “**rigorously explore and objectively evaluate all reasonable alternatives**” including “**reasonable alternatives not within the jurisdiction of the lead agency.**”

- 5. Proposed approval of Categorical Exclusions in place as of September 2020 (§ 1507.3(a)):** Our organizations oppose this provision. While we understand that categorical exclusions in place as of that date were issued under the 1978 NEPA Regulations, we believe a number of those categorical exclusions should not have been approved and that others have been abused and need to be revisited. For example, the Trump administration adopted a number of categorical exclusions that will lead to extensive harm to people and wildlife.

These changes are essential for ensuring that NEPA reviews meaningfully assess alternatives and evaluate impacts—including climate change—in order to identify effective solutions that can best protect the environment, wildlife, and communities.

At a minimum, CEQ should also address the following additional critical items in this Phase 1 Rulemaking: (1) eliminating the 2020 NEPA Rule’s requirement for members of the public to provide highly detailed, technical comments in order for their comments to be fully considered; (2) eliminating the 2020 NEPA Rule’s barriers to challenging NEPA reviews in court; and (3) reinstating the 1978 NEPA Regulations’ prohibition on allowing applicants with admitted financial interest in the outcome of a NEPA review from preparing those reviews, which can introduce fatal biases into the the decision-making process and undermines the public’s faith in the integrity of the review process.

The 2020 NEPA Rule is wreaking havoc on communities, wildlife, and the environment. While we greatly appreciate the importance that CEQ has placed on restoring essential protections eliminated by this rule, we believe it is essential—and fully supported by the extensive record on the 2020 NEPA Rule—that CEQ use this Phase 1 rulemaking to fully reinstate the 1978 CEQ NEPA regulations as the baseline for NEPA planning. Doing so would restore critical protections for people and wildlife while setting the stage for a robust Phase 2 rulemaking that could focus on facilitating participation in the NEPA process by vulnerable communities and ensuring that NEPA reviews equitably evaluate impacts on public health, safety, and wellbeing.

Thank you for the opportunity to provide comment on this rulemaking.

Sincerely,

Peter Jay Perez
Executive Director
500 Sails

Cindy Lowry
Executive Director
Alabama Rivers Alliance

Andy Moderow
State Director
Alaska Wilderness League

Cliff Wallis
Director
Alberta Wilderness Association

Ted Illston
Senior Director, Policy and Government
Relations
American Rivers

Rachel Conn
Deputy Director
Amigos Bravos

Johanna Hamburger
Director and Senior Staff Attorney, Terrestrial
Wildlife Program

Animal Welfare Institute

Harriet Festing
Executive Director

Anthropocene Alliance

Georgia Ackerman
Riverkeeper

Apalachicola Riverkeeper

Brendan Mysliwec
Director of Federal Policy

Appalachian Trail Conservancy

Dean Wilson
Executive Director

Atchafalaya Basinkeeper

Connie Ericson
Secretary

Audubon Society of Northern Virginia

Kevin R Emmerich
Director

Basin and Range Watch

Kristen Schlemmer
Legal Director and Waterkeeper

Bayou City Waterkeeper

Kelly Stolar, CFRE
Executive Director

**Benedictine Sisters of Erie dba Inner-City
Neighborhood Art House**

Anne McCarthy
Coordinator

Benedictines for Peace

Charles Scribner
Executive Director

Black Warrior Riverkeeper

Mark Hefflinger
Communications & Digital Directors

Bold Alliance

Anne Millbrooke
Authorized Signer
Bozeman Birders

Matthew Mehalik
Executive Director
Breathe Project

Beth K. Stewart
Executive Director
Cahaba River Society

Myra Crawford
Executive Director
Cahaba Riverkeeper

Isabella Langone
Conservation Analyst
California Native Plant Society

Michael J. Painter
Coordinator
Californians for Western Wilderness

Brandon Jones
Catawba Riverkeeper
Catawba Riverkeeper Foundation

Zachary Wurtzebach
Corridors and Crossings Program Director
Center for Large Landscape Conservation

Heather Miller
General Counsel and Policy Director
Charles River Watershed Association

Michael William Mullen
Riverkeeper
Choctawhatchee Riverkeeper

John Koferl
President
Citizens Against Widening the Industrial Canal

Aimee Erickson
Executive Director
Citizens Coal Council

Carin High
Co-Chair
Citizens Committee to Complete the Refuge

Andrew Grinberg
National Campaigns Special Projects Manager
Clean Water Action

Ken Dolsky
Organizer
Coalition Against Pilgrim Pipeline - NJ

Emily Vuxton
Policy Director
Coalition to Restore Coastal Louisiana

Suzanne Jackson
Staff
Colorado Wild Public Lands

Dale Beasley
President
Columbia River Crab Fisherman's Association

Clark Bullard
President
Committee on the Middle Fork Vermilion River

Brigid Lawlor
Province Advocacy Liaison
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces

Moana Bjur
Executive Director
Conservation Council For Hawaii

Tyler Schwartze
Executive Director
Conservation Federation of Missouri

Jesse Demonbreun-Chapman
Executive Director & Riverkeeper
Coosa River Basin Initiative

Chad Hoffman
Program Director
Coosa Riverkeeper

B. Arrindell
Director
Damascus Citizens for Sustainability

Renee Stone
Senior Vice President, Conservation Programs
Defenders of Wildlife

Ken Dolsky
Co-leader
Don't Gas the Meadowlands Coalition

Mike Browning
2021 Chair
Eagle Summit Wilderness Alliance

Mary Gutierrez
Director
Earth Action, Inc.

Kelsey Crane
Senior Policy Advocate
Earthworks

Jane Pargiter
Conservation Director
EcoFlight

Dan Silver
Executive Director
Endangered Habitats League

Becky Ayech
President
Environmental Confederation of Southwest Florida

Ann Mesnikoff
Federal Legislative Director
Environmental Law & Policy Center

Matthew Simmons
Staff Attorney
Environmental Protection Information Center

Steve Box
Executive Director
Environmental Stewardship

Adam Carlesco
Staff Attorney
Food & Water Watch

Liz Kirkwood
Executive Director
For Love of Water (FLOW)

Will Harlan
Executive Director
Forest Keeper

Jennifer Best
Assistant Legal Director
Friends of Animals

Emily Diznoff
Program Manager
Friends of Big Ivy

Jocelyn Silverlight
Executive Director
Friends of Big Morongo Canyon Preserve

Glenda Booth
President
Friends of Dyke Marsh

Scott Beauchamp
Policy Director
Friends of the Boundary Waters

Hallie Templeton
Legal Director
Friends of the Earth

Laurie Peterka
Executive Director
Friends of the Mariana Trench

Trevor A Russell
Water Program Director
Friends of the Mississippi River

Bill Tanger
Chair
Friends of the Rivers of Virginia

Blue Evening Star
Board Member
Friends of the Santa Cruz River

Roger E. McManus
Board Member
Friends of the Sonoran Desert

Bob Stokes
President
Galveston Bay Foundation

Joseph Campbell
President
Gas Free Seneca

Codi Norred
Executive Director
Georgia Interfaith Power and Light

Allyson Siwik
Executive Director
Gila Resources Information Project

Leslie Robinson
Chairperson
Grand Valley Citizen's Alliance

Fred Akers
River Administrator
Great Egg Harbor Watershed Association

Shelley Silbert
Executive Director
Great Old Broads for Wilderness

Bruce Morrison
President
Great Rivers Environmental Law Center

Sascha Bollag
Attorney
Green Justice Legal

Andrea Marpillero-Colomina
Clean Transportation + Energy Lead
GreenLatinos

Charlie Cray
Senior Strategist
Greenpeace USA

Theaux M. Le Gardeur
Gunpowder RIVERKEEPER
Gunpowder RIVERKEEPER

Captain Bill Sheehan
Riverkeeper
Hackensack Riverkeeper Inc.

James Redwine
Senior Policy Advisor
Harpeth Conservancy

Emily Sutton
Haw Riverkeeper
Haw River Assembly

Andrew Whitehurst
Water Program Director
Healthy Gulf

Laura Esquivel
VP Federal Policy
Hispanic Federation

Tim Maloney
Senior Policy Director
Hoosier Environmental Council

Maureen Hackett
Founder and President
Howling For Wolves

Brianna DelDuca
Regulatory Specialist
Humane Society Legislative Fund

Jennifer Kalt
Director
Humboldt Baykeeper

John Robison
Public Lands Director
Idaho Conservation League

Nicholas Nelson
Executive Director
Idaho Rivers United

Brian Brooks
Executive Director
Idaho Wildlife Federation

Edward L Michael
Chair, Government Affairs
Illinois Council of Trout Unlimited

Jennifer Thurston
Director
Information Network for Responsible Mining

Vicki Nichols Goldstein
Founder & Executive Director
Inland Ocean Coalition

Mark J. Palmer
Associate Director
International Marine Mammal Project of Earth Island Institute

Scott Douglas Ourth
Executive Director
Iowa Wildlife Federation

Jeffrey Seim
Board President
Kansas Wildlife Federation

Ashley Lipscomb
Director
Kentucky Heartwood

Ashley Wilmes
Director
Kentucky Resources Council

Pat Banks
Director
Kentucky Riverkeeper

Ward Wilson
Executive Director
Kentucky Waterways Alliance

Kimberly Baker
Executive Director
Klamath Forest Alliance

Sandra Bihn
Waterkeeper
Lake Erie Waterkeeper

Matthew Davis
Senior Director, Government Affairs
League of Conservation Voters

Jessica Jones Capparell
Director of Government Affairs
League of Women Voters of the United States

Dave Shukla
Operations Director
Long Beach Alliance for Clean Energy

Jeff Kuyper
Executive Director
Los Padres ForestWatch

Dr. Barry Kohl
President
Louisiana Audubon Council

Rebecca Triche
Executive Director
Louisiana Wildlife Federation

Ted Evgeniadis
Lower Susquehanna Riverkeeper
Lower Susquehanna Riverkeeper Association

Kurt R. Schwarz
Conservation Chair
Maryland Ornithological Society

Audrey Siu
Policy Specialist
Miami Waterkeeper

Ayako Nagano
Managing Attorney
Midori Law Group, P.C.

David Joseph Schmitt
Executive Director
Mill Creek Alliance

Cheryl Nenn
Riverkeeper
Milwaukee Riverkeeper

Kelly McGinnis
Executive Director
Mississippi River Network

Rachel Bartels
Waterkeeper
Missouri Confluence Waterkeeper

Dana Ripper
Director
Missouri River Bird Observatory

Patrice Tomcik
National Field Manager
Moms Clean Air Force

Susan Gordon
Coordinator
Multicultural Alliance for a Safe Environment

Lawrence Couch
Legislative Consultant
National Advocacy Center of the Sisters of the Good Shepherd

Maggie Ostdahl
Conservation Policy Manager
National Aquarium

Tucker Johnson
Natural Resources Analyst
National Parks Conservation Association

Thompson M. Mayes
Chief Legal Officer and General Counsel
National Trust for Historic Preservation

Melissa Samet
Senior Water Resources Counsel
National Wildlife Federation

Kabir Green
Director of Federal Affairs
Natural Resources Defense Council

DeeVon Quirolo
President
Nature Coast Conservation, Inc.

George Cunningham
Board Member
Nebraska Wildlife Federation

Russell Kuhlman
Executive Director
Nevada Wildlife federation

Logan Glasenapp
Staff Attorney
New Mexico Wild

Tim Gestwicki
CEO
North Carolina Wildlife Federation

Wally Sykes
Co-Founder
Northeast Oregon Ecosystems

Lisa Baraff
Program Director
Northern Alaska Environmental Center

Deborah Hanson
Chair, Oil and Gas Committee
Northern Plains Resource Council

Tim Judson
Executive Director
Nuclear Information and Resource Service

Greg Remuad
Baykeeper & CEO
NY/NJ Baykeeper

William Rossiter
Vice President
NY4WHALES

Kathryn Heintz
Executive Director
NYC Audubon

Michael Stocker
Director
Ocean Conservation Research

Lara Levison
Senior Director, Federal Policy
Oceana

Courtney Vail
Campaign Director
Oceanic Preservation Society

Damon Mullis
Executive Director
Ogeechee Riverkeeper

Rich Cogen
Executive Director
Ohio River Foundation

Megan Desrosiers
President/CEO
One Hundred Miles

Jackie Antalan
Director, Outreach & Programs
Operation HomeCare, Inc.

Katie Hawkins
California Program Manager
Outdoor Alliance California

Mary Rickel Pelletier
Director, Secretary
Park Watershed

Laura Haight
U.S. Policy Director
Partnership for Policy Integrity

Laurie Howard
Executive Director
Passaic River Coalition

Rev. Sandra L. Strauss
Director of Advocacy & Ecumenical Outreach
Pennsylvania Council of Churches

Ronald Huber
Executive Director
Penobscot Bay Watch

Dennis L Endicott
President
Peoria Audubon Society

Allen Gibbs
President
Pilchuck Audubon Society

Howard Penn
Executive Director
Planning and Conservation League

Michael Engle
Chair of Board of Directors
**Portneuf Resource Council, local chapter of
Idaho Organization of Resource Councils**

Shannon Anderson
Staff Attorney
Powder River Basin Resource Council

Ryan Grosso
Water Resources Associate
Prairie Rivers Network

Elizabeth S Kostelny
Chief Executive Officer
Preservation Virginia

Mary H O'Brien
Executive Director
Project Eleven Hundred

Gillian Graber
Executive Director
Protect PT (Penn-Trafford)

Kevin H Bell
Staff Counsel
**Public Employees for Environmental
Responsibility**

Mike Hudak
Director
Public Lands Project

Bill Schultz
Riverkeeper
Raritan Riverkeeper

Eleanor Hines
North Sound Baykeeper
RE Sources

Marianne Cufone
Executive Director
Recirculating Farms

Michael Kellett
Executive Director
RESTORE: The North Woods

Lisa Wittenborn
Executive Director
Rivanna Conservation Alliance

Alicea Charamut
Executive Director
Rivers Alliance of Connecticut

Don McEnhill
Executive Director
Russian Riverkeeper

Trygve B. Sletteland
Retired Founding Executive Director
Sacramento River Council

David Harrison
Conservation Chair
Salem Audubon Society

Diane Wilson
Executive Director
San Antonio Bay Estuarine Waterkeeper

Mark Pearson
Executive Director
San Juan Citizens Alliance

Christine Canaly
Director
San Luis Valley Ecosystem Council

Gail Musante
Official Signer
Sanford-Oquaga Area Concerned Citizens (S-OACC)

Kelly Davis
Senior Staff Attorney
Save Our Springs Alliance

Joseph Bogaard
Executive Director
Save Our Wild Salmon Coalition

Gary Wockner
Executive Director
Save The Colorado

John Peach
Executive Director
Save The River Upper St Lawrence Riverkeeper

Gayle Hartmann
President
Save the Scenic Santa Ritas

Bill Lucey
Long Island Soundkeeper
Save The Sound

Amy C Sharma
Vice President
Science for Georgia

Yvonne Taylor
Vice President
Seneca Lake Guardian

Matt Pluta
Choptank Riverkeeper
ShoreRivers

Nathaniel Shoaff
Senior Attorney
Sierra Club

Joi Travis, Esquire
Chair
Sierra Club Alabama Chapter

Dave Willis
Chair
Soda Mountain Wilderness Council

Chris Hesla
Executive Director
South Dakota Wildlife Federation

Stanley Petrowski
President/Director
South Umpqua Rural Community Partnership

Melinda Booth
Executive Director
South Yuba River Citizens League

Kym Hunter
Senior Attorney
Southern Environmental Law Center

Bob Lukinic
Conservation Chair
Southern Maryland Audubon Society

Beth Novak Milliken
President & CEO
Spottswode Winery, Inc.

Justin Bloom
Founder and Board Vice-Chair
Suncoast Waterkeeper

Gloria Flora
Executive Director
Sustainable Obtainable Solutions

David Whiteside
Executive Director
Tennessee Riverkeeper

Ben Jones
Executive Director
Texas Conservation Alliance

Don Jodrey
Director of Federal Relations
The Alliance for the Great Lakes

Taylor Luneau
Policy Manager
The American Alpine Club

Kelsey Anderson
Policy Advisor
The Climate Reality Project

Anne Bekker
Chairperson, Conservation Committee
The Delaware Valley Ornithological Club

Laura Friend Smythe
Senior Staff Attorney, Animal Protection Law
The Humane Society of the United States

Melanie Winter
Founder & Director
The River Project

Paul Botts
President and Executive Director
The Wetlands Initiative

Mary Olive
Senior Government Relations Representative
The Wilderness Society

Heather Hulton VanTassel
Executive Director
Three Rivers Waterkeeper

Jennifer McKay
Policy Director
Tip of the Mitt Watershed Council

Victoria Clark
Executive Director
Trustees for Alaska

Ashley Short
Riverkeeper & In-House Counsel
Tualatin Riverkeepers

Alejandro E. Camacho
Chancellor's Professor of Law and Faculty
Director, Center for Land, Environment, and
Natural Resources
University of California, Irvine

Horst Schmidt
President
Upper Peninsula Environmental Coalition

Brett Prettyman
Chair of the Board
Utah Wildlife Federation

Jason Budsan
President
Virgin Islands Conservation Society

Christina Hausman Rhode
Executive Director
Voyageurs Conservancy

David Groenfeldt
Director
Water-Culture Institute

Kelly Hunter Foster
Senior Attorney
Waterkeeper Alliance

Robin Broder
Deputy Director
Waterkeepers Chesapeake

Caleb Merendino
Co-Executive Director
Waterway Advocates

Larry V. Thomas
President
West Virginia Highlands Conservancy

Angie Rosser
Executive Director
West Virginia Rivers Coalition

Susan Jane Brown
Wildlands Program Director & Staff Attorney
Western Environmental Law Center

David Wieland
Organizing and Training Coordinator
Western Organization of Resource Councils

Erik Molvar
Executive Director
Western Watersheds Project

Kelly Burke
Executive Director
Wild Arizona

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians

Dana Johnson
Staff Attorney
Wilderness Watch

Jesse A. Buss
Senior Attorney
Willamette Law Group

David Page
Advocacy Director
Winter Wildlands Alliance

Tina Christensen
Executive Director
Winyah Rivers Alliance

Kristin Combs
Executive Director
Wyoming Wildlife Advocates

Joy Bannon
Policy Director
Wyoming Wildlife Federation