

October 13, 2023

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

**SUBJECT: Docket ID No. CEQ-2023-0003 National Environmental Policy Act
Implementing Regulations Revisions Phase II**

Dear Chair Mallory,

We applaud the Council on Environmental Quality's (CEQ's) leadership in proposing National Environmental Policy Act (NEPA) Phase II Regulations to restore and strengthen community protections that were undermined by the previous administration. The previous administration's 2020 NEPA regulations put our nation's resources and communities at risk, with the worst effects felt by communities of color and low-income communities. Prior to the 2020 NEPA regulations, NEPA and its implementing regulations helped promote meaningful local involvement, sustainable development, and informed federal decision-making for decades. Restoring and enhancing CEQ's regulatory standards to more fully consider climate change and environmental justice is urgently needed and fully consistent with CEQ's regulatory authority. We applaud the proposed Phase II Regulations and provide additional comments below to support and improve climate change and environmental justice considerations in the final Phase II Regulations.

Climate Change Considerations

Climate change remains the greatest environmental challenge we face. CEQ rightfully acknowledges that climate change effects are environmental effects, and consequently, NEPA requires federal agencies to assess climate-related impacts associated with proposed federal actions. For years, CEQ and the courts have correctly noted that this obligation requires federal agencies to conduct robust analysis of climate change effects.¹ Despite this clear obligation, some federal agencies still conduct little or no climate analysis beyond a general statement that a proposed action represents a small fraction of global or domestic emissions. Such limited analysis simply repeats the well-known observation that climate change is caused by numerous actions with individually minor but collectively significant effects and fails to satisfy NEPA's requirement to seriously consider the environmental impacts of proposed actions.

The final Phase II Regulations should clearly enumerate climate-related NEPA requirements, including requirements for federal agencies to properly quantify, consider, and disclose the

¹ See for example *Center For Biological Diversity v. National Highway Traffic Safety Administration*, 538 F.3d 1172 (9th Cir. 2008).

greenhouse gas (GHG) emissions of major proposed actions and alternatives. Relatedly, the final Phase II Regulations should clearly describe the need for federal agencies to use an accurate baseline to properly consider the environmental effects and GHG emissions associated with a proposed action and its alternatives. This should include direction for agencies to assess the current and future state of the environment under a no-action alternative, an estimate of greenhouse gas emissions without the proposed action, and a requirement for agencies to consider the full lifetime of the proposed action and its effects—including the full lifecycle of associated upstream and downstream emissions where relevant. Without clear standards, many federal agencies will use an inaccurate baseline to compare proposed federal actions to alternatives and underestimate reasonably foreseeable GHG emissions and climate impacts associated with a proposed action.

Furthermore, because climate change is caused by numerous actions with individually minor but collectively significant effects, it is essential that the final Phase II Regulations direct agencies to consider the broader context of how proposed actions and alternatives help meet or detract from larger federal climate goals, international agreements, and commitments, including GHG reduction commitments. Toward this end, CEQ should direct agencies to presume that proposed projects or actions that increase emissions are inconsistent with emission reduction goals, and agencies should consider whether there are reasonable alternatives that avoid such conflicts. Consistent and accurate assessment, measurement, and consideration of GHG emissions associated with major proposed actions will be essential in achieving our GHG emission reduction targets.

Environmental Justice Considerations

It is critical that CEQ's final Phase II Regulations be responsive to widely stated environmental justice community priorities and needs, including the need for more accessible public input processes and full consideration of disproportionate environmental burdens.² To advance more accessible public input processes, CEQ rightly proposes to eliminate major public engagement barriers imposed by the Trump administration in their 2020 NEPA regulations. The final Phase II Regulations should also direct agencies to conduct broad outreach to non-English speaking communities, or those with limited English proficiency (LEP), during the NEPA process, including through translation and interpretation services based on the most widely spoken languages in affected communities. This should include translation and direct dissemination of environmental impact statements and environmental assessments in culturally relevant and accessible ways.

Similarly, CEQ should direct agencies to hold public hearings in environments that are safe, inclusive, and fully accessible to all persons affected by a federal action and exclude the use of venues that require documentation of citizenship status. Recognizing that many communities must contend with poor broadband infrastructure and limited internet access, the final Phase II Regulations should also highlight the need for federal agencies to balance internet-based outreach and physical outreach to reach all impacted communities.

² WE ACT for Environmental Justice and GreenLatinos, *Comment Letter Regarding CEQ Phase II Regulations* (September 29, 2023).

Furthermore, CEQ's Phase II Regulations should stress the need for agencies to communicate information using language that is clear and fully accessible to both impacted communities and the public at large, especially when discussing technical issues like greenhouse emissions. CEQ should also direct agencies to hold public meetings early and often in a manner that facilitates broad community participation, including by providing multiple participation options during daytime and evening hours as well as telephonic and remote participation options. In addition, CEQ should include direction and mechanisms in the Phase II Regulations for agencies to invite environmental justice communities to propose reasonable alternatives and mitigation measures during the NEPA process. By using an inclusive, transparent, community-led, and community-driven NEPA process, federal agencies can help ensure that environmental justice communities throughout the country are responsibly engaged and that environmental justice needs are properly considered in federal decisionmaking.

To better address disproportionate environmental burdens, CEQ's final Phase II Regulations should include clear direction to federal agencies to center and thoroughly analyze environmental justice (EJ) impacts throughout their NEPA analyses. As CEQ has previously noted, climate change raises significant environmental justice concerns because it has disproportionate and adverse public health and environmental impacts in communities of color, low-income communities, Tribal Nations, and Indigenous communities.³ Accordingly, "[u]nderstanding the comparative risks to vulnerable populations is critical for developing effective and equitable strategies for responding to climate change."⁴ Additionally, the communities most affected by climate change impacts are often the same communities that face the greatest localized harm from poor air and water quality and other local environmental hazards. Consequently, the final Phase II Regulations should ensure that agencies fully analyze and seek to mitigate both disproportionate climate impacts as well as the other disproportionate impacts associated with local environmental hazards. For example, oil and gas extraction or natural gas pipelines have both local effects as well as reasonably foreseeable global cumulative effects related to GHG emissions; federal agencies should analyze and seek to mitigate harm related to both types of effects.

Finally, the final Phase II Regulations must stress the importance of early consideration of climate and EJ impacts to help agencies properly determine the scope of proposed actions and consider a full range of alternatives and mitigation measures that minimize harmful impacts on communities. The need for robust consideration and mitigation of harmful cumulative impacts is especially important when federal agencies are considering actions that may further overburden communities that are already overburdened by the effects of numerous pollution sources. Additionally, to avoid additional harm to overburdened EJ communities, CEQ must ensure that the environmental impacts of all major federal actions and projects are properly analyzed and that agencies are properly using categorical exclusions. This should involve periodic reviews of categorical exclusions to ensure that they account for the latest science and design practices, including improved modeling of climate forecasts, as well as improved understanding and research on health impacts associated with categorically excluded activities. It is also critically important that the final Phase II Regulations respect and equitably promote the inclusion of Indigenous Knowledge throughout the federal decisionmaking process.

³ 88 Fed. Reg. at 1197

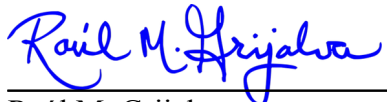
⁴ EPA, Climate Change and Social Vulnerability in the United States: A focus on Six Impacts, at 9 (Sept. 2021), Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts (epa.gov).

Overall, CEQ’s proposed Phase II Regulations include numerous key provisions that will greatly advance environmental justice—including the first-ever definition of environmental justice in NEPA’s implementing regulations (see proposed section 1508.1(k)) and the explicit consideration of environmental justice in the environmental consequences section of environmental impact statements (see proposed §1502.16 (14)). It is critical that CEQ not eliminate or weaken any of these essential protections in the final Phase II Rule.

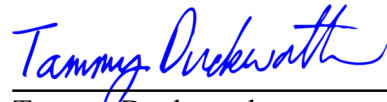
Conclusion

Once again, we applaud CEQ’s leadership in proposing NEPA regulations to strengthen climate change and environmental justice considerations, consistent with CEQ’s regulatory authority. We look forward to continued CEQ engagement and the work ahead to address the climate crisis and environmental injustices across our country.

Sincerely,



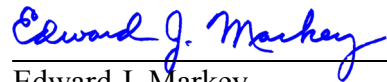
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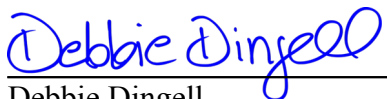
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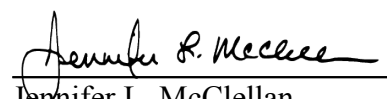
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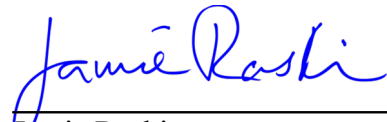
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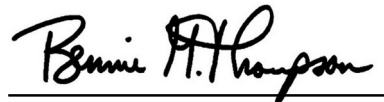
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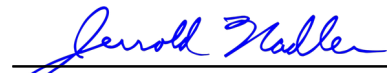
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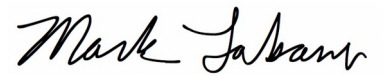
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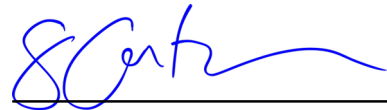
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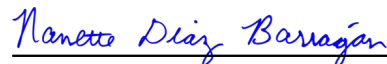
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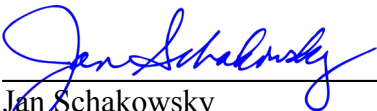
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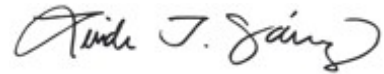
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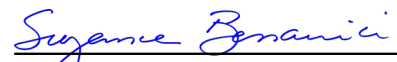
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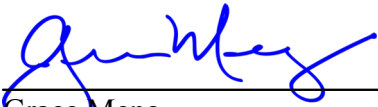
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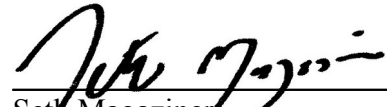
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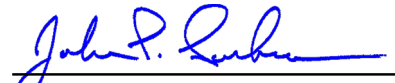
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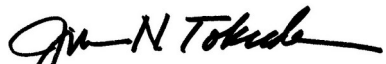
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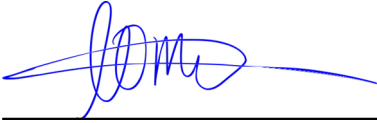
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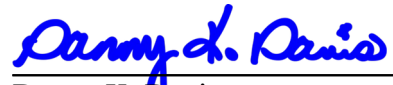
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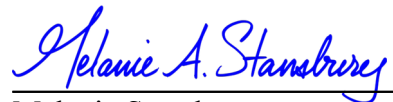
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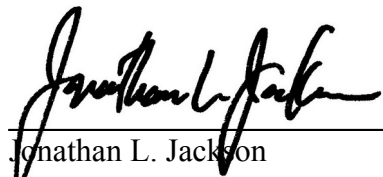
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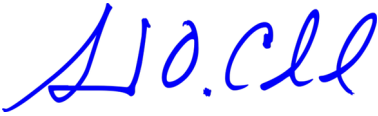
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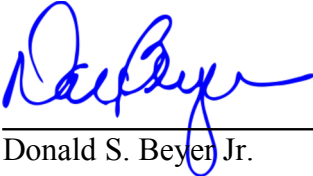
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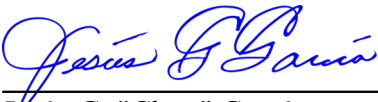
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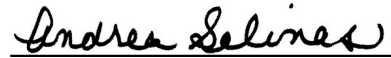
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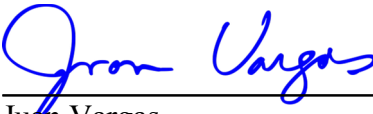
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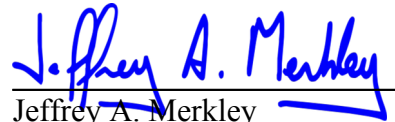
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