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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATES OF CALIFORNIA, WASHINGTON, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, MAINE, MARYLAND, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, AND WISCONSIN; PEOPLE OF THE STATE OF MICHIGAN; COMMONWEALTHS OF MASSACHUSETTS AND PENNSYLVANIA; TERRITORY OF GUAM; DISTRICT OF COLUMBIA; HARRIS COUNTY, TEXAS; CITY OF NEW YORK; CONNECTICUT DEPARTMENT OF ENERGY AND ENVIRONMENTAL PROTECTION; AND NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Case No. 3:20-cv-06057

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Administrative Procedure Act, 5 U.S.C. §§ 551–559, 701–706; Endangered Species Act, 16 U.S.C. §§ 1531–1544; National Environmental Policy Act, 42 U.S.C. §§ 4321–4347)

Plaintiffs,

v.

COUNCIL ON ENVIRONMENTAL QUALITY AND MARY B. NEUMAYR, in her official capacity as Chairman of the Council on Environmental Quality,

Defendants.

1. Plaintiffs, the State of California by and through Attorney General Xavier Becerra; the State of Washington, by and through Attorney General Robert W. Ferguson; the State of Colorado, by and through Attorney General Philip J. Weiser; the State of Connecticut and the Connecticut Department of Energy and Environmental Protection, by and through Attorney General William Tong; the State of Delaware, by and through Attorney General Kathleen Jennings; the State of Illinois, by and through Attorney General Kwame Raoul; the State of Maine, by and through Attorney General Aaron Frey; the State of Maryland, by and through Attorney General Brian E. Frosh; the People of the State of Michigan, by and through Attorney General Dana Nessel; the State of Minnesota, by and through Attorney General Keith Ellison; the State of Nevada, by and through Attorney General Aaron Ford; the State of New Jersey, by and through Attorney General Gurbir Grewal; the State of New Mexico, by and through Attorney General Hector Balderas; the State of New York and the New York State Department of Environmental Conservation, by and through Attorney General Letitia James; the State of North Carolina, by and through Attorney General Joshua H. Stein; the State of Oregon, by and through Attorney General Ellen Rosenblum; the State of Rhode Island, by and through Attorney General Peter F. Neronha; the State of Vermont, by and through Attorney General Thomas J. Donovan, Jr.; the State of Wisconsin, by and through Attorney General Joshua L. Kaul; the Commonwealth of Massachusetts, by and through Attorney General Maura Healey;

the Commonwealth of Pennsylvania, by and through Attorney General Josh Shapiro; the Territory of Guam, by and through Attorney General Leevin Taitano Camacho; the District of Columbia, by and through Attorney General Karl A. Racine; Harris County, Texas, by and through Harris County Attorney Vince Ryan; and the City of New York, by and through Corporation Counsel James E. Johnson (collectively State Plaintiffs) bring this action against Defendants Council on Environmental Quality (CEQ) and Mary Neumayr, in her official capacity as Chairman of CEQ. State Plaintiffs seek judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 551–559 and 701–706 (APA), and the Endangered Species Act, 16 U.S.C. §§ 1531–1544 (ESA), of CEQ's final rule revising its longstanding regulations implementing the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321–4347, titled Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (Final Rule), 85 Fed. Reg. 43,304 (July 16, 2020) (to be codified at 40 C.F.R. pt. 1500).

I. INTRODUCTION

2. For more than fifty years, NEPA has served as our nation's bedrock law for environmental protection by directing federal agencies to make well-informed decisions that protect public health and the environment. NEPA embodies our nation's democratic values by involving states, territories, local governments, and the public in the federal decision making process.

3. In enacting NEPA, Congress recognized the "critical importance of restoring and maintaining environmental quality to the overall welfare and development of man" and emphasized a national policy of cooperation with state and local governments as well as concerned individuals and private organizations "to use all practicable means … to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a).

4. Consistent with this overarching policy, Congress directed federal agencies to implement NEPA "to the fullest extent possible" and to conduct a detailed environmental review for "major Federal actions significantly affecting the quality of the human environment" that analyzes an action's environmental impacts, alternatives to the proposed action, the relationship between short-term uses and long-term productivity, and any irreversible and irretrievable commitment of resources. 42 U.S.C. §§ 4332, 4332(2)(C). As the Supreme Court explained, Congress intended NEPA's "action-forcing procedures" to help "insure that the policies [of NEPA] are implemented." *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979) (quoting S. Rep. No. 91-296, at 19 (1969)).

5. NEPA is a success story of government transparency, meaningful public participation, informed decision making, and environmental and public health protection. Before NEPA, federal agencies often could make decisions without considering an action's environmental impacts or public concerns about those impacts. NEPA requires that federal agencies engage in a transparent, public, and informed decision making process to comprehensively evaluate the environmental effects of their actions. NEPA's focus on government transparency and public participation thus ensures that states, territories, local governments, businesses, organizations, and individuals have a role in shaping federal actions. State and territorial agencies, local governments, and the public have long relied on the NEPA process to identify harms from federal actions to state and territorial natural resources (including State Plaintiffs' air, water, public lands, cultural resources, and wildlife) and public health that might otherwise be ignored. NEPA's public process also provides vulnerable communities and communities of color that are too often disproportionately affected by environmental harms a critical voice in the decision making process on actions that threaten adverse environmental and health impacts. NEPA thus reflects the nation's democratic principles by elevating the public's role in agency decision making and ensuring that federal agencies thoughtfully review public input before making a decision.

6. NEPA prioritizes careful, informed decision making over rushed and reckless action, enabling agencies to consider and adopt alternatives to a proposed action or incorporate mitigation measures that protect public health, preserve irreplaceable natural resources for current and future generations, and avoid long-term, irreversible, and costly environmental harms. NEPA has thus led to more informed decisions and better environmental and public health outcomes for half a century.

7. Promoting better decisions by federal agencies is particularly important when the nation faces the unparalleled threat of climate change, which disproportionately impacts communities already overburdened with pollution and associated public health impacts. Federal actions include coal, oil, and natural gas leasing; timber sales; offshore drilling; interstate transportation of coal, crude oil, and natural gas; and interstate transportation projects, among others. These actions threaten to exacerbate climate change harms, pollute State Plaintiffs' air and water, disrupt wildlife habitats, and contribute to disproportionate public health harms. Rigorous environmental review under NEPA identifies these harms, helps to mitigate and avoid them, and ultimately results in more responsible, less harmful federal actions.

8. In 1978, defendant CEQ promulgated regulations that have guided NEPA's success for more than forty years. These longstanding regulations have directed federal agencies, and, in some situations, state agencies and local governments involved in major Federal actions significantly affecting the environment, on how to comply with NEPA's procedural requirements and its environmental protection policies. *See* 40 C.F.R. pt. 1500 (1978) (1978 regulations).

9. Under the current administration, CEQ now seeks to derail NEPA by issuing a Final Rule that rewrites CEQ's enduring regulations implementing NEPA at the expense of the environment and the people it is meant to protect—including State Plaintiffs' residents, wildlife, and natural resources. The Final Rule (i) severely limits which federal actions require

NEPA compliance; (ii) greatly narrows the scope of federal agencies' obligation to consider environmental impacts; (iii) threatens to render NEPA's public participation process a meaningless paperwork exercise; and (iv) unlawfully seeks to restrict judicial review of agency actions that violate NEPA.

10. The Final Rule strikes at the heart of NEPA—violating NEPA's text and purpose (including NEPA's clear mandate that agencies comply with the statute "to the fullest extent possible," 42 U.S.C. § 4332), and abandoning informed decision making, public participation, and environmental and public health protection. In the Final Rule, CEQ exceeded its authority by exempting certain actions from environmental review and attempting to place unlawful limits on courts' authority to remedy plaintiffs' injuries from NEPA violations.

11. CEQ failed to provide a rational justification for its sweeping revisions to the 1978 regulations. The Final Rule reverses CEQ's longstanding interpretations of and guidance on NEPA, undercutting decades of reliance by State Plaintiffs on well-established NEPA procedures and policies that allowed states, territories, and local governments to identify potential harms to their natural resources and residents and to advocate for alternatives and mitigation measures to avoid those harms. CEQ asserted that the Final Rule advances the original objectives of its 1978 regulations to reduce paperwork and delays while asserting that it will "produce better decisions [that] further the national policy to protect and enhance the quality of the human environment." Final Rule, 85 Fed. Reg. at 43,313 (citing 43 Fed. Reg. 55,978 (Nov. 29, 1978)). But CEQ failed to explain how the Final Rule will advance these objectives when the Final Rule undercuts informed decision making and environmental protection, and sweeps away decades of agency guidance and case law. CEQ also failed to comply with the APA's notice-and-comment requirements in promulgating the Final Rule. The Final Rule thus violates the basic requirements of rational agency decision making.

12. Further, the Final Rule may impact listed endangered and threatened species and designated critical habitat, yet CEQ failed to consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, Services) regarding those impacts prior to promulgating the Final Rule, as required under section 7 of the ESA. 16 U.S.C. § 1536.

13. Last, the Final Rule is unlawful because CEQ failed to review the Final Rule's significant environmental and public health impacts as required by NEPA itself.

14. For these reasons, the Final Rule is arbitrary, capricious, and contrary to law in violation of the APA and NEPA, was promulgated in excess of statutory authority and without observance of procedure required by law, and should be vacated.

II. JURISDICTION AND VENUE

15. This action raises federal questions and arises under NEPA, the APA, and the ESA. This Court therefore has jurisdiction over State Plaintiffs' claims pursuant to 28 U.S.C. § 1331 (action arising under the laws of the United States), 5 U.S.C. §§ 701–06 (APA), and 16 U.S.C. § 1540(g)(1) (ESA). State Plaintiffs seek declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–02, 5 U.S.C. §§ 701–06, and 16 U.S.C. § 1540(g)(1)(A).

16. An actual controversy exists between the parties within the meaning of 28 U.S.C. § 2201(a), and the Court may grant declaratory and injunctive relief under 28 U.S.C. §§ 2201–02, 5 U.S.C. §§ 705–06, and 16 U.S.C. § 1540(g)(1)(A).

17. CEQ is an agency subject to APA requirements. 5 U.S.C. § 551. Each of the State Plaintiffs is a "person" authorized to bring suit under the APA to challenge unlawful final agency action. *Id.* §§ 551(2), 702. The Final Rule is a final agency action subject to review under the APA. *Id.* §§ 704, 706.

18. The United States has waived sovereign immunity for claims arising under the APA. *Id.* § 702.

19. CEQ is an agency subject to ESA requirements. 16 U.S.C. § 1540(g)(1)(A). Each of the State Plaintiffs is a "person" authorized to bring suit under the ESA to challenge violations of the ESA's requirements. *Id*. §§ 1532(13), 1540(g)(1). On September 22, 2020, State Plaintiffs provided Defendants with sixty days' written notice of their intent to sue, in satisfaction of ESA section 11(g). 16 U.S.C. § 1540(g)(2)(i). A copy of the notice is attached as Exhibit A.

20. State Plaintiffs submitted timely and detailed comments opposing CEQ's proposed rule that preceded the Final Rule, *see* Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 1,684 (Jan. 10, 2020) (Proposed Rule), and have therefore exhausted all administrative remedies.

21. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because this is the judicial district in which Plaintiff State of California resides, and this action seeks relief against federal agencies and officials acting in their official capacities.

III. INTRADISTRICT ASSIGNMENT

22. Although no basis exists under Civil Local Rule 3-2(c) for assigning this action to any particular location or division of this Court, this case is related to *Alaska Community Action on Toxics v. Council on Environmental Quality*, Case No. 3:20-CV-05199, which challenges the same Final Rule and is assigned to Judge Richard Seeborg in the San Francisco Division.

IV. PARTIES

A. Plaintiffs

23. Plaintiff STATE OF CALIFORNIA brings this action by and through Attorney General Xavier Becerra. The Attorney General is the chief law enforcement officer of the state and has the authority to file civil actions in order to protect public rights and interests, including actions to protect the natural resources of the state. Cal. Const. art. V, § 13; Cal. Gov't Code §§ 12600–12. This challenge is brought in part pursuant to the Attorney General's

independent authority to represent the people's interests in protecting the environment and natural resources of California from pollution, impairment, or destruction. Cal. Const. art. V, § 13; Cal. Gov't Code §§ 12511, 12600–12; *D'Amico v. Bd. of Med. Exam'rs,* 520 P.2d 10, 14 (Cal. Sup. Ct. 1974).

24. The State of California has a sovereign interest in its natural resources and is the sovereign and proprietary owner of all the state's fish and wildlife resources, which are state property held in trust by the state for the benefit of the people of California. *People v. Truckee Lumber Co.*, 48 P. 374, 374 (Cal. Sup. Ct. 1897); *Nat'l Audubon Soc'y v. Superior Ct.*, 658 P.2d 709, 727 (Cal. Sup. Ct. 1983).

25. California has millions of acres of federal land across twenty national forests, nine national parks (including world-renowned Yosemite National Park), thirty-nine national wildlife refuges, seven national monuments, and numerous Department of Defense facilities, including at least thirty-two military bases. California is also home to six primary and numerous auxiliary interstate highways, at least nine international airports, and major federal water infrastructure projects, such as the Central Valley Project, which controls a significant proportion of water distribution in the northern and southern regions of the state. Federal agencies, including the U.S. Navy and the Coast Guard, also routinely engage in activities in California's coastal waters. Major Federal actions concerning these lands, waters, projects, highways, airports, and other federal facilities are subject to NEPA.

26. There are currently over 300 species listed as endangered or threatened under the ESA that reside wholly or partially within the State of California and its waters—more than any other mainland state. Examples include the southern sea otter (*Enhydra lutris nereis*) found along California's central coastline, the desert tortoise (*Gopherus agassizii*) and its critical habitat in the Mojave Desert, the marbled murrelet (*Brachyramphus marmoratus*) in north coast redwood forests, as well as two different runs of Chinook salmon (*Oncorhynchus tshawytscha*) and their spawning, rearing, and migration habitat in the Bay-Delta and Central

Valley rivers and streams. These and other species are affected by federal projects throughout California. For example, Chinook salmon are threatened by the U.S. Bureau of Reclamation's proposal to raise the level of the Shasta Reservoir in northern California.

27. California state agencies, including the California Environmental Protection Agency, the State Water Resources Control Board, the Air Resources Board, the California Department of Food and Agriculture, and the Department of Fish and Wildlife have engaged in the federal NEPA process to protect the state's interest in public health, environmental quality, and state natural resources. For example, California agencies have commented repeatedly on NEPA documents associated with the Bureau of Reclamation's proposal to raise the level of the Shasta Reservoir. The Bureau recently published a draft Supplemental Environmental Impact Statement (EIS) for this project, which is currently open for public comment. The California Department of Water Resources and California Energy Commission also work with federal agencies in preparing NEPA documents. In addition, Caltrans, California's transportation agency, has assumed NEPA responsibilities from the Federal Highway Administration (FHWA), and is thus responsible for complying with all applicable federal environmental laws, including the Final Rule, and with FHWA's NEPA regulations that will be revised under the Final Rule. *See* Memorandum of Understanding Between FHWA and the California Department of Transportation Concerning the State of California's Participation in the Surface Transportation Project Delivery Program Pursuant to 23 U.S.C. § 327 (Dec. 2016).

28. Plaintiff STATE OF WASHINGTON is a sovereign entity and brings this action to protect its sovereign and proprietary rights. The Attorney General is the chief legal advisor to the State of Washington, and his powers and duties include acting in federal court on matters of public concern. This challenge is brought pursuant to the Attorney General's statutory and common law authority to bring suit and obtain relief on behalf of Washington.

29. Washington has a sovereign and propriety interest in protecting its state resources through careful environmental review at both the state and federal level. Washington

has statutory responsibility to conserve, enhance, and properly utilize the state's natural resources. Wash. Rev. Code. §§ 77.110.030, 90.03.010, 90.58.020; *see also* Wash. Const. art. XVI, § 1. Washington has over six million acres of forest, range, agricultural, aquatic, and commercial lands and holds proprietary rights for wildlife, fish, shellfish, and tide lands. Wash. Const. art. XVII, § 1; Wash. Rev. Code § 77.04.012.

30. Washington State has dozens of federally listed species. These listed species include chinook (*Oncorhynchus tshawytscha*), chum (*Oncorhynchus keta*), and sockeye (*Oncorhynchus nerka*) salmon, steelhead (*Oncorhynchus mykiss*), Southern Resident killer whales (*Orcinus orca*) and the pygmy rabbit (*Brachylagus idahoensis*), the smallest rabbit in North America. Washington also lists thirty-two species as state endangered species and expends significant resources to protect and recover these species, some of which are not federally protected. Wash. Admin. Code 220-610-010.

31. Washington's natural resources generate more than $200 million in annual financial benefits to state public schools, institutions, and county services. They also generate billions of dollars worth of ecosystem services to surrounding communities by filtering drinking water, purifying air, and providing space for recreation. Washington's natural areas generate commercial and recreational opportunities that put billions of dollars into the Washington economy annually.

32. Washington has over 3,000 miles of coastline and millions of acres of federal lands across ten national forests, three national parks, twenty-three national wildlife refuges, three national monuments, and numerous Department of Defense locations, including at least seven military facilities and training areas. Many of these federal lands abut Washington's state-owned lands. Washington is also home to 145 federally owned or regulated dams, including Grand Coulee Dam, three interstate highways, five international airports, and the Hanford Nuclear Reservation. Federal agencies, including the U.S. Navy and the Coast Guard, also routinely engage in activities in Washington's coastal waters and the adjacent exclusive

economic zone and within Puget Sound, one of Washington's most significant ecological, cultural, and economic features. Major Federal actions concerning these lands, waters, projects, highways, airports, and other federal facilities are subject to NEPA.

33. Washington state agencies, including the Department of Ecology, the Department of Fish and Wildlife, the Department of Transportation (WSDOT), the Department of Natural Resources, and the Department of Health regularly engage in the federal NEPA process as cooperating and commenting agencies or as agencies with special expertise highlighting potential impacts to the state's natural resources and public health. For example, WSDOT and FHWA jointly worked on the NEPA process to replace the State Route 99 Alaskan Way viaduct in Seattle, Washington, where rigorous environmental review and meaningful public engagement led to a selected alternative that worked for state and federal agencies, local governments, tribes, and the public, including minority and low-income communities. Federal agency activities and actions requiring federal permits that affect Washington's coastal zone, water quality, wildlife, and cultural resources are subject to NEPA and are also reviewed by state agencies for consistency and compliance with Washington's laws and programs. In some situations, such as certain actions on federal lands, NEPA is the sole means for state agencies to advocate for protection of Washington's resources, including protection of state (but not federally) listed species and other species of concern and their habitat, and to identify unintended consequences of a proposed action.

34. Plaintiff STATE OF COLORADO is a sovereign entity that regulates land use, water and air quality, wildlife, and water resources within its borders through duly enacted state laws. The State of Colorado brings this action in its sovereign and proprietary capacity to protect public health, safety, welfare, its waters and environment, its wildlife and wildlife habitat, and its economy.

35. Clean air, land, and water provide ecologically vibrant habitats that undergird the state's robust outdoor recreation economy. For instance, in Colorado, fishing and wildlife

watching each contribute $2.4 billion in economic output each year, supporting more than 30,000 jobs within the state. Hunting supports nearly 8,000 additional jobs and contributes more than $800 million in annual economic output. The entire outdoor recreation economy, which also includes hiking, skiing, and other activities, accounts for $62.5 billion dollars of economic output in Colorado. Colo. Parks & Wildlife, *The 2017 Economic Contributions of Outdoor Recreation in Colorado* (July 2018). Agriculture is also an important economic engine and cultural resource in Colorado. As of 2019, Colorado's agricultural industry contributed $47 billion in economic output and directly employed more than 195,000 workers. The natural environment influences all aspects of agriculture and food production in Colorado.

36. Colorado is home to seventeen federally listed animals, including the recently-listed Eastern black rail (*Laterallus jamaicensis*), the Canada lynx (*Lynx canadensis*), the bonytail (*Gila elegans*), the greenback cutthroat trout (*Oncorhynchus clarki stomias*), which is designated as the state fish, and the only ferret native to the Americas, the black-footed ferret (*Mustela nigripes*). Colorado lists thirty-one animal species as state endangered or threatened species, a number of which are not federally protected. The state is also home to sixteen federally listed plants, including the Colorado hookless cactus (*Sclerocactus glaucus*) and the Pagosa skyrocket (*Ipomopsis polyantha*).

37. As Colorado's population rapidly grows, the state must ensure that projects intended to serve that population also protect the natural environment for current and future generations. For example, the Colorado Department of Transportation prepares environmental analyses for projects involving state and interstate highways, bridges, and multi-modal transportation. Similarly, the Colorado Department of Agriculture participates in NEPA reviews for public-land grazing permit renewals and for range improvement projects involving water distribution systems and habitat management. Colorado's Department of Public Health and Environment reviews projects for oil and gas leases, transportation, and wastewater infrastructure as part of the NEPA process. The Colorado Department of Natural Resources

utilizes and participates in NEPA processes for land use and water planning, disaster preparedness, and fish and wildlife protection.

38. Through early and meaningful involvement in the NEPA process, state agencies help ensure that NEPA reviews are informed by accurate technical and scientific analysis and preserve important natural, historic, and cultural resources in Colorado communities. To this end, Colorado agencies regularly consider direct, indirect, and cumulative impacts on the natural environment and general welfare.

39. Plaintiff STATE OF CONNECTICUT is a sovereign entity and brings this action to protect its citizens and natural resources. The Connecticut Attorney General is an elected constitutional official and the chief legal officer of the State of Connecticut. The Connecticut Attorney General's responsibilities include intervening in various judicial and administrative proceedings to protect the interests of the citizens and natural resources of the State of Connecticut and ensuring the enforcement of a variety of laws of the State of Connecticut. This challenge is brought pursuant to the Attorney General's statutory and common law authority to bring suit and obtain relief on behalf of the State of Connecticut.

40. Connecticut has a sovereign interest in protecting the health and safety of its citizens and its natural resources. Connecticut has a statutory duty to protect, conserve, and properly utilize its natural resources and public trust lands. Connecticut has over 1.7 million acres of forest, 173,000 acres of wetlands, 437,000 acres of agricultural land, 70,000 acres of shellfishing beds, and 22,000 acres of public trust lands, not including the entire seafloor of Long Island Sound up to the New York border, which Connecticut holds in public trust. Connecticut lists twenty-three species as endangered species and expends significant resources to protect these species. Connecticut's natural resources generate hundreds of millions of dollars in annual financial benefits to the state and its citizens.

41. Connecticut is home to fifteen federally listed animals, including the Puritan Tiger Beetle (*Cicindela puritana*), the Dwarf Wedgemussel (*Alasmidonta heterodon*), and the

Roseate Tern (*Sterna dougallii*), and four federally listed plants, including the Small Whorled Pogonia (*Isotria medeoloides*) and the American Chaffseed (*Schwalbea americana*). Seven additional animal species known to occur in Connecticut have been proposed for federal listing under the ESA.

42. Connecticut has 322 miles of coastline and three major ports (Bridgeport, New Haven, and New London). Long Island Sound is Connecticut's largest and most important maritime natural resource and is vital to Connecticut's economy. Maritime business accounts for approximately five billion dollars in state economic output and provides 30,000 jobs and tens of millions of dollars in state and local taxes.

43. Connecticut is also home to sixteen federally regulated dams, three interstate highways, an international airport, and the Naval Submarine Base in New London. Major Federal actions concerning these lands, waters, projects, highways, airports, and other federal facilities are subject to NEPA.

44. Connecticut state agencies, including the Department of Energy and Environmental Protection, the Department of Transportation, and the Department of Health regularly engage in the federal NEPA process, often as agencies with special expertise relevant to the potential impacts to the state's natural resources and public health. In these cases, the opportunity for rigorous environmental review and meaningful public engagement have been critical for state agencies, local governments, tribes, and the public, particularly for minority and low-income communities. Federal agency activities and actions requiring federal permits that affect Connecticut's coastal zone, water quality, wildlife, and cultural resources are subject to NEPA and are also reviewed by state agencies for consistency and compliance with Connecticut's laws and programs. In some situations, NEPA is the sole means for Connecticut agencies to advocate for protection of Connecticut's citizens and natural resources.

45. Plaintiff STATE OF DELAWARE is a sovereign state of the United States of America. Delaware brings this action by and through Attorney General Kathleen Jennings,

who is the chief law officer of Delaware, *Darling Apartment Co. v. Springer*, 22 A.2d 397, 403 (Del. 1941), and is empowered and charged with the duty to represent as counsel in all proceedings or actions which may be brought on behalf or against the state and all officers, agencies, departments, boards, commissions and instrumentalities of state government, Del. Code Ann. tit. 29, § 2504.

46. The State of Delaware has twenty-two federally listed endangered and threatened species. These listed species include Atlantic sturgeon (*Acipenser oxyrhynchus*), shortnose sturgeon (*Acipenser brevirostrum*), loggerhead sea turtle (*Caretta caretta*), bog turtle (*Glyptemys muhlenbergii*), red knot (*Calidris canutus*), black rail (*Laterallus jamaicensis*), piping plover (*Charadrius melodus*), northern long-eared bat (*Myotis septentrionalis*), swamp pink (*Helonias bullata*) and seabeach amaranth (*Amaranthus pumilus*). Delaware also lists an additional sixty-nine species as state endangered species that are not federally listed.

47. As one of the most low-lying states in the nation, Delaware is particularly at risk from the harms of climate change, including sea level rise. For example, a 2012 Delaware Sea Level Rise Vulnerability Assessment found that sea level rise of only 0.5 meters would inundate either percent of the state's land area. Areas inundated would include "transportation and port infrastructure, historic fishing villages, resort towns, agricultural fields, wastewater treatment facilities and vast stretches of wetlands and wildlife habitat of hemispheric importance." The Assessment concluded that "every Delawarean is likely to be affected by sea level rise whether through increased costs of maintaining public infrastructure, decreased tax base, loss of recreational opportunities and wildlife habitat, or loss of community character."

48. Multiple entities within Delaware rely on NEPA as cooperating agencies. For example, the Delaware Coastal Management Program uses information provided in the federal consistency determination required under Section 307 of the Coastal Zone Management Act of 1972 to assess impacts to Delaware's coastal uses and resources. Federal agencies are encouraged to use NEPA material to satisfy the federal consistency determination

requirements. Therefore, any rollback of NEPA obligations may cause the quality of information submitted to degrade, leaving Delaware's coastal uses and resources more vulnerable to federal activities in the state. Similarly, the Division of Water receives NEPA documents in support of permit applications, such as Water Quality Certification determinations. Delaware relies on the federal NEPA process to coordinate its protection of the state's interests.

49. Plaintiff STATE OF ILLINOIS brings this action by and through Attorney General Kwame Raoul. The Attorney General is the chief legal officer of the State of Illinois (Ill. Const., art. V, § 15) and "has the prerogative of conducting legal affairs for the State." *Envt'l Prot. Agency v. Pollution Control Bd.*, 372 N.E.2d 50, 51 (Ill. Sup. Ct. 1977). He has common law authority to represent the People of the State of Illinois and "an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State." *People v. NL Indus.*, 604 N.E.2d 349, 358 (Ill. Sup. Ct. 1992).

50. Illinois has a sovereign interest in protecting its natural resources through careful environmental review at the federal level. Among other interests, Illinois has "ownership of and title to all wild birds and wild mammals within the jurisdiction of the state." 520 Ill. Comp. Stat. 5/2.1. There are currently thirty-four species listed as endangered or threatened under the ESA that reside wholly or partially within the State of Illinois and its waters. For example, the Illinois cave amphipod (*Gammarus acherondytes*) is a small crustacean that is endemic to six cave systems in Illinois' Monroe and St. Clair County. Illinois is also home to the piping plover (*Charadrius melodus*). Additionally, the Illinois Endangered Species Protection Board has listed 372 endangered species, many of which are not federally protected. The state expends resources to protect and recover these species.

51. Furthermore, federally managed lands in Illinois are vitally important to the state and in need of protection. The Shawnee National Forest spans over 289,000 acres in southern Illinois and straddles six natural ecological regions; the Midewin National Tallgrass

Prairie is the largest open space in the Chicago metropolitan area. Additionally, significant oil and gas pipeline development takes place in Illinois.

52. Plaintiff STATE OF MAINE, a sovereign state of the United States of America, brings this action by and through its Attorney General Aaron Frey. The Attorney General of Maine is a constitutional officer with the authority to represent the State of Maine in all matters and serves as its chief legal officer with general charge, supervision, and direction of the state's legal business. Me. Const. art. IX, § 11; 5 M.R.S.A. §§ 191–205. The Attorney General's powers and duties include acting on behalf of Maine and the people of Maine in the federal courts on matters of public interest. The Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maine residents as a matter of constitutional, statutory, and common law authority.

53. Maine has a sovereign interest in protecting its natural resources through careful environmental review at both the state and federal level. Maine has over 3,000 miles of coastline, a coastline that generates millions of dollars in commercial fishing income and tourism income, and recreational opportunities to the residents of the state. Federal agencies' activities in these vital coastal waters are regulated under NEPA. Federally protected lands in Maine total 295,479 acres, including Acadia National Park, which includes 47,000 acres, and Katahdin Woods and Waters National Monument, with 87,563 acres. Maine has eleven National Wildlife Refuges which encompass 76,230 acres, including the renowned Rachel Carson National Wildlife Refuge. Maine has two federal fish hatcheries, several airports, one military base, 365 miles of federal interstate highways, and ninety-two federally licensed dams.

54. The State of Maine has seventeen species federally listed as endangered or threatened. These listed species include Piping Plovers (*Charadrius melodus*), Leatherback sea turtles (*Dermochelys coriacea*), Roseate terns (*Sterna dougallii*), Northern Atlantic Right Whales (*Eubalaena glacialis*), Canada Lynx (*Lynx canadensis*), Atlantic Salmon (*Salmo salar*), Northern Long-Eared Bats (*Myotis septentrionalis*), and Rusty patched bumble bees

(*Bombus affinis*). Maine lists 64 marine and inland species as endangered or threatened in the State, most of which are not federally listed. The State devotes considerable resources to protecting these species and the habitat that is vital to their survival and recovery.

55. Maine's environmental agencies, including the Department of Environmental Protection, the Department of Marine Resources, the Department of Inland Fisheries and Wildlife, and the Department of Agriculture, Conservation and Forestry, engage in the federal NEPA process to protect the state's natural resources and public health. NEPA review of Federal agency activities and activities requiring federal permits that affect Maine's natural resources provides essential protection to Maine's environment.

56. Plaintiff STATE OF MARYLAND brings this action by and through its Attorney General, Brian E. Frosh. The Attorney General of Maryland is the state's chief legal officer with general charge, supervision, and direction of the state's legal business. Under the Constitution of Maryland and as directed by the Maryland General Assembly, the Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); Md. Code. Ann., State Gov't § 6-106.1. Maryland has enacted its own Environmental Policy Act, *see* Md. Code. Ann., Nat. Res. §§ 1-301 *et seq*., which is triggered upon the general assembly's appropriation of funding for major projects.

57. The State of Maryland has a sovereign and proprietary interest in protecting its state resources through careful environmental review of major federal actions. These resources include the Chesapeake Bay, one of the nation's most productive estuaries with a watershed that spans 64,000 square miles across six states and the District of Columbia. It is the official policy of the state "to conserve species of wildlife for human enjoyment, for scientific purposes, and to insure their perpetuation as viable components of their ecosystems." Maryland Nongame and Endangered Species Conservation Act, Md. Code. Ann., Nat. Res. § 10-2A-02. To that end, more than 150 species of animals and 340 species of plants are listed

as state endangered, threatened, or in need of conservation. *See* COMAR 08.03.08 (providing lists of plant and wildlife species with elevated conservation statuses).

58. Twenty-one federally listed species, including thirteen animals and eight plants, are believed to occur in Maryland. Currently listed species include the federally endangered dwarf wedgemussel (*Alasmidonta heterodon*), the federally threatened bog turtle (*Glyptemys muhlenbergii*), and the federally threatened Puritan tiger beetle (*Cicindela puritan*). Maryland is also home to one of the Endangered Species Act's biggest success stories, the Delmarva Fox Squirrel (*Sciurus niger cinereus*), which thanks to federal, state, and private conservation efforts, was removed from the list of federally threatened species in 2010.

59. The federal government has a large presence in Maryland. There are more than 480 miles of interstate highways in Maryland, including I-95, I-70, the Baltimore Beltway, and portions of the capital beltway that connects the greater Washington, D.C. Metropolitan Area. A number of federally owned or operated facilities are also located in Maryland including the Aberdeen Proving Ground, U.S. Naval Academy in Annapolis, and Camp David. Additionally, the state is home to five National Wildlife Refuges, the Assateague Island National Seashore, and numerous national parks, monuments, and battlefields. Major federal actions concerning these lands, waters, highways, and parks are subject to NEPA review.

60. Maryland agencies frequently participate in and rely on the federal NEPA process as cooperating and commenting agencies. The State Highway Administration, for example, addresses floodplain management for federally funded projects through NEPA, and the Maryland Department of the Environment completes NEPA-like reviews for projects funded through the U.S. Environmental Protection Agency's State Revolving Fund programs for clean water and drinking water.

61. Plaintiff PEOPLE OF THE STATE OF MICHIGAN brings this action by and through Attorney General Dana Nessel, who is authorized by statute and under common law to initiate litigation in the public interest on behalf of the People of the State of Michigan.

62. Michigan has twenty-six federally listed threatened and endangered species. The listed species include the Eastern Massasauga rattlesnake (*Sistrurus catenatus*), the Canada lynx (*Lynx canadensis*), and the Piping plover (*Charadrius melodus*).

63. Among other things, the People of the State of Michigan will be harmed by the federal government's dereliction of duty in the Final Rule's treatment of climate change under NEPA. Michigan is already being harmed by climate change. Since 1951, the average annual temperature has increased by a range of 0.6-1.3 degrees Fahrenheit across the Lower Peninsula. During that same time, annual average precipitation increased by 4.5 percent as well. Michigan faces extreme heat events, excess rain and flooding, respiratory illnesses, heat-related illnesses, and both waterborne and vector-borne diseases. As a result, Michigan is tasked with protecting its citizens from temperature-related illness, respiratory diseases, waterborne diseases exacerbated by extreme rain events, and infectious diseases such as Lyme disease and West Nile Virus. Increased precipitation will also damage Michigan roads, bridges, dams and other physical infrastructure.

64. Plaintiff STATE OF MINNESOTA brings this action by and through its chief legal officer, Attorney General Keith Ellison, to protect Minnesota's interest in its natural resources and the environment. This challenge is brought pursuant to the Attorney General's authority to represent the state's interests. Minn. Stat. § 8.01. Minnesota has enacted and devotes significant resources to implementing numerous laws concerning the management, conservation, protection, restoration, and enhancement of its natural resources. *See, e.g.*, Minn. Stat. Chs. 116B, 116D. Minnesota owns its wildlife resources, Minn. Stat. § 97A.025, and manages them for the benefit of all citizens. Minnesota state agencies, including the Minnesota Pollution Control Agency, the Department of Natural Resources, the Public Utilities Commission, the Department of Commerce, and the Environmental Quality Board regularly engage in the federal NEPA process to protect the state's interest in public health,

environmental quality, and state natural resources. Minnesota has a direct interest in the strength and integrity of NEPA's implementing regulations.

65. Minnesota is home to Voyageurs National Park, two national monuments, two national forests, three wilderness areas, and one national recreation area. In 2019, there were 1,099,276 recreational visits to federal lands and facilities in Minnesota, generating over $60 million in visitor spending for the Minnesota economy. *2019 National Park Visitor Spending Effects Report*, National Park Service, (Apr. 2020), https://www.nps.gov/subjects/socialscience/vse.htm. These figures do not include the more than 110,000 visitors who traveled through the Boundary Waters Canoe Area Wilderness (BWCAW) every year between 2009 and 2016. *USFS Permit and Visitor Use Trends, 2009-2016*, USDA Forest Service, (July 7, 2017), https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd549672.pdf. The BWCAW is the most visited wilderness area in the United States.

66. Federally listed endangered species in Minnesota include the Rusty-Patched Bumble Bee, *(bombus affinis*), the Topeka Shiner (*nontropis topeka*), the Higgins Eye Pearlymussel (*lampsilis higgininsi*), and the Winged Mapleleaf Mussel (*quadrula fragosa*). Of special concern are the Canada lynx (*lynx canadensis*) and the Western Prairie Fringed Orchid (*plantanthera praeclara*).

67. There are several major infrastructure projects currently proposed in Minnesota that have been or will be subject to NEPA review. For example, Enbridge Energy, Limited Partnership seeks to replace an oil pipeline that traverses Minnesota, which requires several state and federal permits. There are also two proposed copper-nickel mining projects in Minnesota—one in the watershed of the Boundary Waters Canoe Area Wilderness—that will require many state and federal permits. These projects have attracted a great deal of public attention from Minnesotans and millions, including Minnesota state agencies, have participated in the review processes to date.

68. Plaintiff STATE OF NEVADA is a sovereign entity and brings this action by and through Attorney General Aaron Ford to protect its sovereign and proprietary rights. The Nevada Attorney General is the chief law enforcement officer of the State. Attorney General Ford's powers and duties include acting in federal court on matters of public concern and he has the authority to file civil actions in order to protect public rights and interests, including actions to protect the natural resources of the State. Nev. Const. art. V, § 19; Nev. Rev. Stat. §§ 228.170, 228.180. This challenge is brought pursuant to the Attorney General's independent constitutional, statutory, and common law authority to represent the people's interests in protecting the environment and natural resources of the State of Nevada from pollution, impairment, or destruction. Nev. Const. art. V, § 19; Nev. Rev. Stat. § 228.180.

69. Nevada has a sovereign and propriety interest in protecting its natural resources through careful environmental review and is the sovereign and proprietary owner of all the State's fish and wildlife and water resources, which are State property held in trust by the State for the benefit of the people of the State. N.R.S. 501.100 provides that "[w]ildlife in this State not domesticated and in its natural habitat is part of the natural resources belonging to the people of the State of Nevada [and t]he preservation, protection, management and restoration of wildlife within the State contribute immeasurably to the aesthetic, recreational and economic aspects of these natural resources." *See Ex parte Crosby*, 38 Nev. 389, 149 P. 989 (1915); *See also*, *Kleppe v. New Mexico*, 426 U.S. 529, 545 (1976) ("Unquestionably the States have broad trustee and police powers over wild animals within their jurisdictions."). In addition, the State of Nevada has enacted numerous laws concerning the conservation, protection, restoration and enhancement of the fish and wildlife resources of the State, including endangered and threatened species, and their habitat. As such, the State of Nevada has an interest in protecting species in the State from actions both within and outside of the State. Nevada's natural resources generate more than one hundred million dollars in annual financial benefits to state public schools, institutions, and county services. Nevada's natural

areas also generate commercial and recreational opportunities that put billions of dollars into Nevada's economy annually.

70. There are currently over thirty-eight species listed as endangered or threatened under the ESA that reside wholly or partially within the State of Nevada. Examples include the desert tortoise (*Gopherus agassizii*) and its critical habitat in the Mojave Desert, the Devil's Hole pupfish (*Cyprinodon diabolis*) reliant on limited aquifers within the Amargosa Desert ecosystem, the Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*) indigenous to Pyramid and Walker Lakes and nearly extirpated by American settlement in the Great Basin, Sierra Nevada bighorn sheep (*Ovis Canadensis sieera*), and the greater sage-grouse (*Centrocercus urophasianus*) found in the foothills, plains and mountain slopes where sagebrush is present across fifteen of Nevada's seventeen counties.

71. Nevada has approximately 58,226,015 acres of federally-managed lands, totaling about 84.9 percent of the State's lands, including three national forests, two national parks, three national historic trails, nine national wildlife refuges, three national monuments, one national recreation area, two international airports, seventy wilderness areas, and numerous Department of Defense and Department of Energy locations. The federal agencies that manage these millions of acres and federal actions concerning these lands are subject to NEPA, including the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Reclamation, the Department of Defense, the Department of Energy, the FWS, the Forest Service, and the National Park Service. Moreover, additional non-federal lands and facilities in Nevada are subject to federal permitting and licensing requirements.

72. Nevada state departments and agencies, including the Department of Conservation and Natural Resources and its many Divisions, the Department of Wildlife, the Department of Transportation, the Agency for Nuclear Projects, the Department of Agriculture, the Colorado River Commission, and the Nevada System of Higher Education, regularly engage in the federal NEPA process as cooperating and commenting agencies or as agencies

with special expertise highlighting potential impacts to the state's natural resources and public health. Federal agency activities and actions requiring federal permits that affect Nevada's environmental quality, wildlife, mineral, and cultural resources are subject to NEPA and are also reviewed by state agencies for consistency and compliance with Nevada's laws and programs. In some situations, NEPA is the sole means for state agencies to advocate for protection of Nevada's resources.

73. Plaintiff STATE OF NEW JERSEY is a sovereign state of the United States of America and brings this action on behalf of itself and as trustee, guardian and representative of the residents and citizens of New Jersey. As the most densely developed state in the country, New Jersey has actively pursued conservation programs for land and natural resources. New Jersey's voters have approved more than $3.3 billion in funding for New Jersey Department of Environmental Protection's (NJDEP) Green Acres program to conserve ecologically-sensitive or natural resource-laden properties. Similarly, over 230,000 acres of farmland have been conserved through New Jersey's State Agricultural Development Committee.

74. New Jersey expends significant resources protecting its natural resources, including eighty-three state-listed threatened or endangered species, and holds all wildlife, fish, shellfish, and tidal waters in trust for its citizens. New Jersey has at least fourteen federally listed species, including the threatened piping plover (*Charadrius melodus*), red knot (*Calidris canutus rufa*), and the recently designated New Jersey state reptile, the bog turtle (*Clemmys muhlenbergii*).

75. New Jersey is home to well over one hundred miles of coastline, which includes the famed Jersey Shore as a significant tourism driver, and federal activities such as seismic testing and offshore drilling have historically been proposed off of New Jersey's coastline. New Jersey is also home to three primary interstate highways and numerous auxiliary interstate highways, including auxiliary highways running from other states' interstate systems, numerous military installations, including Joint Base McGuire-Dix-Lakehurst, and federal

parks and natural areas where a fully functional NEPA process is essential to sound environmental planning. Due to its geographic location, New Jersey has also become the site for numerous proposed energy transmission infrastructure projects which require federal approvals and are subject to NEPA. New Jersey agencies and authorities, including but not limited to NJDEP, regularly engage in the federal NEPA process. NJDEP routinely comments during the NEPA process to inform the relevant federal agency about mechanisms to avoid, minimize, and/or mitigate potential impacts to the environment and public health, as well as to educate the federal agency about New Jersey's own statutory and regulatory requirements. Further, project proponents may use an EIS properly completed under NEPA or properly promulgated categorical exemptions as a substitute for compliance with New Jersey's Executive Order 215 (1989).

76. Plaintiff STATE OF NEW MEXICO joins in this action by and through Attorney General Hector Balderas. The Attorney General of New Mexico is authorized to prosecute in any court or tribunal all actions and proceedings, civil or criminal, when, in his judgment, the interest of the state requires such action. N.M. Stat. Ann. § 8-5-2. New Mexico has a statutory duty to "ensure an environment that in the greatest possible measure will confer optimum health, safety, comfort and economic and social well-being on its inhabitants; will protect this generation as well as those yet unborn from health threats posed by the environment; and will maximize the economic and cultural benefits of a healthy people." *Id.* § 74-1-2.

77. Federal agencies have an enormous footprint in New Mexico. More than one-third of New Mexico's land is federally administered, with the United States Department of Agriculture, Department of the Interior, and Department of Defense playing active roles in land management within the state. The state is home to the nation's newest national park (White Sands National Park, established 2019); first designated wilderness area (Gila Wilderness, established 1924); and largest military installation (White Sands Missile Range).

It also hosts two National Laboratories, three Air Force Bases, and the nation's only deep geologic repository for nuclear waste (the United States Department of Energy's Waste Isolation Pilot Project or WIPP). The state contains a significant portion of the Navajo Nation Indian reservation as well as twenty-two other federally recognized Indian tribes. The U.S. Army Corps of Engineers operates seven dams in New Mexico, and the U.S. Department of Agriculture manages five in-state National Forests, comprising over nine million acres. The Bureau of Land Management (BLM) also oversees over thirteen million acres of public lands, thirty-six million acres of federal mineral estate, and approximately eight million acres of Indian trust minerals in New Mexico. BLM has approved over 7,800 oil and gas leases in the state, as well as twenty-one federal coal leases encompassing 42,756 acres.

78. New Mexico is home to a vast array of plant and animal species, many of which are either threatened or endangered. Indeed, FWS lists forty-one animal and fourteen plant species as threatened or endangered in New Mexico. These include the endangered, iconic Southwestern willow flycatcher (*Empidonax traillii extimus*), the endangered Rio Grande silvery minnow (*Hybognathus amarus*), the endangered jaguar *(Panthera onca*), the endangered Mexican wolf (*Canis lupus baileyi*), and the threatened Mexican spotted owl (*Strix occidentalis lucida*). Furthermore, the New Mexico Department of Game and Fish maintains its own list of 116 in-state threatened and endangered species and subspecies – including crustaceans, mollusks, fishes, amphibians, reptiles, birds, and mammals – many of which are not listed by FWS and do not receive federal protection. Among the species receiving only state protection are the endangered Gila monster (*Heloderma suspectum*), the endangered brown pelican (*Pelecanus occidentalis*), and the threatened white-sided jackrabbit (*Lepus callotis*).

79. New Mexico faces serious environmental challenges in the 21st century. The state is already experiencing the adverse effects of climate change, and average temperatures in New Mexico have been increasing fifty percent faster than the global average over the past

century. According to the Third U.S. National Climate Assessment, streamflow totals in the Rio Grande and other rivers in the Southwest were five percent to thirty-seven percent lower between 2001 and 2010 than the 20th century average flows. As of August 20, 2020, 100 percent of the state is suffering from drought conditions, with approximately 55.5 percent being in a "severe drought." (*See* Nat'l Integrated Drought Info. Sys., https://www.drought.gov/drought/states/new-mexico). It is estimated that forty percent of Navajo Nation residents already lack running water.

80. New Mexico relies on participation in the NEPA process to protect its proprietary and sovereign interests in its natural resources, including weighing the short-term benefits of resource extraction against the long-term effects of climate change, and conserving scarce water resources. In one recent example, the New Mexico State Auditor's Office, the New Mexico Department of Game and Fish, and the New Mexico Department of Agriculture submitted comments to BLM regarding the Farmington Mancos-Gallup Resource Management Plan Amendment, calling BLM's attention to, among other things, the state's land and water conservation planning efforts. Other EISs the state has recently commented on include those for Los Alamos National Lab (Sitewide EIS); the New Mexico Unit of the Central Arizona Project (regarding diversion of water from the Gila River); and Plutonium Pit Production at the Department of Energy's Savannah River Site (regarding effects from waste shipped to WIPP). The New Mexico Environment Department alone has submitted comments on eleven EISs in 2020 so far.

81. Plaintiff STATE OF NEW YORK brings this action on its own behalf and on behalf of its environmental agency, the New York State Department of Environmental Conservation (NYSDEC), to protect New York's sovereign and proprietary interests, which include ownership of all wildlife in the state, N.Y. Envtl. Conserv. Law § 11-0105, and numerous waterbodies, including without limitation: the land under the "marginal sea" to a line three miles from the coast, the Great Lakes within the state's territorial jurisdiction, Lake

Champlain and the St. Lawrence and Niagara Rivers, as well as the Hudson and Mohawk Rivers, Lake George, Cayuga Lake, Canandaigua Lake, Oneida Lake, and Keuka Lake. *See Town of N. Elba v. Grimditch*, 98 A.D.3d 183, 188–89 (N.Y. App. Div. 3d Dep't 2012). The state also owns approximately 4.8 million acres of park and forest lands, including more than 2.8 million acres of "forever wild" forest preserve. N.Y. Const. art. XIV.

82. There are dozens of federally endangered or threatened species that reside in whole or in part within the State of New York and its waters. Examples include four sea turtles that can be found in New York waters—the loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*) and Kemp's Ridley (*Lepidochelys kempii*). New York hosts ten National Wildlife Refuges, home to federally protected species like the Piping Plover (*Charadrius melodus*), and dozens of other federal sites. Other species of concern include the endangered shortnose sturgeon (*Acipenser brevirostrum*), Atlantic sturgeon (*Acipenser oxyrinchus)*, and the Northern long-eared bat (*Myotis septentrionalis*). Strong ESA protections both within its state borders and throughout each species' range are fundamental to New York's interests.

83. New York is home to nine primary and twenty-two auxiliary interstate highways, six international airports, and several federal military installations, including Fort Drum, the United States Military Academy at West Point, and the Watervliet Arsenal. New York is also home to the Western New York Nuclear Service Center, a program of the New York State Energy Research and Development Authority (NYSERDA), which owns, in trust for the People of the State of New York, a 3,300-acre former nuclear waste re-processing facility that is the subject of an ongoing joint lead agency supplemental environmental review of decommissioning activities under NEPA and state law.

84. New York state agencies and authorities, collectively, including without limitation the NYSDEC and NYSERDA, regularly engage or are presently engaged in the federal NEPA process. Federal agency activities and actions requiring federal permits that

affect New York's coastal zone, water quality, wildlife, and cultural resources are subject to NEPA, and NEPA analysis is used to support state decision making. For example, where federal and state environmental reviews of a project are undertaken, the NYSDEC may rely on a NEPA EIS where it is sufficient for the agency to make findings under state law. Where no EIS is prepared under NEPA, the NEPA record developed to support a Finding of No Significant Impact may inform the record for analysis under state law. And where state environmental review may be preempted, New York agencies such as NYSDEC may use NEPA analysis to support their decisions, such as water quality certifications.

85. Plaintiff STATE OF NORTH CAROLINA brings this action by and through Attorney General Joshua H. Stein. The North Carolina Attorney General is the chief legal officer of the State of North Carolina. The Attorney General is empowered to appear for the State of North Carolina "in any cause or matter … in which the state may be a party or interested." N.C. Gen. Stat. § 114-2(1). Moreover, the Attorney General is authorized to bring actions on behalf of the citizens of the state in "all matters affecting the public interest." *Id.* § 114-2(8)(a).

86. North Carolina has a sovereign and propriety interest in protecting its state resources through careful environmental review at both the state and federal level. It is the constitutional policy of North Carolina to conserve and protect its lands and waters for the benefit of all its citizenry. N.C. Const. Art. XIV, § 5. Under North Carolina law, "the marine and estuarine and wildlife resources of North Carolina belong to the people of the state as a whole." N.C. Gen. Stat. § 113-131(a). Furthermore, North Carolina's General Assembly has declared that it is the policy of the State of North Carolina to "encourage the wise, productive, and beneficial use of the natural resources of the State without damage to the environment," and to "maintain a healthy and pleasant environment, and preserve the natural beauty of the State." *Id.* § 113A-3.

87. North Carolina contains over two million acres of federally-owned lands, including lands managed by the U.S. Forest Service, FWS, National Park Service, and Department of Defense. North Carolina has ten national parks and forty-one state parks. North Carolina is home to thirty-nine animal and twenty-seven plant species that have been listed as endangered or threatened by the FWS, including the endangered Red-cockaded woodpecker (*Picoides borealis*), Carolina northern flying squirrel (*Glaucmys sabrinus coloratus*), and Leatherback sea turtle (*Dermochelys coriacea*).

88. North Carolina agencies regularly engage in the federal NEPA process as cooperating and commenting agencies or as agencies with special expertise highlighting potential impacts to the state's natural resources and public health.

89. Plaintiff STATE OF OREGON brings this suit by and through Attorney General Ellen Rosenblum. The Oregon Attorney General is the chief legal officer of the State of Oregon. The Attorney General's duties include acting in federal court on matters of public concern and upon request by any state officer when, in the discretion of the Attorney General, the action may be necessary or advisable to protect the Oregon's interests. Or. Rev. Stat. § 180.060(1).

90. The State of Oregon has a sovereign interest in its natural resources and is the sovereign owner of the state's fish and wildlife. Under Oregon law, "[w]ildlife is the property of the State." *Id.* § 498.002. The State of Oregon has enacted numerous laws and rules concerning the conservation and protection of the natural resources of the state. *See, e.g.*, Oregon Endangered Species Act, Or. Rev. Stat. §§ 496.171–.192, 498.026; Fish and Wildlife Habitat Mitigation Policy, Or. Admin. R. 635-415-0000 (creating "goals and standards to mitigate impacts to fish and wildlife habitat caused by land and water development actions"); Or. Admin. R. 660-15-0000(5) ("[l]ocal governments shall adopt programs that will protect natural resources"). Oregon State has sixty-six federally listed species (including plants and invertebrates). These listed species include upper Columbia River steelhead (*Oncorhynchus*

mykiss), upper Willamette River chinook salmon (*Oncorhynchus tshawytscha*), the marbled murrelet (*Brachyramphus marmoratus*), and the Oregon spotted frog (*Rana pretiosa*). Oregon also lists thirty species as state endangered or threatened species and expends significant resources to protect and recover these species, some of which (for example, the California brown pelican) are not federally protected.

91. Natural resources are the source of substantial economic activity in Oregon. More than $2.6 billion annually is spent in Oregon by residents and visitors on trips and equipment for wildlife-watching, fishing, and hunting. The state also owns at least 1.775 million acres of land, including land managed by the Department of Forestry and the Department of State Lands. (That figure generally excludes state-owned waterbodies and rights of way.) Revenue from the 780,000 acres of land managed by the Department of State Lands is placed in the Common School Fund, which generates tens of millions of dollars annually for Oregon public schools.

92. More than half of Oregon's land area is owned by the federal government. BLM manages over fifteen million acres in Oregon. The U.S. Forest Service also manages over fifteen million acres (across eleven national forests). Oregon has eighteen national wildlife refuges and Crater Lake National Park. Oregon has three primary and three auxiliary interstate highways. Many Oregon resources, such as the Common School Trust Lands and navigable waters, are ecologically connected to federal lands. Oregon's fish and wildlife resources also rely on federal lands and waters.

93. Oregon state agencies, including the Department of Fish and Wildlife, the Department of Transportation, the Department of State Lands, and the Oregon Department of Parks and Recreation, regularly engage in the federal NEPA process as cooperating and commenting agencies or as agencies with special expertise highlighting potential impacts to the state's natural resources and public health.

94. Plaintiff STATE OF RHODE ISLAND is a sovereign entity and brings this action to protect its sovereign and proprietary rights. The Attorney General is the chief legal advisor to the State of Rhode Island, and his powers and duties include acting in federal court on matters of public concern. This challenge is brought pursuant to the Attorney General's statutory and common law authority to bring suit and obtain relief on behalf of Rhode Island.

95. Rhode Island has a sovereign and propriety interest in protecting its state resources through careful environmental review at both the state and federal level. Rhode Island has a statutory responsibility to conserve, enhance, and properly utilize the state's natural resources. R.I. Gen. Laws § 10-20-1; *see also* R.I. Const. art. I, § 17. Although Rhode Island is the smallest state in land size, forests cover fifty-nine percent of its land area, with a total of 393,000 acres. It also has thousands of miles of freshwater streams, rivers, and lakes. Rhode Island lists over twenty-five species as endangered species and expends significant resources to protect and recover these species, some of which are not federally protected. Rhode Island's natural resources generate millions of dollars in annual financial benefits to state public schools, institutions, and municipal services. They also generate millions of dollars' worth of ecosystem services to surrounding communities by filtering drinking water, purifying air, and providing space for recreation. Rhode Island's natural areas generate commercial and recreational opportunities that put hundreds of millions of dollars into the Rhode Island economy annually.

96. Rhode Island has over 400 miles of coastline and thousands of acres of federal lands across three National Park Service affiliated sites, five national wildlife refuges, numerous national monuments and historic sites, and numerous Department of Defense locations, including Naval Station Newport and the Quonest Point Air National Guard Station. Many of these federal lands abut Rhode Island's state-owned lands. Rhode Island is also home to two interstate highways and one international airport. Federal agencies, including the U.S. Navy and the Coast Guard, also routinely engage in activities in Rhode Island's coastal waters.

Major Federal actions concerning these lands, waters, projects, highways, airports, and other federal facilities are subject to NEPA.

97. Rhode Island state agencies, including the Department of Environmental Management and the Coastal Resources Management Council (CRMC), the Department of Transportation, and the Department of Health regularly engage in the federal NEPA process as cooperating and commenting agencies or as agencies with special expertise highlighting potential impacts to the state's natural resources and public health. For example, CRMC and the federal Bureau of Offshore Energy Management jointly worked on the NEPA process to design the installation of a new offshore wind energy project, where rigorous environmental review and meaningful public engagement led to a selected alternative that worked for state and federal agencies, local governments, tribes, and the public, including the commercial fishing industry. Federal agency activities and actions requiring federal permits that affect Rhode Island's coastal zone, water quality, wildlife, and cultural resources are subject to NEPA and are also reviewed by state agencies for consistency and compliance with Rhode Island's laws and programs. In some situations, NEPA is the sole means for state agencies to advocate for protection of Rhode Island's resources, including protection of state listed species and other species of concern and their habitat, and to identify unintended consequences of a proposed action.

98. Plaintiff STATE OF VERMONT is a sovereign state in the United States of America. The State of Vermont brings this action through Attorney General Thomas J. Donovan, Jr. The Attorney General is authorized to represent the state in civil suits involving the state's interests, when, in his judgment, the interests of the state so require. 3 V.S.A. Ch. 7.

99. Vermont brings this action to protect its sovereign and proprietary interests, including its interests in natural resources and infrastructure. The state has ownership, jurisdiction, and control of all wildlife of the state as trustee for the state's citizens. 10 V.S.A. § 4081(a)(1). Vermont has eleven federally listed species, including the Canada Lynx (*Lynx*

canadensis) and Eastern Mountain Lion (*Puma concolor*). Vermont also lists 215 state-endangered and threatened species, which are protected under 10 V.S.A. §§ 5401-5410.

100. The state is also trustee for navigable waters, lakes, ponds, and groundwater located within the state. *Id.* §§ 1390(5), 1421; 29 V.S.A. § 401. Vermont owns, manages and maintains numerous state forests, parks, and wildlife management areas; buildings and other infrastructure, including dams, roads, bridges, airports; and railroad, public transportation, bicycle, and pedestrian facilities. Significant state-owned infrastructure is located in river valleys and is susceptible to damage or destruction by flooding caused by severe rainstorms, the severity and frequency of which is being exacerbated by climate change.

101. The federal government owns nearly half a million acres of land in Vermont, comprising about eight percent of the state's total land area. These lands include approximately 400,000 acres within the Green Mountain National Forest. Located within a day's drive of seventy million people, the national forest is important to Vermont's economy, drawing three to four million visitors to Vermont each year for outdoor recreation, and provides habitat for rare and unique plants, fish, and birds. Federally owned and managed lands in Vermont also include the Marsh Billings National Historic Park, the Silvia O. Conte National Fish and Wildlife Refuge, the Missiquoi National Wildlife Refuge, and approximately 150 miles of the Appalachian Trail. Vermont is also home to National Guard installations, including the Vermont Air National Guard Base in South Burlington, at which F-35 fighter jets are based. Low-income residents of surrounding communities are disproportionately impacted by high noise levels from F-35 training runs. Two major interstate highways and numerous federal aid highways pass through Vermont. The federal government also issues permits and provides grants and loans for various activities within the state, including Federal Emergency Management Administration disaster assistance grants for rehabilitation and improvement of state infrastructure. Federal actions concerning these and other federal lands, facilities and programs are subject to NEPA.

102. Vermont state agencies, including the Vermont Agency of Transportation and Vermont Agency of Natural Resources, regularly participate in federal NEPA proceedings to protect the State's interests.

103. Plaintiff STATE OF WISCONSIN is a sovereign state of the United States of America and brings this action by and through its Attorney General, Joshua L. Kaul, who is the chief legal officer of the State of Wisconsin and has the authority to file civil actions to protect Wisconsin's rights and interests. *See* Wis. Stat. § 165.25(1m). The Attorney General's powers and duties include appearing for and representing the state, on the governor's request, "in any court or before any officer, any cause or matter, civil or criminal, in which the state or the people of this state may be interested." *Id.* § 165.25(1m).

104. The State of Wisconsin has a sovereign interest in its natural resources and in ensuring the protection and conservation of those resources. The State of Wisconsin holds legal title to and is the custodian of all wild animals within Wisconsin and regulates them for conservation and use and enjoyment by the public. *Id.* § 29.011. The State of Wisconsin holds title to the navigable waters of the state in trust for the public and has a duty to protect and preserve those waters for the public for fishing, hunting, recreation, and enjoyment of scenic beauty. Wis. Const. art. IX, § 1; *Wis.'s Envtl. Decade, Inc. v. Dep't of Nat. Res.*, 85 Wis. 2d 518, 526 (1978). The State of Wisconsin has a sovereign interest in protecting its state resources through careful environmental review at both the state and federal level.

105. Wisconsin is home to the Chequamegon-Nicolet National Forest, the Apostle Islands National Lakeshore, the Ice Age National Scenic Trail, the North Country National Scenic Trail, the Saint Croix National Scenic Riverway, nine federal wildlife refuges and wetland management districts, several Department of Defense facilities including Fort McCoy, five primary interstate highways and additional auxiliary federal highways, and several international airports. Major Federal actions concerning these lands, waters, projects, highways, airports, and other federal facilities are subject to NEPA.

106. Wisconsin has twenty-four federally listed species, including the Northern long-eared bat (*Myotis septentrionalis*), Kirtland's warbler (*Setophaga kirtlandii*), Piping plover (*Charadrius melodus*), Karner blue butterfly (*Lycaeides melissa samuelis*), rusty patched bumble bee (*Bombus affinis*), and Fassett's locoweed (*Oxytropis campestris var. chartaceae*). Wisconsin is home to substantial portions of the global population of the endangered Karner blue butterfly and endangered rusty patched bumble bee. The endangered Kirtland's warbler is only found in Michigan and Wisconsin. The variety of the threatened Fassett's locoweed in Wisconsin is found nowhere else in the world.

107. Wisconsin state agencies, including the Wisconsin Department of Natural Resources (WDNR), regularly engage in federal NEPA processes to protect the state's interest in public health, environmental quality, and state natural resources. These agencies have participated in the NEPA process as commenting and cooperating agencies. For example, the WDNR recently provided comments on an environmental assessment prepared by the U.S. Army Corps of Engineers on the placement of dredged material in the upper Mississippi River and on an environmental impact statement prepared by the U.S. Airforce on the addition of F-35 fighter jets at the 115th Fighter Wing National Guard base in Madison, Wisconsin. The WDNR is also serving as a cooperating agency for an environmental assessment with the National Park Service for a new segment of the Ice Age National Scenic Trail and for an environmental impact statement on a proposed bridge corridor over the Fox River in Brown County, Wisconsin.

108. Plaintiff COMMONWEALTH OF MASSACHUSETTS brings this action by and through Attorney General Maura Healey, the chief legal officer of the Commonwealth, on behalf of the Commonwealth and its residents. The Commonwealth has both sovereign and proprietary interests in the conservation and protection of its natural resources and the environment through comprehensive environmental review at both the state and federal level. *See* Mass. Const. Amend. art. 97; Mass. Gen. Laws, ch. 12, §§ 3, 11D.

109. Federal agencies regularly undertake major actions subject to NEPA throughout Massachusetts, including operating federal land and facilities and permitting, licensing, and funding projects that affect the Commonwealth's natural resources. Massachusetts is home to fifteen national parks, five national heritage areas, four wild and scenic rivers, and three national trails managed by the National Park Service and other federal agencies, including the Cape Cod National Seashore, which spans nearly forty miles of coastal land along the eastern shore of Cape Cod. Six Department of Defense military bases, five interstate highways, eight auxiliary interstate highways, two nuclear legacy management sites, one international airport, approximately 1,000 miles of interstate transmission pipelines, and one international liquid natural gas terminal are located in Massachusetts. Numerous federal agencies operate, license, or permit activities in Massachusetts waterways and off Massachusetts's more than 1,500 miles of coastline, impacting Massachusetts fisheries, other valuable resources, and maritime uses, which are critical to the health and economic vitality of the Commonwealth.

110. At least seventeen federally listed and protected endangered or threatened species are known to occur in Massachusetts, including, for example, the threatened piping plover (*Charadrius melodus*) and northern long-eared bat (*Myotis septentrionalis*), and the endangered shortnose sturgeon (*Acipenser brevirostrum*) and leatherback sea turtle (*Dermochelys coriacea*).

111. Massachusetts agencies, including the Massachusetts Executive Office of Energy and Environmental Affairs and its Department of Environmental Protection, Office of Coastal Zone Management, and Division of Fisheries and Wildlife, as well as the Massachusetts Department of Transportation and the Massachusetts Port Authority, engage in the federal NEPA process as coordinating, cooperating, and commenting agencies with specialized expertise to protect the state's interest in public health, environmental quality, and state natural resources. For example, following extensive community involvement and collaboration between multiple state and federal agencies and the two impacted towns during

coordinated review under NEPA and the Massachusetts Environmental Policy Act (MEPA), Mass. Gen. Laws, ch. 30, §§ 61–62I, the National Park Service adopted an alternative plan for the Herring River Restoration on Cape Cod that will restore at least 346 acres of tidal marsh, protect fish species harmed by existing impeded and degraded river conditions, and improve fishing and shellfishing yields, among other significant benefits to the community and the environment. The pending coordinated NEPA and MEPA process for the I-90 Allston highway project also has helped to convene a wide range of state and federal agencies and stakeholder groups to explore and assess alternatives that minimize impacts to important natural resources in and along the Charles River.

112. Massachusetts state agencies also review federal agency actions subject to NEPA, including permits, that affect Massachusetts's natural resources for consistency and compliance with Massachusetts laws and policies. *See, e.g.*, 301 Mass. Code Regs. § 20.04 (procedures for consistency determinations under Federal Coastal Zone Management Act, 16 U.S.C. § 1456).

113. Plaintiff COMMONWEALTH OF PENNSYLVANIA brings this action by and through Attorney General Josh Shapiro. The Attorney General is the chief law officer of the Commonwealth of Pennsylvania and has authority to represent the Commonwealth and all Commonwealth agencies in any civil action brought by the Commonwealth. Pa. Const. art. IV, § 4; *Cmwlth. Attorneys Act*, 71 P.S. § 732-204(c). The Commonwealth brings this action on its own behalf.

114. This action is brought pursuant to the Commonwealth's sovereign interests and its trustee obligations to protect Pennsylvania's public natural resources from degradation. The Commonwealth of Pennsylvania has a sovereign interest in its public natural resources, which are the common property of all the people, including generations yet to come. Pa. Const. art. I, § 27. The Pennsylvania Constitution protects every Pennsylvanian's "right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the

environment." *Id.*, § 27. The Commonwealth, as trustee, must conserve and maintain public natural resources for the benefit of all the people. *Robinson Twp. v. Pennsylvania*, 83 A.3d 901, 955–956 (Pa. 2013).

115. Pennsylvania's public natural resources include 83,184 miles of streams and rivers in the Ohio, Genesee, Potomac, Susquehanna, Lake Erie and Delaware River watersheds, more than 4,000 lakes, reservoirs and ponds, 120 miles of coastal waters in the Lake Erie and Delaware Estuary coastal zones and abundant groundwater resources. Pennsylvania's state forest system comprises 2.2 million acres of forestland in forty-eight of Pennsylvania's sixty-seven counties. Pennsylvania has nineteen federally listed and protected endangered or threatened species are known to occur in Pennsylvania, including the endangered rusty patched bumble bee (*Bombus affinis*) and Piping plover (*Charadrius melodus*) and the threatened northern long-eared bat (*Myotis septentrionalis*).

116. Federal actions and activities that propose impacts to the Commonwealth's public natural resources are subject to NEPA. Commonwealth agencies review these actions to ensure the Commonwealth's public natural resources are protected. Pennsylvania agencies, including without limit the Department of Environmental Protection, the Department of Conservation and Natural Resources, and the Department of Transportation, engage in the federal NEPA process. Pennsylvania is home to large-scale pipeline projects subject to NEPA. Commonwealth agencies closely review and comment on these NEPA analyses and utilize these analyses to support state decision making. Also, Pennsylvania is home to several federal military installations, including those located at the Harrisburg International Airport, the U.S. Army War College and Carlisle Barracks Army Base, New Cumberland Army Depot, Letterkenny Army Depot, the Mechanicsburg Naval Depot, and the Willow Grove Naval Air Station Joint Reserve Base. Commonwealth agencies review the actions at these facilities to ensure the Commonwealth's public natural resources are protected.

117. Plaintiff TERRITORY OF GUAM brings this action by and through Attorney General Leevin Taitano Camacho. The Attorney General is the chief legal officer of the Government of Guam. 48 U.S.C. § 1421g(d)(1). This challenge is brought pursuant to the Attorney General's statutory and common law authority to bring an action on behalf of Guam. 5 GCA § 30103.

118. Guam has a sovereign interest in its natural resources, which run two hundred nautical miles seaward from its low-water line. Guam is the sovereign and proprietary owner of all surface water and ground water within its territory, which it holds in trust for the people of Guam, 12 GCA § 14505, and has a statutory responsibility to conserve, enhance, and properly utilize its natural resources. 5 GCA § 63502.

119. Guam is home to numerous listed threatened and endangered species and their designated critical habitats. These species and habitats include the Mariana Fruit Bat (*Pteropus mariannus*), Hayun Lagu (*Serianthes nelsonii*), the largest native tree in the Mariana Islands, and the Guam Rail or the Ko'ko' bird (*Gallirallus owstoni*), which is native to Guam and found nowhere else in the world.

120. The United States Department of Defense has over fifty military installations in Guam and controls over twenty-five percent of the island. Federal agencies, including the United States Army, Air Force, Navy, Marine Corps, and the Coast Guard, routinely engage in military exercises in Guam. These exercises, along with other major Federal actions concerning Guam's land, water, and air, are subject to NEPA.

121. Over the last decade, there have been several federal actions proposed primarily by the Department of Defense in the Marianas, which have had significant environmental impacts on Guam, including the destruction of hundreds of acres of limestone forest that serve as a habitat for numerous endangered species and the planned construction and operation of a live-fire training range complex over Guam's aquifer. These projects include the Guam and CNMI Military Relocation Environmental Impact Statement and Supplemental EIS, the

Marianas Islands Range Complex EIS, the Mariana Islands Training and Testing EIS, and the Divert Activities and Exercises EIS. Guam agencies, including the Guam Bureau of Statistics and Plans, Guam Environmental Protection Agency, Guam Waterworks Authority, Guam Department of Agriculture and Guam Department of Public Health and Social Services have and continue to engage in the federal NEPA process to protect Guam's interest in public health, environmental quality, and natural resources.

122. Plaintiff DISTRICT OF COLUMBIA (the District) is a municipal corporation and is the local government for the territory constituting the permanent seat of government of the United States. The District is represented by and through its chief legal officer the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1).

123. As the seat of the nation's capital, the District is uniquely impacted by environmental review on federal actions and projects. The federal government owns one-third of the land in the District, eighty-five percent of the District's shoreline, and owns the riverbed of the District's two major rivers, the Potomac and Anacostia. Almost ninety percent of the city's parkland—more than 6,900 acres including Rock Creek Park, the National Mall, Anacostia Park and the Fort Circle Parks—is part of the National Park System. With the federal government owning or managing federal offices, land, and water resources in the District of Columbia, federal government decisions relating to the environmental impact of projects related to these buildings, land, and resources substantially impacts the District's environment and the public health of its residents.

124. The District is home to one federally listed species, the Hay's Spring Amphipod (*Stygobromus hayi*), which is a small, shrimp-like freshwater crustacean that exists only in five springs, all along Rock Creek Park.

125. Under the District's Environmental Policy Act and its implementing regulations, District agencies evaluate environmental impacts through review and analysis of environmental impact screening forms. This review determines whether the District is to perform an environmental impact statement because a major action is likely to have substantial negative impact on the environment, if implemented. However, this analysis is not required when an environmental analysis has been performed in accordance with NEPA. Thus, when a federal agency does not perform an environmental review under NEPA, the District will perform the analysis to ensure that negative environmental and public health impacts are mitigated.

126. Plaintiff HARRIS COUNTY, TEXAS is a local subdivision of the State of Texas. Harris County brings this action to protect its citizens and governmental and proprietary interests, which include parks and greenway spaces. Harris County is represented by the Harris County Attorney, an elected official and chief legal officer for Harris County. Harris County is the third largest county in the United States, home to more than four million residents spread over 1,777 square miles, and is the energy capital of the world.

127. Harris County is often impacted by federal actions subject to NEPA review and has submitted comments and participated in the NEPA process on a range of matters including the Keystone XL Pipeline and the Texas Coastal Study.

128. Plaintiff CITY OF NEW YORK, a municipal subdivision of the State of New York, brings this action on its own behalf to protect its governmental and proprietary interests, which include more than 30,000 acres of parks and beaches, 2.6 million trees, 520 linear miles of waterfront property, and the nation's largest unfiltered water supply system with a watershed of over one million acres, which provides more than one billion gallons of drinking water daily from nineteen reservoirs to more than nine million residents of the City and State of New York.

129. Federally funded or permitted actions that affect New York City's environment are subject to the federal NEPA environmental review process. New York City agencies and authorities regularly rely on NEPA analyses to support local decision making. In particular, pursuant to the New York State Environmental Quality Review Act (SEQRA) and New York City Environmental Quality Review (CEQR) regulations, city agencies may rely on a federal EIS if it is sufficient for the City agency to make its findings under SEQRA/CEQR. Similarly, a federal Environmental Assessment/Finding of No Significant Impact may serve as the basis for a city agency to issue a negative declaration under SEQRA/CEQR. In addition, the New York City Department of Housing Preservation and New York City Mayor's Office of Management and Budget have assumed NEPA responsibilities from the U.S. Department of Housing and Urban Development (HUD) when utilizing HUD's housing grant programs and managing allocations of HUD's Community Development Block Grant Disaster Recovery and National Disaster Resilience programs, and are thus responsible for complying with HUD's NEPA regulations that will be revised under the Final Rule.

B. Defendants

130. Defendant CEQ is an agency of the federal government created by NEPA. CEQ is responsible for guiding NEPA's implementation and bears responsibility, in whole or in part, for the acts complained of in this Complaint.

131. Defendant Mary B. Neumayr is the Chairman of CEQ and is sued in her official capacity. Ms. Neumayr is the official responsible for implementing and fulfilling CEQ's duties, including promulgating the Final Rule, and bears responsibility, in whole or in part, for the acts complained of in this Complaint.

V. STATUTORY AND REGULATORY BACKGROUND

A. Administrative Procedure Act

132. The APA, 5 U.S.C. §§ 551–559 and 701–706, governs the procedural requirements for federal agency decision making, including the agency rulemaking process.

Under the APA, a "reviewing court shall … hold unlawful and set aside" federal agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "without observance of procedure required by law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." *Id.* § 706(2). An agency action is arbitrary and capricious under the APA where "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*). An agency does not have authority to adopt a regulation that is "plainly contrary to the statute." *United States v. Morton*, 467 U.S. 822, 833 (1984); *see also* 5 U.S.C. § 706(2)(C).

133. "Agencies are free to change their existing policies," but they must "provide a reasoned explanation for the change." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (citing *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981–82 (2005)); *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020) ("when an agency rescinds a prior policy its reasoned analysis must consider the 'alterative[s]' that are within the ambit of the existing [policy]") (citations omitted). An agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate" when "its new policy rests upon factual findings that contradict those which underlay its prior policy," "or when its prior policy has engendered serious reliance interests that must be taken into account." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

134. Prior to promulgating a rule, agencies must engage in a public notice-and-comment process. 5 U.S.C. §§ 551(5), 553. Agencies must afford public notice of specific regulatory changes and their reasoned basis to provide the public an opportunity for

meaningful comment, *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35–36 (D.C. Cir. 1977), including the "technical studies and data that [the agency] has employed in reaching the decision[] to propose particular rules." *Kern Cty. Farm Bureau v. Allen*, 450 F.3d 1072, 1076 (9th Cir. 2006). The agency must consider and respond to all significant comments it receives. *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015).

B. National Environmental Policy Act

135. NEPA is often referred to as the "Magna Carta" of U.S. environmental law. *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 193 (D.C. Cir. 1991).

136. Congress developed NEPA at a time of heightened awareness and growing concern about the environment, amid a series of high-profile environmental crises in the late 1960s. The national perspective was shifting from "preoccupation with the extraction of natural resources to the more compelling problems of deterioration in natural systems of air, land, and water." S. Comm. on Interior & Insular Affairs and H.R. Comm. on Science and Astronautics, 90th Congress, *Congressional White Paper on a National Policy for the Environment*, at 1 (Oct. 1968).

137. Congress recognized that "[o]ur national resources—our air, water, and land—are not unlimited," and as a country, "[w]e no longer have the margins for error that we once enjoyed." S. Rep. No. 91-296, at 5 (1969). A comprehensive national environmental policy would disrupt the current practice of establishing policy "by default and inaction" where "[e]nvironmental problems are only dealt with when they reach crisis proportions. Public desires and aspirations are seldom consulted. Important decisions concerning the use and the shape of [humans'] future environment continue to be made in small but steady increments which perpetuate rather than avoid the recognized mistakes of previous decades." *Id.*

138. NEPA thus declares an overarching national policy to "use all practicable means and measures … to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social,

economic and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a).

139. Cooperation with states and local governments and other concerned public and private organizations is an essential component of this policy. *Id.* §§ 4331(a), 4332(G).

140. NEPA further emphasizes that in carrying out these policies, the federal government has a continuing responsibility "to use all practicable means … to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may," among other things "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations," "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings," and "attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences." *Id.* § 4331(b).

141. To ensure that these policies are "integrated into the very process of agency decision making," NEPA outlines "action-forcing" procedures, *Andrus*, 442 U.S. at 349–50, that require federal agencies "to the fullest extent possible," to prepare a detailed environmental review or EIS for legislation or other "major Federal actions significantly affecting the quality of the human environment." *Id.* §§ 4332, 4332(2)(C).

142. An EIS must evaluate, among other things, all of the environmental impacts of the proposed federal action, any adverse and unavoidable environmental effects, alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitment of resources involved in the proposed action. *Id.* § 4332(2)(C).

143. For proposed actions involving unresolved conflicts about alternative uses of available resources, NEPA further directs that federal agencies should "study, develop, and describe appropriate alternatives" to the proposed action. *Id.* § 4332(E).

144. NEPA also requires federal agencies to work in concert with states, local governments, institutions, organizations, and individuals by making available "advice and information useful in restoring, maintaining, and enhancing the quality of the environment." 42 U.S.C. § 4332(G).

145. In short, NEPA directs federal agencies to make well-informed and transparent decisions based on a thorough review of environmental and public health impacts and meaningful input from states, local governments, and the public.

146. In NEPA, Congress also created CEQ and directed it to appraise federal programs and activities in light of NEPA's overarching policies: "to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment." *Id.* § 4342. CEQ has the statutory duty to take actions consistent with NEPA's policies of environmental protection and informed decision making.

147. Many State Plaintiffs have adopted their own state environmental policy acts modeled on NEPA. These include the California Environmental Quality Act, Cal. Pub. Res. Code § 21000–21189.57, Washington's State Environmental Policy Act, Wash. Rev. Code. ch. 43.21C, New York's State Environmental Quality Review Act, N.Y. Envtl. Conserv. L. art. 8; 6 N.Y. Comp. Codes R. & Regs. Part 617; the Massachusetts Environmental Policy Act, Mass. Gen. Laws, ch. 30, §§ 61-62I; and the District of Columbia's Environmental Policy Act, D.C. Code § 8-109.01–109.12, and 20 D.C. Mun. Regs. § 7200–7299. These state statutes (or little NEPAs) require detailed environmental review for certain state agency and local government actions. Where an action subject to state environmental review also requires NEPA review, state and local agencies can often comply with little NEPAs by adopting or incorporating by reference certain environmental documents prepared under NEPA, but only if those NEPA documents meet state statutory requirements. *See, e.g.*, 6 N.Y. Comp. Codes R. & Regs. § 617.15; Mass. Gen. Laws, ch. 30, § 62G.

148. CEQ and several states worked together to harmonize the environmental review processes under NEPA and little NEPAs through state-specific memoranda. *See, e.g.*, CEQ, *States and Local Jurisdictions with NEPA-Like Environmental Planning Requirements*, https://ceq.doe.gov/laws-regulations/states.html. This collaboration has long allowed state, local, and federal agencies to share documents, reduce paperwork, and efficiently allocate limited time and resources. States rely on this collaboration and the effectiveness of federal NEPA documents under the 1978 regulations to allocate state resources and determine staffing needs.

C. Endangered Species Act

149. In 1973, Congress enacted the ESA, 16 U.S.C. §§ 1531–44, "to halt and reverse the trend toward extinction, whatever the cost." *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 174 (1978). As such, the ESA sets forth "a program for the conservation of [] endangered species and threatened species" through, in part, conservation of the ecosystems upon which such species depend. 16 U.S.C. § 1531(b). The Services are the agencies responsible for listing endangered and threatened species and designating those species' critical habitats. *Id.* §§ 1532(15), 1533(a); 50 C.F.R. §§ 17.11(a), 17.12(a). The listing of a species under the ESA is a last resort to conserve endangered or threatened species and the ecosystems on which they depend. The Services currently list over [insert number] species as endangered or threatened under the ESA. 50 C.F.R. §§ 17.11(a), 17.12(a).

150. Section 7 of the ESA codifies "an explicit congressional decision to require agencies to afford first priority to the declared national policy of saving endangered species," elevating concern for the protection of such species "over the primary missions of federal agencies." *Tenn. Valley Auth. v. Hill*, 437 U.S. at 185 (internal quotation marks omitted). Pursuant to section 7, unless an exemption has been granted, each federal agency must, in consultation with one or both of the Services, "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any

endangered species or threatened species or result in the destruction or adverse modification of habitat of such species[.]" 16 U.S.C. § 1536(a)(2). "The minimum threshold for an agency action to trigger consultation with FWS is low." *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011). Consultation is required if a prospective agency action may affect a listed species or designated critical habitat. *Id.*; 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.12(a). Formal consultation is required if the prospective agency action is likely to adversely affect a listed species or designated critical habitat. *Id*. § 1536(a)(2)–(3); 50 C.F.R. §§ 402.12(a), (k), 402.14(a)–(b).

151. During formal consultation, the acting federal agency is prohibited from "mak[ing] any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures[.]" 16 U.S.C. § 1536(d).

152. At the conclusion of the formal consultation period, the FWS or the NMFS provides the agency with a biological opinion including a determination as to whether the action is likely to "jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat[.]" 16 U.S.C. § 1536(b)(1)(3)(A); 50 C.F.R. § 402.14(g)–(h). If the FWS or the NMFS determines the proposed action is likely to result in jeopardy to a listed species or destruction or adverse modification of designated critical habitat, it will include "reasonable and prudent alternatives" to the agency action in the biological opinion. 50 C.F.R. § 402.14(h)(2).

153. If the federal agency wishes to proceed with a proposed action that is deemed likely to result in jeopardy or adverse modification, it must generally implement the Services' recommended "reasonable and prudent alternatives" and adopt other "reasonable and prudent measures" to ensure that the action "is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of

habitat of such species," and to minimize the impact of such action on listed species and designated critical habitat. 16 U.S.C. §§ 1536(a)(2), 1536(b)(4); 50 C.F.R. § 402.15(a).

154. Section 7 differs in important respects from NEPA. As the Ninth Circuit has explained, "[s]ection 7 of the ESA and NEPA involve different processes that measure different kinds of environmental impacts." *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 651 (9th Cir. 2014); *see also Fund for Animals v. Hall*, 448 F.Supp.2d 127, 136 (D.D.C. 2006). Indeed, while NEPA review concerns a broad array of impacts, the ESA is solely focused on impacts to listed species and designated critical habitat.

D. CEQ's 1978 NEPA Regulations

155. In 1977, President Carter issued Executive Order 11,991 directing CEQ to issue regulations to guide federal agency implementation of NEPA. *Relating to Protection and Enhancement of Environmental Quality*, Exec. Order No. 11,991, 42 Fed. Reg. 26,967 (May 24, 1977) (amending in part Executive Order No. 11,514).

156. Before proposing the implementing regulations, CEQ conducted extensive outreach, soliciting "the views of almost 12,000 private organizations, individuals, state and local agencies, and Federal agencies," held public hearings, and considered studies of the environmental impact statement process. NEPA—Regulations, Implementation of Procedural Provisions, 43 Fed. Reg. 55,978, 55,980 (Nov. 29, 1978).

157. CEQ also prepared an environmental assessment (EA) of its proposed implementing regulations, in compliance with NEPA. Proposed Implementation of Procedural Provisions, 43 Fed. Reg. 25,230, 25,232 (May 31, 1978).

158. In 1978, CEQ finalized a comprehensive set of regulations implementing the "action-forcing" elements of NEPA "to tell federal agencies what they must do to comply with the procedures and achieve the goals of" the statute. 40 C.F.R. § 1500.1(a) (1978).

159. The 1978 regulations emphasize NEPA's role as "our basic national charter for protection of the environment" and explained that "[t]he NEPA process is intended to help

public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." *Id.* § 1500.1(c) (1978).

160. The 1978 regulations also emphasize transparency in government decision making by ensuring agencies provide information to the public before "decisions are made and before actions are taken." *Id.* § 1500.1(b) (1978).

161. The 1978 regulations direct agencies to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment," *id.* § 1500.2(d) (1978), allowing states, private organizations, and individuals to inform and influence agency decision making by commenting on proposed agency actions, *id*. § 1503.1(a)(4) (1978).

162. Until the promulgation of the Final Rule, CEQ's 1978 regulations remained largely unchanged with the exception of two minor amendments. First, in 1986, CEQ removed a requirement that agencies analyze the extent of environmental impacts in a hypothetical "worst case scenario." NEPA Regulations, Incomplete or Unavailable Information, 51 Fed. Reg. 15,618 (May 27, 1986) (amending 40 C.F.R. § 1502.22). CEQ prepared an EA for its substantive change to the regulations in 1986 and concluded that the amendment would not have a significant environmental impact. *Id.* at 15,619. Then in 2005, CEQ made a minor amendment to the EIS filing requirements. Other Requirements of NEPA, 70 Fed. Reg. 41,148 (July 18, 2005).

163. CEQ has issued numerous guidance documents on NEPA and its 1978 regulations on which states and other stakeholders have relied. *See e.g.*, *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*, 81 Fed. Reg. 51,866 (Aug. 5, 2016), *withdrawn* 82 Fed. Reg. at 16,576 (Apr. 5, 2017); *Memorandum for Heads of Federal Departments and Agencies: Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act* (Nov. 23, 2010); *A Citizen's Guide to*

the NEPA: Having Your Voice Heard (Dec. 2007); *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026 (Mar. 23, 1982).

164. Additionally, CEQ's Environmental Justice Guidance provides useful direction for agency consideration of environmental justice impacts during the NEPA review process. CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* (Dec. 10, 1997). The Environmental Protection Agency (EPA) defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA, Environmental Justice: https://www.epa.gov/environmentaljustice. CEQ's guidance builds on Executive Order 12,898, which directs federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law. Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (1994) (as amended).

165. The Presidential Memorandum issued with Executive Order 12,898 further directs federal agencies to analyze under NEPA "the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low income communities" and to provide opportunities for community input in the NEPA process, including through "identifying potential effects and mitigation measures in consultation with affected communities …." White House, *Memorandum for the Heads of All Departments and Agencies: Executive Order on Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994).

166. CEQ's Environmental Justice Guidance explains that agencies should consider environmental justice impacts as part of their obligation to consider "both impacts on the natural or physical environment and related social, cultural, and economic impacts." CEQ, *Environmental Justice*, at 8 (citing 40 C.F.R. § 1508.14). Agencies should consider these

impacts while analyzing the affected area, considering cumulative effects, and developing public participation strategies. *Id*. at 8–9. CEQ further explained that identification of disproportionately high and adverse human health or environmental effects on low-income, minority, or Tribal populations "should heighten agency attention to alternatives …, mitigation strategies, monitoring needs, and preferences expressed by the affected community." *Id*. at 10.

167. CEQ has also issued a number of studies documenting NEPA's effectiveness. *See, e.g.*, CEQ, *National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years* (Jan. 1997); NEPA Task Force, *Modernizing NEPA Implementation* (Sept. 2003); CEQ, *Examples of Benefits from the NEPA Process for ARRA Funded Activities* (May 2011). For example, in its NEPA Effectiveness Study, a twenty-five year review of NEPA's implementation, CEQ emphasized that "NEPA is a success—it has made agencies take a hard look at the potential environmental consequences of their actions, and it has brought the public into the agency decision-making process like no other statute." CEQ, *National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years*, at iii (Jan. 1997).

168. The courts, including the Ninth Circuit, have developed a robust body of case law applying and interpreting NEPA and CEQ's 1978 regulations, providing direction to agencies on how to comply with both CEQ's regulations and the statute. *See, e.g.*, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351–52 (1989); *Kern v. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994 (9th Cir. 2004).

169. NEPA, the 1978 regulations, and CEQ's subsequent guidance have promoted more environmentally protective and transparent agency decisions, while not imposing overly burdensome requirements. In 2014, the Government Accountability Office concluded that the NEPA process "ultimately saves time and reduces overall project costs by identifying and avoiding problems that may occur in later stages of project development." U.S. Gov't Account. Office, *National Environmental Policy Act: Little Information Exists on NEPA*

Analyses, 17 (Apr. 2014). Similarly, U.S. Forest Service officials have observed that "NEPA leads to better decisions." *Id.*

E. The Proposed Rule

170. Despite the documented success of the 1978 regulations and reliance by states and the public on NEPA's procedures to protect the environment and public health, CEQ released an Advance Notice of Proposed Rulemaking on June 20, 2018, announcing CEQ's plan to overhaul the 1978 regulations and including a vague list of topics that the rulemaking might address. Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28,591 (June 20, 2018) (Advance Notice). CEQ issued this proposal in response to President Trump's Executive Order 13,807, which called for revisions to the NEPA regulations, purportedly to expedite infrastructure projects and boost the economy. Establishing Discipline and Accountability in the Environmental Review and Permitting Process, Exec. Order 13,807, 82 Fed. Reg. 40,463 (Aug. 15, 2017).

171. CEQ allowed only sixty days for public comment on the Advance Notice. Most State Plaintiffs submitted comments stating that CEQ had not demonstrated a need for substantial revisions and opposing any revisions that would threaten NEPA's fundamental values of environmental protection and informed decision making.

172. On January 10, 2020, CEQ released its proposal to significantly revise the 1978 regulations. 85 Fed. Reg. 1,684 (Jan. 10, 2020).

173. The Proposed Rule included numerous revisions to the 1978 regulations that undermine NEPA's environmental and informed decision making purposes. For example, the Proposed Rule included regulatory changes to remove numerous agency actions from NEPA's reach, narrow the scope of environmental reviews that do occur, limit public participation, and restrict judicial review for those harmed by agency failure to comply with NEPA.

174. After publication of the Proposed Rule, CEQ again provided just sixty days for the public to review, analyze, and submit comments on this far-reaching overhaul of its

longstanding regulations, and hosted only two public hearings on the Proposed Rule. Numerous commenters, including representatives from several State Plaintiffs, were not able to reserve a spot to speak at the hearings due to a limited number of speaking slots. Although CEQ received requests from State Plaintiffs, members of Congress, and others for more time to comment and for additional public hearings on the complex and wide-ranging Proposed Rule, CEQ closed the comment period without providing additional hearings or extending the comment period.

175. Despite this short timeframe, interested parties submitted over 1.1 million comments, the vast majority of which strongly opposed CEQ's Proposed Rule. Most State Plaintiffs submitted detailed comments stating that CEQ's Proposed Rule was unlawful, unreasonable, and unjustified and should be withdrawn. In addition to these comments, many State Plaintiff elected officials and agencies submitted comments expressing concern about CEQ's proposed changes and urging CEQ to withdraw the Proposed Rule. *See*, *e.g.*, Letter from Washington State Governor Jay Inslee to Mary Neumayr, re Proposed Rule (Mar. 10, 2020) (enclosing comments from seven state agencies and offices opposing the Proposed Rule); Letter from California Governor Gavin Newsom to Edward A. Boling, re Proposed Rule (Mar. 10, 2020).

F. The Final Rule

176. Just four months after the close of the comment period, President Trump announced the release of the Final Rule on July 15, 2020. The Final Rule was published in the Federal Register the following day. The Final Rule largely adopts the Proposed Rule's unlawful, unjustified, and sweeping revisions to the 1978 Regulations.

177. CEQ claimed that the Final Rule "advance[s] the original goals of the CEQ regulations to reduce paperwork and delays and promote better decisions consistent with the national environmental policy set forth in section 101 of NEPA," Final Rule, 85 Fed. Reg. at

43,306. But the Final Rule will do just the opposite—leading to increased confusion and litigation and decisions inconsistent with NEPA's text and purpose.

178. The Final Rule makes substantial and unsupported revisions to the 1978 regulations, ignores reliance interests on those longstanding regulations, lacks a rational justification, and undermines NEPA's goals of environmental protection, public participation, and informed decision making. Among other things, the Final Rule arbitrarily and unlawfully:

a. Deletes language from the 1978 regulations directing federal agencies to comply with "the letter and spirit" of NEPA's "action-forcing" provisions, *compare* 40 C.F.R. § 1500.1(a) (1978), *with* Final Rule, 85 Fed. Reg. at 43,358 (to be codified at § 1500.1(a));

b. Deletes language from the 1978 regulations stating that NEPA "is our basic national charter for protection of the environment" and that "[t]he NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment," *compare* 40 C.F.R. § 1500.1(a), (c) (1978), *with* Final Rule, 85 Fed. Reg. at 43,357–58 (to be codified at § 1500.1);

c. Deletes language from the 1978 regulations that federal agencies should "to the fullest extent possible … [e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment" and "[u]se all practicable means … to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their action upon the quality of the human environment," *compare* 40 C.F.R. § 1500.2 (1978), *with* Final Rule, 85 Fed. Reg. at 43,317, 43,358 (removing and reserving § 1500.2);

d. Prohibits federal agencies from adopting NEPA regulations that are more stringent than CEQ's Final Rule, 85 Fed. Reg. at 43,373 (to be codified at § 1507.3(a), (b));

e. Preemptively concludes that all categorical exclusions (*i.e.*, actions that federal agencies have determined will not have a significant environmental impact), effective by September 14, 2020, comply with the Final Rule, *id.* at 43,373 (to be codified at § 1507.3(a));

f. Establishes six "NEPA Thresholds" that will allow federal agencies to avoid any environmental review of certain proposed actions, *id*. at 43,359 (to be codified at § 1501.1);

g. Separates the definition of "major Federal action" from an action's significance and narrows the definition to exclude an agency's failure to act as well as actions that are not "subject to" an undefined amount of "Federal control and responsibility" and actions that are extraterritorial, non-discretionary, have minimal federal funding or minimal federal involvement, or receive certain federal loans, *id*. at 43,375 (to be codified at § 1508.1(q));

h. Allows federal agencies to rely on unspecified procedures and documentation prepared under other statutory or Executive Order requirements to avoid conducting environmental review, *id*. at 43,359, 43,372–73 (to be codified at 40 C.F.R. §§ 1501.1, 1506.9, 1507.3);

i. Authorizes federal agencies to determine that other statutes or directives conflict with NEPA and thus excuse agencies from NEPA review, *id*. at 43,359, 43,373, 43,374 (to be codified at §§ 1501.1(a)(2), (a)(3), 1507.3(d)(2));

j. Revises the analysis of an agency action's "significance," to (i) diminish the scope of actions that will require more detailed environmental review, (ii) remove a prohibition on improperly segmenting a project to avoid analyzing its collective significant impacts, and (iii) eliminate review of important concerns like an action's public health impacts, cumulative effects, effects on threatened and endangered species and their habitat, and proximity to historic or cultural resources, park lands, farmlands, wetlands, wild and scenic

rivers, or ecologically critical areas, 85 Fed. Reg. at 43,360 (to be codified at 40 C.F.R. § 1501.3(b));

k. Expands the use of categorical exclusions by adopting a new vague definition that removes consideration of cumulative impacts and allows for use of categorical exclusions in situations with extraordinary circumstances (*i.e.*, circumstances in which a normally excluded action may have a significant effect and would formerly have required preparation of an EA or EIS), *id*. at 43,360 (to be codified at § 1501.4);

l. Allows certain actions to proceed during NEPA review, potentially limiting the range of alternatives that could be considered during environmental review despite NEPA's direction that environmental review occur before agencies take action, *id*. at 43,370 (to be codified at § 1506.1);

m. Limits the number of alternatives to the proposed action analyzed in an EA or EIS and the depth of that analysis by, among other things, removing the requirement that agencies "[r]igorously explore and objectively evaluate" all reasonable alternatives to the proposed action, eliminating consideration of alternatives outside the jurisdiction of the lead agency, and removing the requirement that agencies "[d]evote substantial treatment to each alternative," *id*. at 43,365 (to be codified at § 1502.14);

n. Narrows the scope of effects agencies are required to evaluate, imposes strict causation requirements for determining which environmental effects should be considered, and directs agencies not to consider cumulative and indirect effects, all of which will limit review of environmental justice and climate change impacts, impacts to species listed and critical habitat designated under the ESA, and other impacts, *id*. at 43,360, 43,365–66, 43,375 (to be codified at §§ 1501.3(b), 1502.15, 1508.1(g), (m));

o. Reduces agencies' obligations to obtain additional information about environmental impacts when such information is not immediately available and further allows

agencies to refuse to consider certain scientific evidence if the agency determines it is not a "reliable data source," *id*. at 43,366–67 (to be codified at §§ 1502.21, 1502.23);

p. Allows project proponents with potential conflicts of interest to prepare the EIS as long as conflicts are disclosed to the federal agency (but not the public), 85 Fed. Reg. at 43,371 (to be codified at § 1506.5(b)(4));

q. Imposes unreasonable and unworkable time and page limits for EAs and EISs, *id*. at 43,360, 43,362–64 (to be codified at §§ 1501.5(f), 1501.10(b), 1502.7);

r. Limits public participation in the NEPA process by striking key provisions emphasizing the importance of public participation and eliminating the requirement that a draft EIS circulated for public comment satisfy NEPA's standards to the fullest extent possible, *id*. at 43,364–65 (to be codified at § 1502.9);

s. Places an undue burden on the public to analyze environmental issues and to meet a vague standard of specificity and detail and imposes burdensome exhaustion requirements on commenters, *id*. at, 43,358, 43,367–68 (to be codified at §§ 1500.3(b)(3), 1503.3);

t. Reduces agencies' obligation to consider and respond to public comments, *id*. at 43,366, 43,368–69 (to be codified at §§ 1502.17, 1505.2(b), 1503.4);

u. Permits agencies to claim a presumption that they have adequately considered all public comments on an EIS, *id*. at 43,369 (to be codified at § 1505.2(b)); and

v. Seeks to limit judicial review of agency NEPA compliance by attempting to restrict remedies parties injured by deficient NEPA review can secure through litigation and promoting unlawful bond requirements, 85 Fed. Reg. at 43,358 (to be codified at § 1500.3(c), (d)).

179. NEPA Review. CEQ did not conduct any environmental review before issuing the Proposed Rule or Final Rule. Instead, CEQ asserted without adequate explanation that a NEPA review was not required because the regulations are procedural and "apply generally to

Federal actions affecting the environment." *Id.* at 43,353–54. CEQ then claimed that even if it were to conduct an EA, it likely would result in a Finding of No Significant Impact, citing its cursory analysis of environmental impacts in the Final Rule's Regulatory Impact Analysis (RIA). *Id*. But the RIA analysis of environmental impacts, which consists of only two pages and a short appendix, does not meet requirements for an EA or an EIS and summarily concludes that the Final Rule will have no adverse environmental impacts. RIA at 10–11; App'x. A. The RIA does not analyze alternative actions, and it ignores environmental impacts of the Final Rule, including climate change and environmental justice impacts. Moreover, despite relying on the RIA to justify its conclusions of NEPA compliance in the Final Rule, CEQ did not make the RIA available for public review and comment.

180. ESA Review. Although CEQ acknowledged in the Final Rule that the promulgations of regulations "can be a discretionary action subject to section 7 of the ESA," CEQ failed to consult with the Services regarding the impacts that the Final Rule may have on federally listed endangered and threatened species. Final Rule, 85 Fed. Reg. at 43,354. Instead, CEQ bypassed section 7's consultation process entirely without providing meaningful analysis or supporting evidence for its conclusion that the Final Rule, which makes significant changes to how federal agencies review the environmental impacts of their actions, will have "no effect" on listed species or designated critical habitat. Final Rule, 85 Fed. Reg. at 43,354-55. In the Final Rule, CEQ asserts that it "determined that updating its regulations implementing the procedural provision of NEPA has 'no effect' on listed species or designated critical habitat. Therefore, section 7 consultation is not required." *Id.* at 43,354. CEQ's decision to forego consultation with the Services under section 7 regarding the impacts that the Final Rule may have on listed species or critical habitat violates the ESA because it is clear that the proposed rule may affect, and is in fact likely to adversely affect, myriad listed species and designated critical habitat. In addition, CEQ's finding that no impact to listed species or

critical habitat will result from the major changes to NEPA because the Final Rules are "procedural in nature" is arbitrary and capricious and violates both the ESA and the APA.

181. Environmental Justice. CEQ also did not adequately review environmental justice impacts from the Final Rule as required by Executive Order 12,898. Instead, in the Final Rule, CEQ concluded without rational explanation or support, and again relying on the inadequate RIA, that the Final Rule will "not cause disproportionately high and adverse human health or environmental effects on minority populations and low-income populations." Final Rule, 85 Fed. Reg. at 43,356–57.

182. The Final Rule will become effective on September 14, 2020. *Id*. at 43,372 (to be codified at § 1506.13). At that time, CEQ's existing guidance documents that are inconsistent with the regulatory changes will effectively be withdrawn. *Id*. at 43,371 (to be codified at § 1506.7).

183. Federal agencies may apply the Final Rule to ongoing activities and environmental documents begun before the effective date. *Id*. at 43,372-73 (to be codified at § 1506.13). As a result, federal agencies may apply the revised regulations to NEPA reviews currently in progress, including reviews impacting State Plaintiffs.

184. Federal agencies are also required to amend their NEPA regulations to conform to the Final Rule. *Id*. at 43,373 (to be codified at § 1507.3(b)).

185. The Final Rule is unlawful and violates NEPA and the APA, because: (i) the Final Rule is contrary to NEPA's text and purpose; (ii) CEQ failed to provide a rational explanation for the Final Rule's numerous changes in policy and interpretation; (iii) CEQ exceeded its statutory authority with certain revisions in the Final Rule; (iv) CEQ violated notice-and-comment requirements; and (v) CEQ failed to analyze the Final Rule's significant environmental impacts or consider reasonable alternatives to the Final Rule, as required by NEPA. CEQ also violated the ESA and the APA by failing to consult with the Services prior to adopting the Final Rule, despite the fact that the Final Rule may impact federally listed

threatened and endangered species. For these reasons, the Final Rule is arbitrary, capricious, and contrary to law, was promulgated in excess of statutory authority and without observance of procedure required by law, and should be vacated.

VI. THE FINAL RULE WILL HARM STATE PLAINTIFFS

186. State Plaintiffs' unique, concrete, and particularized interests will be harmed by CEQ's Final Rule, which undermines and weakens key NEPA requirements. A judgment vacating the Final Rule and reinstating the 1978 regulations and associated guidance would redress these harms.

187. As the Supreme Court has recognized, State Plaintiffs are entitled to "special solicitude" in seeking to remedy environmental harms. *Massachusetts v. EPA*, 549 U.S. 497 519–22 (2007). State Plaintiffs have a concrete proprietary and sovereign interest in preventing harm to their natural resources, including their state-owned and state-regulated water, air, coastlines, public lands, and wildlife, as a result of fewer and less robust federal environmental reviews and diminished public participation.

188. Many federal actions, including those actions subject to NEPA, impact state-owned and/or state-regulated resources. Federal agencies routinely conduct major Federal actions within and near our states and territories, including those related to federal land management, infrastructure projects, energy projects, water management, national defense and military training, and interstate transportation projects. Federal lands often encompass large-scale and important ecosystems that help to support biodiversity, including ESA listed species and their critical habitat.

189. Among other things, the Final Rule will increase the number of federal actions that avoid environmental review and diminish the scope of NEPA reviews that do occur. Both of these changes will reduce federal agencies' understanding of proposed actions' potential harms on the environment, including but not limited to, harms to listed species and critical habitat. These changes will also limit opportunities through the NEPA process to develop

alternatives or other solutions that avoid or mitigate adverse impacts to state and territorial natural resources (including water, air, coastlines, public lands, wildlife, and species listed and critical habitat designated under the ESA) and public health. As a result, the Final Rule will cause unmitigated adverse impacts to public health and to state and territorial natural resources (including water, air, coastlines, public lands, wildlife, and species listed and critical habitat designated under the ESA).

190. In particular, the Final Rule eliminates consideration of indirect and cumulative impacts, including a project's reasonably foreseeable upstream and downstream GHG emissions, the impact of those emissions on climate change, and methods for avoiding and mitigating those impacts. Climate change impacts have already harmed and are continuing to harm state and territorial sovereign lands and coastal areas, state and territorial natural resources (including ESA listed species and their critical habitat), state and territorial infrastructure, and the health and safety of state and territorial residents resulting in economic losses for State Plaintiffs. State Plaintiffs are already committing significant resources to reduce their own greenhouse gas (GHG) emissions and investing in infrastructure to protect communities and state resources from the impacts of climate change. Contrary to NEPA, the Final Rule impedes these efforts. Without detailed information about an action's GHG emissions and climate impacts, federal agencies will not engage in efforts to avoid or mitigate harms from those emissions and impacts, which will exacerbate climate change impacts in our states and territories, diminish our states' understanding of the actions contributing to those impacts, and cause states and territories economic harm.

191. Eliminating consideration of climate impacts will also place an increased burden on efforts by State Plaintiffs to study and abate harms from climate change. For example, the Final Rule's elimination of climate change considerations will make it more challenging for New York to assess GHGs from projects subject to NEPA review where those GHGs are generated outside New York but are associated with electricity generation or fossil

fuel transportation in New York. Under New York's Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019 (Climate Act), which requires significant statewide emission reductions by set dates, such out-of-state emissions contribute to statewide GHG emissions. N.Y. Envtl. Conserv. L. § 75-0107(1). New York thus may need to implement additional and potentially costly regulatory, policy, or other actions to ensure the achievement of the requirements of the Climate Act. By decreasing the quality of analysis and potential mitigation for GHG emissions from projects with impacts on Massachusetts residents, the Final Rule may impose similar challenges and burdens on Massachusetts' ability to assess and meet the GHG emission-reduction mandates of the Massachusetts Global Warming Solutions Act. *See* Mass. Gen. Laws. ch. 21N, §§ 1–11.

192. The scope of cumulative impact review required under the 1978 NEPA regulations was broader than the cumulative impact review performed during an ESA consultation process. The Final Rule, however, eliminates cumulative impact analysis during the NEPA review process entirely, undermining CEQ's conclusion that the Final Rule will have "no effect" on listed species or designated critical habitat. For example, the Final Rule's instruction that federal agencies should not consider impacts that are "remote in time" and "geographically remote" may result in inadequate analysis of and, consequently, potential damage to the State Plaintiffs' fish and wildlife, including ESA listed species and designated critical habitat. For ESA listed species and designated critical habitat, this harm will occur even if federal agencies perform site-specific ESA consultation, due to the more limited scope of cumulative impacts analysis required under the ESA's section 7 implementing regulations. *See* 50 C.F.R. §§ 402.02, 402.14(g)(3)–(4). One example of such harm is apparent in the context of federal dam operations, which have a major impact on several of Oregon's iconic salmon populations, many of which are listed as threatened or endangered under the ESA. Salmon travel hundreds of miles and juvenile salmon may be harmed by powerhouses in the hydrosystem, only to succumb to their injuries after entering the ocean or on their migration

upstream as adults. Due to the Final Rule's elimination of consideration of "geographically remote" impacts and impacts that are "remote in time," NEPA analysis of federal hydrosystem actions could disregard these impacts to State Plaintiffs' natural resources, including species listed and critical habitat designated under the ESA.

193. By decreasing opportunities for public comment and participation, the Final Rule also limits State Plaintiffs' ability to influence federal projects affecting their natural resources and residents. Through NEPA, state and territorial agencies regularly engage with federal agencies and permit applicants to identify potential adverse impacts to their state and territorial resources and propose alternatives or mitigation measures to avoid those harms. For example, the Washington Department of Fish and Wildlife recently commented on the draft EA for a proposed expansion of a ski area on federal lands within the state to highlight impacts to state lands and wildlife and suggest the most effective mitigation of these impacts. Washington state agencies also recently submitted comments on the Draft Supplemental EIS for the Navy's proposed Northwest Training and Testing activities, which threatens harmful impacts to critically endangered Southern Resident Killer Whales, a species that Washington has dedicated significant resources to protect. Under the Final Rule, these opportunities to comment on and help shape federal actions affecting state resources, including ESA listed species and designated critical habitat, will be diminished in some situations and lost in others. Where actions proceed with diminished public process under the Final Rule, states will lose the opportunity to comment on or, if necessary, challenge the actions before harms occur.

194. Fewer and less robust environmental reviews and diminished opportunities for public participation will also increase the burden on State Plaintiffs to respond to public health disparities flowing from uninformed federal decisions that adversely impact vulnerable communities. For example, the Final Rule excludes consideration of cumulative impacts to communities that face a historic and disproportionate pattern of exposure to environmental hazards and are more likely to suffer future health disparities due to the elimination of

cumulative impact review from the NEPA process. These communities also are more likely to experience severe impacts of climate change, including flooding, extreme weather events such as extreme heat, and degraded air and water quality. Increased public health and community harms from weakened NEPA reviews will require greater expenditures of state and territorial funds to remedy increased public health disparities flowing from uninformed federal agency action.

195. These harms will also impair ongoing efforts by State Plaintiffs to reduce public health disparities, which State Plaintiffs already devote significant resources to address. For example, the New York State Department of Environmental Conservation's Office of Environmental Justice directs resources to disproportionately impacted communities and enhances public participation through grant opportunities, enforcement of environmental laws and programs, and consultation with local industries. California's Community Air Protection Program (CAPP) helps to reduce exposure in communities most impacted by air pollution. CAPP works with communities throughout California to measure and reduce adverse health impacts from air pollution, including through targeted incentive funding to deploy cleaner technologies in communities experiencing localized air pollution. In Washington, the Department of Health and a statewide Environmental Justice Task Force are working to reduce health disparities. The Final Rule hinders these state efforts by adopting changes that allow agencies to avoid thorough consideration of impacts on public health and environmental justice.

196. In addition, fewer and less robust NEPA reviews may increase the burden on some State Plaintiffs to protect vulnerable species and the habitats upon which they depend through the protections afforded under state environmental review laws and other state efforts to protect biodiversity.

197. State Plaintiffs have also relied on the 1978 regulations to review proposed agency NEPA rules and to determine their potential impact on state and territorial natural

resources. For example, the Washington Department of Fish and Wildlife (WDFW) relied on the requirement in the 1978 regulations that projects with extraordinary circumstances will not be subject to a categorical exclusion in assessing potential wildlife impacts from the Forest Service's proposed categorical exclusions. *See* Letter from WDFW Director Kelly Susewind to Amy Baker, U.S. Forest Service on proposed categorical exclusions, USFS-HQ-2019-12195 (Aug. 6, 2019). The Final Rule, however, authorizes federal agencies to apply a categorical exclusion even where extraordinary circumstances exist, diminishing the protections to state natural resources on which WDFW relied. Similarly, the Final Rule requires federal agencies to amend their NEPA regulations to meet the lowered environmental review standards of the Final Rule, which will increase the risk of adverse impacts to state and territorial natural resources, including species listed and critical habitat designated under the ESA.

198. Additionally, State Plaintiffs have institutional, proprietary, and economic interests in federal agency compliance with NEPA's text and goals of environmental protection, public participation, and informed decision making. Fewer and weaker federal environmental reviews mean that state agencies in Washington, California, New York, and Massachusetts will no longer be able to adopt or incorporate most federal NEPA documents into their own state NEPA review processes because the NEPA documents will no longer satisfy state law, including, for example, requirements that state review include climate impacts and greenhouse gas emissions. *See, e.g.*, Wash. Rev. Code ch. 43.21; Cal. Pub. Res. Code § 21083.5; 6 N.Y. Comp. Codes R. & Regs. § 617.15; Mass. Gen. Laws, ch. 30, §§ 61, 62G. Similarly, state agencies in California will no longer be able to prepare joint documents to satisfy both NEPA and California's little NEPA law, and this will increase the burden on state agencies to prepare their own stand-alone environmental documents. Cal. Code Regs., tit. 14, § 1517. Similar problems may arise even in states that do not have so-called "little NEPAs." In Oregon, for example, the State Energy Facility Siting Council may need to develop separate environmental reviews to meet the requirements of Oregon statutory law

before approving energy facilities, rather than rely on federal NEPA documentation according to the Council's longstanding practice. As a result, State Plaintiff agencies will need to expend significant financial and administrative resources to conduct environmental analyses that would not have been necessary under the 1978 regulations.

199. Robust NEPA review is critical for State Plaintiffs that lack environmental review processes or where state environmental review statutes may not apply. In these situations, state agencies will be unable to fill significant gaps in analysis through their own state environmental review and will thus need to rely on the federal NEPA process to understand a project's anticipated environmental impacts. Where the federal environmental review is insufficient, as it will be under the Final Rule, states and territories will lack valuable information to determine how federal projects will impact state and territorial natural resources.

200. Moreover, while State Plaintiffs can act to protect natural resources within their borders, they cannot control decisions made by non-plaintiff states about resources that cross state boundaries, such as water, air, and wildlife. Thus, despite the State Plaintiffs' efforts, State Plaintiffs may not be able wholly to fill the regulatory gaps created by the Final Rule.

201. Federal agencies will also be required to amend their NEPA regulations to conform to the Final Rule. 85 Fed. Reg. at 43,373 (to be codified at § 1507.3(b)). These regulatory changes will further burden State Plaintiff agencies that frequently participate in the NEPA process and will place a particular burden on State Plaintiff agencies, like Caltrans, that have been delegated NEPA authority.

202. State Plaintiffs also suffered procedural harm from CEQ's failure to comply with the procedural requirements of the APA, NEPA, and the ESA in promulgating the Final Rule. CEQ's failure to promulgate a rationally supported and lawful rule, failure to prepare an EA or EIS for the Final Rule, and failure to consult with the Services regarding impacts to listed species and designated critical habitat harms State Plaintiffs' procedural interests in

participating in a lawful rulemaking and environmental review process that adequately considers and mitigates impacts on the State Plaintiffs' residents, natural resources, and ESA listed species and designated critical habitat.

203. State Plaintiffs have thus suffered concrete injury caused by CEQ's promulgation of the Final Rule. A court judgment vacating the entire Final Rule and reinstating the 1978 regulations and associated guidance will redress the harms to State Plaintiffs by requiring that federal agencies continue to review actions under the prior regulations and guidance, consistent with NEPA. Therefore, State Plaintiffs have standing to bring this action.

FIRST CAUSE OF ACTION
Violation of the APA and NEPA by Adopting Regulations Contrary to NEPA
5 U.S.C. § 706(2); 42 U.S.C. §§ 4321 *et seq*.

204. State Plaintiffs incorporate all preceding paragraphs by reference.

205. The APA provides that this Court shall "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2). An agency does not have authority to adopt a regulation that is "plainly contrary to the statute." *Morton*, 467 U.S. at 834; *Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or.*, 515 U.S. 687, 703 (1995).

206. The Final Rule is "not in accordance with law" because it conflicts with NEPA's text, structure, and purpose and exceeds the scope of CEQ's jurisdiction, authority, and discretion under NEPA.

207. The Final Rule violates NEPA and the APA by adopting provisions that, both individually and collectively, conflict with NEPA's overriding purposes of environmental protection, public participation, and informed decision making and the statute's mandate that agencies apply NEPA "to the fullest extent possible." 5 U.S.C. § 706(2)(A); 42 U.S.C. §§ 4331, 4332. The Final Rule is unlawful because, among other things, it:

a. Restricts the number of projects subject to detailed environmental review, including, among others things, through (i) a new "NEPA thresholds" provision that establishes six broad and ill-defined circumstances in which NEPA does not apply, Final Rule, 85 Fed. Reg. at 43,359 (to be codified at § 1501.1); (ii) a narrow definition of "major Federal action" that is inconsistent with NEPA's plain language, *id*. at 43,375 (to be codified at § 1508.1(q)); and (iii) a revised analysis for determining what actions are likely to have "significant effects" and thus require an EIS, *id.* at 43,360 (to be codified at § 1501.3). These provisions are directly contrary to NEPA's text and purpose and its mandate that agencies apply the statute "to the fullest extent possible." *See* 42 U.S.C. §§ 4331, 4332.

b. Limits the scope of environmental effects agencies must consider when conducting NEPA review. For example, the Final Rule allows agencies to avoid considering cumulative and indirect impacts, as well as impacts that are "remote in time" or "geographically remote." Final Rule, 85 Fed. Reg. at 43,375 (to be codified at § 1508.1(g)); *see also id*. at 43,360 (to be codified at § 1501.3(b)(1)) (limiting the "affected area" in the significance analysis to "national, regional, or local"). Congress however, plainly intended NEPA to address such impacts. NEPA directs agencies to consider "any adverse environmental effects which cannot be avoided should the proposal be implemented," 42 U.S.C. 4332(C)(ii), and "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity," *id.* § 4332(2)(C)(iv). NEPA further directs agencies to "recognize the worldwide and long-range character of environmental problems," rather than examine the impacts of each federal proposal in a silo, *id.* § 4332(2)(F). Indeed, the Senate Committee Report on NEPA stated that the statute was necessary because "[i]mportant decisions concerning the use and the shape of man's future environment continue to be made in small but steady increments which perpetuate rather than avoid the recognized mistakes of previous decades." S. Rep. No. 91-296, at 5. Avoiding this death by a thousand cuts demands that federal agencies carefully

consider the cumulative environmental impacts of their actions with other related and unrelated actions—not, as the Final Rule would have it, ignore those impacts entirely.

c. Limits the number of alternatives to the proposed action analyzed in an EA or EIS and the depth of that analysis by, among other things, removing the requirement that agencies "[r]igorously explore and objectively evaluate" all reasonable alternatives to the proposed action, eliminating consideration of alternatives outside the jurisdiction of the lead agency, and removing the requirement that agencies "[d]evote substantial treatment to each alternative. Final Rule, 85 Fed. Reg. at 43,365 (to be codified at § 1502.14). The Final Rule also unlawfully allows certain actions to proceed during NEPA review, constraining available alternatives. *Id*. at 43,370 (to be codified at § 1506.1). Contrary to these provisions, NEPA's plain language requires "to the fullest extent possible" consideration of "alternatives to the proposed action" and limits action on proposals until after that comprehensive environmental review occurs. 42 U.S.C. § 4332, 4332(2)(C)(iii); *Robertson*, 490 U.S. at 349 ("Simply by focusing the agency's attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.").

d. Diminishes agencies' obligation to obtain or develop information regarding environmental impacts when such information is not already available. The 1978 regulations required agencies to obtain such information when the cost of obtaining it was "not exorbitant." 40 C.F.R. § 1502.22(a) (1978). The Final Rule lowers the bar and permits agencies to forgo additional investigation when the cost would be merely "unreasonable." Final Rule, 85 Fed. Reg. at 43,366 (to be codified at 40 C.F.R. § 1502.21(b)). This vague and lax standard is inconsistent with NEPA's statutory mandate that agencies consider all the environmental impacts of their actions, not just those that are readily apparent. *See* 42 U.S.C. § 4332(2)(C)(ii) (agencies must disclose "*any* adverse environmental effects which cannot be avoided should the proposal be implemented" (emphasis added)).

e. Undermines the ability of State Plaintiffs and the public to comment on federal proposals, in direct conflict with NEPA's informed decision making mandate and direction that federal agencies work "in cooperation with State and local governments, and other concerned public and private organizations." *Id.* § 4331(a); *see also id.* § 4332(2)(C) (directing that "the comments and views of the appropriate Federal, State, and local agencies … shall accompany the [agency] proposal through the existing agency review processes" and shall be made available to the public), *id.* § 4332(2)(G) ("make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment"). The Final Rule allows federal agencies to claim a "presumption" that they have considered public comments (including comments by states and their agencies) by making a certification in the record of decision approving a proposed action. Final Rule, 85 Fed. Reg. 43,369 (to be codified at 40 C.F.R. § 1505.2(b)). This unjustified presumption invites federal agencies to overlook state and public input on federal proposals. Indeed, the Final Rule adds a provision stating that agencies "are not required to respond to each comment." *Id.* at 43,368 (to be codified at 40 C.F.R. § 1503.4(a)(5)). Together, these changes, which excuse federal agencies from providing meaningful response to comments submitted by State Plaintiffs, local governments, and the public, unlawfully render NEPA's mandated public participation process an empty paperwork exercise.

208. For these reasons, the Final Rule is arbitrary and capricious, an abuse of discretion, and contrary to the requirements of NEPA and the APA. 5 U.S.C. § 706(2); 42 U.S.C. §§ 4321 *et seq*. The Final Rule should therefore be held unlawful and set aside.

SECOND CAUSE OF ACTION
Violation of the APA for Arbitrary and Capricious Rulemaking
5 U.S.C. § 706(2)

209. State Plaintiffs incorporate all preceding paragraphs by reference.

210. The APA provides that this Court shall "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "without observance of procedure required by law," or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2).

211. Pursuant to the APA, in promulgating a regulation an "agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43.

212. When the regulation represents a change in policy or interpretation, the agency must provide a rational explanation for that change. *Fox Television, Inc.*, 556 U.S. at 515. The agency must demonstrate that the new rule "is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates." *Id*.

213. Moreover, in changing policy agencies are "required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Dep't of Homeland Sec.*, 140 S. Ct. at 1915 (citations omitted).

214. In promulgating the Final Rule, CEQ failed, both for the entire rule and for its individual changes, to provide the reasoned analysis required by the APA. Specifically, CEQ failed to provide a rational explanation for its changes to its longstanding NEPA interpretations and policies, relied on factors Congress did not intend for CEQ to consider, offered explanations that run counter to the evidence before the agency, ignored substantial reliance interests (including reliance by State Plaintiffs on NEPA's procedures to help protect state and territorial natural resources and public health) in the 1978 regulations and associated guidance, and entirely overlooked important issues.

215. CEQ provided no reasoned analysis to demonstrate that the revisions in the Final Rule, both individually and collectively, will achieve its purported objectives to reduce

paperwork and delays while "at the same time to produce better decisions [that] further the national policy to protect and enhance the quality of the human environment." Final Rule, 85 Fed. Reg. at 43,313; *see also id*. at 43,307.

216. In particular, CEQ failed to demonstrate how the Final Rule will further NEPA's policies of producing better decisions and furthering protection and enhancement of the human environment when the Final Rule adopts provisions that conflict with NEPA's text, purpose, legislative history, and CEQ's longstanding prior interpretations; that will produce fewer and less robust environmental reviews and restrict public participation; and that will limit judicial review.

217. CEQ further failed to demonstrate how its revisions will reduce delay or add clarity when CEQ's Final Rule injected new, undefined, and poorly explained language and requirements into the NEPA process and swept away decades of agency regulations, guidance, and case law that formerly provided extensive direction for federal agencies implementing NEPA. If anything, the Final Rule will lead to more delay, confusion, and litigation over the correct interpretation and application of the Final Rule.

218. CEQ also failed to meaningfully examine evidence, including studies developed by CEQ itself, demonstrating successful implementation of NEPA under the 1978 regulations and indicating that delay in project implementation is often caused by factors other than CEQ's implementing regulations. *See, e.g.*, U.S. Gov't Account. Office, *National Environmental Policy Act: Little Information Exists on NEPA Analyses*, 16 (Apr. 2014).

219. CEQ also failed to rationally consider environmental justice impacts from the Final Rule or provide factual support for its conclusion that the Final Rule will "not cause disproportionately high and adverse human health or environmental effects on minority populations and low-income populations." Final Rule, 85 Fed. Reg. at 43,356–57. CEQ does not justify its departure from its longstanding policy that environmental justice impacts should be thoroughly analyzed through the NEPA process.

220. CEQ also failed to consider important aspects of the Final Rule by, among other things, ignoring evidence of NEPA's successful implementation and sweeping away concerns about environmental justice impacts, natural resource impacts (including climate change impacts), and burdens imposed on State Plaintiffs resulting from the Final Rule.

221. For these reasons, the Final Rule is arbitrary and capricious, an abuse of discretion, and contrary to the requirements of the APA. 5 U.S.C. § 706(2). The Final Rule should therefore be held unlawful and set aside.

THIRD CAUSE OF ACTION
Violation of the APA for Promulgating Regulations in Excess of Statutory Authority
5 U.S.C. § 706(2); 42 U.S.C. §§ 4321 *et seq.*

222. State Plaintiffs incorporate all preceding paragraphs by reference.

223. The APA provides that this Court shall "hold unlawful and set aside" agency action that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2).

224. Several of the Final Rule's provisions, individually and collectively, exceed CEQ's "statutory jurisdiction [and] authority." *Id.* § 706(2)(C).

225. These unlawful revisions include:

a. Carving out new exceptions to NEPA's requirements. As discussed above, the Final Rule would greatly expand the circumstances in which agencies can avoid complying with NEPA. CEQ has no authority to excuse agencies from complying with NEPA's environmental review mandate.

b. Redefining "major Federal action" to exclude an agency's failure to act, *compare* 40 C.F.R. § 1508.18 ("[a]ctions include the circumstance where the responsible agency officials fail to act and that failure to act is reviewable by courts or administrative tribunals"), *with* Final Rule, 85 Fed. Reg. at 43,375 (to be codified at § 1508.1(q) (removing failure to act language from the definition of "major Federal action")), effectively rewriting the

definition of a reviewable agency action under the APA, 5 U.S.C. § 551(13). CEQ has no authority to limit the application of the APA.

c. Placing a limit on the remedies available in a NEPA lawsuit, stating that "[h]arm from the failure to comply with NEPA can be remedied by compliance with NEPA's procedural requirements," suggesting that courts should decline to invalidate agency action where agencies commit "minor, non-substantive errors that have no effect on agency decision making," and stating that the Final Rule "create[s] no presumption that violation of NEPA is a basis for injunctive relief or for a finding of irreparable harm." Final Rule, 85 Fed. Reg. at 43,358 (to be codified at § 1500.3(d)). CEQ has no authority, statutory or otherwise, to instruct courts on the remedies they can order. *See City of Los Angeles v. Barr*, 941 F.3d 931, 938 (9th Cir. 2019) ("An agency literally has no power to act ... unless and until Congress confers power upon it.").

226. For these reasons, the Final Rule is arbitrary, capricious, not in accordance with law and in excess of CEQ's statutory authority. 5 U.S.C. § 706(2); 42 U.S.C. §§ 4321 *et seq.* The Final Rule should therefore be held unlawful and set aside.

FOURTH CAUSE OF ACTION
Violation of the APA's Notice-and-Comment Requirements
5 U.S.C. § 706(2)

227. State Plaintiffs incorporate all preceding paragraphs by reference.

228. The APA provides that this Court shall "hold unlawful and set aside" agency action that is "without observance of procedure required by law." 5 U.S.C. § 706(2).

229. Prior to promulgating, amending, or repealing a rule, agencies must engage in a public notice-and-comment process. *Id.* §§ 551(5), 553. To satisfy the requirements of APA section 553(b), agencies must afford public notice of specific regulatory changes and their reasoned basis to provide the public an opportunity for meaningful comment. *Home Box Office v. FCC*, 567 F.2d at 35–36. To allow for meaningful public comment, an agency must "make available" during the public comment period "technical studies and data that it has

employed in reaching the decision[] to propose particular rules." *Kern Cty. Farm Bureau*, 450 F.3d at 1076. The public may then submit comments on the proposed rule. 5 U.S.C. § 553(c).

230. "An agency must consider and respond to significant comments received during the period for public comment." *Perez*, 575 U.S. at 96. "These procedures are 'designed to assure due deliberation' of agency regulations and 'foster the fairness and deliberation that should underlie a pronouncement of such force.'" *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 775 (9th Cir. 2018) (quoting *United States v. Mead Corp.*, 533 U.S. 218, 230 (2001)). "In considering and responding to comments, 'the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made."'" *Altera Corp. & Subsidiaries v. Comm'r of Internal Revenue*, 926 F.3d 1061, 1080 (9th Cir. 2019) (quoting *State Farm*, 463 U.S. at 43), *cert. denied sub nom. Altera Corp. & Subsidiaries v. CIR*, No. 19-1009, 2020 WL 3405861 (U.S. June 22, 2020).

231. CEQ failed to provide a meaningful opportunity to comment on data or technical studies that it employed in reaching conclusions in the Final Rule. *Kern Cty. Farm Bureau*, 450 F.3d at 1076.

232. In the Final Rule, CEQ relied repeatedly on its RIA to support its revised regulations and to dismiss harms to the environment, public health, and vulnerable communities, including to dismiss its obligation under NEPA to prepare an EA or EIS and its obligation under Executive Order 12,898 to assess environmental justice impacts. *See, e.g.*, Final Rule, 85 Fed. Reg. at 43,352, 43,354, 43,356. CEQ thus relied on the RIA in reaching its decisions in the Final Rule.

233. CEQ did not provide an opportunity for the public to comment on the RIA prior to promulgating the Final Rule.

234. CEQ also failed to respond adequately to comments on the Proposed Rule. For example, State Plaintiffs and others submitted significant comments on the Advance Notice and the Proposed Rule explaining that:

a. CEQ has not presented sufficient evidence to demonstrate a need for the Proposed Rule, particularly given that studies, including studies developed by CEQ itself, and State Plaintiffs' own experience with NEPA demonstrate that NEPA leads to better decisions, that external factors contribute to delay in environmental reviews, and that existing tools could remedy CEQ's concerns about delay;

b. CEQ's Proposed Rule, if finalized, would increase confusion, uncertainty, and litigation, causing the very delay CEQ claimed that it sought to avoid in promulgating the Final Rule;

c. CEQ's Proposed Rule, if finalized, would adversely impact the unique interests of states, territories, and local governments including by harming state resources, limiting state access to information, disrupting coordination with federal agencies, undermining state reliance on the 1978 regulations and associated guidance, and burdening states with increased environmental review;

d. CEQ's Proposed Rule, if finalized, would eliminate consideration of climate change impacts, contributing to adverse impacts to natural resources and public health in our states, territories, and communities; and

e. CEQ's Proposed Rule, if finalized, would adversely impact vulnerable communities by limiting NEPA's application and scope, including by excluding certain federal actions from environmental review, eliminating consideration of cumulative impacts, and limiting opportunities for public comment.

235. CEQ failed to provide a rational response to these significant comments. To the extent CEQ addressed these issues, it provided only cursory responses that did not "examine

the relevant data and articulate a satisfactory explanation for its action." *Altera Corp. & Subsidiaries*, 926 F.3d at 1080.

236. Because CEQ failed to provide an opportunity to comment on the RIA and CEQ failed to rationally respond to significant comments, the Final Rule is arbitrary, capricious, an abuse of discretion, and promulgated "without observance of procedure required by law." 5 U.S.C. § 706(2). The Final Rule should therefore be held unlawful and set aside.

FIFTH CAUSE OF ACTION
Violation of NEPA and the APA for Failure to Prepare an EA or EIS on the Final Rule
42 U.S.C. § 4332(2)(C); 5 U.S.C. § 706(2)

237. State Plaintiffs incorporate all preceding paragraphs by reference.

238. NEPA requires federal agencies to take a "hard look" at the environmental consequences of a proposal before acting on it. *See* 42 U.S.C. § 4332. That is, a federal agency must prepare an EIS for all "major Federal actions significantly affecting the quality of the human environment." *Id.* § 4332(2)(C); 40 C.F.R. § 1502.3 (1978).

239. An EIS must discuss, among other things: the environmental impact of the proposed federal action, any adverse and unavoidable environmental effects, any alternatives to the proposed action, and any irreversible and irretrievable commitment of resources involved in the proposed action. 42 U.S.C. § 4332(2)(C).

240. CEQ is a federal agency subject to NEPA.

241. CEQ's 1978 regulations apply to CEQ's promulgation of the Final Rule. Final Rule, 85 Fed. Reg. 43,354 (stating that if CEQ were to prepare an EIS on the Final Rule, the 1978 regulations would apply).

242. Under CEQ's 1978 regulations, a "major Federal action" included "new or revised agency rules [and] regulations," like the Final Rule. 40 C.F.R. § 1508.18(a) (1978).

243. CEQ's 1978 regulations specify that in an EIS, agencies must rigorously explore and objectively evaluate all reasonable alternatives, including the alternative of taking

no action, and must discuss the reasons for eliminating any alternatives rejected from detailed study. *Id*. § 1502.14.

244. The 1978 regulations also require agencies to analyze both the direct impacts that an action will have on the environment, as well as the action's "reasonably foreseeable" indirect and cumulative impacts. Indirect impacts are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id*. § 1508.8(b) (1978). Cumulative impacts are those impacts that result "from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." *Id*. § 1508.7 (1978).

245. CEQ's analysis of alternatives and impacts should consider, among other things, the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. 42 U.S.C. § 4332(2)(C); Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (1994) (as amended); CEQ, Environmental Justice (1997).

246. As a preliminary step, an agency may first prepare an EA to determine whether the effects of an action may be significant. 40 C.F.R. §§ 1501.4(b), 1508.9 (1978). If an agency decides not to prepare an EIS, it must supply a "convincing statement of reasons" to explain why a project's impacts are not significant. *Nat'l Parks Conservation Ass'n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001) (internal citations omitted); *see also Save the Yaak Comm. v. Block*, 840 F.2d 714, 717 (9th Cir. 1988).

247. An EIS must always be prepared if "substantial questions are raised as to whether a project … *may* cause significant degradation of some human environmental factor." *Idaho Sporting Cong. v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998) (quoting *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1332 (9th Cir. 1992)).

248. CEQ's promulgation of the Final Rule is a "major Federal action" that significantly affects the environment. The Final Rule severely limits federal agencies' obligation to review environmental impacts under NEPA both by excluding federal actions

from environmental review and by limiting the scope of environmental reviews that do occur. These changes will cause federal agencies to overlook—and thus fail to address, avoid, or mitigate—their actions' impacts, including significant impacts to State Plaintiffs' natural resources, climate change, public health, and environmental justice. Projects with significant unstudied and undisclosed impacts will move forward with no or insufficient environmental review in violation of NEPA. Moreover, excusing agencies from considering cumulative impacts will result in agencies taking actions without fully understanding the impacts of those actions on climate change, overburdened and underserved communities, water and air quality, and sensitive, threatened, and endangered wildlife.

249. Under NEPA, CEQ was required to address the Final Rule's significant environmental impacts and consider reasonable alternatives to the Final Rule in an EIS or, at a minimum, an EA. 42 U.S.C. § 4332(2)(C). CEQ did neither.

250. CEQ provided no legally sufficient justification—let alone a "convincing statement of reasons"—for failing to comply with NEPA in promulgating the Final Rule. *Babbitt*, 241 F.3d at 730; *see also Sierra Club v. Bosworth*, 510 F.3d. 1016 (9th Cir. 2007).

251. CEQ's failure to take a "hard look" at the environmental impacts of the Final Rule prior to its promulgation was arbitrary and capricious, an abuse of discretion, and contrary to the procedural requirements of NEPA and the APA. 5 U.S.C. § 706(2); 42 U.S.C. § 4332(2)(C). The Final Rule should therefore be held unlawful and set aside.

SIXTH CAUSE OF ACTION
Violation of the ESA and APA for Failing to Consult
5 U.S.C. § 706(2)

252. State Plaintiffs incorporate all preceding paragraphs by reference.

253. Section 7 of the ESA requires each federal agency to engage in consultation with the FWS or the NMFS when a proposed federal action "may affect a listed species or critical habitat." 16 U.S.C. § 1536(a)(2); 50 C.F.R. §§ 402.12(a), (k), 402.14(a)–(b). This "may affect" threshold is low; and "any possible effect, whether beneficial, benign, adverse, or

of an undetermined character, triggers the formal consultation requirement." *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 496 (9th Cir. 2011) (citing 51 Fed. Reg. 19,926, 19,949 (June 3, 1986)) (brackets and internal quotation marks omitted).

254. Once consultation has been initiated, the federal agency is prohibited from "mak[ing] any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures[.]" 16 U.S.C § 1536(d). Where a federal agency is required to initiate consultation, but fails to do so, the agency is prohibited from proceeding with any activity that may affect a listed species or designated critical habitat until it complies with the consultation requirement. *Pac. Rivers Council v. Thomas*, 30 F.3d 1050, 1056–57 (9th Cir. 1994).

255. Each "department, agency, or instrumentality of the United States" is a federal agency subject to the ESA. 16 U.S.C. § 1532(7).

256. Actions subject to the ESA include "all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas." 50 C.F.R. § 402.02. Such actions include the promulgation of regulations and all other actions directly or indirectly causing modifications to the land, water, or air. *Id*.

257. CEQ is a federal agency subject to the ESA.

258. Promulgation of the Final Rule is an action subject to the ESA.

259. Promulgation of the Final Rule "may affect" numerous listed species and the designated critical habitats upon which they rely, including but not limited to, by revising NEPA's implementing regulations to: exclude certain actions from NEPA review; separate the definition of "major Federal action" from an action's significance; expand the use of categorical exclusions; eliminate review of an agency action's effects on listed species and designated critical habitat when analyzing the significance of an action; reduce the scope of

alternatives considered during environmental review; and direct agencies not to consider cumulative and indirect effects, including climate change impacts. Final Rule, 85 Fed. Reg. at 43,360, 43,365–66, 43,375 (to be codified at §§ 1501.3(b), 1501.4, 1502.14, 1502.15, 1508.1(g), (m), (q)). As such, CEQ's rulemaking for the Final Rule triggered the consultation requirement set forth in section 7(a)(2) of the ESA. 16 U.S.C. § 1536(a)(2).

260. However, CEQ did not consult with the Services with regard to the Final Rule. Rather, CEQ concluded, without any basis or explanation, that the Final Rule would have "no effect" on listed species or designated critical habitat.

261. Once published, the Final Rule can no longer be revised as needed to ensure that it will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat of such species. As such, CEQ's promulgation of the Final Rule constitutes an irreversible and irretrievable commitment of resources, which foreclosed the formulation or implementation of any reasonable and prudent alternative measures[.]" 16 U.S.C. § 1536(d). As a result of CEQ's failure to initiate consultation, the ESA's prohibition on the irreversible or irretrievable commitment of resources applies.

262. CEQ's promulgation of the Final Rule without consulting with the Services, based on its conclusion that the Final Rule would have "no effect" on listed species, is arbitrary, capricious, and not in accordance with law, in violation of the ESA and the APA. 16 U.S.C. § 1536; 5 U.S.C. § 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, State Plaintiffs respectfully request that this Court:

1. Declare that CEQ violated NEPA and the APA by promulgating a Final Rule that is contrary to NEPA's language and purpose and exceeds CEQ's statutory authority;

2. Declare that CEQ violated the APA by promulgating a Final Rule that is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and fails to follow the procedures required by law;

3. Declare that CEQ violated NEPA and the APA by promulgating a Final Rule without preparing an EA or an EIS evaluating the Final Rule's environmental and public health impacts;

4. Declare that CEQ violated the ESA and the APA by promulgating the Final Rule without first consulting with the Services regarding the effects that the Final Rule may have on listed endangered and threatened species and designated critical habitat;

5. Vacate the entire Final Rule so that the 1978 regulations as amended and associated guidance are immediately reinstated;

6. Enjoin CEQ from implementing, enforcing, or relying upon the Final Rule;

7. Award State Plaintiffs their costs, expenses, and reasonable attorneys' fees; and

8. Award such other relief as the Court deems just and proper.

DATED this 23rd day of November, 2020.

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