United States Senate

WASHINGTON, DC 20510

February 26, 2020

The Honorable Mary B. Neumayr
Chairman
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

RE: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Docket ID: CEQ-2019-0003

Dear Chairman Neumayr,

We urge you to reconsider and withdraw the Council on Environmental Quality's (CEQ) ill-considered rewrite of the National Environmental Policy Act (NEPA) implementing regulations. This rulemaking proposal overreaches and modifies almost every procedural and substantive aspect of the existing regulations.

In particular, the proposal blocks agencies from assessing cumulative impacts in NEPA reviews and would remove all references to indirect effects, instead focusing only on direct causal impacts of a proposed action. These changes would have devastating and wide-ranging consequences. The inclusion of cumulative impacts in environmental impact statements or environmental assessments allows for a holistic understanding of how a project's effects will interact with or add to the collective impacts of other projects. While the environmental impact of one project may seem minor on its own, several projects may cause significant harm to communities and the environment when viewed altogether.

For fifty years, NEPA has safeguarded the voice of those affected by projects and activities in their communities, and ensured that the public's environmental, health, and quality-of-life concerns are assessed and protected. On January 9, 2020, the Trump administration issued a proposed rule that would undermine key aspects of the NEPA process and result in the comprehensive dismantling of core protections for communities and the environment. The rule oversimplifies and antiquates environmental protections, rather than modernizing them, and would actively prevent agencies from considering the full effects of any given project on the public and the environment.

Since the beginning of CEQ's interpretation and oversight of the NEPA statute, the statutory clause describing "major Federal actions significantly affecting the quality of the human environment" has been "construed by agencies with a view to the overall, cumulative impacts of the action proposed (and of further actions contemplated)."[1] Decades of case law and further CEQ interpretation have provided detailed guidance on this core requirement.

[1] CEQ: Statements on Proposed Federal Actions Affecting the Environment; Interim Guidelines, April 30, 1970, Section 5(b).

The recent CEQ proposal contains an explicit requirement to exclude the discussion of cumulative impacts during the NEPA review process.[2] This unlawful rollback would be akin to a requirement to exclude impacts to air or water quality from a proposed action. It is both illogical and conflicting with its congressional mandate, and the judiciary's authority, to study anything other than what NEPA itself requires – consideration of the "environmental impact of the proposed action" and "any adverse environmental effects" of the proposal – not environmental impacts or effects *minus* a particular impact or effect.

One textbook example of an important cumulative impact is a project's contribution to climate change—a massive global crisis made worse by the cumulative impacts of millions of small individual sources of greenhouse gas emissions. However, there are other serious threats that could go unacknowledged and unassessed if the Trump administration does not consider cumulative impacts and indirect effects in NEPA reviews.

Agency analysis of the impacts associated with a proposal to mine, drill, or log would be limited to those deemed to have "a reasonably close causal relationship to the proposed action," with no analysis of indirect or cumulative effects that are considered to be "remote in time, geographically remote, or the product of a lengthy causal chain." For example, in permitting a sulfide-ore copper mine in the headwaters of the Boundary Waters Wilderness, the Bureau of Land Management and Forest Service might attempt to consider only the most direct and immediate impacts associated with building the mine and removing and processing the ore, while ignoring the long-term impacts associated with water and air pollution and degradation of the wilderness. The negative effects on the local economy and quality of life from an action that ignores these factors could be vast – the clean water of the Boundary Waters Wilderness supports walleye, trout, and bass populations, and attracts hundreds of thousands of people each year for recreation and tourism.

Under this proposed rulemaking, companies would also be allowed to write their own environmental reviews, and federal contractors would no longer need to disclose conflicts of interest or financial stakes in the projects they are reviewing. In the aforementioned example, a mining company could potentially prepare its own EIS for its proposed sulfide-ore copper mine in the headwaters of our nation's most visited Wilderness, the Boundary Waters, or the federal government could use the company's handpicked contractor with a financial stake in the mine to prepare the analysis. The reason NEPA has long required agencies to maintain responsibility of reviews is because they are charged with making decisions in the public interest. Industry makes decisions largely based on private profit and stockholder interest.

Other projects may cause air quality to worsen in areas that already experience high rates of asthma or other lung diseases, or add to existing burdens of water contamination. Under the proposed rulemaking, the Army Corps of Engineers might only look at the immediate impacts of crude oil tanker traffic on a project allowing an oil company to expand its dock capacity, turning a blind eye to similar industrial projects in the area that might amplify the effects of an oil spill or decline in air quality.

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[2] *See* § 1508.1 (g)(2), as proposed to be amended ("Analysis of cumulative effects is not required.")

Projects that require forest management or electrical infrastructure in an area already at risk of wildfires could make these events more frequent or intense, or disrupt valuable carbon sequestration – issues that would be ignored if projects are not assessed within a framework that includes cumulative impacts. The Forest Service could move to authorize old-growth logging in the Tongass National Forest, without considering the effect on erosion, habitat fragmentation, or broader impacts to salmon populations.

Additionally, projects that may have minor quality-of-life impacts on their own may contribute to overwhelming noise or light pollution burdens on communities when viewed as a whole. For example, if the Air Force proposes to base planes within a major metropolitan area, the Air Force would currently have to identify the cumulative noise on affected areas of the city when the planes' effects are combined with nearby civilian airport flights, any nearby National Guard Airfields, or nearby interstate highways. Without cumulative impact analysis, the combined noise impacts would not be studied or understood, preventing project designers from mitigating noise concerns from local residents.

As science has progressed to more accurately identify and assess cumulative impacts, we should be engaging with this field of study, rather than walking away from our opportunity to understand the true impact of projects in which the federal government has a stake.
In many cases, the assessment of cumulative impacts provides information that the public needs to truly understand and comment on the effects projects would have on their community.

If a project's cumulative impacts on climate, air and water quality, and quality of life are removed from consideration, it would hinder the analysis of complex environmental issues, undermine important protections, and violate the intent of NEPA so severely that it would contravene the language of the statute. As a result, we strongly feel that the proposal to ban the inclusion of cumulative impacts in NEPA reviews must be excluded from any final rule.

We request that this letter be added to Docket ID: CEQ-2019-0003. Thank you for your consideration of this request.

Sincerely,

Edward J. Markey
United States Senator

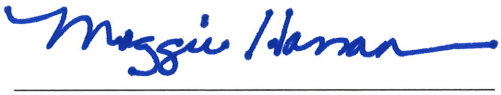
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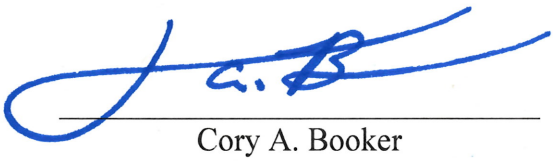
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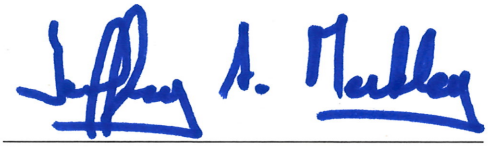
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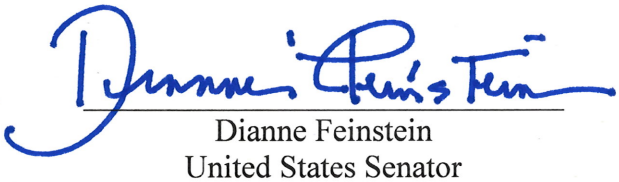
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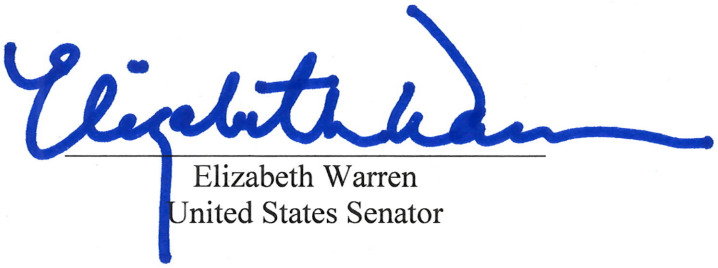
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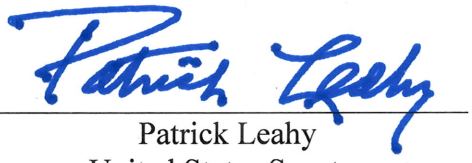
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