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March 6, 2023

Mr. Jomar Maldonado
Council on Environmental Quality
730 Jackson Place NW
Washington, D.C. 20503

RE: Docket # CEQ-2022-0005
Guidance Regarding Consideration of Greenhouse Gases in NEPA Documents

Dear Mr. Maldonado:

Please accept and consider the following comments from the elected Commissioners of Duchesne County, Utah. We are an underserved, rural county with a population of about 20,000 containing a land base larger than the states of Delaware and Rhode Island combined. Our economy is heavily dependent on agriculture and natural resource extraction; especially the oil and gas industry. We are especially vulnerable to wildfire; having had two major wildfires in the past five years. All of this makes it critical that common-sense NEPA rules and procedural guidance be developed.

We predict that the establishment of this guidance for the consideration of greenhouse gas emissions and climate change; although not legally enforceable (since it is not a rule or regulation), will be used by NGOs and NIMBYs to further weaponize NEPA to litigate and prevent beneficial projects; especially those associated with the production or transportation of oil and natural gas products that are so vital to our standard of living around the world. If the CEQ and other federal agencies are going to follow the *"Rule of Reason"* mentioned throughout the guidance, the essential nature of fossil fuels for society should be first and foremost in our minds. Reason dictates that many will freeze in the winter or die from heat waves in the summer if fossil fuel development is curtailed as a result of this guidance.

The Guidance Targets Essential Fossil Fuels

Crude oil and natural gas produced in our county is used for many products that we rely on and use on a daily basis (see: https://www.iogp.org/workstreams/advocacy/oil-natgas-in-everyday-life/). A few of the most common uses are listed below:

- National Defense: The equipment used to defend our country and its interests worldwide and the fuels to power them would not be possible without petroleum products.
- Vehicles: When thinking of oil, we immediately think of fuel to keep our cars running. However, oil is found in many car parts, including all plastic components, car seats, tires, and bumpers.

- Construction: Oil and gas are essential for construction materials such as paint, caulking, roofing shingles, asphalt, and pipes. Heat generated by oil and gas is needed to produce the basic building blocks of society; cement and steel. Moreover, using products derived from petroleum allows for a safer work environment for construction workers, providing them with hard hats, safety goggles, and other equipment. They also allow for more durable projects, with the use of protective coatings and waterproofing.

- Clothing: The most commonly manufactured fibers are petroleum based, such as nylon, polyester, acrylic, and spandex. Fabrics and materials created from petroleum keep us dry and warm in cold weather and cool in hot weather.

- Fashion Accessories: Many everyday fashion accessories are derived from various plastics, such as handbags, sunglasses, phone cases, jewelry, and many others. All of these come from petroleum.

- Fuels: Fuels derived from oil and gas are essential in our modern lives. They allow us to cook our foods, heat or cool our housing, and make high-speed land, sea, and air transportation possible.

- Household Items: We might not realize it, but in our homes, we are surrounded by products containing oil and gas derivatives, including cooking tools, domestic appliances, and cleaning products.

- Beauty Products: There are many beauty products derived from petroleum, such as nail polish, perfumes, some make-up, and hair colorings. Some products which are used on a daily basis, such as soap, toothbrushes, and shampoo, are also made from oil.

- Medical Products: Much of the medical equipment used today, many of which are life-saving devices, is made from oil. Not only are heart valves and artificial limbs made from petroleum, but also many of the cleaning and safety products medical personnel use. Aspirins and other pharmaceuticals also contain petroleum.

- Furniture: Most of our household furniture has components derived from oil. This is true for any synthetic furniture, as well as furniture containing an oil finish.

- Sporting Goods: Petroleum can be found in many types of sporting equipment: surfboards, basketballs, and skate wheels, to name but a few. Many times, the materials derived from oil and gas used in sporting equipment also contribute to the safety of the players.

- Electronics: Most electronics, from TVs to computers and cell phones, contain plastics. In some cases, these plastics prevent any safety hazards. Electronics are now indispensable to our daily lives, and oil and gas play a central role in making this possible.

- Office Supplies: Our office spaces are filled with oil-derived materials which help us in our everyday work and enable us to deliver the best products: all electronics, most furniture, and even printer ink all contain petroleum.

- Toys: Many of the toys that children play with are made from oil-based plastics. Legos, dolls, frisbees, crayons and markers, and balloons are all made from or with plastic components, as are many other childhood items such as car seats or buggies.

- Agriculture: For the agriculture industry to run smoothly, it uses various fertilizers, herbicides, and insecticides to protect products from invasive plants or insects. Many of these products contain petroleum in some fashion or require petroleum fuels to process.

Vagueness and Subjectivity in the Guidance Leaves Room for Bias

The proposed guidance contains many statements that are subjective and open to debate. For example:

- Supplementary Information, Section I, Introduction: there is not universal agreement that *"The United States faces a profound climate crisis" and that "there is little time left to avoid a dangerous – potentially catastrophic – climate trajectory."* Then, in Section III. Background, Subsection B. Climate Change, the guidance states that *"human activities have caused the carbon dioxide content of the atmosphere of our planet to increase to its highest level in at least 800,000 years."* Many believe that the climate has fluctuated as long as the earth has existed and will continue to do so regardless of human activity. Many believe that these fluctuations are more closely tied to solar activity, which is beyond our control. We have no scientific methods to accurately measure carbon dioxide in the atmosphere back to 800,000 years ago. Melodramatic statements such as these are not helpful and promote fear that can ultimately stifle projects needed to provide for

humanity's basic needs such as heating fuels, electricity, water, food, fiber, minerals, shelter, transportation facilities and more.

- What is *"reasonably foreseeable"* to one NEPA practitioner or decision-maker may not be reasonably foreseeable to another; depending on their political bent, personal biases and subjective factors.

- What constitutes the *"best available science and data"* to one may not be considered the best available science to another. Organizations across the political spectrum routinely fund projects that generate "science" that furthers their agenda. Given the widespread nature of "dueling science"; ultimately, the courts will need to decide what constitutes the best science.

- Agencies are encouraged to assign a monetary value to the social cost of carbon. Doing so is a subjective process; not a scientific calculation. The social cost of carbon (SCC) is **an estimate**, in dollars, of the economic damages that would result from emitting one additional ton of carbon dioxide into the atmosphere. There are many **modeling choices** that affect the value of the SCC. The models are based on research and expertise from many different fields, such as climate science, demography, and economics. Additionally, the modeling must **incorporate information that is inherently uncertain**, such as projections of future economic growth (see: https://www.rff.org/publications/explainers/social-cost-carbon-101/).

  A February 11, 2022 court ruling (see https://www.msn.com/en-us/news/politics/court-ruling-on-social-cost-of-carbon-upends-bidens-climate-plans/ar-AAU8kvP) "barred the Biden administration from accounting for the real-world costs of climate change created temporary chaos at federal agencies, upending everything from planned oil and gas lease sales to infrastructure spending. The February 11, 2022 decision by a Louisiana federal judge blocked the Biden administration from using a higher estimate for the damage that each additional ton of greenhouse gas pollution causes society. This formula, called the social cost of carbon, applies to consequential decisions affecting fossil fuel extraction on public lands, infrastructure projects and even international climate talks." Due to the uncertainty and litigation associated with efforts to establish a social cost of carbon, the guidance proposed by the CEQ should not direct federal agencies to consider it in their NEPA analysis.

- The analysis of *"indirect and cumulative effects"* requires that many assumptions be made and these assumptions by a NEPA practitioner or decision-maker will be influenced by their political bent, personal biases and other subjective factors. Over the last several decades, litigants have become very creative in subjectively expanding this "universe of effects" well beyond what is reasonable. It is reasonable to consider direct and indirect effects; however, the indirect and cumulative impacts in a region are difficult to

document with certainty and this uncertainty provides a means for project opponents to litigate and delay.

When analyzing "reasonably foreseeable" indirect or cumulative effects, there needs to be a reasonably close causal relationship. Effects that would occur regardless of the proposed action, effects that would be remote in time, effects geographically remote to the project or the product of a lengthy causal chain and effects that the agency has no ability to prevent due to its limited statutory authority should not be considered in the analysis of indirect and cumulative effects.

Requiring agencies to analyze cumulative and indirect effects that are far removed from the proposed action leaves the door open for special interest groups to force agencies to analyze everything remotely effected by the proposal; thereby limiting authorizations essential to national defense, national energy needs, and production of everyday consumer products.

The terms *"reasonably foreseeable"* and *"cumulative effects"* are vague and invite subjectivity and litigation. An analysis of NEPA court actions would confirm that asserting the cumulative effects analysis is insufficient is a major weapon employed by litigants. Agencies struggle and spend an inordinate amount of resources attempting to address this requirement. However, it is very difficult and speculative to determine how the projects of others will lead to cumulative impacts. If the CEQ is serious about efficient and effective NEPA analysis, it must make the indirect and cumulative effects analysis more objective/less speculative.

- The guidance suggests that agencies use *"appropriate tools and methodologies"* to further the analysis. What is "an appropriate tool and methodology" to one NEPA practitioner or decision-maker may not be appropriate to another, depending on their personal biases.

Referencing the Paris Climate Accord

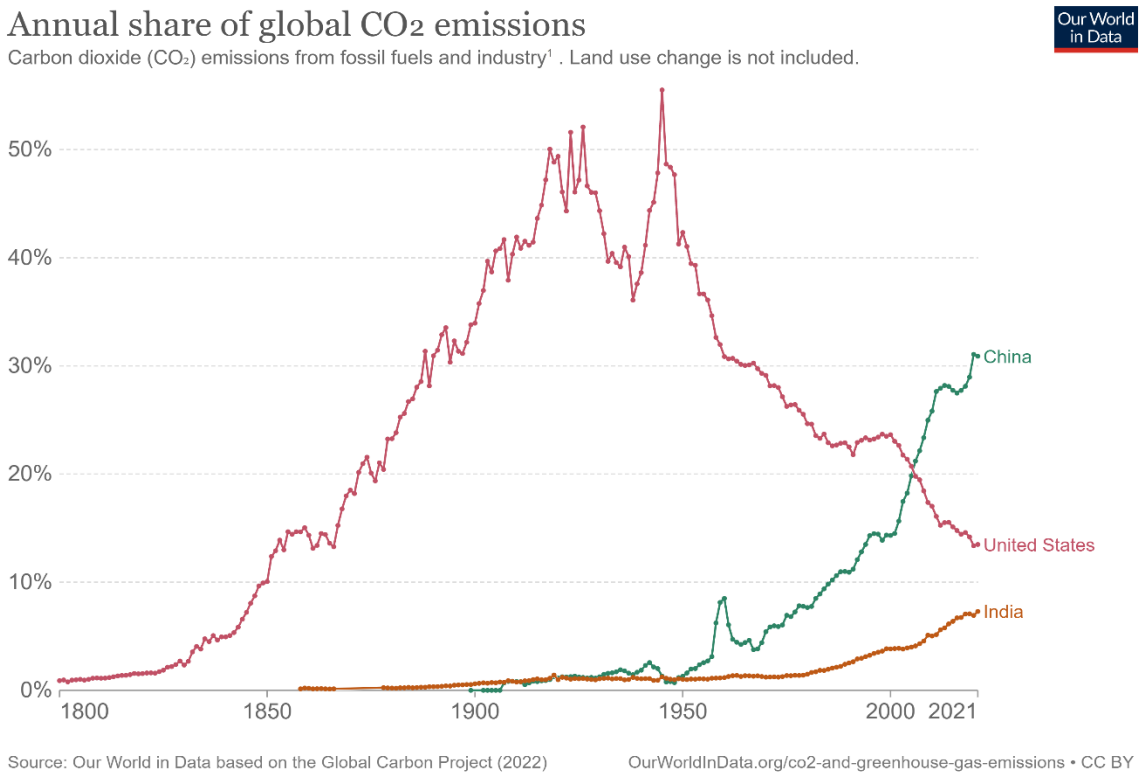
There are many references in the guidance to the Paris Climate Accord. This is not appropriate as the *"climate change goals and commitments"* contained in the accord are not law and have not been ratified by Congress. There remains considerable debate about the merits of this climate agreement and whether it should have been approved by the Senate. The executive branch under President Obama showed its contempt for the U.S. treaty-making process and the role of Congress, particularly the Senate, when it entered into the accord in late 2015. President Biden, by rejoining the accord, is attempting to achieve through executive fiat that which President Obama could not achieve through the democratic process. These Democratic presidents have ignored the commitment made to the Senate in 1992 (when it approved participation in the United Nations Framework Convention on Climate Change) by treating the Paris Agreement as a "sole executive agreement" and by seeking to enforce the agreement through controversial and deeply divisive regulations, the constitutionality of which has already

been called into question by the U.S. Supreme Court (see: https://www.heritage.org/environment/report/the-paris-agreement-treaty-and-should-be-submitted-the-senate#_ftn).

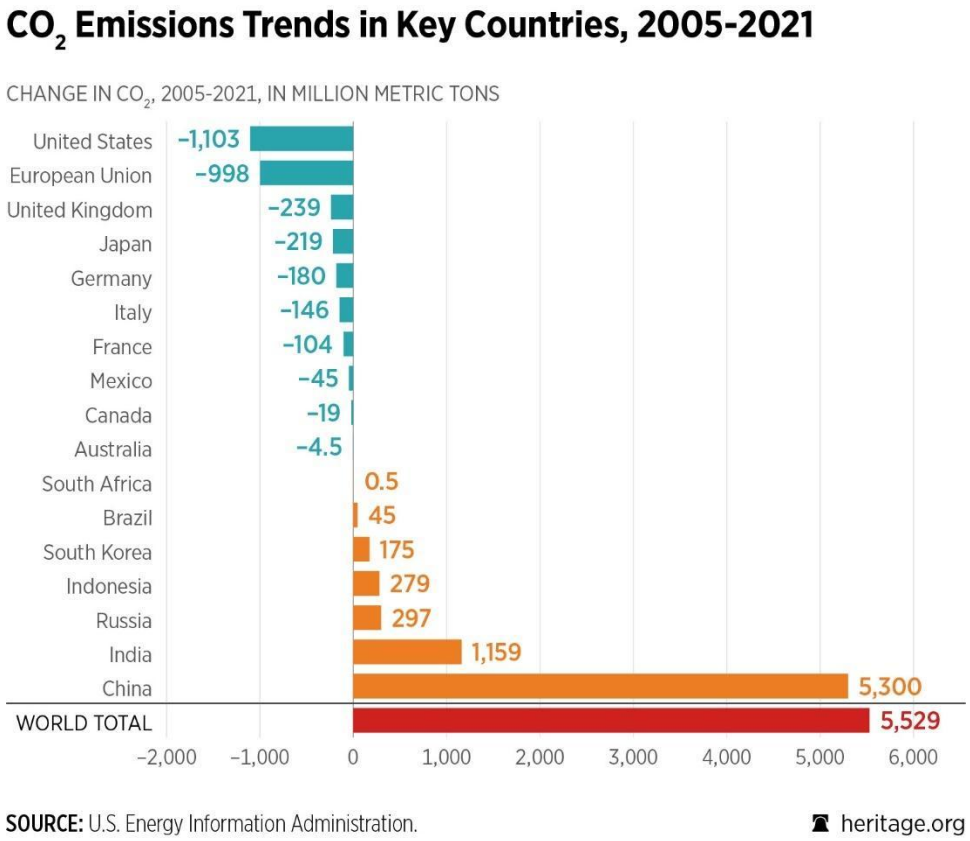
It is far from clear whether the accord will have a significant effect on projected rates of global warming, given that key signatories (namely, China and India) made only nominal carbon-reduction commitments; the agreement's usefulness as a diplomatic tool is uncertain; and it will certainly have a retardant effect on domestic economic growth (see: https://www.nationalreview.com/2017/06/paris-agreement-treaty-requiring-two-thirds-senate-vote/).

The tables below show that while the United States has reduced CO2 emissions by 1,103 million metric tons between 2005 and 2021, India increased its emissions by 1,159 million metric tons and China increased its emissions by 5,300 million metric tons during the same time period. Even if the United States were to cut all of its CO2 emissions, which amounted to 13.49% of global emissions in 2021 (see: https://ourworldindata.org/co2/country/united-states#what-share-of-global-cumulative-co2-has-the-country-emitted), it would have a negligible impact on climate change when China, India and other nations are increasing emissions dramatically.

Consequently, this guidance to scrutinize the impacts of needed infrastructure projects on greenhouse gas emissions is going to be futile and overshadowed by activities occurring in more populated nations.



1. Fossil emissions: Fossil emissions measure the quantity of carbon dioxide (CO_2) emitted from the burning of fossil fuels, and directly from industrial processes such as cement and steel production. Fossil CO_2 includes emissions from coal, oil, gas, flaring, cement, steel, and other industrial processes. Fossil emissions do not include land use change, deforestation, soils, or vegetation.



Even assuming that the Earth's temperatures are highly sensitive to GHG emissions, eliminating all U.S. emissions would mitigate global temperatures by less than 0.2 degrees Celsius by 2100. Even if the U.S. and other Organization for Economic Co-operation and Development (OECD) countries reduced their emissions to zero today, the averted warming would be a meager 0.5 degrees Celsius by the year 2100 according to Heritage Foundation modeling (see https://www.heritage.org/energy-economics/report/the-unsustainable-costs-president-bidens-climate-agenda).

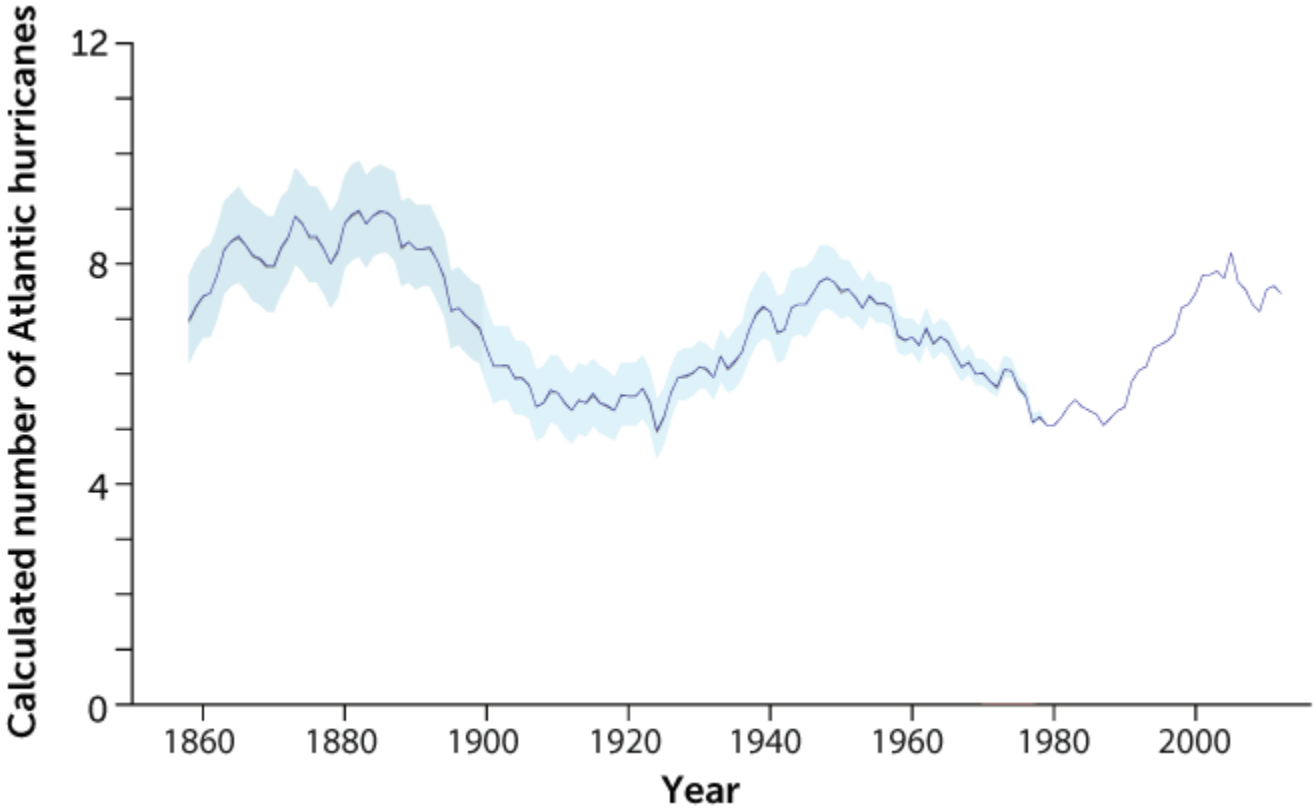
Section III (B) Climate Change

In this section and elsewhere in the guidance, there is speculation that climate change will increase the frequency of extreme weather. While it is a fact that extreme weather is causing more damage as development in the U.S. has increased assessed values, especially in storm-prone areas, the science does not indicate that frequency of extreme weather is increasing. A prime example of extreme weather is hurricanes. The data shows that they are not increasing in frequency.

The National Oceanic and Atmospheric Administration's record of hurricane observations in the Atlantic Ocean begins in 1851. To adjust for changes in observational practices from 1851 to 2019, researchers developed a statistical method to estimate the number of storms that went

unobserved in pre-satellite years. Then, the team took successive 15-year averages of the annual estimated counts (blue line, with error margins shaded in blue in the graph below) to determine whether a trend exists over time. The adjusted count suggests no clear trend in hurricane frequency over roughly the last 150 years.

Frequency of Atlantic hurricanes, 1851–2019



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Section IV (G) Short and Long-term Effects

The example in this section of the emissions analysis associated with a wind energy project seems to be inconsistent with the "cradle to grave" analysis proposed for a fossil fuel extraction project in Section IV (E) of the guidance. For the fossil fuel example, the guidance suggests analysis at the production, refining, transporting and end-use stages. For a sample wind energy project, the guidance suggests analysis only at the construction stage of the project. The guidance seems to disregard the fact that emissions will occur during manufacture of the wind energy components (which requires fossil fuels in the production stage), during transportation of the components to the site, that fossil fuels (waxy crude oil) is used to lubricate wind turbines during operation, and that fossil fuels will be used during decommissioning of wind energy components. If a "cradle to grave" analysis is suggested for one form of energy, it should be suggested for all forms of energy.

Section IV (I) Special Considerations for Biological GHG Sources and Sinks

On a positive note, we are pleased that the CEQ guidance recognizes, in this section, that certain vegetation management practices, such as prescribed fire and non-commercial thinning of forests (which is critical to improving forest health nationwide) is recognized in the example given as producing short-term increases in emissions but providing greater long-term benefits. More NGO environmental litigants need to recognize these benefits before forest health in our nation suffers greater declines due to their hands-off or "let nature take its course" philosophy for forest management.

Section V (A) Affected Environment

In considering the effects of a proposed action on climate change and in considering the effects of climate change on a proposed action, we agree that a range of possibilities should be considered. Typically, when forecasting, we suggest that at least three scenarios be developed (a high, medium and low projection).

Section V (C) Using Available Assessments and Scenarios to Assess Present and Future Impacts

Here, the guidance suggests that agencies, in their efforts to assess reasonably foreseeable effects of a project, may use climate assessments or reports from the United States Global Change Research Program (USGCRP) and the Intergovernmental Panel on Climate Change (IPCC). We question whether those entities offer the best available science or science created to further a political agenda. The CEQ should offer more alternative and impartial sources of information; such as from agencies not dominated by climate activists appointed by the Biden Administration.

Section VI (F) Monetizing Costs and Benefits

While NEPA does not require a cost-benefit analysis, we believe that such an analysis would be beneficial for the public to review. We encourage all agencies to see the value in doing so. While monetizing the beneficial impacts of a project in terms of jobs, income and revenue created can be done fairly accurately, monetizing environmental impacts of a project is a subjective and inexact science. We agree that agencies should "disclose the assumptions, alternative inputs and levels of uncertainty as they embark on such fiscal analysis. Care should be taken in such analysis to assess the true direct and indirect costs associated with the denial of fossil fuel producing projects (including leasing, permits to drill, pipelines, refineries, etc.…). For example, using GHG concerns to stifle petroleum product development will lead to higher fuel costs, which increase transportation costs, which drive up the costs of all products transported to market, which leads to demands for higher wages and an inflationary spiral that negatively impacts us all. Increasing the cost of crude oil will lead to price increases for the military and consumers of the products mentioned on Pages 1-3 of this letter.

NEPA: "The Full Employment Act" for Activist Attorneys

The NEPA process is broken and invites litigation due to the vague terms and ever-shifting standards of analysis arising from court decisions. The subject guidance will make matters worse. It is common knowledge among federal agency personnel and NEPA practitioners that NEPA documents take too long and cost too much to prepare because agencies are trying to "bullet-proof" them against the inevitable legal challenges from those who oppose proposed projects. This results in "paralysis by analysis" which delays important infrastructure or land management projects and wastes agency resources. This is all contrary to the stated purpose of the NEPA rule to ensure "efficient and effective environmental reviews."

Many presenters during an October 19, 2021 CEQ public meeting associated with NEPA rulemaking provided verbal evidence that NEPA rules are leading to a variety of problems as they attempt to provide citizens of this nation with their basic needs; such as water, food, fiber, fuel, minerals, shelter, transportation facilities and more. Among them were Nick Goldstein, Assistant General Counsel at the American Road and Transportation Builders Association. Mr. Goldstein commented that although Congress passed the "Bi-Partisan Infrastructure Bill" (the $1.2 trillion Infrastructure Investment and Jobs Act), our NEPA rules will mean that many infrastructure projects will not be built for 7-10 years, if at all. As a result, the Biden Administration's "Build Back Better" slogan will need to be changed to "Build Back Later." A representative of the US Chamber of Commerce, Chad Whiteman, agreed with Mr. Goldstein.

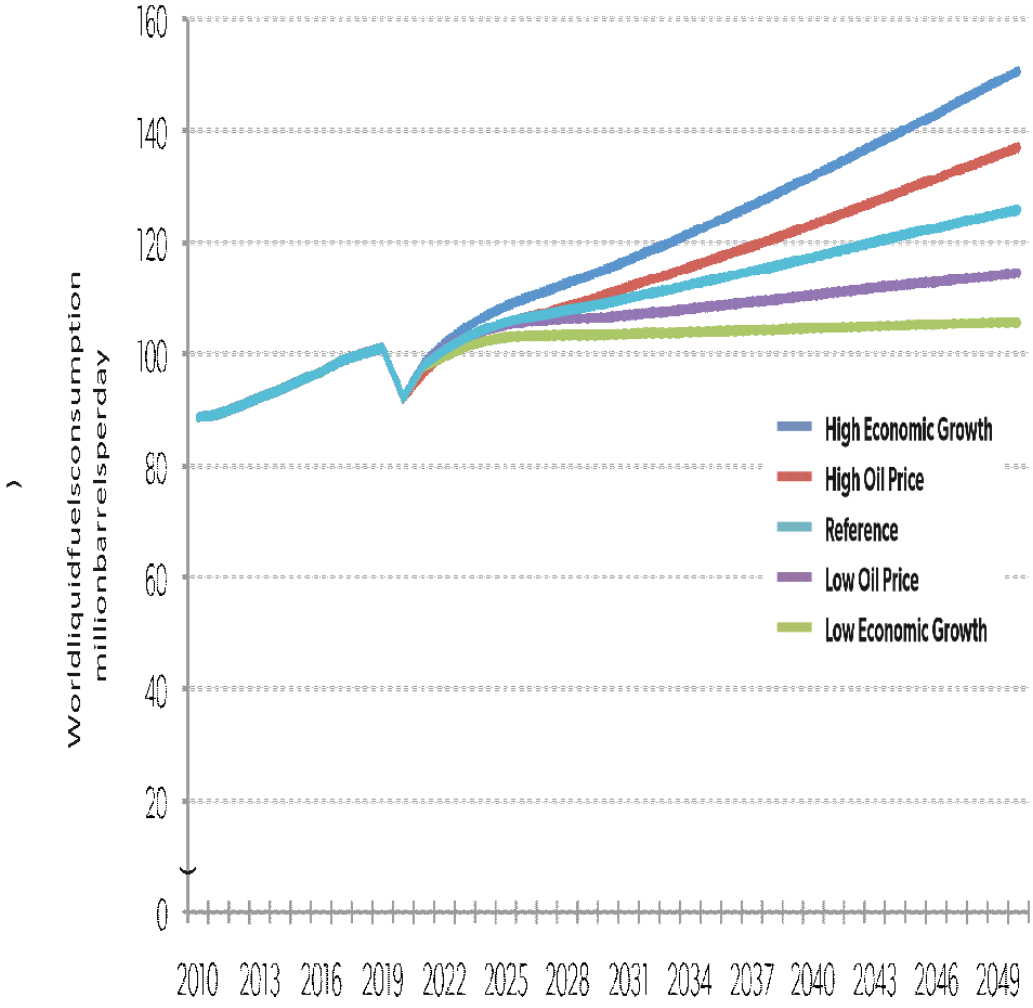
It makes no sense to provide funding for infrastructure but maintain a NEPA process that makes it very difficult to get projects constructed in a reasonable time frame due to inevitable litigation. While well-intentioned, the interim guidance and proposed guidance will further hamstring agencies into doing more analysis while giving more ammunition for litigious environmental and NIMBY groups to fight projects they oppose.

We supported the efforts of the Trump Administration to enact needed NEPA reform in 2020. We are very disappointed that the Council on Environmental Quality (CEQ) invalidated these reforms which would have reduced the amount of time it takes to get needed infrastructure projects built and operational for the benefit of Americans. Similarly, we are disappointed that this guidance will lead agencies to spend more time and resources preparing analysis that will, in many cases, be flawed and subjective.

Over 50 years have passed since NEPA was enacted in January, 1970. It is doubtful that Congress and the President at the time foresaw the potential for NEPA to become more than a process to inform agency decision making but evolve into a weapon for opponents of projects to litigate, delay and prevent projects essential for public health, safety and welfare. Rather than issue guidance intended to further attack the oil and gas industry, the CEQ should be exploring ways to reform NEPA to reduce delays and litigation.

Conclusions

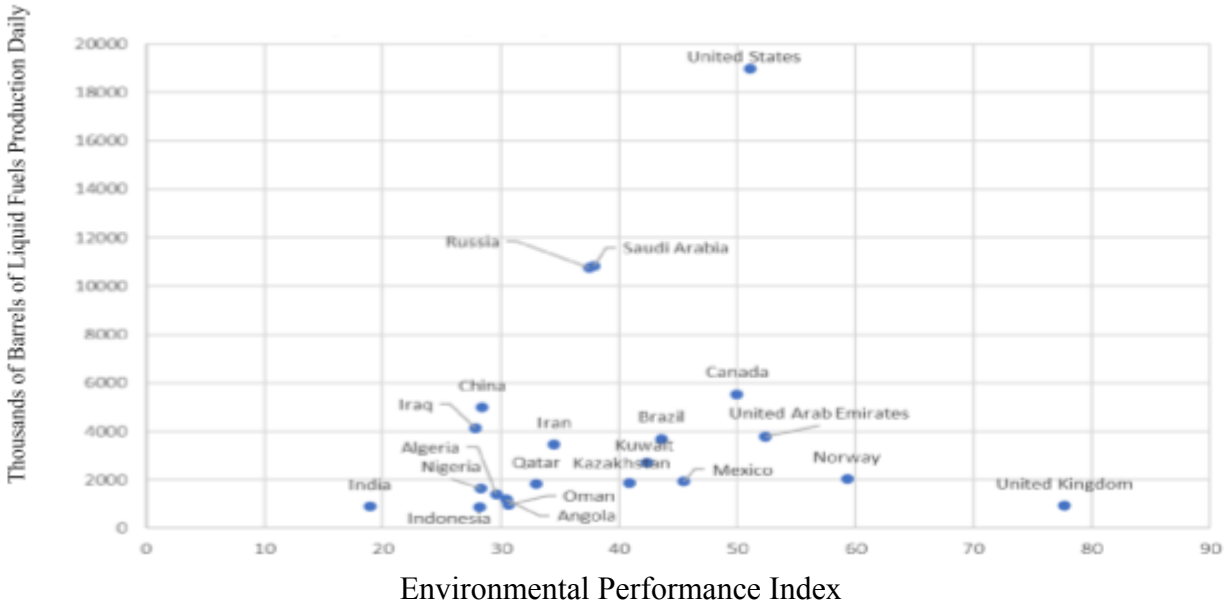
There are unintended consequences associated with this guidance. As shown in the table below, the demand for oil and gas is projected to increase from now until at least 2050 as the world's population increases. Ironically, while the CEQ guidance is offered to help agencies with their analysis of GHG emissions with an ultimate goal of reducing such emissions, this and other anti-fossil-fuel policies and regulations will ultimately force oil and gas production to foreign lands with lower environmental standards. Greater reliance on foreign nations for the oil and gas that society demands and will continue to demand, will cause a global increase in GHG emissions.



There is a stark difference between the environmental impacts of oil and gas production in countries with high environmental standards like the U.S., Canada, the United Kingdom, or Norway, and those countries that either don't have these standards at all, or where widespread

corruption leads to the de- facto nonexistence of such standards. A barrel of oil produced in Saudi Arabia or Venezuela rather than the U.S. on net is more negatively impactful to the global environment (see table below).

ENVIRONMENTAL PERFORMANCE INDEX AND PRODUCTION BY COUNTRY AMONG TOP LIQUID FUELS PRODUCERS IN 2021



Source: Yale EPI data and U.S. Energy Information Administration data

This inescapable fact must be part of the policy discussion in developed economies as loud special interest groups seek to shut down safe and clean domestic oil and natural gas production. The world demands oil, natural gas, and their associated products. It is far better for the environment if that demand is met by production in countries like the U.S. with high environmental standards (see: https://www.instituteforenergyresearch.org/wp-content/uploads/2023/02/IER-EQI-2023.pdf).

We agree with the authors of "*The Unsustainable Costs of President Biden's Climate Agenda*" that, "instead of an agenda that will decrease Americans' access to energy and cost trillions, the Biden Administration and Congress should pursue a policy agenda that advances economic freedom and rejects symbolic but ineffective climate policies and reduces barriers to innovation and economic opportunity. An environmentally resilient future is one in which Americans are not crushed under the burden of federal debt and regulation, energy is affordable and abundant, and innovators have freedom from cronyism to develop their ideas and export those to the world" (see: https://www.heritage.org/energy-economics/report/the-unsustainable-costs-president-bidens-climate-agenda).

Please revise this climate change/GHG emission guidance to enable the environmentally resilient future described above, which is so important to rural and underserved counties like ours.
Sincerely,

DUCHESNE COUNTY COMMISSIONERS

Mike Hyde, AICP
Community Development Director