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COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

August 7, 2014

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Michael B. Gerrard, Esq.
Arnold & Porter LLP
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Mr. Michael Brune
Executive Director
Sierra Club
85 Second Street
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Re: CEQ's Response to a Petition for Rulemaking and Issuance of Guidance to Require Inclusion of Climate Change Analyses in NEPA Documents

Dear Mr. Mendelson, Mr. Kimbrell, Mr. Gerrard, and Mr. Brune:

Thank you for your letter dated February 28, 2008, on behalf of the International Center for Technology Assessment, Natural Resources Defense Council, and the Sierra Club (collectively, "Petitioners"), requesting that the Council on Environmental Quality (CEQ) amend its National Environmental Policy Act (NEPA) regulations and issue guidance addressing climate change impacts in NEPA compliance documents ("petition").¹ We appreciate and share your concern about the impacts of climate change on the environment.² CEQ and this Administration have taken seriously the urgency of addressing climate change and we are actively moving forward on a comprehensive Climate Action Plan focused on reducing greenhouse gas (GHG) emissions domestically, preparing for those climate impacts that are already unavoidable, and leading internationally. Related work led by CEQ includes developing critical information to assist the Federal government, states, Tribes and local governments in understanding climate change effects; requiring Federal agencies to establish and meet targets for

¹ International Center for Technology Assessment, Petition Requesting that the Council on Environmental Quality Amend its Regulations to Clarify that Climate Change Analyses be Included in Environmental Review Documents, (Feb. 28, 2008) (document on file with Council on Environmental Quality) [hereinafter *ICTA Petition*].

² *ICTA Petition* at 7 – 21.



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reducing their GHG emissions and increasing their use of alternative energy; and, supporting Federal agencies as they integrate considerations of climate effects into their planning and decision-making processes. CEQ has targeted and prioritized its activities to address areas of greatest need and with broadest impact for addressing climate effects.

In light of these actions and for other reasons discussed more fully below, CEQ does not believe that revising its existing NEPA regulations is necessary because they already encompass consideration of climate effects and it is not the best use of CEQ's resources at this time for meeting its obligations under NEPA. Moreover, as to NEPA guidance, CEQ notes it has an ongoing process in which it has proposed and sought comment on draft guidance. CEQ is considering how to proceed in light of the comments. Therefore, CEQ declines to take the specific actions requested in the petition and hereby denies it.

Council on Environmental Quality

CEQ was established within the Executive Office of the President (EOP) by Congress as part of the National Environmental Policy Act of 1969 (NEPA) and received additional responsibilities as a result of the Environmental Quality Improvement Act of 1970. As a cornerstone of our Nation's efforts to protect the environment, NEPA recognizes that many Federal activities affect the environment and mandates that Federal agencies consider the environmental impacts of their proposed actions before acting. CEQ has the important role under NEPA of, among other things, advising the President on environmental policy and assisting Federal agencies in meeting their obligations to consider environmental effects of the actions they undertake. CEQ also coordinates Federal environmental efforts and works closely with Federal agencies and other White House offices to balance environmental, economic, and social objectives in pursuit of NEPA's goal of "productive and enjoyable harmony" between humans and the human environment.³

CEQ has implemented its charge in a variety of ways since 1970 – from issuing its comprehensive regulations in 1978,⁴ to providing general guidance and training, to coordinating with individual Federal agencies on specific actions, or groups of Federal agencies around a topic. It has also facilitated collaboration among Federal agencies and worked with stakeholders and members of the general public on what is necessary for NEPA compliance. More recently, CEQ has engaged in a broad effort to modernize and reinvigorate Federal agency implementation of NEPA through innovation, public engagement, and transparency. CEQ's approach in any given circumstance entails an assessment of what is needed and a judgment on how best to address that particular need

³ 42 U.S.C. § 4321 (2014).

⁴ CEQ amended its regulations in 1986 (51 FR 15625, Apr. 25, 1986).



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given other demands. CEQ has taken the same approach in determining how to assist Federal agencies in integrating climate change considerations in their NEPA compliance.

The Petition Request

The petition describes the statutory and regulatory framework of NEPA,⁵ summarizes scientific support for the occurrence of global climate change,⁶ and conveys your concerns about the potential adverse effects of climate change on the natural environment.⁷ Relying on the premise that the effects of climate change are “reasonably foreseeable” and therefore must be addressed in Federal agencies’ efforts to implement and comply with NEPA, the petition specifically requests that CEQ take two actions: (1) amend its NEPA regulations to require that climate change be addressed in NEPA compliance documents,⁸ and (2) issue guidance clarifying how Federal agencies could best integrate climate analyses into their NEPA processes.⁹

The petition requests that CEQ amend its NEPA regulations to include explicit language referring to climate change effects throughout the regulations. While it acknowledges that the broad definitions of key terms in the NEPA regulations for “effects,” “significantly,” and “environmental consequences” encompass climate change considerations, the petition requests that CEQ revise its regulations to include the words “climate change” “[t]o better inform the public, the agencies, and courts in their decisionmaking.”¹⁰

Specifically, the petition calls on CEQ to amend the definition of “effects” first by revising the term “indirect effects” so that the climate change impacts of an action are expressly referenced in the term.¹¹ Next, it requests CEQ to explicitly reference the effects of climate change on ecosystems in the description of what constitutes effects.¹² It also requests that CEQ amend the definition of “significantly” to include the degree to which the action will affect

⁵ *ICTA Petition* at 4-6.

⁶ The body of scientific information and analyses regarding global climate change has expanded considerably since 2008 and, as noted later in the document, this Administration has played an important role supporting the development of critical information.

⁷ *ICTA Petition* 7-21.

⁸ *ICTA Petition* at 35-45.

⁹ *ICTA Petition* at 45-57.

¹⁰ *ICTA Petition* at 39.

¹¹ The petition requests that 40 C.F.R. § 1508.8(b) be revised to include the following as a final sentence in the explanation of the term: “Such effects include the contribution of the action to climate change through, for example, the release of greenhouse gas emissions.” *ICTA Petition* at 39.

¹² Specifically, the petition requests that we add the phrase “including those related to and contributing to climate change” to the final paragraph of the effects definition at §1508.8, which lists ecological, aesthetic, historic, cultural, economic, and social effects, among others. *ICTA Petition* at 40.



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GHG emissions and climate change.¹³ Finally, it requests that CEQ amend the provision on environmental consequences so that climate change considerations are itemized in the definition.¹⁴

In addition to requesting revisions to CEQ's NEPA regulations, the petition requests that CEQ issue a guidance memorandum clarifying that NEPA and CEQ's implementing regulations require that climate change effects be addressed in NEPA compliance documents.¹⁵ The petition requests that such guidance should include instructions on how, where, and when to best integrate climate change analyses into Federal agency NEPA processes. The petition provides that the guidance should make clear that "NEPA and CEQ regulations – *even without any clarifying amendments* - are broad enough in scope to include global climate change and its reasonably foreseeable impacts."¹⁶ Specifically, the petition requests that the guidance clarify that climate change is a "reasonably foreseeable" effect that falls within the ambit of "ecological, economic, and health effects."¹⁷ Further, the petition requests that the guidance explain how climate considerations would be integrated into every part of the NEPA process from the earliest planning stages, to determining whether a categorical exclusion, an environmental assessment, or an environmental impact statement is appropriate for the specific action, to how key terms in the NEPA regulations should be interpreted in the context of preparing an environmental impact statement.¹⁸ Finally, the petition requests that the CEQ guidance instruct Federal agencies to promulgate or amend their own NEPA regulations and guidance to include climate change analyses.¹⁹

¹³ Specifically, the petition requests that 40 C.F.R. § 1508.27 be amended to include in the list of factors for evaluating the intensity of effects the following language: "[t]he degree to which the action directly or indirectly affects greenhouse gas emissions, climate change, or atmospheric resources." *ICTA Petition* at 40.

¹⁴ The petition requests CEQ to amend 40 C.F.R. § 1502.16 in two ways. The first is to include the language, "including within this discussion the issue of climate change" in describing the need to consider the relationship between man's short term uses of the environment and the need to maintain long-term productivity. Second, it requests that two additional sections be added to 40 C.F.R. § 1502.16 to make explicit that climate change should be included in consideration of environmental impacts. Those requested sections provide the following: "(g) The contribution of the proposed action and alternatives to greenhouse gas emissions and other factors that influence the climate, and the measures to mitigate those contributions," and "(h) The effects of reasonably foreseeable changes in the climate on the proposed action and alternatives, and measures to mitigate those effects." *ICTA Petition* at 42.

¹⁵ *ICTA Petition* at 45-57.

¹⁶ *ICTA Petition* at 47 (italics in original).

¹⁷ *ICTA Petition* at 47.

¹⁸ *ICTA Petition* at 47-57.

¹⁹ *ICTA Petition* at 57.



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CEQ's Response

CEQ acknowledges the breadth and scope of the petition and recognizes your commitment to ensuring that climate change is appropriately addressed in the Federal government's planning processes. Nonetheless, CEQ is denying the requests that we amend our regulations and issue particular guidance, because, among other things, the existing regulations already encompass consideration of climate effects and CEQ is using mechanisms other than guidance to assist Federal agencies in considering GHGs in their NEPA compliance. Moreover, CEQ has an ongoing process underway considering the issuance of guidance.

It is worth noting that since its inception CEQ has recognized the potential impact of climate change and taken steps to address it in ways that CEQ deems appropriate to provide support to Federal agencies. A few examples of CEQ actions are listed below:

- CEQ discussed climate change in its First Annual Report in 1970, recognizing the potential impacts of man's activities on the environment and the complexity surrounding the science and processes associated with the climatic changes.²⁰
- In 1997, CEQ issued the "Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts," which clarified the applicability of NEPA to proposed Federal actions that may have transboundary effects.²¹
- More recently, in February 2010, CEQ issued "Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions" ("2010 draft guidance"),²² which described how Federal agencies should analyze GHG emissions and climate change impacts in NEPA reviews.
- In October 2010, CEQ issued its "Guidance on Federal Greenhouse Gas Accounting and Reporting" ("reporting guidance"), which established an

²⁰ COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY: THE FIRST ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 93 (Aug. 1970), *available at* <http://www.whitehouse.gov/administration/eop/ceq/foia/readingroom> (follow link "1970" under heading "Reports").

²¹ KATHLEEN MCGINTY, COUNCIL ON ENVIRONMENTAL QUALITY, COUNCIL ON ENVIRONMENTAL QUALITY GUIDANCE ON NEPA ANALYSES FOR TRANSBOUNDARY IMPACTS (July 1, 1997), *available at* <http://ceq.hss.doe.gov/nepa/reg/transguide.html>.

²² COUNCIL ON ENVIRONMENTAL QUALITY, DRAFT NEPA GUIDANCE ON CONSIDERATION OF THE EFFECTS OF CLIMATE CHANGE AND GREENHOUSE GAS EMISSIONS (Feb. 2010), *available at* <http://www.whitehouse.gov/sites/default/files/microsites/ceq/20100218-nepa-consideration-effects-ghg-draft-guidance.pdf>. CEQ continues to evaluate the numerous comments it received on the 2010 draft guidance and to determine the best path forward.



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approach for Federal agencies in calculating and reporting GHG emissions associated with Federal agency operations.²³

- In June 2012, CEQ finalized an update to the reporting guidance and concurrently issued a separate “Technical Support Document for Federal GHG Accounting and Reporting” (“TSD for Federal reporting”).²⁴ The TSD for Federal reporting provided detailed information on inventory reporting approaches and calculation methodologies.

These actions are illustrative of CEQ’s ongoing engagement in supporting and guiding Federal agencies in appropriately and adequately addressing the reasonably foreseeable effects of their actions, including climate change considerations.

With respect to its NEPA regulations, CEQ does not believe that amending the regulations is necessary to fulfill its obligations to issue regulations under NEPA. Those obligations were fulfilled²⁵ when it issued comprehensive regulations that implement the procedural provisions of NEPA.²⁶ Furthermore, CEQ coordinates with the Federal agencies as they establish, review, and update their NEPA implementing procedures.²⁷ CEQ also provides ongoing assistance to Federal agencies to help them meet their obligations to address the reasonably foreseeable environmental impacts of climate change as part of their NEPA processes. Through formal and informal mechanisms, CEQ serves as a resource in ensuring that Federal agencies understand how to apply NEPA to a wide variety of Federal actions and appropriately consider a range of effects, including climate change. The broad scope of CEQ’s NEPA regulations enables them to remain relevant and appropriate, without constant revisions, even as the nature of the Federal agency actions and environmental challenges evolve.

Moreover, revisions are unnecessary because NEPA and its implementing regulations already require Federal agencies to evaluate the reasonably foreseeable environmental impacts of their actions, including foreseeable GHG and climate change implications. Courts have found that GHG emissions and climate change issues need to

²³ COUNCIL ON ENVIRONMENTAL QUALITY, GUIDANCE ON FEDERAL GREENHOUSE GAS ACCOUNTING AND REPORTING (Oct. 2010), *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/ghg_guidance_document_0.pdf.

²⁴ COUNCIL ON ENVIRONMENTAL QUALITY, FEDERAL GREENHOUSE GAS ACCOUNTING AND REPORTING GUIDANCE (June 2012), *available at* http://www.whitehouse.gov/sites/default/files/microsites/ceq/revised_federal_greenhouse_gas_accounting_and_reporting_guidance_060412.pdf; COUNCIL ON ENVIRONMENTAL QUALITY, FEDERAL GREENHOUSE GAS ACCOUNTING AND REPORTING GUIDANCE; TECHNICAL SUPPORT DOCUMENT (June 2012), *available at* http://www.whitehouse.gov/sites/default/files/federal_greenhouse_gas_accounting_and_reporting_guidance_technical_support_document.pdf.

²⁵ See Executive Order 11,991, 35 Fed. Reg. 4,247.

²⁶ 40 C.F.R. §§ 1500-1508 (2014).

²⁷ 40 C.F.R. § 1507.3(a) (2014).



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be analyzed under the existing NEPA statute and regulations. Petitioners, in fact, make a similar argument in the petition.²⁸ Under these circumstances, granting the petition request for rulemaking is not a necessary or appropriate action for CEQ. In addition, using its limited staff resources to conduct a rulemaking process is not warranted where the existing regulations are adequate to foster NEPA compliance by Federal agencies and CEQ is engaged in a number of other activities that support NEPA compliance and advance the President's climate agenda. Therefore, CEQ denies all portions of the petition requesting that CEQ amend its NEPA regulations.

CEQ is also denying the petition request that it issue GHG NEPA guidance. First, the Administrative Procedure Act (APA) does not provide authority to request that CEQ issue guidance.²⁹ In addition, independent of this petition and as noted above, CEQ has already issued draft NEPA guidance regarding consideration of the effects of climate change and GHG emissions, solicited public comments, and is considering how to proceed. CEQ also continues to work directly with the Federal agencies to advise them on integrating climate considerations into the analysis for specific Federal agency actions. These processes are providing CEQ further insight on the types of issues that Federal agencies are confronting as they attempt to integrate climate considerations into their NEPA analyses and can help inform the nature of the guidance that would be most beneficial to the range of Federal agencies and actions. Therefore, CEQ denies all portions of the petition requesting that CEQ issue NEPA guidance.

The Administration's Broader Response to Climate Impacts

As noted above, CEQ's efforts are integral to and a necessary part of this Administration's broader policy to address climate change and its impacts. Under President Obama's leadership, the United States continues to lead by example in addressing climate change both domestically and globally. It is working to promote global progress towards cleaner energy, greater efficiency, and improved environmental and public health. Since 2009, the Administration has undertaken a wide array of measures to tackle the challenge of climate change while targeting and prioritizing its efforts to achieve the most significant benefits. It is within this context that CEQ has been spearheading an expansive range of climate initiatives, including providing assistance and support to Federal agencies in compliance with NEPA and CEQ's NEPA regulations.

Since the President released his Climate Action Plan (Plan) in 2013, CEQ has ensured that the broad-based plan of executive actions would be implemented in a

²⁸ *ICTA Petition* at 33-35.

²⁹ Petitioners alleged a right to petition the government under the First Amendment. While the First Amendment may provide ICTA the right to petition the Federal government, it does not compel CEQ to grant the request to issue guidance.



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manner consistent with NEPA and CEQ's NEPA regulations. The Plan focuses on three principal areas: cutting carbon pollution consistent with the President's goal of reducing emissions in the range of 17 percent below 2005 levels by 2020; preparing the United States for the impacts of climate change; and leading international efforts to combat global climate change and prepare for its impacts. Federal agency efforts to implement the Plan are informed by analyses that integrate climate change data and considerations.

For example, the Plan promotes measures to assist state and local governments in strengthening roads, bridges, and other critical infrastructure to better protect people's homes and businesses and to conduct assessments on the climate change impacts on key sectors of the economy (e.g., energy, agriculture, water supply, transportation, food supply). These actions are being undertaken utilizing the growing body of information about climate impacts and, where necessary, with appropriate NEPA analysis. Similarly, in an effort led by CEQ and the Office of Management and Budget, Federal agencies are engaged in improving the permitting process for our national infrastructure while ensuring that environmental considerations under NEPA appropriately consider resilience.

There are other examples of where Federal agencies have used the existing NEPA statutory and regulatory framework to integrate climate change analyses into planning efforts for significant climate related activities. The Administration issued a National Fuel Efficiency Policy, which was aimed at both increasing fuel economy and reducing GHG pollution for all new cars and trucks sold in the United States. It required an average fuel economy standard of 35.5 mpg by 2016 and the National Highway Traffic Safety Administration (NHTSA) established new Corporate Average Fuel Economy (CAFE) standards in 2012. NHTSA prepared an environmental impact statement (EIS) that considered the direct and indirect effects of GHG emissions and climate change before it established the 2012 CAFE standards.³⁰

In addition, in 2012, President Obama announced seven nationally and regionally significant transmission projects that would enable solar and wind energy while creating jobs. That same year, the U.S. Department of Agriculture announced grants of nearly \$4 million for renewable wood energy projects to provide 20 small businesses, tribes and community groups with the technical engineering and design services they need to explore installing wood heat and electricity projects. The NEPA reviews supporting these Federal actions considered the reasonably foreseeable effects of climate change and GHG emissions.

³⁰ NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, FINAL ENVIRONMENTAL IMPACT STATEMENT: CORPORATE AVERAGE FUEL ECONOMY STANDARDS, PASSENGER CARS AND LIGHT TRUCKS, MY'S 2012-2016 (2010), available at http://www.nhtsa.gov/staticfiles/rulemaking/pdf/cale/MY2012-2016_FEIS_Summary.pdf.



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Beyond consideration of climate impacts in individual situations, both as part of NEPA and in separate analyses, this Administration has been at the forefront of developing and promoting much of the recent science and the tools for identifying and addressing climate impacts. For example, the petition cites to the United Nations Framework Convention on Climate Change and the work of the Intergovernmental Panel on Climate Change (IPCC). In 2013, the United States joined other member nations of the IPCC in approving the Fifth IPCC Working Group Report on the Physical Science Basis of Climate Change. Earlier this year, the Department of State submitted the 2014 U.S. Climate Action Report to the United Nations Framework Convention on Climate Change.³¹

This Administration also recently released, through the U.S. Global Change Research Program (USGCRP), the Third U.S. National Climate Assessment (NCA) and launched the Climate Data Initiative. The NCA is the most authoritative and comprehensive source of scientific information to date on the domestic impacts of climate change. The Climate Data Initiative is bringing together extensive open government data with commitments from the private sector to develop planning resources for local communities. These efforts, supported by this Administration, build upon the science and research described in the petition.

Finally, in response to the President's commitment to lead by example, in 2011 the Administration released the first-ever comprehensive GHG Emissions Inventory, which accounted for the GHG emissions associated with the Federal government's operations in 2010. In July 2014, the Federal agencies released their annual updates that show the significant progress they have made toward the aggressive energy and sustainability goals the President set in 2009. The updates indicate that the Federal government has already reduced its greenhouse gas emissions by 17 percent since 2008, the equivalent of permanently taking 1.8 million cars off the road, and that 9 percent of the Federal government electricity is now from renewable sources. Similarly, the Better Buildings Initiative, announced in 2011, strives to make commercial buildings 20 percent more energy efficient over the next decade by catalyzing private sector investment through a series of incentives to upgrade offices, stores, schools and other municipal buildings, universities, hospitals, and other commercial buildings. In May 2014, President Obama announced an additional \$2 billion goal for energy efficiency upgrades to Federal buildings over the next 3 years. Moreover, this Administration has made the largest clean energy investment in American history and supported energy efficiency and low-carbon energy through comprehensive policies and measures. For example, the Department of Energy is on track to eliminate by 3 billion metric tons of carbon pollution

³¹ U.S. Department of State, *2014 U.S. Climate Action Report to UN Framework Convention on Climate Change* (2014), available at <http://www.state.gov/documents/organization/219038.pdf>.



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cumulatively through 2030 while saving consumers billions of dollars through appliance standards.

As documented in the January 2014 Climate Action Report, in 2012 greenhouse gas emissions in the United States fell to the lowest level in nearly two decades even as the economy continued to grow. Moreover, as outlined in the accompanying First Biennial Report of the United States of America, we are on track to meet the Administration's goal of reducing emissions in the range of 17 percent below 2005 levels by 2020.

These are but a few examples that reflect the focus and attention that the Administration has been giving to addressing climate change impacts,³² and they provide important context for the work CEQ is doing to promote compliance with NEPA and CEQ's NEPA regulations. They also exemplify the comprehensive nature of the work CEQ is doing in the climate arena and the interests it is balancing in determining how to deploy its resources and how best to proceed in any one area. For these and other reasons stated in this response, CEQ denies the petition.

Thank you again for sharing your concerns about these important issues.

Sincerely,

A handwritten signature in black ink that reads "Michael J. Boots".

Michael J. Boots
Acting Chair
White House Council on Environmental Quality

³² For additional examples, *See* PRESIDENT OBAMA'S CLIMATE ACTION PLAN PROGRESS REPORT, Cutting carbon pollution, protecting American communities, and leading internationally (June 2014), *available at* http://www.whitehouse.gov/sites/default/files/docs/cap_progress_report_update_062514_final.pdf.