

**THE IMPACTS OF THE OBAMA CEQ'S
FINAL GUIDANCE FOR GHG EMIS-
SIONS AND THE EFFECTS OF
CLIMATE CHANGE**

OVERSIGHT HEARING

BEFORE THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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CONTENTS

	Page
Hearing held on Wednesday, September 21, 2016	1
Statement of Members:	
Bishop, Hon. Rob, a Representative in Congress from the State of Utah ...	1
Prepared statement of	3
Grijalva, Hon. Raúl M., a Representative in Congress from the State of Arizona	4
Prepared statement of	5
Statement of Witnesses:	
Goldfuss, Hon. Christy, Managing Director, Council on Environmental Quality, The White House, Washington, DC	7
Prepared statement of	8
Additional Materials Submitted for the Record:	
Congress of the United States, April 27, 2015 Letter to Christy Goldfuss, Managing Director, Council on Environmental Quality	24
Open Letter Regarding Climate Change from Concerned Members of the U.S. National Academy of Sciences, September 20, 2016	5

**OVERSIGHT HEARING ON THE IMPACTS OF
THE OBAMA CEQ'S FINAL GUIDANCE FOR
GHG EMISSIONS AND THE EFFECTS OF
CLIMATE CHANGE**

**Wednesday, September 21, 2016
U.S. House of Representatives
Committee on Natural Resources
Washington, DC**

The committee met, pursuant to notice, at 10:04 a.m., in room 1334, Longworth House Office Building, Hon. Rob Bishop [Chairman of the Committee] presiding.

Present: Representatives Bishop, McClintock, LaMalfa, Westerman, Graves, Newhouse, Hice, Radewagen, Mooney, Hardy; Grijalva, Tsongas, Huffman, Lowenthal, Dingell, and Gallego.

The CHAIRMAN. The committee will come to order, as well as the audience, even though you haven't said a word already this morning.

The committee is meeting today to hear testimony on the impacts of the Obama CEQ's final guidance for greenhouse gas emissions and the effects of climate change. Under Rule 4(f), any oral opening statements at this hearing are limited to the Chair, Ranking Member, Vice Chair, and a designee of the Ranking Member. This will also allow us to hear from our witness sooner, and help Members keep their schedules.

Therefore, I am going to ask unanimous consent that all the Members' opening statements be made part of the hearing record if they are submitted to the Clerk by 5:00 p.m. today.

Hearing no objection, so ordered.

Now I am going to recognize myself for my 5-minute opening statement.

**STATEMENT OF THE HON. ROB BISHOP, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF UTAH**

The CHAIRMAN. Today's hearing is focusing on the Obama Administration Council on the Environmental Quality's sweeping final guidance on greenhouse gas emissions. Last year, we received testimony on a similar draft guidance, that it was not legally enforceable. Now, with a stroke of the pen, CEQ is finalizing a voluntary guidance that has to be obeyed, forcing every Federal agency to enact regulations to consider greenhouse gas emissions for literally all NEPA permitting reviews.

For CEQ, it appears that advancing a questionable agenda at all costs is more important than ensuring that the law, science, and sound economic reasonings are going to be honored.

NEPA now requires consideration of individual projects' impact on the environment, including carbon emissions. Most Federal

agencies have correctly concluded that such projects have no significant impact on global carbon emissions.

Not satisfied, CEQ's new voluntary guidances, which must be obeyed, greatly expands its interpretation of NEPA, stating that all NEPA reviews should now explicitly consider a higher bar of impacts on greenhouse gas emissions.

This guidance, rather than helping the environment, in the end will hurt it by driving up the costs for processing of permitting activities that support millions of jobs. This increase of cost of everything from energy projects to highway maintenance to small business construction, will have a real impact on the wallets of everyday American families, families who have already seen their stagnant incomes stretched to the limit by government policies.

Hundreds of NEPA-related lawsuits have been filed against the Federal Government during this Administration, and this guidance will encourage these litigious groups, who already view NEPA as a means to slow or shut down projects they oppose politically or ideologically to sue away. Entities that have already spent significant resources on NEPA processes to complete environmental impact statements will face greater uncertainty as a result of this guidance. Exaggerated impacts for even the smallest of future projects will likely mean that projects that are waiting in the pipeline will be unjustly denied or they will become too costly to complete.

This guidance inappropriately promotes a cost-benefit analysis that lacks peer review, called the Social Cost of Carbon. This is one of the Administration's least transparent environmental decisions, developed behind closed doors by the Office of Management and Budget and other unelected Federal administrative officers.

Perhaps most concerning is the apparent lack of awareness of the limits of executive authority and the appropriate role of Congress. Executive over-reach has become the hallmark of this Administration, and will be part of its legacy. This Administration's concept that the end justifies the means and if it can't get something through Congress, then finding other ways of accomplishing its goals, stretches the limits of our Constitution.

A few years ago, the President failed to get his cap-and-trade and climate change agenda through Congress, a Congress, I might add, which held Democratic majorities. He famously declared that using Congress was just one way of skinning the cat, but that is not the only way. Apparently this CEQ draft guidance is apparently that other way. That is not how our system of government is supposed to work.

If a project would have no significant impact on global carbon emissions, or the global climate, then that project's impact on the human environment is zero, full stop, end of story. This should be the end of assessments required by NEPA. CEQ does not get to alter NEPA just because they do not like the results it produces. That approach of interpreting the law is dangerous, and it is an abuse of power the Constitution was created to minimize and prevent.

NEPA, which was enacted in 1970, desperately needs to be reviewed, updated, and improved, as state environmental protection acts have, and as Canada has with theirs. However, it is Congress'

responsibility, through oversight and passing legislation, not the executive branch's responsibility through guidances.

As Congress begins this needed look at NEPA, CEQ must be content with the way the law is written, not how they mistakenly interpret it.

[The prepared statement of Mr. Bishop follows:]

PREPARED STATEMENT OF THE HON. ROB BISHOP, CHAIRMAN, COMMITTEE ON
NATURAL RESOURCES

Today's hearing will focus on the Obama Administration Council on Environmental Quality's sweeping final guidance on greenhouse gas emissions. Last year, we received testimony that similar draft guidance was "not legally enforceable." Now, with the stroke of a pen CEQ is finalizing it, thus forcing Federal agencies to enact regulations to consider greenhouse gas emissions for literally *all* National Environmental Policy Act (NEPA) permitting reviews. For CEQ, it appears advancing a questionable agenda at all costs is more important than ensuring that the law, science, or sound economic reasoning are honored.

NEPA now requires consideration of individual projects' impact on the environment, including carbon emissions. Most Federal agencies have correctly concluded that such projects have **no significant impact** on global carbon emissions. Not satisfied, CEQ's guidance greatly expands its interpretation of NEPA, stating *all* NEPA reviews should now explicitly consider a much higher bar of "impacts on greenhouse gas emissions."

This guidance, rather than help the environment, will in the end hurt it by driving up costs for the processing of permitted activities that support millions of jobs. This will increase [increasing] the cost of everything from energy projects to highway maintenance to small business construction, having a very real impact on the wallets of everyday American families, families who have already seen their stagnant incomes stretched to the limit by government policies.

Hundreds of NEPA-related lawsuits have been filed against the Federal Government just during the Obama administration. This guidance will encourage litigious groups, who already view NEPA as a means to slow or shut down projects that they oppose politically or ideologically.

Entities that have already spent significant resources on NEPA processes to complete environmental impact statements will face greater uncertainty as a result of this guidance. Exaggerated impacts for even the smallest of future projects will likely result in these in the pipeline projects being unjustly denied or they will become too costly to complete.

In addition, this guidance inappropriately promotes a cost-benefit analysis that lacks peer review, called the Social Cost of Carbon. This is one of the Administration's least transparent environmental decisions, developed behind closed doors by the Office of Management and Budget and other unelected Federal officials in 2009.

Perhaps most concerning is the apparent lack of concern or awareness of the limits of Executive authority and the appropriate role of Congress. Executive over-reach has become perhaps the hallmark of this Administration and will unfortunately be part of its legacy. From executive amnesty, to unilateral changes to Obamacare, and now climate change, this Administration's "the-ends-justifies-the-means" attitude has been apparent from the beginning; if it can't get something through Congress, then it find other means of accomplishing its goal, stretching the limits of the Constitution.

A few years ago, after the President failed to get his cap-and-trade and climate change agenda through Congress—a Congress in which the Democrats held the majority, by the way—he famously declared that using Congress "was just one way of skinning the cat, [but] it was not the only way." This CEQ draft guidance is apparently that "other way."

That is not how our system of government is supposed to work. If a project would have "no significant impact" on global carbon emissions or the global climate, then that project's impact on the human environment is zero. Full stop. End of story. That is the end of the assessment required by NEPA. CEQ does not get to alter NEPA just to get the results it wants. That approach to interpreting laws is dangerous and is the exact abuse of power our Constitution was created to prevent.

NEPA—enacted in 1970—needs to be reviewed, updated and improved to protect the environment as originally intended. However, this is Congress' responsibility, through oversight and passing laws—NOT the executive branch's. As Congress

begins this needed look at NEPA, CEQ must be content with the law as it is written.

The CHAIRMAN. With that, I will yield back the remainder of my time, and turn to the Ranking Member for his opening statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you, Mr. Chairman, and let me welcome our witness. Thank you very much.

It is disappointing that we are not doing our jobs and having hearings on the impacts of climate change on our Nation. That is what we should be doing. Instead, we are going to dissect, for the second time in this Congress, the Administration's attempt to merely understand the carbon impact of our Federal decisions.

The arguments for doing so are simple and strong: various agencies and dozens of lawsuits have concluded that analyses done under NEPA, an environmental law, should consider the mother of all environmental issues, climate change. But different courts are giving different agencies slightly different mandates. And the agencies that are already doing it, are not all doing it in the same way.

CEQ's guidance provides clarity, consistency, and predictability across agencies for various industries and stakeholders. By reducing litigation, it also reduces taxpayer costs. I can usually rely on my friends on the other side of the aisle to argue for these outcomes.

At the same time, the arguments against the guidance are not particularly compelling. We will hear claims that the guidance contains requirements for agencies instead of recommendations, because agencies will follow guidance as if it were law. But then we will hear that CEQ chose not to follow the guidance of OMB about cost-benefit analysis.

Which is it? Is guidance always followed or not? We can't have it both ways. And we will hear that individual projects undertaken by the Federal Government are too small for us to be able to prove that they contribute to climate change. This shows a profound lack of understanding, or denial, about how climate change works. These arguments help us understand what this hearing is really about, it is about climate denial.

In our hearing on this guidance last year, a climate denier was a Majority witness who garnered much of the time and questions. In fact, the majority on this committee has frequently given climate deniers legitimacy by inviting them to testify.

And of course, there is the Science Committee Chairman's holy war against anyone who would dare ask whether the biggest oil company on the planet has broken the law in its quest to distort, delay, or deny climate science.

We cannot afford the luxury of playing political games with our climate. That time is up. Yesterday, in fact, 375 members of the National Academy of Sciences, including 30 Nobel laureates, published an open letter to draw attention to the serious risks of climate change, and the irresponsibility of political leaders who deny the risk.

The statement, signed by a set of scientists that includes long-time Republican voters and that represents a broad political spectrum, begins by saying, “Human caused climate change is not a belief, a hoax, or a conspiracy. It is a physical reality.” The letter continues that it is of great concern that the Republican nominee for President has advocated U.S. withdrawal from the Paris Accord. The consequences of opting out of a global community would be severe and long lasting for our planet’s climate and for the international credibility of the United States.

And I would ask unanimous consent to submit the letter in its entirety for the record, Mr. Chairman.

The CHAIRMAN. So ordered.

[The letter submitted by Mr. Grijalva for the record has been retained in the Committee’s official files and can be accessed at <http://responsiblescientists.org/>.]

Mr. GRIJALVA. Thank you. In May of this year, I held a forum in which we heard directly from American citizens that are already refugees in their own country because of climate change. Démé Naquin, from the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw Natives in southeast Louisiana testified, “Over the last 60 years, we have lost 98 percent of our land due to coastal erosion, land subsidence, and powerful storms enhanced by sea-level rise. We have lost 22,000 acres in this time. Our island is disappearing fast.”

It is a classic case of environmental injustice because Native American communities typically do the least among us to contribute to climate change, but they bear the impacts first and worst.

I would support a discussion about the best way to stop the worst effects of climate change. I would welcome a debate about the best way for us to shore up our resilience to the warming that is already in the pipeline. But this hearing is about whether we should close our eyes and hope that climate change goes away. I promise it won’t.

[The prepared statement of Mr. Grijalva follows:]

PREPARED STATEMENT OF THE HON. RAÚL M. GRIJALVA, RANKING MEMBER,
COMMITTEE ON NATURAL RESOURCES

Thank you Mr. Chairman.

It’s disappointing that we aren’t doing our jobs and having hearings on the impacts of climate change on our Nation. Instead, we are going to dissect, for the second time this Congress, the Administration’s attempt to merely *understand* the carbon impact of our own Federal decisions.

The arguments for doing it are simple and strong.

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we'll hear that CEQ chose not to follow the guidance from OMB about cost-benefit analysis. Which is it? Is guidance always followed or not? Can't have it both ways.

And we will hear that individual projects undertaken by the Federal Government are too small for us to be able to prove they contribute to climate change. That shows a profound lack of understanding—or denial—about how climate change works.

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But this hearing is about whether we should close our eyes and hope that climate change goes away. I promise, it won't.

Mr. GRIJALVA. With that, I yield back, Mr. Chairman.

The CHAIRMAN. Thank you. It is good to see we are both on the same page.

With that, we want to welcome our witness, Ms. Christy Goldfuss, who is the Managing Director of the White House Council on Environmental Quality. Thank you for being here again. Thank you for talking about this voluntary guidance, which everyone has to do. In fact, I think we are going to give you that shirt that says, "She Who Must Be Obeyed." And you get 2 extra minutes if you understand the reference.

Ms. GOLDFUSS. Well, I really wish my children understood what that meant.

The CHAIRMAN. OK. You don't get the extra 2 minutes.

Ms. GOLDFUSS. I won't get the extra 2 minutes; I won't need it.

The CHAIRMAN. But I—

Ms. GOLDFUSS. Let me put it that way.

The CHAIRMAN. So, with that, thank you for being here. You know the drill. You have 5 minutes for the opening statement, you know the way the clock works ahead of you. I would like to recognize you right now for anything you wish to say orally.

Ms. GOLDFUSS. Great, thank you, Chairman.

The CHAIRMAN. Thank you.

**STATEMENT OF THE HON. CHRISTY GOLDFUSS, MANAGING
DIRECTOR, COUNCIL ON ENVIRONMENTAL QUALITY, THE
WHITE HOUSE, WASHINGTON, DC**

Ms. GOLDFUSS. Good morning, everyone. Thank you, Ranking Member Grijalva, and members of the committee. Thank you for the opportunity to appear before you today to discuss the Council on Environmental Quality's final guidance on considering greenhouse gas emissions and the effects of climate change in National Environmental Policy Act reviews. This final guidance represents the culmination of more than 6 years of work by CEQ with Federal agencies and two rounds of public comments from a wide variety of stakeholders. I appreciate the committee's continued interest in this issue, and for inviting me back to testify a second time, now that this guidance is final.

Across the globe, we are already seeing increasingly the impacts of extreme weather, longer wildfire seasons, rising sea levels, and other impacts of climate change. Climate change is real, and we are experiencing these impacts now: 2015 was the hottest year on record, and last month was the 16th consecutive month of record-breaking heat.

And taxpayer dollars are at stake, as well. Over the past decade, the Federal Government alone has spent more than \$357 billion in direct costs due to extreme weather and wildfires. Now we are even looking at spending taxpayer dollars to help relocate entire communities at risk in Louisiana, Washington, and also Alaska. That is why, under President Obama's leadership, the Administration has taken more action to address climate change and build a clean-energy economy than ever before. By counseling Federal agencies on how to consider climate change in their NEPA reviews, our final guidance builds on the Administration's efforts to address climate change and build a more resilient future.

Under NEPA, Federal agencies are required to consider and disclose the potential effects of their actions on the environment. Over the years, Federal agencies have looked to CEQ for how best to analyze those actions, and consider ways in which climate change is affecting Federal projects.

Additionally, for more than two decades, courts have been asked to determine if Federal agencies must consider the greenhouse gas emission effects of major Federal actions in their NEPA documents. In fact, since 1990, there have been more than 90 NEPA cases, involving more than 25 Federal agencies, in which plaintiffs have raised climate change issues.

The final CEQ guidance is built on agencies' experience, and crafted to provide a consistent approach across the Federal Government, while also allowing the flexibility to accommodate diverse circumstances and agencies' expert judgment. The goal is to ensure that NEPA analysis provides the public and Federal agencies with a clear picture of how the Federal Government impacts climate change.

In order to measure impacts on climate change, the guidance asks that agencies quantify greenhouse gas emissions from proposed agencies actions as part of their NEPA analyses. It also counsels agencies to consider alternatives that are more resilient to

the effects of a changing climate, like ensuring a bridge is rebuilt to account for sea-level rise.

Building on the 2010 and 2014 draft guidance documents, our final guidance reflects extensive consideration of comments and feedback received from hundreds of individuals, organizations, and Members of Congress, including this very committee. Notably, the final guidance does not include a reference point for when agencies would have to quantify projected greenhouse gas emissions impacts. Instead, the guidance asks that agencies quantify projected emissions when the necessary tools, methodologies, and data inputs are available, an issue this committee raised with us.

With the finalization of this guidance, the Administration is taking another big step in the effort to consider how Federal actions will impact climate change, and identify opportunities to build climate resilience, saving taxpayer dollars in the long run. As President Obama has said many times, climate change is the greatest threat facing our planet, and it is critical that we all act now.

I firmly believe that this guidance will help agencies build more resilient projects and communities, and make more transparent decisions, which in turn improve environmental and community outcomes.

With that, Mr. Chairman, Ranking Member Grijalva, and members of the committee, I appreciate the opportunity to testify before you today, and I look forward to answering all of your questions.

[The prepared statement of Ms. Goldfuss follows:]

PREPARED STATEMENT OF CHRISTY GOLDFUSS, MANAGING DIRECTOR, COUNCIL ON ENVIRONMENTAL QUALITY

Chairman Bishop, Ranking Member Grijalva, and members of the committee, thank you for the opportunity to appear before you today to discuss the Council on Environmental Quality's *Final Guidance on Considering Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act (NEPA) Reviews*. This final guidance represents the culmination of over 6 years of work by CEQ with Federal agencies and two rounds of public comments from a wide variety of stakeholders. CEQ's message is clear: NEPA implementation should be consistent with the law, policy, and science that is leading efforts here and around the world to consider the impacts associated with climate change and Federal actions. I appreciated the committee's interest in this issue when I testified in front of this committee on May 13, 2015 and thank you for inviting me back to discuss the final guidance.

CEQ issued its final guidance under the authority of NEPA, which is the Nation's basic environmental charter and CEQ's organic act. Section 102 of NEPA contains action-forcing requirements for Federal agencies to consider and publicly disclose the potential environmental effects of their proposed actions on the human environment. Simply put, the NEPA review process directs agencies to "look before they leap" to ensure that Federal decisionmakers take into account the direct, indirect, and cumulative impacts of their actions on the natural and physical environment.

The consideration of the impacts of human activities on our climate has been identified as a CEQ concern since 1970, when it issued its first annual report on the state of the environment.¹ As the science of climate change developed over time, CEQ was called upon to provide guidance on the application of this information in the context of NEPA reviews. CEQ developed draft guidance for interagency review in 1989 and in 1997 but it never finalized these guidance. This did not impede agencies from considering climate change in their NEPA reviews. For example, as early as 1989 Federal agencies like the Department of Energy were leading the way with the incorporation of climate change considerations into their environmental impact statements. Federal courts have also gotten involved over the years by requiring

¹ See CEQ, *First Annual Report of the Council on Environmental Quality*, pp. 93–104 (Aug. 3, 1970).

Federal agencies to consider the greenhouse gas emission effects in NEPA analyses of major Federal actions.

Today, taking into account climate change in environmental impact assessment processes has become a standard practice that has been adopted by Federal agencies, state agencies, international bodies, and public and private organizations around the world. The final CEQ guidance is built on this record of experience to help ensure that NEPA analysis provides the public and Federal agencies with a clear picture of how many types of Federal actions can implicate climate change issues and identify opportunities to build climate resilience. The guidance encourages consistency across Federal agencies in how they take these considerations into account in the NEPA process. Agencies must consider and disclose the impacts of their actions with respect to climate change, but it does not require them to choose any specific outcome.

ROAD LEADING TO THE FINAL GUIDANCE

NEPA implementation is based on the idea that Federal agencies should consider and disclose the reasonably foreseeable effects of their proposed actions on the human environment. For a number of years, Federal agencies struggled with how they should analyze actions that contribute to climate change and how to best consider the myriad of ways in which climate change is affecting Federal agency actions.

In many cases, Federal actions have the potential to contribute to climate change by causing greenhouse gas emissions. Federal agency actions may also affect ecosystems and communities that are particularly vulnerable to climate change impacts. Additionally, Federal agency actions may themselves be affected by many of the impacts of a changing climate, such as rising sea levels, extreme weather, drought, and wildfires, and NEPA assists in considering a range of alternatives to address those impacts.

Not surprisingly, Federal courts have found that evaluating the impacts of Federal actions on climate change should be part of agencies' NEPA reviews. Litigation over various NEPA documents creates the potential for different standards across the Nation on the appropriate scope and extent of this analysis. These analytical challenges, and their legal implications, led agencies to request CEQ provide guidance and technical assistance on this topic. CEQ also received a formal petition from three non-governmental organizations under the Administrative Procedure Act to amend its regulations to address climate change in NEPA reviews.

In light of the agencies need for formal guidance, CEQ circulated drafts of guidance for interagency comment beginning in 1989 and issued initial Draft Guidance for public comment in February 2010. CEQ sought public comments on the 2010 Draft Guidance generally and included a number of questions regarding the assessment of climate change effects for land and resource management actions specifically. CEQ received more than 100 public comments and other feedback from private citizens, corporations, environmental organizations, trade associations, and Federal and state agencies. During the time CEQ was considering these comments and was engaging with Federal agencies on changes to the guidance, it received formal recommendations to finalize the guidance. The U.S. Government Accountability Office (GAO), for example, recommended CEQ finalize the guidance to assist agencies in determining how to consider the effects of climate change in the NEPA process.² In addition, the State, Local and Tribal Leaders Task Force on Climate Preparedness and Resilience recommended to the President that the guidance be finalized.³ Following years of engagement CEQ released a Revised Draft Guidance in December 2014 that reflected consideration of comments and input received.

CEQ made the 2014 Revised Draft Guidance available for public review and comment for a total of 90 days (60-day comment period and a 30-day extension). We received over 100 substantive comments from a wide range of stakeholders including from this committee, individual Members of Congress, tribes, corporations, environmental organizations, trade associations, academics, private citizens, and Federal, state, and local government agencies.

The final guidance adopted on August 1, 2016 reflects CEQ's consideration of comments and feedback. Throughout this process, CEQ consulted with Federal agencies and other stakeholders on the most helpful and appropriate ways to provide all

²See GAO Report to Congressional Requesters, *Climate Change: Future Federal Adaptation Efforts Could Better Support Local Infrastructure Decision Makers*, p. 87, GAO-13-242 (April 2013) available at <http://www.gao.gov/assets/660/653741.pdf>.

³Recommendations of the State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, p. 20, Recommendation 2.7 (November 2014) available at https://www.whitehouse.gov/sites/default/files/docs/task_force_report_0.pdf.

Federal agencies with clarity on how they should consider the potential impacts of their actions on climate change in their NEPA reviews.

CONTENT OF THE FINAL GUIDANCE

The final CEQ guidance provides Federal agencies with a CEQ-endorsed framework they can rely on, providing a more predictable and consistent approach when considering climate impacts as part of NEPA alternatives, effects, and public input. This increased predictability and consistency will allow decisionmakers and the public to better understand the relevant climate impacts of all proposed Federal actions, and in turn, assist agencies in comparing alternatives and considering measures to mitigate the impacts of climate change and identify opportunities to build climate resilience. It will also allow agencies to manage public resources more efficiently by focusing their attention on climate change issues when and where they matter.

The final guidance explains the application of NEPA principles and practices to the analysis of GHG emissions and climate change, and:

- Recommends that agencies quantify a proposed agency action’s projected direct and indirect GHG emissions, taking into account available data and GHG quantification tools that are suitable for the proposed agency action;
- Recommends that agencies use projected GHG emissions (to include, where applicable, carbon sequestration implications associated with the proposed agency action) as a proxy for assessing potential climate change effects when preparing a NEPA analysis for a proposed agency action;
- Recommends that where agencies do not quantify a proposed agency action’s projected GHG emissions because tools, methodologies, or data inputs are not reasonably available to support calculations for a quantitative analysis, agencies include a qualitative analysis in the NEPA document and explain the basis for determining that quantification is not reasonably available;
- Discusses methods to appropriately analyze reasonably foreseeable direct, indirect, and cumulative impacts of reasonably foreseeable GHG emissions and climate effects;
- Guides the consideration of reasonable alternatives and recommends agencies consider the short- and long-term effects and benefits in the alternatives and mitigation analysis;
- Advises agencies to use available information when assessing the potential future state of the affected environment in a NEPA analysis, instead of undertaking new research that is unnecessary, and provides examples of existing sources of scientific information;
- Counsels agencies to use the information developed during the NEPA review to consider alternatives that would make the actions and affected communities more resilient to the effects of a changing climate;
- Outlines special considerations for agencies analyzing biogenic carbon dioxide sources and carbon stocks associated with land and resource management actions under NEPA;
- Recommends that agencies select the appropriate level of NEPA review to assess the broad-scale effects of GHG emissions and climate change, either to inform programmatic (e.g., landscape-scale) decisions, or at both the programmatic and tiered project- or site-specific level, and to set forth a reasoned explanation for the agency’s approach; and
- Counsels agencies that the “rule of reason” inherent in NEPA and the CEQ Regulations allows agencies to determine, based on their expertise and experience, how to consider an environmental effect and prepare an analysis based on the available information.

Agencies have substantial discretion on how to implement to their programs and actions. Many are already developing strategies and their own guidance to apply the general CEQ guidance to their particular actions, programs, and decisions. Guidance does not impose new requirements—this is not a regulation. Nothing in the guidance requires agencies to make a specific decision. It simply guides agencies on how they can take climate change impacts into consideration, which strengthens those decisions scientifically, legally, and as a matter of informed public policy.

INCORPORATING PUBLIC COMMENT AND AGENCY FEEDBACK IN THE FINAL GUIDANCE

After receiving public comments and agency feedback on the 2014 Draft Guidance, CEQ made a number of changes to the final guidance to address concerns raised. First, CEQ eliminated the concept of a reference point. In both the 2010 and 2014 drafts, CEQ had proposed a 25,000 metric ton CO₂-equivalent reference point to assist agencies in identifying when quantification of greenhouse gas emissions would be appropriate, something in which this committee was specifically interested. However, after receiving feedback from Federal agencies and other stakeholders, CEQ found that many tools are available to estimate GHG emissions and there was no need to establish a reference point for the decision whether to quantify emissions. This led CEQ to remove the reference point and instead to encourage agencies to quantify and disclose GHG emissions whenever the necessary tools, methodologies, and data inputs are reasonably available. If appropriate quantitative calculators or data inputs are not available, a qualitative analysis is recommended. To assist agencies in this area, CEQ updated its information on existing GHG accounting tools that Federal agencies have developed and used, and that may be appropriate for GHG emission quantification in particular NEPA analyses. An updated list of these GHG accounting tools was published simultaneously with the Final Guidance⁴ and will be further updated from time to time as new tools are identified.

In addition to the removal of this reference point, CEQ made changes throughout the guidance to remind agencies that they should rely on the NEPA concepts of “proportionality” and the “rule of reason” to establish when and how to take climate change into account. The Final Guidance encourages agencies to draw on their experience and expertise to determine the appropriate level and extent of quantitative or qualitative analysis required to comply with NEPA. This would help agencies avoid develop in-depth analysis when they are unnecessary.

Another change CEQ made as a result of the input received is the removal of the terms “upstream” and “downstream” in reference to GHG emissions. Comments received expressed confusion since these were not terms typically used in the NEPA process. CEQ removed these terms and focused on the more familiar NEPA regulatory terms of “direct,” “indirect,” and “cumulative effects.”

Finally, the guidance provides the agencies with more details on what to consider when determining whether to apply the guidance to ongoing NEPA reviews. In particular the guidance indicates that in making these decisions the agencies should factor whether following the guidance would inform the consideration of differences between alternatives or address comments raised through the public comment process. Agencies should also consider whether the additional time and resources needed would be proportionate to the value of the information included.

IMPLEMENTATION OF THE FINAL GUIDANCE

This guidance is part of an ongoing effort to adapt NEPA implementation and help agencies make informed and transparent decisions about the impacts of climate change associated with their actions. The Final Guidance makes recommendations that will benefit all agencies and build off of the work agencies are already doing to engage in climate change-related analyses for their actions.

Since the release of the Final Guidance, CEQ has received positive feedback from agencies and is providing technical assistance to those agencies interested in developing their own agency-specific guidance materials that take into account their unique programs and missions. CEQ recommends that agencies review their NEPA procedures and propose any updates they deem necessary or appropriate to facilitate their consideration of GHG emissions and climate change. This guidance will inform CEQ’s review of agency proposals for revising their NEPA procedures. The Final Guidance and CEQ’s review of agency NEPA procedures will be important tools for achieving consistency across Federal agencies on how climate change is considered in NEPA reviews.

CONCLUSION

This final guidance is another big step in this Administration’s effort to consider how Federal actions will impact climate change and to identify opportunities to build climate resiliency into projects with a Federal nexus.

⁴The list of GHG accounting tools currently can be accessed at: https://ceq.doe.gov/current_developments/ghg-accounting-tools.html.

Mr. Chairman, Ranking Member Grijalva, and members of the committee, I firmly believe that this guidance will help agencies build more resilient projects and communities, and make more transparent decisions, which in turn improve environmental and community outcomes. I appreciate the opportunity to testify before you today and look forward to answering your questions.

The CHAIRMAN. Thank you, Christy. And, obviously, anything else you have written will be part of the record.

We will now turn to questions from Members. Remember that Rule 3(d) imposes a 5-minute limit on all questions and answers. I will try and do that as quickly as I can. And for me, I am going to yield my time to Mr. Westerman to start the questioning.

Mr. WESTERMAN. Thank you, Mr. Chairman.

Thank you, Ms. Goldfuss, for being here. You have referenced a couple of times in your testimony about increased wildfires and climate change. Do you think there is anything else contributing to the increased wildfires that we are seeing today?

Ms. GOLDFUSS. Can you repeat the question?

Mr. WESTERMAN. Do you think there is anything other than climate change contributing to the increased wildfires that we see today? You have referenced that a couple of times.

Ms. GOLDFUSS. There are many factors that contribute to each individual fire, yes.

Mr. WESTERMAN. And what would those be?

Ms. GOLDFUSS. They can be drought, which is exacerbated by climate change. They can be lightning strikes, human activity, any number of things.

Mr. WESTERMAN. Yes, lightning strikes is a cause, human activity is a cause. What about management of the forest? Can that contribute to wildfires?

Ms. GOLDFUSS. Certainly management of the forest is very important in how we manage for wildfire.

Mr. WESTERMAN. In what ways?

Ms. GOLDFUSS. In what way is management of the forest important to how we manage for wildfire?

Mr. WESTERMAN. Right.

Ms. GOLDFUSS. Well, I don't want to speak to all the Forest Service's management approaches here, but there are many different ways that—

Mr. WESTERMAN. How about their lack of management approaches? Do you think there is any correlation between wildfires on managed land and public land that is not managed?

Ms. GOLDFUSS. We certainly have had much success, and our colleagues at the Forest Service are the experts in this area, in managed areas where we see areas that are more resistant to wildfire, yes.

Mr. WESTERMAN. And what areas would those be?

Ms. GOLDFUSS. I was actually just near one recently with the President in Tahoe. There are many stories about fire in that region, where we have seen the difference between managed lands and not-managed lands.

Mr. WESTERMAN. So the managed lands have less fire, they are more resilient to fire than the unmanaged lands?

Ms. GOLDFUSS. It is not less fire, just the fire characteristics are different in the managed lands than—

Mr. WESTERMAN. What is your training? What is your background?

Ms. GOLDFUSS. What is my background?

Mr. WESTERMAN. Right.

Ms. GOLDFUSS. Prior to this job I worked at the National Park Service. And then, prior to that, I was here at the committee. And then, prior to that, I worked at a think tank.

Mr. WESTERMAN. And what is your educational background?

Ms. GOLDFUSS. I graduated from Brown University and I studied political science.

Mr. WESTERMAN. So you studied political science, which really is not a science at all, but you are making scientific judgments on what causes wildfires. You come in and say that it is climate change that causes it, that you don't really understand about forest management, and the Administration has pushed back on forest management. The fact that we have seen wildfires increase as management goes down, that is a pretty good scientific indicator that management and controlling wildfires is important.

When you talk about the impact of this guidance—and I am concerned about what it will have on a project that may have, prior to this guidance, simply conducted an environmental assessment and then issued a finding of no significant impact. Is the draft guidance intended to be used for environmental assessments?

Ms. GOLDFUSS. The draft guidance applies to both environmental assessments and environmental impact statements. We say clearly in the guidance that any decision that has been previously made, the agencies are not recommended to go back and review that.

Mr. WESTERMAN. Is it possible that a project, pre-final guidance, would have had no significant impact on the environment, but now, due to the final guidance, it would be forced to conduct an EIS or implement mitigation measures?

Ms. GOLDFUSS. If there has already been a finding of no significant impact, it would not need to go back and be reviewed.

Mr. WESTERMAN. So, if a project has a relatively small amount of emissions, say 25,000 tons, and let's say the project has no other significant impacts, so the finding of no significant impact, could a judge place an injunction on the project until they mitigated their emissions, saying that they should have conducted an environmental impact statement?

Ms. GOLDFUSS. Is this a specific case to which you are referencing?

Mr. WESTERMAN. Well, it is just in general what could happen with this guidance.

Ms. GOLDFUSS. Well, I cannot respond to what would happen if a judge said that the agency had to go back and review. I can tell you what happens now, going forward.

Mr. WESTERMAN. So what happens now?

Ms. GOLDFUSS. Now, going forward, the guidance would recommend that agencies look at climate change in their NEPA reviews. And they do that through quantifying their greenhouse gas emissions.

Mr. WESTERMAN. So what is the difference between 10,000 tons and 100,000 tons or 500,000 tons in the context of global emissions? Is there any difference?

Ms. GOLDFUSS. I think what you are speaking to is really the nature of climate change, which is that there are millions of different actions that contribute to this overall threat that we see to the planet. So to say that one—

Mr. WESTERMAN. What about the 100 million tons of carbon that went up in forest fires last year because we failed to manage our forest? Does that contribute to climate change?

Ms. GOLDFUSS. As you would see in the guidance, we account for both ways to value the carbon stock nature of the environment, or the natural resources, and also the carbon emissions.

The CHAIRMAN. Thank you. Be careful, I am a poli-sci graduate, too.

[Laughter.]

The CHAIRMAN. And you are right, it qualifies me to sell shoes at Penney's.

Mr. Grijalva, do you have questions?

Mr. GRIJALVA. Yes, I do. Thank you very much, Mr. Chairman.

Director Goldfuss, thank you for being here again. As a history major—

[Laughter.]

The CHAIRMAN. That is one step below poli-sci, right?

Ms. GOLDFUSS. Are we going to get everyone's major here?

Mr. GRIJALVA. Perhaps a step below poli-sci, in some people's estimation. But as a history major, I mean, there is a glaring lesson that we were taught about it repeating itself. And also to be able to understand what was and what is now. So, I think there is some application to the discussion today.

Let me ask you. Do you and your colleagues at CEQ believe the earth's climate is changing?

Ms. GOLDFUSS. We certainly do.

Mr. GRIJALVA. Do you and your colleagues believe that burning fossil fuels and the resulting release of greenhouse gases into our atmosphere contributes to climate change?

Ms. GOLDFUSS. We certainly do, and we are not alone.

Mr. GRIJALVA. So, the bottom-line question is, is climate change real?

Ms. GOLDFUSS. Yes, climate change is real, and we are experiencing the impacts and paying for them right now.

Mr. GRIJALVA. OK. And why should we care, I think is kind of the part of the question today. It appears to me that our changing climate is playing a role in the prolonged and more severe drought, longer and more intense fire seasons, more frequent and dangerous weather events, accelerated coastal erosion, habitat loss, and on and on and on. Do you share the conviction that climate change is having serious detrimental impacts on our environment? And could you discuss some examples?

Ms. GOLDFUSS. Yes. Thank you, Congressman Grijalva. The impacts that we are experiencing are devastating for, say, the community of Isle de Jean Charles in Louisiana, where we are looking at spending taxpayer dollars for moving the entire community to

a new location because their island will be under water in the coming decades.

Also, Kotzebue, in Alaska, where the entire community has just voted to relocate from where they have lived, because of the impact from climate change. And then there are other communities elsewhere in Washington State that are having a similar discussion. These are the impacts that we see in the United States.

If you look at globally, you talk to the Department of Defense or any other colleagues about the impacts of what we are seeing globally, it is devastating. So to say that one impact or one decision is not relevant to the overall problem we are facing does not recognize that, really, we are all in this together and have a responsibility to address this problem at every point we can.

Mr. GRIJALVA. For the benefit of all of us I want to just read the stated purpose of NEPA. The laws, that CEQ was created to help implement, state—"To declare a national policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts that will prevent or eliminate damage to the environment and biosphere, and stimulate the health and welfare of man."

If climate change is indeed real, and I believe it is, as you do, and if the impacts of climate change are those we just discussed, would you say we are currently living up to the goals set by Congress in NEPA, and that we should live in a productive and enjoyable harmony with our environment? Are we there yet?

Ms. GOLDFUSS. We are not there yet. I think it is a constant struggle of always balancing the needs of our economy and the environment. But what we have seen over time is that we can have both. Over the last 15 years we have cut our carbon emissions by 6 percent, while the GDP has grown 11 percent. We can do both of these things. The guidance is a step in the right direction to giving agencies the space to give us the information so we can make smart decisions.

Mr. GRIJALVA. Director, my question is not whether or not CEQ should be issuing this guidance. My question is why it has taken CEQ this long to make this obvious and overdue step.

Can CEQ, the Interior Department, the Agriculture Department, or any aspect of our Federal Government possibly claim to be living up to the goals set forth in NEPA if we continue to deny climate science and ignore climate change in our decisionmaking?

Ms. GOLDFUSS. In 2010 and 2014, we had many conversations and heard from stakeholders. It took us this 6-year period of time, and even back farther than that if you look at the records for CEQ, discussing how climate change should be incorporated into NEPA reviews to get it right.

I also believe that the tools available to agencies to quantify greenhouse gas emissions have evolved and are really state-of-the-art at this time. So they have the capacity to do it.

Mr. GRIJALVA. Thank you.

The CHAIRMAN. Thank you. You should have taken another 2 years.

Mr. McClintock.

Mr. McCLINTOCK. Thank you.

Ms. Goldfuss, as one political science major to another—

[Laughter.]

Mr. MCCLINTOCK. You are addressing something that you are obviously very seriously concerned about.

I noted that on November 2 the *Washington Post* carried this report, "The Arctic Ocean is warming up, icebergs are growing scarcer, and in some places, the seals are finding the water too hot," according to a report to the Commerce Department yesterday. Reports from fishermen, seal hunters, and explorers all point to a radical change in climate conditions and hitherto unheard-of temperatures in the Arctic zone. Exploration expeditions report that scarcely any ice has been met as far north as 81 degrees 29 minutes. Soundings to a depth of 3,100 meters showed the Gulf Stream still very warm. Great masses of ice have been replaced by moraines of earth and stones, the report continued, while at many points well-known glaciers have entirely disappeared. Very few seals and no whitefish are found in the Eastern Arctic, while vast shoals of herring and smelts, which have never before ventured so far north, are being encountered in the old seal fishing grounds. Within a few years it is predicted that due to the ice melt, the sea will rise and make most coastal cities uninhabitable.

Is this the crisis you are referring to?

Ms. GOLDFUSS. It is a crisis we are trying to address.

Mr. MCCLINTOCK. And how long has this been reaching a critical condition?

Ms. GOLDFUSS. I am not sure how you would define a critical condition. I think we are seeing the impacts now, and this guidance is a tool that agencies will be able to use to provide us information on how—

Mr. MCCLINTOCK. Specifically to address the catastrophic warming that this report refers to.

Ms. GOLDFUSS. I am not familiar with that specific report. What I can tell you—

Mr. MCCLINTOCK. Perhaps the reason is because it was November 2, 1922 that the *Washington Post* carried this article. I think we can agree that global warming has been going on for a long time. It has been going on and off since the last Ice Age.

In fact, I attended the President's address at Yosemite this past year. I was struck by his noting that the glaciers in Yosemite were disappearing, and it occurred to me that, had he given that speech on that very spot 12,000 years before, he would have been covered by nearly 3,000 feet of ice.

Doesn't that predate the invention of the SUV?

Ms. GOLDFUSS. What I can speak to are the facts that scientists are pointing to now. As has been rightly pointed out, I am not a climate scientist, but what I—

Mr. MCCLINTOCK. And neither am I, but I do know history. And our pre-history tells us that climate is always changing. We know that during the Jurassic Period, about 150 million years ago, atmospheric carbon dioxide levels were five times higher than they are today. And it was the planet's most prolific period for new species. Do you deny this science?

Ms. GOLDFUSS. What I know is that—

Mr. MCCLINTOCK. Do you deny this—yes or no?

Ms. GOLDFUSS. Well, 15 of the 16 hottest years on record have happened since 2000.

Mr. MCCLINTOCK. Well, when you say on—

Ms. GOLDFUSS. We have now had 16 months—

Mr. MCCLINTOCK. Pardon me, my time.

Ms. GOLDFUSS [continuing]. Of global averages—

Mr. MCCLINTOCK. Well, I am glad you brought that up, because we know, in recorded history, that during the Roman warm period, from about 250 to 400 AD, much of Rome's grain supply was grown on what are now the deserts of North Africa. We know that during the Medieval Warm Period, from the 10th through the 13th centuries, wine grapes were grown in Northern Britain, and Iceland and Greenland supported a thriving agricultural economy. And we also know that during the little ice age that followed, the Thames River froze solid every winter, and advancing ice destroyed many towns in Europe.

So, to change this, I am just wondering what it is that you estimate this to cost.

Ms. GOLDFUSS. Congressman, what I know is the changes that we are experiencing now, the costs associated with that—

Mr. MCCLINTOCK. But these are changes that—

Ms. GOLDFUSS [continuing]. And the responsibility that we have to address them if we—

Mr. MCCLINTOCK. These are changes that we have noted throughout the recorded history of civilization, and that science tells us were occurring—

Ms. GOLDFUSS [continuing]. Are not telling us that these are the same changes.

Mr. MCCLINTOCK [continuing]. Long before the emergence of human life on this planet.

So now, let me ask you. What is this guidance going to cost?

Ms. GOLDFUSS. This guidance is not a regulation. It is not legally enforceable. And in fact, what it does is help agencies—

Mr. MCCLINTOCK. If it is followed to the letter, how much is it going to cost?

Ms. GOLDFUSS. I don't have that figure for you, because it is not a regulation. It is not required to be followed by agencies—

Mr. MCCLINTOCK. I suspect because the price is absolutely astronomical. And if you dared to be candid with this committee or the American people, you would have a revolt on your hands.

I yield back.

The CHAIRMAN. Mrs. Dingell, you were here even before anyone else was, so you get to go next, according to Mr. Grijalva, and everyone else was tardy. So you are very close to detention right now. Mrs. Dingell, you are recognized.

Mrs. DINGELL. Thank you, Mr. Chairman. I am not a political scientist, I am not a historian, I am just someone who loves our country and loves America. And I don't like it when I see us all fighting like this.

And I will tell you the Pope, though I am a Catholic, has told me to pay attention to some of this. But I think we have a lot of misinformation out here.

I want to thank you, Mr. Chairman, for recognizing me and Director, for coming today—I am sure this is more fun than going to the dentist, maybe.

For decades, the National Environmental Policy Act has improved our environment and fostered fairness in our communities by ensuring that the government remains accountable to the people. And we all agree the government needs to remain accountable to the people.

The NEPA process requires Federal agencies to review their proposed actions in light of their potential impacts on the human environment, the places where we all live, work, and play. I want to commend CEQ for issuing this historic and significant guidance for how agencies should consider emissions during the NEPA review process. But I think, as we are seeing here today, there is a lot of misinformation about what the guidance really means. And I want to clarify those misconceptions, so we are all on the same page.

Director Goldfuss, will agencies be required to prepare environmental impact statements for every proposed action that emits GHGs?

Ms. GOLDFUSS. No, not at all.

Mrs. DINGELL. Will this guidance require agencies to prepare more EISs instead of EAs?

Ms. GOLDFUSS. No, and we specifically say in the guidance that it is unlikely that GHG emissions would ever change the type of environmental analysis an agency would conduct.

Mrs. DINGELL. Opponents claim that this guidance is burdensome and costly. How is this guidance consistent with the President's stated goal of streamlining the permitting process, which is something I think we agree with on both sides? How does this actually accomplish it, not make it more complicated?

Ms. GOLDFUSS. We certainly agree, as well. And as someone who has worked in an agency, I can tell you nothing delays things more than uncertainty. So, with 90 cases in the courts, 25 different agencies trying to figure out how to address the issue of climate change, this guidance answers that question, says that we recommend they account for greenhouse gas emissions, and gives them tools to do so, which allows them to move beyond the debate and do the analysis.

Mrs. DINGELL. Why does CEQ recommend agencies use projected emissions as a proxy for climate effects?

Ms. GOLDFUSS. It is another way of answering that question, and we know that we have the tools and the data available to do that. When there aren't tools or data available, the agencies can simply state that and move on. But this is the best way that we have and, really, the best proxy for climate change impacts.

Mrs. DINGELL. I want to thank the Director for coming today and answering these questions. I think it is clear that this guidance will give more certainty to project sponsors and set the rules for the roads, for how each agency should account for these impacts. And I think it would hopefully reduce the time that goes into much of this because of it.

I want to thank the Director and CEQ for the good work on this important issue, and yield back the balance of my time, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. LaMalfa.

Mr. LAMALFA. Thank you, Mr. Chairman. As a holder of a degree in agriculture, bachelor of science, I am glad to hear that we are concerned about the production of CO₂. All the plants I have ever grown love CO₂.

What we are talking about here with the proposed guidance, it suggests that an agency must quantify greenhouse gas across all actions connected to a Federal action. So I am wondering how this would fit with the limits of an agency's authority outside of a proposed action. Would it require an agency to be speculative in what it does? How are we going to quantify these things?

Because the scope of an individual project—well, let me narrow it down. How does the CEQ intend to move forward to ensure that the guidance does not become an impediment when this Administration has professed to be supportive of natural gas and the infrastructure? Natural gas is a very clean-burning fuel, very plentiful, very low cost, one of our best things we have, going forward, to provide a reliable fuel source for heating, what have you.

How will this guidance not become an impediment to the gas utility projects, and instead further, the Administration's goals of improving infrastructure permitting; how is this actually going to improve that process? How are we going to streamline and speed up the process of getting permits when we have additional layers that the CEQ is going to require all the agencies that have a piece of the action to do?

Ms. GOLDFUSS. Just to step back a moment, the guidance fits within the regulatory framework of NEPA, which asks agencies to look at the direct, indirect, and cumulative impacts of their actions. This guidance does not require agencies to do anything different than what those regulations already lay out.

Instead, it says when it comes to the question of climate change, here is the path forward. We would recommend that you quantify your greenhouse gas emissions, and here are some tools that you could use to do that. If the tools and methodologies are not available—and I can say in the agriculture space, USDA has several that are quite helpful—agencies can simply state that the tools and data are not available, and give us a qualitative assessment of what the impacts would be.

Mr. LAMALFA. If they will pull back from the requirement? If the data is not available? Or will they go forward with a speculative one?

Ms. GOLDFUSS. Once again, this is guidance, so it is not requirement, and it is not legally binding.

Mr. LAMALFA. OK. So agencies can completely ignore this if they wish.

Ms. GOLDFUSS. They can.

Mr. LAMALFA. That has not been the attitude.

There is a tool called the social cost of carbon that is allowed within the guidance that we think would be very incompatible with the Office of Management and Budget requirements that there be a guide for agencies conducting cost-benefit analyses.

Mr. McClintock alluded to—how much will be done to look at the cost-benefit analysis of these actions? Because no doubt there will be additional cost to those getting permits and ongoing operations.

Ms. GOLDFUSS. NEPA is a regulation that requires Federal agencies to look at their environmental impacts. It does not require cost-benefit analysis. So, social cost of carbon is a regulatory tool. It is not in any way required by this guidance, which still is about environmental analysis, is not a regulation, and does not require cost-benefit analysis.

Mr. LAMALFA. But the SCC does conflict with the Office of Management and Budget guidance for requirement for agencies when using cost-benefit analysis. Does that mean cost benefit will be ignored?

Ms. GOLDFUSS. My colleague, Howard Shelanski from OIRA, is talking about good guidance right now somewhere else on the Hill. But social cost of carbon, once again, is a regulatory tool. It is about cost-benefit analysis. NEPA is specifically not about cost-benefit analysis. It is about environmental review.

Mr. LAMALFA. So, we can assume that cost-benefit analysis will not be part of the thinking on the implementation of the guidance?

Ms. GOLDFUSS. It is up to each agency to use the tools that they believe will give them the best information available.

Mr. LAMALFA. They have been ignoring that tool for a long time.

Ms. GOLDFUSS. If they decided to use the cost-benefit analysis of social cost of carbon, that is up to them.

Mr. LAMALFA. How do you explain the fluctuations in CO₂ levels pre-Industrial Revolution, and the—sure, there is something called climate change. What this really boils down to is what percentage of climate change or CO₂ is caused by mankind's actions. What percentage of that CO₂ production in the world today is caused by what people do versus what the planet itself does?

Ms. GOLDFUSS. Congressman, we are going to have a difference of opinion on this. Just as Mr. McClintock raised, we know and what I know is what our scientists tell us, which is that climate change is happening now.

Mr. LAMALFA. Your scientists.

Ms. GOLDFUSS. And that humans are contributing—

Mr. LAMALFA. Which group of scientists?

The CHAIRMAN. All right, let me—

Ms. GOLDFUSS. The vast majority.

The CHAIRMAN. Let me cut this off, we need to go on.

Mr. Huffman.

Mr. HUFFMAN. Thank you, Mr. Chairman. In defense of my own political science degree, it gives you options. Law school—

The CHAIRMAN. Yes, but you became an attorney, so you went downhill from there.

Mr. HUFFMAN. You have law school or unemployment, so it gives you options.

All right, Ms. Goldfuss, welcome. My friend from Arkansas raises some interesting points. He is certainly right, that these catastrophic wildfires that we are seeing more and more in the West are not helping with climate change, they are contributing to the problem.

But even though those questions were posed to you in an adversarial manner, I think he is helping make the case for you here, because, if he is correct—and he may be—that prudent forest treatments can reduce the prevalence of those fires and, therefore, the greenhouse gas-inducing emissions, then considering those climate impacts or benefits as part of a NEPA process ought to be a good thing in the NEPA review of those plans. Wouldn't you agree?

Ms. GOLDFUSS. I would agree.

Mr. HUFFMAN. OK. So I actually appreciate the point. I think it underscores the fact that we need to look comprehensively at all impacts, including climate impacts and benefits to the various things that our Federal Government does. That is what NEPA is all about.

Mr. McClintock certainly gave us some interesting rhetoric on ice ages and climate change. Just when you thought a previous ice age had extinguished all the dinosaurs, we heard some pretty incredible climate denial just now. And that, unfortunately, is the prevailing view in today's Republican party. So you know this already, but I just want to welcome you to this bubble of climate denial that you have walked into today.

Mr. LAMALFA. Mr. Chairman? Can we ask the Members to not be so personal in their comments on using words like "rhetoric" when Members bring things up that might be scientifically based, and just keep the tone to something less personal, sir?

The CHAIRMAN. Thank you. I didn't know who was talking there, but I am sorry, there is a time you are supposed to ask that question—

Mr. HUFFMAN. Reclaiming my time?

The CHAIRMAN. Mr. Huffman, it is your time, please.

Mr. HUFFMAN. Thank you. And I hope it will be adjusted to reflect what was just lost.

The point, Ms. Goldfuss, is that this climate denial philosophy you are hearing today is completely isolated from the rest of the world. And you do know this, but it is worth mentioning—every other conservative party in the world acknowledges climate change, and supports action plans and national and international negotiations and responses to address it. That is why the conservative parties even who believe in liberty and do not like regulation and do not like lots of government in every other democracy in the world acknowledge climate change and support international agreements. They have signed on to the Paris Agreement, and yet we are going the other direction with our Grand Old Party these days, unfortunately, as you have heard today.

Just 8 years ago, the party platform acknowledged climate change and called for a transition to clean energy. Fast forward to 2016 and we have a nominee that calls it a hoax and a platform that rejects not just the Paris Agreement, but its goals, and declares that coal is clean energy.

So, we are sort of in a netherworld on this issue of climate change here today, isolated literally from the rest of the world. Even Vladimir Putin's Russia, even Castro's Cuba, even China, they have all stepped forward because this climate change science and the imperative of doing something about it is so obvious to absolutely everyone in the world, including conservatives, except for

the folks that you are hearing from here today and some of their colleagues.

So, I think that context is important. What you are doing is absolutely essential. We should just make sure to remind people why you are doing it. This is not part of some radical, costly agenda. In fact, a lot of court cases have looked at NEPA and concluded that you have to examine the impacts of climate change. Is that correct?

Would you tell us about the state of those court decisions that actually bind Federal agencies to go through a process like this?

Ms. GOLDFUSS. That is right. By our research, there have been 90 different cases that have raised climate change. The trend out of those cases was for climate change to be considered. Certainly there are cases that went the other way. What that creates for the 25 agencies that are involved in those various cases is confusion about what to do.

This guidance answers that question. It is our recommendation that they quantify greenhouse gas emissions as a way to account for their climate change impacts.

Mr. HUFFMAN. All right, thank you. So, binding decisions of Federal courts, overwhelming consensus of the world's scientific community, and the view of the rest of the world, you are doing the right thing, Ms. Goldfuss. Keep it up.

The CHAIRMAN. Let me ask all Members here, we have a long time between now and the end of the year and a lame duck session—just make sure you self-regulate what you say, and the comments that you make vis-à-vis anybody else here in the room. Mellow them out, unless we are talking about the Administration. Then go after the jugular. Is that OK?

[Laughter.]

Ms. GOLDFUSS. Bring it.

The CHAIRMAN. OK?

Ms. GOLDFUSS. OK.

The CHAIRMAN. Mr. Newhouse, you are recognized.

Mr. NEWHOUSE. Welcome, Ms. Goldfuss, I appreciate your coming with us this morning. I appreciate the opportunity to have this hearing, and just for full disclosure, I am an agriculture-economics major. I hold a degree from Washington State University.

But I guess it was inevitable that this would devolve into an argument about climate change, unfortunately. I think the focus of the hearing is the impacts of your final guidance on a host of American economic energy-related industries and activities. And so we will leave some of the previous comments alone for now.

But certainly the climate is changing. I think everyone recognizes that there is always change, and we are looking at ways that we can solve what I think is not a mutually exclusive equation, that we can have both economic development, as well as being responsible. So, I appreciate you coming and answering some questions about the final guidance itself.

So, a question. Just weeks after this final guidance was issued, litigation was introduced against BLM's oil and gas leasing program, actually citing the document. You have made several statements today that this is not a regulation, it is not legally enforceable, it is voluntary—so how can the Administration maintain

that it is merely a voluntary guide for agencies, and should be exempt from the rulemaking process, when it was immediately used as a tool for obstruction by environmental organizations?

Ms. GOLDFUSS. Well, guidance has been part of policymaking for a long time. And yes, NEPA guidance has withstood many different court cases, and it comes out in different ways. But it is still standing that this is not a regulation, it is not legally binding. And although it may be referenced in courts, it is up to agencies to make these decisions within the bounds of their own statutes.

There is nothing here that says that you have to do this guidance. In fact, there are many ways that agencies may determine this is not appropriate, and our guidance would be that they tell us why it is not appropriate. But the courts will then determine whether or not those reviews were conducted appropriately.

Mr. NEWHOUSE. So, by setting the bar, at least if they do not follow the guidance, because it is voluntary, they have to justify beyond a shadow of a doubt in a court of law whether or not they were right in ignoring the guidance.

Some people have raised concerns that this final guidance does not provide for a fully inclusive cost-benefit analysis of potential energy projects. For example, a newly built natural gas pipeline or a hydro-electric dam could replace a less-efficient source of energy, and a less reliable method of transportation, thus having a positive and short-term as well as long-term impact on the environment.

So, how does the suggested life cycle analysis of a long-term infrastructure project take into account the positive benefits of the project? If we are trying to address the cumulative impacts on climate, why not factor in all benefits?

Ms. GOLDFUSS. Thank you, Congressman, for that question. There are two parts there. The cost-benefit analysis is specifically not part of NEPA reviews, as we discussed before, but in terms of looking at the cumulative impacts you are referencing, the regulations for NEPA, do lay out a framework of direct, indirect, and cumulative impacts.

Those cumulative impacts are bound by what can be reasonably foreseen in the future to be those impacts. Then, with regard to this guidance, the tools that we have made available, and that the agencies are familiar with, they will be able to use those to evaluate what the cumulative impacts of the greenhouse gas emissions may be.

So, this is not about life-cycle analysis. That is different than cumulative impacts that are bound by what is reasonably foreseeable as our regulations already lay out.

Mr. NEWHOUSE. OK, I think I understand. I appreciate that.

And in the short time remaining, Mr. Chairman, I yield back my time.

The CHAIRMAN. Thank you. And, Dan, I apologize profusely. Look, all I will tell you is that one time I wanted to talk to Conway ahead of me. I leaned over and said, "Larry, Larry, Larry," and finally he turned back and said, "My name is Mike." So at least I did not go that far with you.

Mr. NEWHOUSE. I appreciate that. I am not Larry, by the way, so that is good.

The CHAIRMAN. But you are Mike.

[Laughter.]

The CHAIRMAN. I apologize. So we will turn to Mr. Johnson next.

Mr. GRIJALVA. Mr. Chairman, if I may, there is some analysis going on as to the effects of climate change on memory.

[Laughter.]

Mr. GRIJALVA. And perhaps that is part of the impact that we could study.

The CHAIRMAN. You are not recognized.

[Laughter.]

The CHAIRMAN. Mr. Lowenthal, it is your turn.

Dr. LOWENTHAL. Thank you, Mr. Chair. First, I would like to enter into the record a letter that I and 53 of my House colleagues sent to seek support of the draft NEPA guidance last year. I am pleased that we are holding this hearing on the two topics that are very important to my constituents. That is both NEPA and also climate change. So I offer that into the record.

The CHAIRMAN. So ordered.

Dr. LOWENTHAL. Thank you, Mr. Chair.

[The information follows:]

**CONGRESS OF THE UNITED STATES
Washington, DC 20515**

April 27, 2015

Ms. Christy Goldfuss
Managing Director
Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20506

Dear Ms. Goldfuss:

We write to express our strong support for the Council on Environmental Quality's (CEQ) December 2014 draft guidance providing federal agencies direction on when and how to consider the effects of greenhouse gas (GHG) emissions and climate change in their evaluation of all proposed federal actions in accordance with the National Environmental Protection Act (NEPA).

Since the 1970's, NEPA has increased transparency and educated federal agencies, Congress, and the public about the environmental impacts of proposed federal actions. NEPA ensures that agencies analyze the environmental effects of federal actions before decisions are made, and provides decision makers with alternatives to mitigate these effects.

Climate change is a fundamental environmental issue, and the relation of federal actions to climate change falls squarely within NEPA's congressional intent. The concentration of CO₂ in the atmosphere has now surpassed 400 ppm. This is the highest atmospheric CO₂ concentration in at least 800,000 years. Among other effects, increased greenhouse gases in the atmosphere are causing global temperatures and sea levels to rise and are threatening many aspects of our society—from fisheries to agriculture and from human health to national security. In light of the broad environmental consequences of greenhouse gas emissions, it is appropriate that environmental evaluations required by NEPA should include consideration of the ways in which federal actions can exacerbate or be impacted by climate change.

Without imposing new requirements, the proposed guidance will help federal agencies comply with NEPA requirements consistently across agencies. It will not mandate a particular agency decision or compel agencies to limit greenhouse gas emissions, even for projects with high levels of greenhouse gas emissions. Instead, it will provide for better and more informed federal decisions regarding GHG emissions and the effects of climate change consistent with existing NEPA principles.

The guidance highlights the importance of comparing and disclosing potential GHG emissions from various project alternatives, and makes clear that projects

with GHG emissions below 25,000 metric tons annual CO₂-e do not always warrant quantitative climate change analysis.

Furthermore, CEQ's NEPA guidance directs agencies to account for actions that may occur as a predicate to the agency action as well as a result of the agency action. We support CEQ's emphasis on the importance of considering reasonable mitigation measures to lower GHG emissions and appreciate the examples provided of mitigation options related to greenhouse gases.

Finally, in order to put the GHG emissions into context, we propose that CEQ direct agencies to consider calculating the climate change costs of a project using the social cost of carbon. The social cost of carbon is a scientifically-accepted method, developed by a dozen federal agencies and offices, for determining the costs of carbon pollution. The social cost of carbon provides a meaningful metric, beyond tons of CO₂ emissions, for understanding the impact of GHG emissions in monetary terms.

We look forward to working with CEQ to further develop and implement the NEPA guidance on when and how federal agencies should consider the effects of GHG emissions and climate change in accordance with their responsibilities under NEPA. As greenhouse gas concentrations in the atmosphere continue to rise, it is imperative that federal agencies show leadership and transparency in accounting for and reducing the emissions from their actions while also considering the impacts that climate change may have on a specific project. We will continue to push for comprehensive reforms in Congress to decrease emissions across the public and private sectors and support ongoing federal initiatives that clean-up our atmosphere.

Thank you for your leadership on this important matter. We look forward to the completion of the final NEPA guidance later this year.

Sincerely,

ALAN LOWENTHAL
RAÚL M. GRIJALVA
SCOTT PETERS
Members of Congress.

[Also signed by the following Members of Congress:]

Alma S. Adams	Barbara Lee
Donald S. Beyer, Jr.	Ted Lieu
Earl Blumenauer	Zoe Lofgren
Julia Brownley	Doris O. Matsui
Lois Capps	Betty McCollum
Matt Cartwright	Jim McDermott
Kathy Castor	James P. McGovern
Judy Chu	Grace F. Napolitano
Katherine M. Clark	Eleanor Holmes Norton
Emanuel Cleaver	Chellie Pingree
Gerald E. Connolly	Mark Pocan
John Conyers, Jr.	Jared Polis
Mark DeSaulnier	David E. Price
Ted Deutch	Mike Quigley
Lloyd Doggett	Bobby L. Rush
Donna Edwards	John P. Sarbanes
Keith Ellison	Jan Schakowsky
Anna G. Eshoo	Adam B. Schiff
Elizabeth Esty	Robert C. "Bobby" Scott
Sam Farr	Mike Thompson
John Garamendi	Paul Tonko
Michael M. Honda	Niki Tsongas
Jared Huffman	Chris Van Hollen
Steve Israel	Maxine Waters
Henry C. "Hank" Johnson	Peter Welch
Jim Langevin	

Dr. LOWENTHAL. Before I ask a question, I would like to follow up on—I think the discussion is fascinating that my colleague from California just gave, that the climate is always changing, why are

we doing this. And he is right. Global average temperatures for the earth do go up and down over time. But I would like to point out from the data that it goes up and down quite slowly.

For example, the temperatures rose about 4° Celsius between the last ice age and modern times. Scientists believe that that is because of the CO₂ that was released into the atmosphere that was released from the oceans. We are talking about now tens of thousands of years that the glaciers melted, sea level rose, about 120 meters—4 degrees in tens of thousands of years.

Now we are looking at warming that, according to NASA, is at least 10 times as fast as the warming that got us out of the last ice age. Just in the past century alone we have increased the global average temperature by a degree-and-a-half Celsius. And unless we take drastic changes, we are on track for 3° more warming by the end of this century. So, we are talking about, in two centuries, more change in the climate than took place in tens of thousands of years. So let's be clear about the data.

We know that these changes have happened slowly in the past by, as we have studied, the paleoclimate history. But I want to remind my clients—I mean my colleagues, not my clients—

[Laughter.]

Dr. LOWENTHAL [continuing]. But maybe my clients, maybe—that we have invested this civilization we are talking about modern infrastructure of trillions of dollars of investments. We have built homes, utilities, roads, ports, and so forth, and they have been built with the idea that climate and sea level rise would be relatively stable.

So, it makes sense, with this phenomenal investment, which was based upon the assumption of a very stable climate and sea level, that that has changed right now. And so, the issue is how are we going to look at coastal flooding? How is that going to affect infrastructure projects in the next 20 to 30 years?

So, I am asking the Director. How can the effects of climate change, like rising sea levels, impact Federal projects? We are not only talking about climate, and what our actions do to affect climate change, but how does this new guidance assist agencies with deciding how to analyze the future effects of climate change like sea level rise on possible projects? How are we going to deal with that issue?

Ms. GOLDFUSS. Congressman, thank you very much for that question. As I referenced in the beginning, OMB and the President's budget said that we have already spent \$357 billion on the direct costs of climate change.

So, it would make sense that, if we have the tools available to see what the changes of the environment are going to be due to sea level rise, that when we are planning a 30 to 40, or 50-year project like a bridge or rebuilding a road, or even where you might site a particular project, that you would take those pieces of information into consideration, so that you don't continually rebuild the same bridge over and over again at the same level, have it wash out, and then spend taxpayer dollars to do it again in, say, 20 years or even less, depending on where that project is.

So, what we recommend through the guidance is that, where appropriate, depending on the project, that agencies look at not only

how their actions or what the contribution to climate change will be, but then the changes in the environment that might impact that project, or how that project will impact a changed environment, is the better way to phrase it. Five seconds.

Dr. LOWENTHAL. Just checking how much time. I will yield back, Mr. Chair. I believe my time has expired.

The CHAIRMAN. Thank you. Mr. Graves, you came in late. Are you prepared? Are you ready?

Mr. GRAVES OF LOUISIANA. Yes, sir.

The CHAIRMAN. You are recognized.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman, I appreciate it. I will say, with all the confusion that has gone on with the last few speakers, you all aren't making getting old look very attractive.

But look at that, I got to say it without even getting caught for it. That was great.

[Laughter.]

Mr. GRAVES OF LOUISIANA. Ms. Goldfuss, thank you for being here today. In a previous life, I worked for years on resiliency issues, and spent a lot of time working with a very diverse group of folks, environmental community, oil and gas community, and others, to help them—

Ms. GOLDFUSS. I am sorry, I missed it. Where did you say you worked?

Mr. GRAVES OF LOUISIANA. I worked on resilience issues.

Ms. GOLDFUSS. Oh, resilience.

Mr. GRAVES OF LOUISIANA. I am from the state of Louisiana, and worked on coastal issues. In fact, I worked with a number of your predecessors over the years.

I am struggling with something, I guess, kind of thematically about your testimony and some of the things that are being discussed here.

Coastal Louisiana has lost about 1,900 square miles of wetlands and some of the most productive ecosystem on this entire continent. You sit here and you talk about the social cost of carbon, and how we need to be mindful of the long-term impacts of the social cost of carbon because you care about the environment, you care about humanity, you care about our citizens. Yet the Administration is effectively doing nothing but throwing up roadblocks in our efforts to actually restore wetlands and our efforts to actually improve the resiliency of the community, improve or maintain the ecological productivity of the coastal ecosystem in Louisiana.

So, I am having trouble giving you credibility, to be honest with you, that you are here saying that, look, we are doing this because this is the right thing for society, this is the right thing for our environment, the right thing for our community, yet the greatest cause of land loss in coastal Louisiana is the Federal Government, the U.S. Army Corps of Engineers.

I have repeatedly, repeatedly, gone to CEQ and said, "You all need to do something." This isn't something that is going to happen in 50 to 100 years. Ms. Goldfuss, let's be honest. You can be wildly successful in your efforts, wildly successful in your efforts, and you are not going to see any reduction in sea level rise for 50, 100 years. And so, we have problems right now.

As I understand, my friends from California referenced perhaps—I am not sure what they were talking about, I was not here—but some of the communities in Louisiana that right now are facing the need to have to leave, communities that have been around for hundreds of years. Can you help explain that to me, sort of this whole credibility gap that I see?

Ms. GOLDFUSS. Sure. First of all, I have repeatedly said the social cost of carbon is a cost-benefit analysis tool used in regulation. That is not what we are talking about today. The climate guidance under NEPA does not require cost-benefit analysis, and it is only referenced in the guidance as an option available to decision makers, if they decide cost-benefit analysis is appropriate for their review.

Mr. GRAVES OF LOUISIANA. I have 2 minutes left.

Ms. GOLDFUSS. So—

Mr. GRAVES OF LOUISIANA. Don't eat all my time. I have more questions.

Ms. GOLDFUSS. All right. Let me just say on wetlands, because I do think we share your concern, and are working diligently at CEQ to address some of the problems that you have raised—we put out a Presidential Memorandum that was focused specifically on bringing private investment to some of these problems, and lifting the standard of no net loss of wetlands in this country.

Mr. GRAVES OF LOUISIANA. But you are talking about private investment. If I destroyed something, you would come after me. And if I destroyed wetlands, you know who would come after me? The U.S. Army Corps of Engineers, yet they are the greatest cause of loss to coastal wetlands in the Nation, and nothing is being done about it. I don't understand that hypocrisy. I don't understand at all.

Let me pivot and ask another question. When I recall what the Administration did on the Keystone XL Pipeline, part of the justification for rejecting the pipeline was because there was a greenhouse gas analysis that was done to determine it was going to contribute to emissions of greenhouse gas. That was part of the justification for shutting it down.

Let me ask you this. When the Iran nuclear deal was done, was there a social cost of carbon? Was there an analysis on what—

Ms. GOLDFUSS. Excuse me. When what was done?

Mr. GRAVES OF LOUISIANA. The Iran nuclear agreement, which included lifting sanctions for Iran, I believe the fourth-largest oil reserves in the world, and allowing them to access global markets. Was there a greenhouse gas analysis that was done there to determine the increase in emissions that would result from that? And I would love to see the comparison of that to the Keystone XL Pipeline, in terms of the additional oil that would be put on global markets.

Ms. GOLDFUSS. I am afraid that might have to be a different hearing. You would have to ask Secretary Kerry.

Mr. GRAVES OF LOUISIANA. But doesn't that seem a little bit strange, that you would blame Keystone XL Pipeline on greenhouse gas emissions, yet for the Iran nuclear agreement you have the fourth-largest reserves of the world—if I recall correctly—of oil,

hundreds of millions of barrels of oil dumped on the markets? Do you see any hypocrisy there at all?

Ms. GOLDFUSS. Those are, again, both State Department decisions.

Mr. GRAVES OF LOUISIANA. Yes, but you are CEQ. You all are the ones that are supposed to be addressing these issues from an environmental perspective.

The last question is this. The Department of the Interior recently came out with some offshore air emissions proposal. And under—

The CHAIRMAN. Give me a break here. You can do it if you can do it in 2 seconds.

Mr. GRAVES OF LOUISIANA. All right. Amen.

[Laughter.]

The CHAIRMAN. Mr. Gallego.

Mr. GALLEGO. Thank you, Mr. Chair.

Ms. Goldfuss, thank you for being here and for your tireless work on these issues.

Many see NEPA as a bedrock environmental statute aiming to make smart decisions while we develop our infrastructure, and I agree. However, I also see NEPA as a statute that protects the public's voice and its power to protect their health and safety as we develop their infrastructure.

As a Latino who represents a heavily Latino district, I know firsthand how critical it is to have a process in place that allows communities like mine, communities that have historically been marginalized and lack a voice in policymaking when it comes to projects in their backyards, a role and opportunity for input.

So, I see an attack on NEPA as an attack on the public voice. Anything that makes NEPA more consistent and reliable strengthens that public voice.

Can you tell us how this NEPA guidance will help the public have more influence over what happens in their communities?

Ms. GOLDFUSS. Congressman Gallego, great question. One of the main points of NEPA, as Congress brilliantly wrote it, was both to look at the environmental impacts of Federal decisionmaking, but then also to allow the public to see those environmental impacts. And we hear frequently from environmental justice communities and then also from communities that have the least but are bearing the biggest burden of climate change impacts. Louisiana is one of the states that has some of the biggest problems there, as is Alaska.

The enormity of this problem is such that, having the information for those communities about how our decisions, as the Federal Government, could make their situation worse, is the power of the people, basically, to see what our decisions are. That is the transparency. By asking agencies to share what the greenhouse gas emissions of their decisionmaking are, that allows the public to see how each of our decisions contributes to this overall problem.

So, this is the tool to allow the public the window into the decisions we make, and how the problem of climate change is either helped or burdened.

Mr. GALLEGO. Excellent. Thank you, I yield back.

The CHAIRMAN. Mr. Hice.

Dr. HICE. Thank you, Mr. Chairman. And just in the context of full disclosure, I have three degrees in theology, so that is where I have come from. And this discussion immediately took me there, in light of some other thoughts. And going back to our founders, who recognized the creator, who gave us certain inalienable rights, is the same creator who made clear in Genesis 8 that, as long as the earth endures, there will be seed time and harvest, cold and heat, summer and winter, day and night, and that those will not cease.

So, within that context, we certainly need to be good stewards of this earth. I think we all understand that. We are responsible to do so.

When I was in high school, the big talk was that we were entering into an ice age again, and then it all turned to global warming several years later. Now, we are talking about climate change. I think we all recognize the climate changes, and we need to be good stewards of this earth.

But I want to go back to some things that came up specifically in the guidance. I am a bit unsure as to what the council would consider a significant level of greenhouse gas emissions. What is the bar that to pass is dangerous?

Ms. GOLDFUSS. We have not set a significant level. We have instead asked agencies to rely on their expertise and, if the tools and methodologies and data are available, then they should do it.

So, to say one level is more significant than another was problematic. In our initial analysis, we heard two different competing factors around the 25,000 threshold we set previously, which, one, was that some agencies confused that as a threshold for actually doing an EIS, which was not the intention, and then also the very practical concern that if you are determining whether or not you are above or below 25,000 metric tons of CO₂ equivalent, then you are already quantifying.

Dr. HICE. OK, so we have agencies—

Ms. GOLDFUSS. So, rather than setting a threshold, yes—

Dr. HICE [continuing]. That are facing an arbitrary—they don't know what to—are any of them even going to respond to this? I mean we have—

Ms. GOLDFUSS. The guidance is quite clear, that if the tools and methodologies are available, our recommendation is to quantify.

Dr. HICE. To do what they want. OK, so we have the quantitative and qualitative.

Ms. GOLDFUSS. Correct.

Dr. HICE. Taxpayers paying for both of this. And yet, if there is no standard that says—I mean this is simple math—if you go beyond this level, you are getting into a dangerous zone. And yet there is no level that says so. So these agencies have nothing to work with.

How do you deal with quantitative and qualitative, when we are not even dealing with simple math?

Ms. GOLDFUSS. I would argue that we have taken out the confusion around the particular threshold that would have required people to quantify anyway, and instead say if you have the capacity, the tools, the methodologies, and the data to quantify your greenhouse gas emissions, we would recommend that you do so.

Dr. HICE. So everyone does is differently——

Ms. GOLDFUSS. And if they don't——

Dr. HICE. That doesn't do away with the confusion. That adds to it. It gives everyone a choice to determine themselves.

Ms. GOLDFUSS. That they should quantify their greenhouse gas emissions. That is what it says. If they are not able to, then they have to reference the facts that the methodologies and the tools are not available——

Dr. HICE. How do you deal with the Supreme Court case, public citizen case, that says agencies cannot be responsible for areas for which they have no authority, and yet we have the Department of Agriculture and Interior, and so forth. They don't have any authority to determine these issues that you are asking them to do.

Ms. GOLDFUSS. Once again, guidance in the construct of the regulations that are laid out by NEPA that look at direct, indirect, and cumulative impacts, that is also, once again, bound by a rule of reason. So, what are the reasonably foreseeable impacts of the action? Those are the tools and methodologies that we are referencing.

So, it is not endless research. We even say to agencies, "Do not conduct new research"——

Dr. HICE. But that contradicts what the Supreme Court has said.

Ms. GOLDFUSS. No, because this would be within their statutory authority to look at the reasonably foreseeable impacts of the decision that they are making. And that is long-standing NEPA practice.

Dr. HICE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Lucky you. I know you have a timeline when you have to get out of here, and we will get you out in plenty of time, because I am the last set of questions—kind of questions.

First of all, I appreciate you being here. I appreciate this voluntary guidance, a full employment for attorneys act. I am making the assumption that CEQ, when you were doing this, coming up with this guidance, tried to use courts' interpretations of the limitations on NEPA as part of your analysis and recommendations. You looked at that, I am assuming.

Ms. GOLDFUSS. Certainly.

The CHAIRMAN. OK. So let's assume I am the evil oil and gas company that Mr. Grijalva wants me to be. And I want to get an approval for a lease on Federal lands. Currently, NEPA analysis would have me to quantify or qualify the greenhouse gas emissions from the drilling activity over the course of the lease. That is correct, right?

Ms. GOLDFUSS. Correct.

The CHAIRMAN. But under——

Ms. GOLDFUSS. It wouldn't recommend.

The CHAIRMAN [continuing]. Your guidances that you have in here, the NEPA analysis would now also have to consider the greenhouse gas emissions from transportation of the resource, combustion of the emission at either the power plant or refinery, and if the product is exported, the combustion at the end use, even if it is a foreign country.

Therefore, under the guidance, it requires inclusions of effects of greenhouse gas emissions from users of the resource that are beyond the control of the permitting agency. The problem now comes—

Ms. GOLDFUSS. The reasonably foreseeable impacts.

The CHAIRMAN. Just a minute, let me finish. There is no question mark yet.

The problem comes in here that the Supreme Court's precedent says that where an agency has no ability to prevent a certain effect due to its statutory authority over the relevant actions, the agency cannot be considered a legally relevant cause of the effect, which essentially means that indirect effects cannot be considered if the agency cannot control them.

But that is not what your guidance actually says. You are familiar, I am assuming—well, that is a stupid question—OMB circular A4, whether you are familiar or not with that, does require a 7 percent discount, and it does require that domestic impacts are given. And if there is a global impact, that has to be considered separately from the domestic impacts.

But the problem is the social cost of carbon, which you put as one of the other options that companies can use as they are going through NEPA, does not require either the 7 percent discount rate or, if it is required, it does not have to list domestic costs separately from global costs. So if there is a final decision on this using the OMB cost, it is going to be at variance with OMB Circular A4, which is at variance with the social cost of carbon that is given as one of the options, which ultimately means the end result is lawsuit time.

See, once somebody has responsibility to do something, it does not necessarily mean they have the authority to do it. You do not have the authority to do this. This is why you repeatedly say this is all voluntary. But it is voluntary that everyone simply has to do. If not, the lawsuits will be there.

And, once again, if a court uses your voluntary guidance as an issue of what somebody has to do, does that not become de facto enforcement of what takes place?

Ms. GOLDFUSS. Is that my question?

The CHAIRMAN. Yes or no, go ahead.

Ms. GOLDFUSS. No, we do not see it that way.

The CHAIRMAN. Well, OK. Then you are seeing it wrong, because, unfortunately, it already happened. Wild Earth Guardians has already sued BLM on this particular issue. The amount of lawsuits are going to increase because of this. It may be voluntary, but it isn't voluntary. Everyone would still have to do it. And once the courts use this as a rationale and a reason, that becomes the de facto responsibility that has to be there. That is why this is such a dangerous and difficult approach, unless you are an attorney, in which case this is full employment for the rest of your life-cycle.

Now, let me—

Ms. GOLDFUSS. The courts were already addressing this issue. So, either way, it was going to be—

The CHAIRMAN. No, no, no.

Ms. GOLDFUSS [continuing]. Resolved there.

The CHAIRMAN. You have exacerbated the problem. That is why I use that old Rumpole of the Bailey line. Horace Rumpole did not have to obey his wife, but he knew he had to obey her. That is why he always referred to her as "She Who Must Be Obeyed."

That is what this silly guidance is—what has to be obeyed. And you know what will be the result if one does not, even though your agency does not have the legal ability to enforce it. It is not enforceable, it is voluntary, unless somebody tries to do it. You have given all the options out to the other groups now to make sure that if they don't do it, there is going to be a lawsuit, so they better do it, because it has to be obeyed. It is not your responsibility, it is not your authority, but you did it anyway, and that is why I object to it.

With that, I also want to thank you very much for sitting here with us for over an hour. I appreciate your time. You have had to answer every question, because there is no one to share the responsibility with you. But then you did the guidance, so it is your own fault.

Ms. GOLDFUSS. Thank you, Mr. Chairman.

The CHAIRMAN. But I do appreciate you being here. And with that, if there is no other business—actually, I have statements to say here—but there is a rule that says our Committee Record is open. If anyone has other questions, we will be sending them to you. We ask you to respond to those in the appropriate amount of time. You know the drill we go through.

And if there is no other business, we got you out of here on time.

Ms. GOLDFUSS. That is appreciated. Thank you.

The CHAIRMAN. Thank you for being here, and this committee will stand adjourned.

[Whereupon, at 11:17 a.m., the committee was adjourned.]

