No. 23-975

IN THE

Supreme Court of the United States

SEVEN COUNTY INFRASTRUCTURE COALITION, *et al.*,

Petitioners,

v.

EAGLE COUNTY, COLORADO, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF ANSCHUTZ EXPLORATION CORPORATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICUS CURIAE*[1]

Anschutz Exploration Corporation is an independent oil-and-gas company focused on responsible production of oil-and-gas resources in three Western States: Colorado, Utah, and Wyoming. Since its founding decades ago, Anschutz has developed federal oil and gas managed by the Department of the Interior ("Interior") through the Bureau of Land Management ("BLM"). Each time BLM proposes to sell new leases or issue Anschutz a new permit to develop a well on an existing lease, the agency must undertake an environmental review under the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* ("NEPA").

Because NEPA applies to every major federal action—including the authorizations Anschutz needs to develop federal oil-and-gas reserves—far more is at stake in this case than the 88-mile rail line in rural Utah.

Instead, this case presents a question that recurs in virtually every case brought by special-interest groups that oppose oil-and-gas and other mineral development on public lands: Must an agency "study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority?" The Court said the answer is "no" under *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004). But,

1. Under Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution to fund the preparation or submission of this brief. No person or entity other than *amicus curiae* made a monetary contribution to fund the preparation and submission of the brief.

as the D.C. Circuit's decision demonstrates, *see Eagle Cty. v. Surface Transp. Bd.*, 82 F.4th 1152, 1177–80 (D.C. Cir. 2023), the D.C. Circuit and other courts still demand that agencies evaluate effects that are outside the agencies' authority.

Anschutz presents this brief to: (1) explain the statutes and regulations that authorize Interior to manage oil-and-gas and mineral development on public lands; (2) demonstrate how recent judicial decisions—sidestepping *Public Citizen*—have expanded NEPA reviews for mineral-development projects to require Interior to consider effects far outside its regulatory purview, leading to absurd requirements imposed on remand and causing significant harms to the project developers and the economy; and (3) impress upon the Court the importance of reaffirming *Public Citizen* and upholding appropriate limits on the scope of NEPA's "effects" analysis.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *Public Citizen*, the Court established reasonable guardrails on the scope of an agency's required NEPA analysis. The Court held that "where an agency has no ability to prevent [an environmental effect] due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect," and thus NEPA does not require the agency to study that effect. *Public Citizen*, 541 U.S. at 770. This sensible approach focuses an agency's NEPA analysis on only those effects that will serve NEPA's fundamental purpose: informed agency decision-making. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349

(1989). In other words, *Public Citizen* instructed that if information analyzed during the NEPA process cannot influence or change the outcome of the agency's decision because the agency "simply lacks the power to act on whatever information might be contained in the [NEPA document]," then it serves "no purpose" in the NEPA process, and a court cannot fault an agency for omitting it. *Public Citizen*, 541 U.S. at 767–68.

Unfortunately, the D.C. Circuit and other courts have not heeded *Public Citizen*'s instruction. In supporting Petitioners before this Court, the Surface Transportation Board justifiably argues that "NEPA did not require" it to consider the upstream and downstream effects at issue—"based on the scope of the proposed action and the nature and reach of the agency's organic statutes"—because the effects were "so attenuated, speculative, contingent, or otherwise insufficiently material to the agency's decisionmaking." *See* Resp'ts' Br. in Supp. of Pet'rs 16–17 (citing *Public Citizen*, 541 U.S. at 767).

Likewise, in challenges to oil-and-gas lease sales and development permits (known as applications for permits to drill), and contests of mining-plan approvals, courts have faulted agencies for not adequately evaluating indirect effects that the agencies cannot control, prevent, or "act on" under their governing statutes—the Mineral Leasing Act, 30 U.S.C. §§ 181 *et seq.*, the Mining and Minerals Policy Act, 30 U.S.C. § 21a, and the Federal Land Policy and Management Act, 43 U.S.C. §§ 1701, *et seq.* Courts have required agencies responsible for permitting oil-and-gas and mining operations to evaluate effects such as global climate change, foreign countries' energy consumption and greenhouse-gas emissions, and impacts

to air and water—not from the mineral development itself but from the ultimate end-use of the mineral—much like the indirect upstream and downstream effects at issue in this case. *See Eagle Cty.*, 82 F.4th at 1177–80.

The repercussions are legion.

First, after achieving some success about a decade ago in convincing a court to disregard *Public Citizen* and expand the scope of NEPA to include effects outside the agency's regulatory authority, anti-fossil-fuel groups have gained momentum. There is seemingly no limit to the number of cases they can bring and the types of far-flung effects they can claim the agency failed to consider. In other words, the groups have been gifted a powerful tool—NEPA litigation unbounded by *Public Citizen* or the rule of reason—to challenge, slow, and sometimes halt projects they oppose based on speculative impacts often far removed from the challenged project.

Second, to insulate their NEPA analyses from attack, agencies are forced to prepare oversized NEPA documents—covering every "effect" imaginable—that take years and sometimes millions of dollars to prepare. This problem became so dire that President Biden signed into law Section 321 of the Fiscal Responsibility Act of 2023, which amended NEPA to set reasonable page limits and deadlines. *See* 42 U.S.C. § 4336a(e). But agencies struggle to meet the new requirements, opponents continue to assault agencies' NEPA analyses, and courts still find fault in the agencies' evaluations. In the end, the developers whose projects are delayed and later challenged are harmed, the economic benefits of the projects are detained or never realized, and America's energy independence and

national security are compromised.

Clarity and certainty in the NEPA process is critical for industries that depend on federal approvals or funding—not limited to developing oil-and-gas but also mining for critical minerals, developing wind facilities, and growing solar arrays. Anschutz urges the Court to confirm that *Public Citizen* limits the scope of an agency's NEPA analysis—consistent with NEPA's purpose to foster informed agency decision-making—such that an agency need only study those environmental effects over which the agency has regulatory authority.

ARGUMENT

The D.C. Circuit's decision in *Eagle County* is a prime example of courts ignoring the sensible limits this Court established in *Public Citizen*, faulting an agency for failing to consider "effects" of a proposed action over which the agency has no regulatory authority. *See* Pet'rs' Br. 13–19, 30–49. Predictably, the 88-mile rail line was challenged in this case, in part, because the Surface Transportation Board allegedly failed to consider the upstream and downstream effects of transporting crude oil, *Eagle Cty.*, 82 F.4th at 1177—a product that anti-fossil-fuel groups have unabashedly assailed.

The Court need only examine the cases involving challenges to Interior's oil-and-gas and mineral approvals highlighted in this brief to understand how sidestepping the bounds of *Public Citizen* have run roughshod over NEPA's fundamental purpose to foster informed decision-making. These cases also highlight the real-world repercussions: increased litigation weaponizing NEPA

to further an anti-fossil-fuel agenda;[2] agencies' attempts to fortify NEPA documents—inevitably delaying and increasing the costs of projects; and the harms that follow when courts grant disruptive remedies upending existing projects. Like the *Eagle County* decision, these cases underscore the urgent need for the Court to reaffirm *Public Citizen*.

I. Reaffirming *Public Citizen* is Vital to Ensure That NEPA Analyses for Federal Oil-and-Gas Approvals Remain Consistent with Interior's Regulatory Authority.

A. Federal Law Limits Interior's Authority to Consider Certain "Effects" in its Decision-Making Processes.

Statutes intended to promote and maximize mineral development on public lands govern Interior's decision-making authority for proposed oil-and-gas projects. The Mineral Leasing Act of 1920 was adopted in the aftermath of World War I "to promote the orderly development of oil and gas deposits in publicly owned lands of the United States through private enterprise." *Geosearch, Inc. v. Andrus*, 508 F. Supp. 839, 842 (D. Wyo. 1981). The Act

2. WildEarth Guardians, a group responsible for many NEPA-based challenges to energy projects, wants to "stop fossil fuel production in its tracks," *Keep It in the Ground*, WildEarth Guardians, https://wildearthguardians.org/climate-energy/keep-it-in-the-ground/. Sierra Club similarly boasts how it is using the "same tools"—which includes NEPA-based litigation—to "stop the industry from building any new oil infrastructure." *Blocking Dirty Oil Infrastructure*, Sierra Club, https://www.sierraclub.org/dirty-fuels/stopping-build-out-dirty-oil-infrastructure.

thus mandates leasing certain federal lands for oil-and-gas, coal, and other mineral development. *See* 30 U.S.C. §§ 181, 226.

Similarly, in the Mining and Minerals Policy Act of 1970, "Congress declare[d] that it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in ... the orderly and economic development of domestic mineral resources ... to help assure satisfaction of industrial, security and environmental needs." 30 U.S.C. § 21a. This policy defines "minerals" as "oil, gas, coal, oil shale and uranium." *Id.*

The Federal Land Policy and Management Act ("FLPMA") directs BLM to manage public lands "on the basis of multiple use and sustained yield." 43 U.S.C. § 1701(a)(7). "The term 'multiple use' means 'the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.'" *Id.* § 1702(c). The development of "minerals" is one of the multiple uses Congress contemplated. *Id.*

Interior, through BLM, carries out these congressional mandates to foster oil-and-gas development in a three-stage process of (1) region-wide resource planning, (2) leasing, and (3) permitting development operations—and each stage is subject to NEPA. At the first stage, FLPMA requires local BLM offices to prepare a resource-management plan for its assigned planning area, identifying lands within the planning area open to oil-and-gas leasing. *Id.* § 1712(a); 43 C.F.R. §§ 1601.0-5(n), 1610.1. BLM prepares an environmental impact statement under NEPA to consider the plan's direct, indirect,

and cumulative effects. 42 U.S.C. § 4332(C); 40 C.F.R. § 1508.1(i); 43 C.F.R. § 1601.0-6.

At the second stage, the Mineral Leasing Act requires, for lands "known or believed to contain oil or gas deposits," that "[l]ease sales shall be held ... at least quarterly." 30 U.S.C. § 226(a)–(b)(1)(A). Thus, BLM conducts quarterly lease sales in approved areas consistent with each resource-management plan. *Id.* BLM prepares additional NEPA analysis for each sale, which can tier to or incorporate by reference the previous NEPA analysis done at the resource-planning stage, if appropriate. *See* 40 C.F.R. § 1501.11.

Once issued, a federal oil-and-gas lease represents the government's "point of commitment" or the "go/no go" decision for mineral development. *See Conner v. Burford*, 848 F.2d 1441, 1448, 1451 (9th Cir. 1988). An oil-and-gas lease is a vested property right. *See W. Watersheds Project v. Haaland*, 22 F.4th 828, 842 (9th Cir. 2022) (an oil-and-gas lease is a "legally protected interest in [a] contract right[ ] with the federal government"). The lease imposes obligations on the lessee to develop the oil-and-gas reserves with "reasonable diligence." 30 U.S.C. § 187. BLM's implementing regulations require the agency to ensure that "all operations be conducted in a manner which ... results in the maximum ultimate recovery of oil and gas with minimum waste." 43 C.F.R. § 3161.2. To that end, at the third stage, BLM reviews and approves an application for a permit to drill, setting out geological data, drilling plans, plans of operations, plans for reclamation, and other pertinent data. *See id.* § 3171.6. Before approving development operations, BLM must again comply with NEPA. *Id.* § 3171.12(b)(2)(i).

Interior's approval of coal mining on federal lands follows a similar three-stage process—each stage being subject to NEPA: (1) region-wide resource planning, *see* 30 U.S.C. § 201(a)(3)(A)(i); 43 C.F.R. §§ 1601.0-6, 3420.1-4; (2) leasing, *see* 30 U.S.C. §§ 181, 201; 43 C.F.R. §§ 3425.2, 3425.3; and (3) mining-plan approval, *see* 30 U.S.C. § 207(c); 43 C.F.R. § 3425.3(b); 30 C.F.R. § 746.13. The Mineral Leasing Act instructs that "no mining operating plan shall be approved which is not found to achieve the maximum economic recovery of the coal." 30 U.S.C. § 201(a)(3)(C). BLM's sister agency, the Office of Surface Mining Reclamation and Enforcement, reviews and recommends mining-plan approvals. 30 C.F.R. § 746.13.

Interior's NEPA analyses cannot be divorced from this statutory framework or Congress's clear directives. Consistent with *Public Citizen*, the information the agencies consider and the analyses they perform at these three stages must inform the decision before the agency, otherwise their efforts fail to serve NEPA's fundamental purpose. *See* 541 U.S. at 768.

For instance, after BLM has already completed stage one for authorizing oil-and-gas development (by determining that certain lands are available for oil-and-gas leasing) and finished stage two (by issuing a valid oil-and-gas lease, deciding mineral development is a "go," and triggering the lessee's legal obligation to diligently develop the minerals to maximize recovery), the agency "has no authority to prevent," *id.* at 767, or base a permit denial decision on, *any* variable related to the downstream end-use of the oil and gas at stage three when the agency is analyzing whether to approve a development permit. *See* 43 C.F.R. § 3171.17(c) (when approving a permit, BLM may require an operator to comply with permit provisions

addressing "issues" covered by "applicable laws, regulations," and related to cultural resources, endangered species, surface protection, safety, and completion of oil-and-gas wells). Nor could BLM decide at stage three that the validly issued lease should not be developed at all. *See Conner*, 848 F.2d at 1451 (the sale of an oil-and-gas lease "constitutes the 'point of commitment;' after the lease is sold the government no longer has the ability to prohibit potentially significant inroads on the environment" because the "no action," no-leasing alternative is foreclosed).

Thus, even assuming BLM could predict how much of or where the produced oil or gas would be later combusted, the agency lacks authority to regulate or reduce emissions, such that analyzing the air-quality impacts from oil or gas combustion could inform BLM's decision on *which lands* are available to lease at stage one, *which leases* to sell at stage two, and *which conditions* are necessary in a permit to drill at stage three under the controlling statutory scheme.[3] But, as discussed next, some courts have required this level of speculation and analysis, notwithstanding *Public Citizen*'s limitations.

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3. Under the Clean Air Act, Congress expressly delegated the authority to regulate air quality to the States and the Environmental Protection Agency, not BLM. *See* 42 U.S.C. §§ 7407(a), 7410(a)(1), 7410(c)(1). That is why, in a recent rulemaking aimed at disincentivizing the loss of gas during oil-and-gas production, BLM disclaimed authority to regulate air pollution and human health. *See Waste Prevention, Production Subject to Royalties, and Resource Conservation*, 89 Fed. Reg. 25,378, 25,394 (Apr. 10, 2024) ("BLM is not regulating air quality in this rule.... [A]ir pollution and its connection to human health and welfare ... is the primary responsibility of the [Environmental Protection Agency], States, and local governments.").

B. Despite *Public Citizen*'s Instruction that an Agency's Regulatory Authority Matters, Some Courts Have Improperly Expanded Interior's NEPA-Review Requirements.

In early NEPA cases, the Court emphasized the need to consider "the scope of the agency's statutory responsibility" when determining whether the agency complied with NEPA. *E.g.*, *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 550–53 (1978) (agency's selection of alternatives in NEPA analysis was "judged in ... light ... of its statutory authority"); *see also* Pet'rs' Br. 24–25. And in the years following *Public Citizen*, courts generally acknowledged that agencies were required to consider only those effects that fell within the agency's regulatory jurisdiction or that were proximately caused by—not merely within the "but for" causal chain of—the acting agency's decision. *See* Pet'rs' Br. 5–6; *see also*, *e.g.*, *Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177, 197 (4th Cir. 2009) ("[agency] reasonably determined that a scope of NEPA analysis extending beyond [its] limited jurisdiction ... would encroach on the regulatory authority of [another agency]"); *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005) ("[I]t is doubtful that an environmental effect may be considered as proximately caused by the action of a particular federal regulator if that effect is directly caused by the action of another government entity over which the regulator has no control.").

However, as the effects of greenhouse-gas emissions and climate change have been increasingly debated, and the Circuit Courts have diverged on how they interpret *Public Citizen*, *see* Pet'rs' Br. 5–6, agencies and courts alike have been "forced to confront this global

environmental issue" with "little direction," *350 Mont. v. Haaland*, 50 F.4th 1254, 1281 (9th Cir. 2022) (Nelson, J., dissenting), leading to "mixed messaging" on what NEPA requires of agencies, *Diné Citizens Against Ruining Our Env't v. Haaland*, 59 F.4th 1016, 1040 (10th Cir. 2023).

At first, courts made no attempt to wade into the issue. *See*, *e.g.*, *Seattle Audubon Soc'y v. Lyons*, 871 F. Supp. 1291, 1324 (W.D. Wash. 1994) (summarily rejecting climate-change challenge); *Audubon Naturalist Soc'y of the Cent. Atl. States, Inc. v. U.S. Dep't of Transp.*, 524 F. Supp. 2d 642, 708 (D. Md. 2007) (affirming where agency explained it "believed it was not useful to consider greenhouse gas emissions" (internal quotations omitted)).

By the mid-2000s, Interior began analyzing, to a limited degree, climate-change impacts in its oil-and-gas and coal-related NEPA documents. These analyses were record-based and avoided speculations—and they were uniformly upheld. *See*, *e.g.*, *Nat'l Audubon Soc'y v. Kempthorne*, 2006 U.S. Dist. LEXIS 110152, at *28–31 (D. Alaska Sept. 25, 2006) (in upholding analysis for oil-and-gas leases, observing that "[a]ny attempted delineation or quantification of the effects of global climate change would be highly speculative" and noting plaintiffs agreed that "BLM was not required to develop information about global climate change other than what was in the record"); *WildEarth Guardians v. Jewell*, 738 F.3d 298, 308–11 (D.C. Cir. 2013) (affirming BLM's analysis of greenhouse-gas emissions for coal lease where BLM determined that projecting future emissions was too speculative).

A shift began in 2014, as anti-fossil-fuel groups achieved several judicial wins requiring expanded NEPA

analyses on remand, forcing agencies to consider global-climate-change impacts, utilize tools to monetize the social cost of carbon emissions (or explain why those tools were not used), quantify projected future greenhouse-gas emissions, evaluate greenhouse-gas effects of downstream transportation and combustion of oil-and-gas, and much more. *See, e.g.*, *High Country Conservation Advocs. v. U.S. Forest Serv.*, 52 F. Supp. 3d 1174, 1193 (D. Colo. 2014) (holding Interior failed to adequately explain "reasons for not using ... the social cost of carbon protocol to quantify the cost of [greenhouse-gas] emissions"); *Mont. Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1090–94 (D. Mont. 2017) (holding Interior failed to adequately consider downstream rail transportation and coal-combustion impacts—ignoring Interior's *Public Citizen* argument that these effects "fall[ ] outside the scope of the Secretary's authority" and such analyses "would be speculative" given uncertainty as to ultimate "combustion locations ... and emissions controls" in place).

After these early successes, the anti-oil groups increasingly deployed NEPA to challenge nearly every significant mineral-development project approved by Interior, and they continued to succeed—in large part because courts were ignoring *Public Citizen*—by following the example set by *Sierra Club v. Federal Energy Regulatory Commission*, 867 F.3d 1357 (D.C. Cir. 2017) ("*Sabal Trail*"). In *Sabal Trail*, the D.C. Circuit required consideration of downstream effects regulated by other State and federal agencies because (a) the effects were "reasonably foreseeable," and (b) even if outside the action agency's regulatory authority, the action agency could "consider" the effects under NEPA because it could "deny" the action if it "would be too harmful to the

environment." *Id.* at 1372–73. Unfortunately, the court provided no guidance on how an agency could accomplish this impossible task.

The first oil-and-gas decision applying the *Sabal Trail* sidestep was *WildEarth Guardians v. Zinke*, 368 F. Supp. 3d 41, 55, 67–77 (D.D.C. 2019). In that case, plaintiffs challenged BLM's issuance of oil-and-gas leases covering 460,000 acres across several Western States for the agency's alleged failure to adequately quantify and analyze greenhouse-gas emissions from future, yet-to-be-proposed oil-and-gas drilling operations and future end-use consumption of the petroleum that might be produced. *Id.* Interior argued that under *Public Citizen*, end-use greenhouse-gas emissions are not an indirect effect of oil-and-gas leasing and, even if they are, BLM's analysis of the emissions satisfied NEPA. *Id.* at 72. Relying on the D.C. Circuit's skewed reading of *Public Citizen* in *Sabal Trail*, the court determined that NEPA required Interior to analyze the "[d]ownstream use of oil and gas, and the resulting [greenhouse-gas] emissions" as an indirect effect of leasing. *Id.* at 73–75 (citing *Sabal Trail*, 867 F.3d at 1373). Ultimately, the court held that the agency's analysis was deficient and remanded for further analysis. *Id.* at 85.[4]

4. BLM prepared supplemental NEPA, but plaintiffs brought another challenge repeating many of the same claims. *See WildEarth Guardians v. Bernhardt*, 502 F. Supp. 3d 237, 245–47 (D.D.C. 2020). After the court again found NEPA deficiencies (after it ignored *Public Citizen*), *see id.* at 244–59, and ordered another remand, *id.* at 259, plaintiffs and BLM eventually executed a settlement agreement by which the agency agreed to conduct additional NEPA analysis for the challenged (as well as several other) leasing decisions. BLM issued a draft supplemental NEPA analysis in November 2022,

But as the Eleventh Circuit explains, the *Sabal Trail* "test" runs afoul of *Public Citizen* and turns an agency into a "de facto environmental-policy czar" that can kill a project after considering distant and often speculative effects over which the agency has no statutory or regulatory authority, if the agency somehow determines certain environmental harms are too great. *See Ctr. for Biological Diversity v. U.S. Army Corps of Eng'rs*, 941 F.3d 1288, 1298–1300 (11th Cir. 2019).

This is the unspoken result of the *WildEarth Guardians* decision. 368 F. Supp. 3d at 73. The court gave BLM an environmental-policy-based power to disregard Congress's clear instruction that the agency must manage public lands to "foster ... development of " federal oil-and-gas reserves to support the nation's "industrial, security and environmental needs." 30 U.S.C. § 21a; *see* Argument Section I.A, *supra*. By sidestepping *Public Citizen*, the court cleared the way for BLM to shirk its statutory duty to issue or affirm oil-and-gas leases if, based on its expanded NEPA analysis alone, the agency determines that the end-use of the oil and gas is too environmentally harmful. *See WildEarth Guardians*, 368 F. Supp. 3d at 73. The Congresses that passed NEPA, the Mineral Leasing Act, the Mining and Minerals Policy Act, and FLPMA never intended this result. Indeed, BLM is considering cancelling 3,600 leases covering 3,433,615 acres across

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although it has yet to issue a final analysis. *See* U.S. Dep't of Interior, Bureau of Land Mgmt., *Supplemental Environmental Assessment Analysis for Greenhouse Gas Emissions Related to Oil and Gas Leasing* (2022), https://eplanning.blm.gov/public_projects/2022218/200537447/20069931/250076113/WEG%20EA.pdf ("*WildEarth Guardians Supplemental Environmental Assessment*").

seven States in the supplemental NEPA analysis it prepared to evaluate the sole issue of greenhouse-gas emissions over whose effects it has no authority to control.[5]

Such a reading of NEPA is beyond the pale. NEPA "does not expand the jurisdiction of an agency beyond that set forth in its organic statute." *Cape May Greene, Inc. v. Warren*, 698 F.2d 179, 188 (3d Cir. 1983). As much as some advocates and courts wish to re-write *Public Citizen* and turn agencies into environmental-policy czars, Congress simply did not intend for NEPA to "confer unlimited power on the agencies." *Id.* NEPA does not "support ... an agency taking substantive action beyond that set forth in its enabling act." *Id.*

Unfortunately, the *WildEarth Guardians* decision is only *one* of numerous recent decisions requiring an agency to consider downstream, far-removed, and speculative "effects" beyond the proximate effects of the action over which the agency has regulatory authority. Courts have lately required, for example:

- BLM to predict and consider foreign oil consumption and emissions in calculating the greenhouse-gas emissions of a proposed oil-and-gas development project in Alaska. *Sovereign Iñupiat for a Living Arctic v. U.S. Bureau of Land Mgmt.*, 555 F. Supp. 3d 739, 762–67 (D. Alaska 2021) (rejecting *Public Citizen* argument). While the court did not provide instruction on the "foreign" consumption information that

5. *See WildEarth Guardians Supplemental Environmental Assessment*, *supra* note 4, at 10.

BLM should consider, another judge aptly observed that such global climate-change analyses would presumably require agencies to make assumptions based on "the behavior of 200 other sovereign nations, the supply and demand projections of global energy models, or the personal energy usage decisions of 7 billion people worldwide." *350 Mont.*, 50 F.4th at 1281 (Nelson, J., dissenting).

- BLM to expressly "factor into its decision-making" for an oil-and-gas lease sale in Wyoming the "social cost" of greenhouse-gas emissions. *Wilderness Soc'y v. U.S. Dep't of Interior*, 2024 U.S. Dist. LEXIS 51011, at *84–92 (D.D.C. Mar. 22, 2024).

- The Bureau of Ocean Energy Management to predict and consider foreign oil consumption in calculating greenhouse-gas emissions for the sale of leases in the Gulf of Mexico. *Friends of the Earth v. Haaland*, 583 F. Supp. 3d 113, 136–44 (D.D.C. 2022), *rev'd on other grounds*, 2023 U.S. App. LEXIS 10554 (D.C. Cir. Apr. 28, 2023).

- The Office of Surface Mining Reclamation and Enforcement to evaluate the impacts of a power plant's withdrawal of water from a river on fish 60 miles away from the plant (and even further away from the permitted coal mine) when evaluating the effects of combusting coal from the proposed mining plan area. *Mont. Envtl. Info. Ctr. v. Haaland*, 2022 U.S. Dist. LEXIS 128280, at *29–30 (D. Mont. Feb. 11, 2022) (rejecting *Public*

Citizen argument that agency lacks authority over plant's water withdrawals).

- The Fish and Wildlife Services to consider how a third-party wind-power project, whose development was rendered "more probable" by a proposed and evaluated 225-mile electrical transmission line, might impact the beetles and cranes found at the wind-project site. *Or.-Cal. Trails Ass'n v. Walsh*, 467 F. Supp. 3d 1007, 1050–51, 1068 (D. Colo. 2020).

Seeking to stretch NEPA reviews to the breaking point, plaintiffs opposed to oil and gas want even more. Most recently, in *Center for Biological Diversity v. U.S. Department of Interior*, 2023 U.S. Dist. LEXIS 195761, at *4 (D.D.C. Nov. 1, 2023), plaintiffs brought an unprecedented omnibus challenge to BLM's more than 4,000 separate agency actions approving individual permits to develop existing oil-and-gas leases across New Mexico and Wyoming. Among their plethora of claims is the argument that in approving the permits, BLM was required but failed to consider the impacts of greenhouse-gas emissions on "climate-imperiled species" across the world, including Hawaiian songbirds that could allegedly "be extinct in the wild in three to five years due to the uphill spread of mosquitos and avian malaria caused by climate change." *See Ctr. for Bio. Diversity*, No. 22-cv-01716-TSC, Am. Compl., ECF No. 57 at ¶¶ 1, 4, 7, 9, 191–97 (D.D.C. Sept. 12, 2022). The district court rightly dismissed the case because plaintiffs could not establish standing. *See Ctr. for Bio. Diversity*, 2023 U.S. Dist. LEXIS 195761, at *15. Undeterred, the plaintiffs appealed to the D.C. Circuit. *See Ctr. for Bio. Diversity*

v. U.S. Dep't of Interior, No. 23-5308 (D.C. Cir. Dec. 22, 2023).

Because courts have ignored *Public Citizen*'s limits on the scope of NEPA, the analyses that courts have required Interior to undertake on remand have and will continue to spiral out of control. Regardless of whether BLM can "act on" information gathered about the oil- or gas-consumption trends in 200 other countries, or mosquitos in Hawaii, or some other downstream "effect" not yet imagined by anti-fossil-fuel groups, some court will nonetheless fault the agency for not analyzing that effect in sufficient detail to "inform" its decision-making process.

A decision from this Court affirming *Eagle County* would further expand NEPA and, ultimately, thwart NEPA's fundamental goals.

II. Expanded NEPA Reviews—Unbounded by *Public Citizen*—Fail to Serve NEPA's Fundamental Goals.

The Court in *Public Citizen* wisely limited the scope of NEPA based on "the underlying policies behind NEPA and Congress' intent, as informed by the 'rule of reason.'" 541 U.S. at 768.

NEPA is intended to promote "the understanding of the ecological systems and natural resources important to" the United States. 42 U.S.C. § 4321. Environmental analyses that comply with NEPA serve two fundamental purposes: (1) ensuring that agencies make informed decisions after considering the environmental impacts of the proposed action; and (2) guaranteeing that relevant information is made available to the public. *Robertson*,

490 U.S. at 349. Critically, NEPA is a procedural statute; it "does not mandate particular results." *Id.* at 350.

In directing agencies to consider "objectives of environmental management," Congress did not intend for environmental considerations to override federal agencies' other priorities and project goals. Staff of S. Comm. on Interior and Insular Affairs and H. Comm. on Science and Astronautics, 90th Cong., *Congressional White Paper on a National Policy for the Environment*, at 15 (Comm. Print 1968). Nor did Congress intend for NEPA's procedures to "unreasonably delay the processing of Federal proposals." H.R. Rep. No. 91-765, at 8 (1969).

Expanded NEPA reviews—like that required by *Eagle County*—defeat Congress's intent in two significant ways. First, they require agencies to amass voluminous information that have no bearing on the agencies' decision-making authority. Second, they serve as a tool, for agencies and project opponents alike, to delay—and potentially kill—projects.

1. Expanded reviews require agencies to wastefully evaluate "effects" that fail to inform their decision-making processes. As discussed above, successful NEPA challenges often require agencies on remand to consider additional effects, or certain effects in more detail—even if the agency took the position that it had no statutory authority to act on or prevent the identified effect. *See* Argument Section I.B, *supra*. Nonetheless, "[w]hen lawsuits successfully kill a project, the rulings explicitly state that a NEPA document failed to account for some environmental impact, forcing future agency reviews to

analyze that impact."[6] One lawsuit, therefore, can create a one-way ratchet affecting numerous federal decisions and have a reverberating effect. *Id.*

In response, agencies seek to "litigation-proof " their NEPA documents, "increasing costs and time but not necessarily quality" of their analyses.[7] As a result, final environmental impact statements have bloated from a handful of pages in the early 1970s to an average of about 661 pages.[8]

But NEPA's purpose was never "to generate paperwork—even excellent paperwork," 40 C.F.R. § 1500.1(c), just for the sake of insulating a review from legal challenge. Its purpose is to promote informed decision-making by government officials. *Public Citizen*, 541 U.S. at 768–69. That is why President Biden attempted to limit the size of agencies' NEPA documents through the Fiscal Responsibility Act. *See* 42 U.S.C. § 4336a(e). Now, environmental impact statements are generally limited to 150 pages and environmental assessments are limited to 75 pages, not counting appendices. *Id.* Yet agencies, apparently, view the statutory page limits as optional—

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6. Aidan Mackenzie & Santi Ruiz, *No, NEPA Really Is a Problem for Clean Energy*, Institute for Progress (Aug. 17, 2023), https://ifp.org/no-nepa-really-is-a-problem-for-clean-energy/.

7. Council on Envtl. Quality, Exec. Office of the President, *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years*, at iii (1997), https://ceq.doe.gov/docs/ceq-publications/nepa25fn.pdf.

8. *See Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 43,304, 43,309 (July 16, 2020).

following the "more is better" approach.[9] Understandably so. If courts require agencies to evaluate *all* "reasonably foreseeable effects" no matter the statutory limits in play, *see Sabal Trail*, 867 F.3d at 1373, an agency cannot do so in 150 pages.

Reaffirming *Public Citizen* will further NEPA's goal of focusing NEPA documents on the information that truly matters to an agency's decision-making, and further the Fiscal Responsibility Act's streamlining goal.

2. NEPA reviews and ensuing litigation have become potent tools—for agencies and opponents—to delay projects. Agencies drive the NEPA process and, therefore, can dictate how fast or slow the process proceeds.[10] Between 2010 and 2018, the average environmental impact statement took 4.5 years to complete, and 25% of them took more than 6 years.[11]

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9. *See*, *e.g.*, U.S. Dep't of Interior, Bureau of Land Mgmt., *Bald Mountain Mine Plan of Operations Amendment Juniper Project Final Environmental Impact Statement* (2024), App. K, https://eplanning.blm.gov/public_projects/2011567/200507677/20111331/251011322/App_K_FRA_Conformance.pdf (claiming compliance with page limits despite publishing 502-page environmental impact statement plus over 630 pages in appendices).

10. *See* Council on Envtl. Quality, Exec. Office of the President, *supra* note 7, at 22 ("agencies often have different (sometimes conflicting) timetables [and] requirements").

11. *See* Council on Envtl. Quality, Exec. Office of the President, *Environmental Impact Statement Timelines (2010-2018)* (2020), at 1, https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Report_2020-6-12.pdf.

Trying to rein in ever-expanding NEPA timelines, the Fiscal Responsibility Act set reasonable deadlines. *See* 42 U.S.C. § 4336a(g) (two years for environmental impact statements and one year for environmental assessments). Like the page limits, however, the deadlines have also been ignored. For example, a Montana coal mine recently sued the Office of Surface Mining Reclamation and Enforcement to enforce the two-year deadline for preparing an environmental impact statement for a mining plan because the agency's current NEPA schedule exceeds two years by 19 months. *See Signal Peak Energy, LLC v. Haaland*, 2024 U.S. Dist. LEXIS 149325, at *5 (Aug. 21, 2024); *see also The Falkirk Mining Co. v. U.S. Dep't of Interior*, No. 24-cv-00040-DLH-CRH, First Am. Compl., ECF No. 9, ¶ 17 (D.N.D. Apr. 4, 2024) (filing suit because BLM failed to complete an environmental assessment for a coal lease in over four years).

Lawsuits brought by project opponents also affect the timeline of NEPA analyses. Often, successive lawsuits repeatedly challenging the NEPA work for the same agency approval can mean that an approval granted over a decade ago remains at risk of reversal. For example, based on the *WildEarth Guardians* settlement, BLM issued a draft supplemental NEPA analysis for the challenged leases over a year-and-a-half ago, in November 2022.[12] It has not yet released the final analysis. Meanwhile, the leases involved in that case—some issued close to ten

12. *See generally WildEarth Guardians Supplemental Environmental Assessment*, *supra* note 4.

years ago[13]—are still at risk of cancellation. And some of those *same* leases are now the subject of a new challenge filed in Utah—prolonging the uncertainty. *See S. Utah Wilderness All. v. U.S. Dep't of Interior*, No. 2:23-cv-804, Compl., ECF No. 1 (D. Utah Nov. 3, 2023).

A lengthy saga also is playing out for a Montana coal mine. Mining company Signal Peak filed its application to lease an area of federal coal at its existing mine in 2008. *Mont. Envtl. Info. Ctr. v. U.S. Office of Surface Mining*, 274 F. Supp. 3d 1074, 1083 (D. Mont. 2017). BLM's NEPA work for the leasing decision was challenged and ultimately affirmed in 2018. *N. Plains Res. Council, Inc. v. U.S. Bureau of Land Mgmt.*, 725 F. App'x 527, 529–31 (9th Cir. 2018). In 2012, Signal Peak applied for a mining-plan approval; it too was challenged—repeatedly. *Mont. Envtl. Info. Ctr.*, 274 F. Supp. 3d at 1083–84; *350 Mont. v. Bernhardt*, 443 F. Supp. 3d 1185, 1190 (D. Mont. 2020). Almost sixteen years later, Signal Peak is still precluded from mining the area. *See 350 Mont.*, 50 F.4th at 1273. And the agency has significantly delayed completing the required NEPA on remand, despite the two-year deadline. *See Signal Peak Energy*, 2024 U.S. Dist. LEXIS 149325, at *5 (deadline expires in December 2024 but agency's schedule projects NEPA will be completed in May 2026). What is worse, under a recent court ruling, Signal Peak cannot do anything about the delay until the agency misses the deadline because, until then, the mine's claim under the Fiscal Responsibility Act is prudentially unripe. *Id.* at *25–28.

13. *See id.*, App. D (listing leases sold as far back as February 2015).

The mine's story is not uncommon. Ten major infrastructure projects, reflecting $34 billion in capital expenditures, were cancelled, stalled, or were at risk of cancellation due to permitting and judicial-review delays in recent years.[14]

Oil-and-gas and mining projects are not the only ones to suffer because of long NEPA reviews. Extended NEPA disrupt "clean" energy projects too, including onshore and offshore wind facilities, solar farms, geothermal power plants, transmission lines, and mining permits for copper and lithium—critical minerals for "clean" energy.[15] According to 2021 data, 42% of the Department of Energy's active NEPA reviews were for clean-energy, transmission, or conservation projects, while only 15% were for fossil-fuel projects.[16]

Regardless of the kind of project, these enormous and costly delays frustrate NEPA's purpose. More significantly, these delays in federal permitting and approvals of oil-and-gas, critical-mineral, renewable-

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14. *See* Rystad Energy, *API's "10 in 2022" Policy Plan, Quantification of Policy Impacts*, at 26–27 (2022), https://www.api.org/-/media/files/misc/2022/11/rystad-energy-apis-10-in-2022-policy-plan-quantification-of-policy-impacts.pdf.

15. Mackenzie & Ruiz, *supra* note 6; *see also* Michael Bennon & Devon Wilson, *NEPA Litigation Over Large Energy and Transport Infrastructure Projects*, 53 Envtl. L. Rep. 10836 (Oct. 2, 2023).

16. *See* Philip Rossetti, R Street Policy Study No. 234, *Addressing NEPA-Related Infrastructure Delays*, at 1, 4 (2021), https://www.rstreet.org/wp-content/uploads/2021/07/FINAL_RSTREET234.pdf.

energy, infrastructure, and other projects cause numerous significant harms—and not just to those supporting the projects, as discussed next.

III. Reaffirming *Public Citizen*'s Limits Will Lessen Many Harms That Expanded NEPA Reviews Cause Agencies, Project Developers, and the Economy.

Expanded, wasteful NEPA analyses, and permitting and litigation delays have serious repercussions, including increased project costs, litigation risks, waterfalls of permitting holdups, and significant regulatory uncertainty. These hurt developers, the thousands of employees and contractors they employ, and the economies they and their projects support and energize. Further, as applied to the oil-and-gas and energy industries, expansive, costly, and languishing NEPA reviews also threaten America's energy independence and national security.

Direct and Indirect Costs. To begin, agencies and project developers must spend millions of dollars to prepare "litigation-proof" NEPA documents to analyze effects that have no bearing on their decision-making process—then they must repeat that effort in preparing supplemental NEPA analyses when courts inevitably hold that their original analyses are not enough.

NEPA is not cheap—and requiring expanded reviews only exacerbates the cost. The Department of Energy spent over $18 million to prepare 42 environmental assessments between 2013 and 2016.[17] Just last year, BLM

17. *See* U.S. Dep't of Energy, *National Environmental Policy Act Lessons Learned: Quarterly Report*, at 16 (Dec.

spent $8.9 million to prepare a *draft*—not even final—environmental impact statement.[18] Even assuming, as estimated in 2020, that the federal government prepares 10,000 environmental assessments every year at a conservative price tag of $100,000 each, the total direct costs would be a staggering $1 billion.[19] *And those are just the direct costs. There are also billions of dollars allocated to indirect costs.* NEPA reviews also demand the full-time efforts of hundreds or thousands of federal employees and contractors in every federal agency. Developers and project sponsors seeking federal funds or

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2013), https://www.energy.gov/sites/default/files/2013/12/f5/LLQR-2013-Q4.pdf; U.S. Dep't of Energy, *National Environmental Policy Act Lessons Learned: Quarterly Report*, at 13 (Dec. 2014), https://www.energy.gov/sites/default/files/2014/12/f19/DecemberLLQR_2014.pdf; U.S. Dep't of Energy, *National Environmental Policy Act Lessons Learned: Quarterly Report*, at 13 (Dec. 2015), https://www.energy.gov/sites/default/files/2015/12/f27/LLQR_Dec2015_12-1-15_FINALr2.pdf; U.S. Dep't of Energy, *National Environmental Policy Act Lessons Learned: Quarterly Report*, at 23 (Dec. 2016), https://www.energy.gov/sites/default/files/2016/12/f34/LLQR_2016_Q4.pdf.

18. *See* U.S. Dep't of Interior, Bureau of Land Mgmt., *Rock Springs Field Office Draft Resource Management Plan Revision and Draft Environmental Impact Statement*, at 1 (2023), https://eplanning.blm.gov/public_projects/13853/200030619/20084073/250090255/Volume%201_Rock%20Springs%20RMP%20Revision%20Draft%20EIS_v2.pdf.

19. Council on Envtl. Quality, Exec. Office of the President, *Fact Sheet: CEQ's Proposal to Modernize its NEPA Implementing Regulations* (2020), https://www.doi.gov/sites/doi.gov/files/uploads/8-nepa-ceq-factsheet-508.pdf; U.S. Gov't Accountability Office, GAO-14-369, *National Environmental Policy Act, Little Information Exists on NEPA Analyses* (2014), https://www.gao.gov/assets/gao-14-369.pdf.

approvals similarly incur massive expenditures to fulfill NEPA's requirements.

When NEPA documents are challenged (and few are not), the same parties must then spend additional, often vast sums on litigation. No one disputes that litigation is massively expensive—not only for the government but also for the project developer if it elects to intervene and defend approval of its project.

It bears consideration that the Equal Access to Justice Act allows certain categories of plaintiffs who successfully challenge a government decision to recover legal costs and attorney fees. *See* 28 U.S.C. § 2412(d). Anti-fossil-fuel plaintiffs often take advantage of this. Following their success in the *WildEarth Guardians* cases, plaintiffs sought to recover their fees and costs from the government. *See WildEarth Guardians v. Jewell*, No. 1:16-cv-01724-RC, Interim Mot. for Att'y Fees, ECF No. 199 (D.D.C. July 9, 2021).

While the federal government—and thus American taxpayers—foots the bill for government attorneys and Equal Access to Justice fees, the project developer incurs its own fees and costs and has no way to recover them if plaintiffs' NEPA claims ultimately fail. The overwhelming costs of defending federal approvals have unfortunately become part of doing business on federal lands. These litigation costs, incurred to defend all manner of oil-and-gas, mineral, renewable-energy, and infrastructure projects in federal court are, like other regulatory expenses, ultimately passed on to the consumer.

Permitting Delays. Businesses, investors, and project developers, including oil-and-gas companies like *amicus*

curiae Anschutz, depend on predictable permitting processes to make informed investments and undertake business decisions. Uncertainty injected into the NEPA process by the *Eagle County* decision, and the other cases discussed in this brief that uniformly sidestep *Public Citizen*, jeopardizes Interior's ability to timely review and approve new lease sales or permits.[20] In other words, expanded NEPA makes the process of developing federal oil and gas expensive and unpredictable. That unpredictability impedes project development and increases costs to producers and consumers.[21]

Litigation Risks and Disruptive Vacaturs. NEPA litigation has the potential to severely hamper domestic oil-and-gas production, renewable-energy development, critical-mineral extraction, and other infrastructure projects. That is because, if successful, courts often vacate pre-existing project approvals pending additional NEPA analysis and, vacatur can be difficult—both logistically and financially—for agencies and project developers to implement.

In just the last few years, courts have vacated or suspended several federal-energy projects after finding deficiencies in the agencies' NEPA analyses. *See*, *e.g.*, *Friends of the Earth*, 583 F. Supp. 3d 113 (vacating 80.8 million-acre Gulf of Mexico lease sale); *Sovereign Iñupiat.*, 555 F. Supp. 3d 739 (vacating oil-and-gas development

20. *Cf.*, Michael J. Mortimer et al., *Environmental and Social Risks: Defensive National Environmental Policy Act in the US Forest Service*, J. of Forestry (Jan./Feb. 2011), www.fs.usda. gov/pnw/pubs/journals/pnw_2011_mortimer001.pdf.

21. *Cf.* Bennon & Wilson, *supra* note 15, at 10849.

project approval); *Mont. Wildlife Fed'n v. Bernhardt*, 2022 U.S. Dist. LEXIS 44080 (D. Mont. Mar. 11, 2022) (vacating multi-state oil-and-gas lease sale); *W. Watersheds Project v. Zinke*, 441 F. Supp. 3d 1042 (D. Idaho 2020) (same);[22] *Ctr. for Bio. Diversity v. Bernhardt*, 982 F.3d 723 (9th Cir. 2020) (vacating approval of offshore oil-and-gas production facility); *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880 (D. Mont. 2020) (vacating oil-and-gas leases in Montana); *San Juan Citizens All. v. U.S. Bureau of Land Mgmt.*, 326 F. Supp. 3d 1227 (D.N.M. 2018) (vacating oil-and-gas leases in New Mexico).

Remedies like these—upending oil-and-gas and other projects—creates a landscape of significant uncertainty and instability that hampers investment in projects that depend on federal minerals and federal approvals.

Business and Economic Harms. When courts upend projects, they often derail companies' lease-development and mineral-production operations that are already well in motion. That can slam the door on companies' logistically complex and economically vulnerable business models.

In the oil-and-gas industry, lease-development is generally a multi-year endeavor that requires overlapping resources devoted to numerous wells, as opposed to discretely developing one well. This type of interconnected program requires companies to mobilize large and diverse teams of contractors that include drill-rig operators,

22. The court later stayed vacatur of the leases pending appeal but suspended operations and production on those leases. *W. Watersheds Project v. Zinke*, 2020 U.S. Dist. LEXIS 85203, at *16 (D. Idaho May 12, 2020).

engineers, construction companies, water, and other service providers. When a court vacates oil-and-gas leases or drilling permits, that decision not only wreaks havoc on a large and interconnected lease-development operation, but also leaves the vendors and contractors without meaningful jobs. *See*, *e.g.*, *Diné Citizens Against Ruining Our Env't v. Jewell*, 2015 U.S. Dist. LEXIS 109986, at *161 (D.N.M. Aug. 14, 2015) ("The oil-and-gas industry is an enormous job creator and economic engine ... and shutting down portions of it based on speculation about unproven environmental harms is against the public interest."), *aff'd*, 839 F.3d 1276 (10th Cir. 2016).

Halting oil-and-gas and mineral production on federal lands also robs the government of federal royalties on production, 50% of which is funneled back to the States where the minerals are produced. *See* 30 U.S.C. § 191(c) ("50 percent ... shall be paid by the Secretary of the Treasury to the State ... within the boundaries of which the leased land is located or the deposits were derived."). Most of this royalty money goes to "those subdivisions of the State socially or economically impacted by development of minerals" for "(i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service." *Id.* § 191(a).

Energy Independence and National Security. Responsible development of energy resources on federal lands is critical to meet the growing demand for affordable, reliable energy while reducing greenhouse-gas emissions. Due in large part to energy produced on federal lands, the United States has become the leading petroleum supplier

in the world.[23] It has thereby deterred the Organization of the Petroleum Exporting Countries from cutting its own production to increase prices.[24]

Discouraging domestic production inevitably results in America's greater dependence on foreign sources of oil and gas, produced in jurisdictions with fewer and less-protective environmental laws.[25] The courts' increasingly drastic remedies, ostensibly designed to cure only procedural NEPA deficiencies, risk eroding the country's competitive advantage in the global marketplace for energy, and can alter global geopolitics: reducing the energy security of the U.S. and its allies by forcing dependence on foreign—and often politically and economically unfavorable—sources.

Preventing domestic energy production also contravenes congressional intent and the public interest.

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23. *See* U.S. Energy Information Administration, *Frequently Asked Questions* (2024), https://www.eia.gov/tools/faqs/faq.php?id=709&t=6.

24. *See* Timothy J. Considine, *The Fiscal and Economic Impacts of Federal Onshore Oil and Gas Lease Moratorium and Drilling Ban Policies* xi (2020), https://www.eoriwyoming.org/projects-resources/publications/307-the-fiscal-and-economic-impacts-of-federal-onshore-oil-and-gas-lease-moratorium-and-drilling-ban-policies/viewdocument/307.

25. *See WildEarth Guardians Supplemental Environmental Assessment*, *supra* note 4, at 26 (citing U.S. Energy Information Administration 2021 Annual Energy Outlook); David Kreutzer & Paige Lambermont, *The Environmental Quality Index: Environmental Quality Weighted Oil and Gas Production*, at 6–8 (Feb. 2023), https://www.instituteforenergyresearch.org/wp-content/uploads/2023/02/IER-EQI-2023.pdf.

The Energy Policy Act of 2005 provides that it is the intent of Congress to "ensure jobs for our future with secure, affordable, and reliable energy." Pub. L. No. 109-58, pmbl., 119 Stat. 594 (2005). Exploration and development of oil-and-gas on public lands is also consistent with executive orders from presidents on both sides of the political aisle. *See Actions To Expedite Energy-Related Projects*, 66 Fed. Reg. 28,357 (May 22, 2001) ("The increased production and transmission of energy in a safe and environmentally sound manner is essential to the well-being of the American people."); *Promoting Energy Independence and Economic Growth*, 82 Fed. Reg. 16,093 (Mar. 31, 2017) ("It is in the national interest to promote clean and safe development of our Nation's vast energy resources" and "the prudent development of these natural resources is essential to ensuring the Nation's geopolitical security.").

CONCLUSION

Amicus curiae Anschutz Exploration Corporation respectfully requests that the Court reverse *Eagle County* and reaffirm *Public Citizen*'s appropriate limits on NEPA.

Respectfully submitted,

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