NATIVE AMERICAN RIGHTS FUND

EXECUTIVE DIRECTOR
JOHN E. ECHOHAWK

DEPUTY DIRECTOR
MATTHEW L. CAMPBELL

August 4, 2024

VIA REGULATIONS.GOV
FEDERAL E-RULEMAKING PORTAL

Doug Burgum
Secretary of the Interior
U.S. Department of the Interior
1600 Pennsylvania Avenue NW
Washington, DC 20500

ATTN: Docket No. DOI-2025-0004

RE: National Environmental Policy Act Implementing Regulations, 90 Fed Reg. 29498 (Jul. 3, 2025) (Docket No. DOI-2025-0004) and Handbook of NEPA Implementing Procedures (516 DM 1).

The Honorable Secretary Burgum:

On behalf of Bay Mills Indian Community, Chilkat Indian Village (Klukwan), Confederated Tribes of the Colville Reservation, Igiugig Village, Indian Peaks Band of Paiute Indians of Utah, Shoshone-Bannock Tribes, and National Association of Tribal Historic Preservation Officers, this letter submits comments on interim final regulations published at 90 Federal Register 29498 on July 3, 2025 ("Interim Final Rule"), regarding both the implementation of the National Environmental Policy Act ("NEPA") by the Department of the Interior ("Department"), as well at the publication of the Department Handbook of National Environmental Policy Act Implementing Procedures (516 DM 1) ("Handbook").

As sovereign entities, Tribal Nations possess inherent rights to self-determination and governance, including the authority to manage their land and resources. While NEPA has not been as effective as Tribal Nations need it to be in identifying and analyzing impacts to Tribal resources, it has nevertheless provided a critical role in ensuring the voices of Tribal governments and communities are heard in the federal decision-making process, enabling Tribal Nations to advocate for our rights and interests in relation to the impacts from proposed federal actions on Tribal trust, cultural, and natural resources. To fulfill NEPA's goals, regulations should demand stronger involvement of Tribal Nations

ANCHORAGE, AK
745 W 4TH AVE, SUITE 502
ANCHORAGE AK 99501
(907) 276-0680

BOULDER, CO (main)
250 ARAPAHOE AVE
BOULDER CO 80203
(303) 447-8760

WASHINGTON, DC
950 F STREET NW, SUITE 1050
WASHINGTON DC 20004
(202) 785-4166

and broader consideration of impacts to Tribal communities. Instead, the Interim Final Rule and Handbook represent a rollback of a wide range of procedural protections put in place to ensure that Tribal Nations' and communities' interests are heard and meaningfully considered in NEPA's environmental review processes. This pullback of important procedural protections directly threatens Tribal sovereignty, lands, and natural resources; the cultural heritage of Tribal Nations; public health; environmental protection; and government transparency.

By stripping away NEPA's provisions for Tribal participation and comprehensive environmental review, the Department is effectively proposing to violate its federal trust responsibility to Tribal Nations to faithfully implement NEPA, thereby further entrenching systemic inequities in federal decision making that have marginalized Tribal communities.

This comment's signatories oppose the Interim Final Rule and the concurrent guidance published in the Department Handbook. Through these policy changes, the Department fails to uphold its obligations to conduct government-to-government consultations with Tribal Nations on the dismantling of NEPA, one of the most significant federal laws to directly impact Tribal lands, waters, and other cultural and environmental resources. The guidance that replaces long-standing NEPA procedural protections for Tribal input, and consideration of Tribal rights is empty of any recognition that Tribal Nations will be disproportionately negatively impacted by the changing—and inconsistent—approach federal agencies are taking to implementing NEPA. Specific issues are discussed below that highlight the inadequacies inherent in the Interim Final Rule and Handbook. This comment letter also fully incorporates Earthjustice's comments on this Interim Final Rule (Comment ID: DOI-2025-0004-5621).

I. The promulgation of the Department's Interim Final Rule without Tribal consultation violates Executive Order 13175 requirements.

The federal government has a duty to consult with Tribal Nations on federal actions that may have Tribal implications, as expressed in Executive Order 13175.[1] Tribal Nations routinely participate in the NEPA process as cooperating and lead agencies, and the parameters for the NEPA process have direct impacts on Tribal Nations' ability to protect Tribal environmental and cultural resources. This means that any changes to NEPA regulations have Tribal implications, triggering a consultation requirement.

The Interim Final Rule improperly side-steps this consultation obligation by attempting to define "Tribal implications" as only existing in relation to sections 5(b) (compliance costs) and section 5(c) (preempting Tribal law) of E.O. 13175. However, the language in E.O. 13175 for both sections 5(b) and 5(c) makes clear that compliance costs and preemption of Tribal law are emphasized and defined separately from "tribal implications."[2] "Policies that have tribal implications" is defined in Sec. 1(a) as "regulations ... and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." Furthermore, Sec. 5(a) plainly states that "[e]ach agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Yet, the substantial direct effects of the present rollback of the Department's NEPA implementing regulations include increased uncertainty and irregularity in the relationship between the federal government and Tribal Nations, yet the Department did not ensure meaningful and

[1] *Consultation and Coordination with Indian Tribal Governments*, 65 Fed. Reg. 67249 (Nov. 6, 2000) [hereinafter E.O. 13175].

[2] *See id.* at Sec. 5(b) ("...no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless…").

timely input by Tribal officials in the development of the Interim Final Rule. Moreover, the absence of consultation also perpetuates a cycle where the unique needs and perspectives of, and legal obligations to, Tribal Nations are overlooked. This results in policy decisions that undermine the ability of Tribal Nations to ensure appropriate consideration under NEPA of federally protected Tribal interests. The Department's failure to consult with Tribal Nations during the promulgation of the Interim Final Rule violates the letter and fundamental principles of E.O. 13175.

II. The Department's Interim Final Rule withdrawing the majority of its NEPA implementing regulations is a violation of its federal obligations to Tribal Nations.

The duty to uphold federally protected Tribal rights under treaties, executive orders, statutes and judicial determinations extends to federal agencies, including the Department, in the exercise of permitting decisions. *See, e.g., Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504, 1523 (W.D. Wash. 1988) (granting an injunction against the construction of a marina in consideration of the effect upon Indian treaty rights).

In implementing NEPA, federal agencies should honor their obligations to uphold federally protected Tribal rights under treaties, executive orders, statutes and judicial determinations, and should integrate and incorporate these rights as much as possible in such processes as rulemaking, guidance and policy development, permitting, and enforcement. These overlapping legal mandates are not contradictory and need not conflict; they are, and should be, mutually supportive and reinforcing. In fact, honoring federally protected Tribal rights can assist in achieving NEPA's mission and objectives, and properly applying NEPA and its implementing regulations can benefit, and supplement, the federal government's independent duties and obligation, originally established much earlier under the Constitution and long-standing federal Indian Law principles.

However, the lack of a robust environmental review process with early and meaningful Tribal participation in the Interim Rule will hinder Tribal Nations' ability to challenge harmful federal actions and protect Tribal lands, airs, and waters. It will likely lead to ill-informed decisions that could illegally infringe upon Tribal rights and territorial integrity, resulting in long-lasting environmental and social harm for Tribal communities, as well as potential litigation that could be avoided.

III. The Department's Interim Final Rule and concurrent guidance on NEPA implementation in the Handbook severely limit meaningful and timely engagement with Tribal Nations.

a. The removal of standalone requirements for early consultation with Tribal Nations is incompatible with E.O. 13175 and the Department's Policy on Consultation with Indian Tribes and Alaska Native Corporations.

Under the Council for Environmental Quality's ("CEQ") regulations, previously incorporated into the Department of the Interior's regulations at 43 C.F.R. § 46.10(a)(2), agencies were required to "consult early with appropriate State, Tribal, and local governments and with interested persons and organizations when their involvement is reasonably foreseeable," and to "use, as appropriate, the public engagement and scoping mechanisms in §§ 1501.9 and 1502.4 of this subchapter to inform consideration of the scope of the proposed action and determination of the level of NEPA review," including "[inviting] the participation of any likely affected Federal, State, Tribal, and local agencies and governments, as early as practicable, including, as appropriate, as cooperating agencies under § 1501.8 of this subchapter." 40 C.F.R. §§ 1501.2(b)(4)(ii), 1501.3(b), 1501.9(c)(1) (2024). The CEQ regulations stated that the purpose of government engagement in the environmental review process was "to identify the potentially affected Federal, State, Tribal, and local governments, invite them to

serve as cooperating agencies, as appropriate, and ensure that participating agencies have opportunities to engage in the environmental review process, as appropriate." § 1501.9(a) (2024). With the recission of the CEQ regulations and now, the recission of the majority of the Department of the Interior's own implementing regulations for NEPA, there is no longer any standalone regulation ensuring that Tribal consultation occurs early in any environmental review process.

Under the Department's Handbook, the agency does not provide guidance directing lead agencies to conduct outreach to affected Tribal Nations during the scoping process, prior to determining whether a federal action will require an environmental assessment or an environmental impact statement. With the recission of the agency's regulations implementing NEPA and the publication of the Handbook, it seems possible that an affected Tribal Nation may not receive notification or outreach to participate in an environmental assessment process at all, and that Tribal Nations may not be consulted as early in developing an environmental impact statement as they should be.

Early consultation with Tribal Nations is critical to appropriately inform and shape the environmental impact analysis. Lack of a standalone requirement to conduct early consultation with Tribal Nations will result in information regarding the environmental impacts of a federal action on Tribal environmental and cultural resources being siloed, rather than integrated into the analysis. Early Tribal consultation ensures that Tribal input helps shape the scope of analysis and the development of alternatives; without this early consultation, appropriate alternatives that address Tribal concerns will likely be inappropriately foreclosed.

The removal of the requirement to consult early in the environmental review process with affected Tribal Nations is incompatible with E.O. 13175 on Consultation and Coordination with Indian Tribal Governments, which requires consultation with Tribal Nations on a government-to-government basis when considering federal actions that have Tribal implications. It is also incompatible with the Department's Policy on Consultation with Indian Tribes and Alaska Native Corporations, which states that:

> It is the policy of DOI to recognize and fulfill its legal obligations to identify, protect, and conserve tribal trust resources; carry out its trust relationship with federally recognized Indian tribes and tribal members; and consult with tribes on a government-to-government basis whenever DOI plans or actions have tribal implications. All bureaus and offices shall comply with and participate in the consultation process in a manner that demonstrates a meaningful commitment and ensures continuity in the process. 512 DM 4.

Tribal Nations will continue to participate in environmental review processes as cooperating or lead agencies, and lead bureaus must invite Tribal Nations with jurisdiction or special expertise to participate, but the lead bureau has the discretion to determine what is considered special expertise. The removal of standalone requirements for government-to-government Tribal consultation is thus incompatible with E.O. 13175 and Department's Policy on Consultation with Indian Tribes and Alaska Native Corporations, and these requirements should be reinstated.

b. The removal of requirement to publish a notice of intent for an environmental assessment and to publish any draft pre-decisional materials, including draft Environmental Impact Statements and supplemental Environmental Impact Statements, directly undermines Tribal and public participation in NEPA processes.

The proposed recission and concurrent adopted guidance remove several significant requirements that

provide affected Tribal Nations and the broader public, including Tribal communities, with opportunities to engage and comment on the analyses that the agency will rely upon for its Record of Decision. If affected Tribal Nations are not given the opportunity to review each analysis and the implementing bureaus are not required to engage the public at all during the process of preparing an environment impact statement, the Department's regulations subvert the foundational premise that NEPA requires robust public participation. *See, e.g.*, *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) ("The very purpose of public issuance of an environmental impact statement is to provide a springboard for public comment.") (cleaned up); *Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1121 n.24 (9th Cir. 2010) (NEPA is a "democratic decisionmaking tool"); *Sierra Club v. U.S. Army Corps of Eng'rs*, 772 F.2d 1043, 1049 (2nd Cir. 1985) (the detailed statement NEPA requires serves "as an environmental full disclosure law so that the public can weigh a project's benefits against its environmental costs.").

The former CEQ regulations required agencies to request comments from "[a]ppropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards" and "State, Tribal, or local governments that may be affected by the proposed action" on the publication of the draft EIS. 40 C.F.R. § 1503.1(a)(2)(ii) (2024). Under the Department's proposed regulations and Handbook, the Department now states only that Responsible Officials will request the comments of affected Tribal Nations *at some point* "during the process of preparing an environmental impact statement," but does not mandate involvement at any particular stage. Sec. 2.1(b). Instead, the agency advises that a request for comments "may be undertaken at any time that is reasonable. . . and [will] *seek* to provide 30 days, *to the extent practicable*." Sec. 2.1(c) (emphasis added). Thus, if a Tribal Nation does not participate in a NEPA process as a cooperating agency, it may not receive any notification or outreach regarding the environmental analysis of a federal action until an environmental assessment is already completed or far along in the development of an environmental impact statement. Moreover, reducing the period of time that a Tribal Nation has to provide comments on an environmental impact statement from 45 days to, at most, 30 days, is a significant reduction that will further strain already limited Tribal resources and staff.[3] In practice, reviewing and commenting on an entire draft environmental impact statement in less than 30 days in a meaningful way is near impossible.

Many Tribal Nations do not have the resources to hire consultants or legal staff, and those Tribal Nations who do will have difficulty hiring the necessary support in a timely manner if they do not know at what stage in the process affected Tribal Nations will have an opportunity to review and comment on the environmental analysis. For example, a Tribal Nation may be interested in reviewing a hydrological study relied upon in an EIS for impacts on the Tribal Nation's water resources. If the Tribal Nation does not have a hydrologist on staff, it would need to be able to hire a hydrologist and the hydrologist would need sufficient time to review the study and provide analysis to the Tribal Nation for its comments. This entire process would take longer than 30 days, which means that many Tribal Nations will not have adequate opportunity to meaningfully participate in an environmental review process that significantly negatively affects their resources and rights. Moreover, although most Tribal Nations have strong technical staff and offer important technical advice that is regionally specific, Tribal staff resources are often stretched thin given the number of proposed projects that are undergoing regulatory review that affect the Tribal Nation. Advanced and meaningful Tribal consultation is an absolutely essential step in the NEPA process and demands adequate time to

[3] DOI, Department of Justice, and Department of the Army, "Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions," January 2017, p. 50, https://www.achp.gov/digital-library-section-106-landing/improving-tribal-consultation-and-tribal-involvement-federal; U.S. Government Accountability Office (GAO), Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects, GAO-19-22, March 2019, p. 24, https://www.gao.gov/products/gao-19-22.

complete.

c. The curtailment of lead agency obligations to cooperating agencies substantially limits the role of Tribal Nations as cooperating agencies in shaping analyses and alternatives.

The Department's Interim Final Rule and Handbook removes any legal obligations that the lead agency has toward cooperating agencies, aside from the bare bones obligation to invite eligible governmental entities. The lead agency is no longer required to: (i) request participation of cooperating agencies at the "earliest practicable time"; (ii) "consider any analysis or proposal created by a cooperating agency and, to the maximum extent practicable, use the environmental analysis, proposal, and information provided by cooperating agencies"; (iii) meet with cooperating agencies at their request; nor "determine the purpose and need, and alternatives in consultation" with the cooperating agencies. 40 C.F.R. § 1501.7(h)(1)-(4) (2024). One of the critical benefits of participating as a cooperating agency on an environmental review for Tribal Nations has been the ability to shape the analyses and alternatives. Eliminating the requirement for lead agencies to use the environmental analysis, proposal, and information provided by the cooperating agency significantly diminishes the ability of Tribal Nations to ensure that their own information and analysis of effects is incorporated into environmental review documents. This leaves Tribal rights and resources more vulnerable to damage. It also leaves Tribal Nations without procedural recourse, even when they take on the additional burden of participating as a cooperating agency.

In addition, in the preparation of both environmental assessments and environmental impact statements, the Department rescinds its regulation incorporating the CEQ definition of "purpose and need," which formerly required consultation with cooperating agencies. *Id.* The Department's Handbook now defines the statement of "purpose and need," which shapes what alternatives are considered, in relation to an applicant's goals: "When the proposed action concerns a bureau's duty to act on an application for authorization, the purpose and need for the proposed action will also be informed by the goals of the applicant." Sec. 1.5(b)(1)(i); 2.2. This changes the fundamental parameters of an environmental review. The range of alternatives assessed in the NEPA process will be narrowed to those that meet the applicant's goals, rather than the federal agency's goals as defined in consultation with cooperating agencies. This framework uses a purportedly procedural step to substantively elevate an applicant's interests over other interests, including Tribal interests.

Every aspect of the Department's regulatory recissions and guidance that strip mandated Tribal involvement and consideration of Tribal perspectives and analysis constitutes a violation of § 706 of the Administrative Procedures Act ("APA").

IV. The Department's revised regulations and accompanying guidance should reinstate references to Indigenous Knowledge as a basis for special expertise and reliable information.

Tribal natural resources on and off Tribal lands are not merely commodities to be exploited; they are vital to the cultural, spiritual, and economic fabric of Tribal communities. Tribal Nations hold a deep-rooted connection to the land, viewing it as a source of life, tradition, and identity. Further, Tribal Nations often possess valuable knowledge about local ecosystems that can complement scientific studies. Consulting with Tribal Nations ensures that this knowledge is integrated into environmental assessments, leading to more accurate and comprehensive understanding of potential impacts.

Tribal Nations possess Indigenous Knowledge of the ecosystems within the Tribal Nation's ancestral homelands, and this knowledge is vitally important in guiding resource management and protection, as

recognized by the Department in the *Joint Secretarial Order No. 3403 on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters* (Nov. 15, 2021).

The Handbook guidance does not incorporate any reference to agency reliance on Indigenous Knowledge. The CEQ regulations had required that, when analyzing the "affected environment," agencies "use high-quality information, including reliable data and resources, models, and Indigenous Knowledge, to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment, and when such information is incomplete or unavailable, provide relevant information consistent with [40 C.F.R.] § 1502.21." 40 C.F.R. § 1502.15 (2024). In addition, when identifying governments appropriate to invite to participate as cooperating agencies in an environmental review process based on jurisdiction and special expertise with respect to any environmental issue, the CEQ regulations stated that "[r]elevant special expertise may include Indigenous Knowledge." 40 C.F.R. § 1501.8(a) (2024). By leaving any reference or mention of Indigenous Knowledge out of the Handbook and instead referencing only "reliable data" without defining that term inclusively, *see* Sec. 1.2(b), the Department of the Interior is stripping away the express recognition, and thus protection, of the role that Indigenous Knowledge plays in stewarding the environment. Moreover, the Interim Rule, Sec. 3.7(b), states that:

> [w]hen a bureau is evaluating an action's reasonably foreseeable significant effects on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, the bureau will make clear in the relevant environmental document that such information is lacking and the bureau has decided not to rely on such data or information.

If a bureau responsible for an environmental review chooses not to rely on Indigenous Knowledge or a Tribal Nation chooses to limit what culturally sensitive, confidential information it shares with the bureau preparing the environmental review, as is its sovereign right, this lack of information might thus be justification for the federal government to ignore the relevant information and refuse to rely on such information in its assessment. In addition, by removing references to Indigenous Knowledge as a basis for a Tribal Nation's special expertise, the Department of the Interior is inappropriately signaling that it may not consistently require bureaus conducting environmental reviews under NEPA to invite or permit Tribal Nations to participate as cooperating agencies based on a Tribal Nation's Indigenous Knowledge of the proposed action's environmental effects.

In addition, the Department's Handbook advises that bureaus implementing NEPA should incorporate planning studies, analyses, and other documents into an environmental assessment or impact statement by reference, including a brief description of the content and relevance to the environmental document. Sec. 3.5(a). This guidance does not include parameters for the types of documents to be incorporated by reference, unlike the CEQ regulations, which stated that "[a]gencies shall not incorporate by reference material based on proprietary data that is not available for review and comment." 40 C.F.R. §1501.12 (2024). This presents concerns regarding the interpretation and translation of confidential Tribal knowledge.

V. The significantly narrowed scope of analysis required for environmental reviews threatens federally protected Tribal environmental and cultural resources and sacred places.

The Department's promulgation of this Interim Final Rule rescinding the majority of its regulations implementing NEPA, along with its concurrent publication of the Handbook, poses a specific threat to Tribal environmental and cultural resources and sacred places.

a. The Department's rollback of explicit consideration of adverse effects on Tribal rights and resources in significance determinations may result in an extensive reduction in analysis of the effects of projects that threaten Tribal sacred sites.

In the process of determining the appropriate level of NEPA review, the Department no longer explicitly requires analysis of adverse effects on: "Tribal sacred sites," "resources listed or eligible for listing in the National Register of Historic Places," "the degree to which the action may adversely affect communities with environmental justice concerns," or "the degree to which the action may adversely affect rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders." 40 C.F.R. §§ 1501.3(d)(2)(ii), (v), (vii), (viiii) (2024).

Instead, the Department signals that these considerations may not be consistently included in significance determinations. Under Section 1.2(b)(1) of the Department Handbook, the explicit guidance includes only analysis of: "any connected actions, the scope of the affected area (national, regional, or local), reasonably foreseeable trends and planned actions within that area, and the affected area's natural and cultural resources." The degree of the impact will be measured according to the following criteria: "(i) [b]oth short- and long-term effects; (ii) [b]oth beneficial and adverse effects; (iii) [e]ffects on public health and safety; (iv) [e]conomic effects; and (v) [e]ffects on the quality of life of the American people." Sec. 1.2(b)(2). Although Tribal rights and resources to be considered include natural and cultural resources, the lack of express regulatory requirements for analysis leaves a significant amount of discretion in a Responsible Official's hands. The lack of binding requirements means that consideration of Tribal rights and resources will not be implemented consistently, if at all. This shifts even more of the burden to Tribal Nations to ensure that Tribal rights are not being violated and that the Department's trust responsibility is being upheld.

Tribal Nations engage in the NEPA process in concert with Section 106 of the National Historic Preservation Act (NHPA) regulations in 36 C.F.R. § 800 *et seq.* to protect places that are important to our people and cultures. The Section 106 process must remain integrated at the earliest possible stage of the NEPA process, including analysis prior to the significance determination of effects of the proposed action on resources identified by Tribal Nations as eligible for the National Register of Historic Places. The Department's Handbook indicates that, in the absence of binding regulations, the integration of other federal permitting and authorization processes, such as the Section 106 process, need only be done at the "earliest *reasonable* time," seemingly leaving much more discretion in the hands of the implementing bureaus. Sec. 1.3(a) (emphasis added). This untethering of the Section 106 consultation process from the stages of the NEPA environmental review process threatens to cause direct harm to Tribal sacred sites and Properties of Traditional, Religious, and Cultural Importance (PTRCIs) within Tribal Nations' traditional and ancestral homelands. Tribal sacred sites are consistently threatened by proposed federal actions – from Oak Flat in Arizona, sacred to the Apache, to the Medicine Lake Highlands in California, sacred to the Pit River Tribe, to the Black Hills in South Dakota, sacred to the Sioux, Lakota, and other Tribal Nations, and the Bears Ears landscape in southeast Utah, of course. Any action to undermine the role of the NHPA Section 106 consultation process in environmental reviews under NEPA erodes the trust responsibility that federal agencies have to Tribal Nations to protect Tribal sacred and culturally significant sites under applicable treaties and NEPA's directive to "preserve important historic, cultural, and natural aspects of our national heritage." 42 U.S.C. 4331(b)(4).

b. The revision of the definition of "effects" or "impacts" undermines the core purposes of NEPA and conceals the accumulated environmental harm that Tribal Nations, in particular, have experienced over extended time.

Under the Interim Final Rule and Handbook, the Department no longer defines "effects" as

encompassing direct, indirect, and cumulative effects, nor as explicitly requiring an analysis of effects on Tribal resources. However, implementing agencies cannot satisfy NEPA's mandate to use "all practicable means and measures" to satisfy NEPA's policy and procedural requirements, including the requirements to act as "trustee of the environment for succeeding generations," to "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings," and to "preserve important historic, cultural, and natural aspects of our national heritage, without looking at indirect and cumulative impacts. *See* 42 U.S.C. §§ 4331(b)(1)-(2); (4).

The impact that this definitional change will have is enormous, and it will directly affect Tribal environmental and cultural resources that have been harmed by an accumulation of actions over time. The scope of effects considered "indirect" no longer expressly includes "growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." 40 C.F.R. 1508.1(i)(2) (2024). Moreover, unlike the prior regulations which stated that indirect effects included those "later in time or farther removed in distance, but are still reasonably foreseeable," *id.*, the Department signals that effects will "generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain," Sec. 6.1(j)(2). Instead, the Handbook's guidance on analysis now states that the effects must have a "reasonably close causal relationship" to the proposed action or action alternatives. Sec. 6.1(j).

In addition, previously, the cumulative effects from "other past, present, and reasonably foreseeable action" would be considered "regardless of what agency (federal or non-federal) or person undertakes such other actions." 40 C.F.R. 1508.1(i)(2) (2024). Under the new Handbook, the Department is providing guidance that it will not consider "those effects that the agency has no ability to prevent due to the limits of its regulatory authority, or that would occur regardless of the proposed action, or that would need to be initiated by a third party." Sec. 6.1(j)(2). Moreover, the guidance indicates that bureaus have the discretion to not analyze environmental effects from other projects "separate in time, or separate in place," so long as the agency documents "where and how it drew a reasonable and manageable line" relating to its consideration of any environmental effects and that such a line "would assist it in reasoned decision making." Sec. 1.5(d)(3); 2.3(b)(3).

Eliminating "cumulative effects" and "indirect effects" analysis represents a significant departure from existing NEPA case law, guidance, and practice and is incompatible with NEPA's mandates. In *Kleppe v. Sierra Club*, the Supreme Court stated that consideration of cumulative effects may be necessary to comply with NEPA's statutory mandate that agencies use "all practicable means and measures" to satisfy NEPA's policy and procedural requirements, and that, for example, "when several proposals [] that will have cumulative or synergistic environmental impact[s] upon a region are pending concurrently before an agency, their environmental consequences must be considered together." 427 U.S. 390, 409-10 (1976). Other cases have, independently of regulatory language, addressed the need for analysis of "cumulative harm that results from [the proposed action's] contribution to existing adverse conditions or uses in the affected area." *Hanly v. Kleindienst*, 471 F.2d 823, 31 (2d Cir. 1972). This is distinct reasoning from the issue of proximate causation discussed by the Court in *Seven Cnty. Infrastructure Coalition v. Eagle Cnty., Colorado*. 145 S. Ct. 1497, 1515-16 (2025). Moreover, consideration of "cumulative" and "indirect" effects has proven to be an effective mechanism to ensure agencies take the "hard look" required by NEPA. *Te-Moak Tribe of W. Shoshone of Nevada v. U.S. Dept. of Interior*, 608 F.3d 592, 606 (9th Cir. 2010).

With this in mind, it is critical for the Department to recognize that it has only limited discretion to foreclose consideration of reasonably foreseeable effects, even considering the *Seven County* decision. The Department seems to be focused on limiting consideration of other separate projects over which it

has no control, but it cannot limit consideration of the proposed action's own effects within the context in which the project would be developed. Projects are not developed in a vacuum.

The removal of consideration of indirect and cumulative effects is particularly concerning for Tribal Nations. As previous comment letters on the recission of the CEQ regulations implementing NEPA have pointed out,

> "it is rare that one can point to a single specific action that dispositively impacted [Tribal] rights or resources, but it is common to identify multiple effects that cumulatively had overall major impacts. We are all too familiar with instances of "death by a thousand cuts." For example, dams did not—exclusively—drive historic salmon populations to the brink of extinction (and in some cases actually beyond it), but massive fish wheels, extensive water diversions, other habitat degradations, and multiple additional factors in combination with dams contributed to decimated salmon populations. Excluding cumulative effects from NEPA analysis is inconsistent with the law's goals of informed decision-making."[4]

In sum, these definitional changes to the categories of "effects" are arbitrary and capricious and violate NEPA's mandate that agencies use "all practicable means" to fulfill the purposes of the statute. As a result, Tribal Nations will be disproportionately impacted by increased environmental harms.

c. The Interim Final Rule and Handbook dangerously entrench a framework for climate denialism.

As the Department of the Interior recognized in publishing this interim final rule, "NEPA [] mandates that Federal agencies ensure the professional and scientific integrity of environmental documents [and] use reliable data and resources when carrying out NEPA." 90 Fed. Reg. 29498 (2025) (*citing* 42 U.S.C. 4332(2)(D)-(E)). Professional and scientific integrity requires recognition that humans have caused accelerating climate change, principally through emissions of greenhouse gases into the environment and that these changes have resulted in weather and climate extremes in every region across the globe.[5] The impacts of climate change are disproportionately felt by vulnerable communities, including Indigenous communities, across the globe.[6] Under NEPA, the primary way federal agencies have considered climate impacts is through analysis of indirect and cumulative impacts, although agencies were also directed to explicitly consider climate change-related effects, including a quantification of

---

[4] Confederated Tribes of the Umatilla Indian Reservation, CTUIR DNR Comments on the Council on Environmental Quality's "Interim Final Rule" removing CEQ's regulations implementing NEPA (Docket No. CEQ-2025-0002) (Mar. 27, 2025); *see also* National Congress of American Indians and National Association of Tribal Historic Preservation Officers, Removal of National Environmental Policy Act Implementing Regulations, 90 Fed Reg. 10610 (Feb. 25, 2025) (Docket No. CEQ-2025-0002) (Mar. 27, 2025) ("Through the piecemeal destruction of our cultural resources, Tribal Nations have witnessed deaths by a thousand cuts. Consider the more than 100 years of hydroelectric power generation in the Pacific Northwest, where cumulative impacts span "industrial development of the river . . . continued management for purposes of electric power generation, water supply, flood risk management, and barge transportation." This has resulted in a multiplicity of adverse impacts: the loss of salmon, which are central to Tribal identity, spirituality, and a primary source of sustenance; the displacement of people living near water bodies; the destruction of housing; ruination and inundation of cultural and religious sites, Tribal lands, and natural resources; the diminishment of Tribal members' ability to exercise treaty rights; and the rise of poverty in Tribal communities. Taken together, these impacts "threaten Tribal well-being, way of life, and, ultimately, sovereignty.") (internal citations omitted).

[5] H. Lee and J. Romero (eds.), *Summary for Policymakers*, in CLIMATE CHANGE 2023: SYNTHESIS REPORT. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, at 4-5 (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

[6] *Id.* at 5.

greenhouse gas emissions from the proposed action and alternatives, under the former CEQ regulations. *See* 40 C.F.R. §§ 1502.14(f); 1502.15(b); 1502.16(a)(5)-(6) (2024). By eliminating both the specific requirement to consider climate change-related effects and the framework for agency consideration of indirect and cumulative effects, this Interim Final Rule allows the government to approve environmentally destructive projects, such as oil pipelines, with no consideration of their contribution to climate change and resulting impacts to Tribal rights.

This is an arbitrary and capricious decision in direct violation of NEPA's statutory mandate to ensure professional and scientific integrity and to use reliable data under 42 U.S.C. 4332(2)(D)-(E), as well as of NEPA's statutory mandate to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations." 42. U.S.C. 4331(b)(1). Moreover, removing the requirement to consider the effects of climate change also puts communities, including Tribal communities, at risk by allowing agencies to fund projects that are less resilient to severe drought, stronger hurricanes, and more severe weather.

d. Reduced requirements for presentation and analysis of alternatives limits consideration of reasonable alternatives, including no action, based on impacts on Tribal rights and resources.

For environmental impact statements, the Handbook no longer instructs the Responsible Official to identify an "environmentally preferable alternative" or to include a "no action" alternative, which increases the likelihood that the alternative selected will cause harm to Tribal rights and resources. The CEQ regulations had required that the environmentally preferable alternative, to be identified in an environmental impact statement, would maximize environmental benefits, including "protecting, preserving, or enhancing historic, cultural, Tribal, and natural resources, including rights of Tribal Nations that have been reserved through treaties, statutes, or Executive Orders." 40 C.F.R. §1502.14(f) (2024). The regulations also required the alternatives analyzed in the environmental impact statement to include the "no action" alternative. *Id.* at (c).

The Handbook guidance now states that the bureaus are only required to analyze a "reasonable range of alternatives, that, in the bureau's expert judgement, are technically and economically feasible." Moreover, the Handbook advises that bureaus cannot take any actions concerning the proposed action while a NEPA review is ongoing that would "limit the choice of reasonable alternatives" or is not "independently justified and accompanied by an adequate environmental review." Sec. 1.3(b). If the "no action" alternative is not required to be included in the range of reasonable alternatives, then a bureau could take an action related to the proposed action with one fewer barrier: it would not be considered a limitation on the choice of reasonable alternatives to render the "no action" alternative obsolete if it is not being considered in the environmental review process. This is of particular concern to Tribal Nations whose participation in NEPA processes is based on protecting Tribal environmental and cultural resources that may be irreparably damaged if they are disturbed.

VI. Guidance states that NEPA does not authorize approval or implementation of mitigation measures and does not require bureaus to select any specific form of mitigation.

Mitigation is one of the most critical aspects of the environmental review process for Tribal Nations, as approval of projects is often premised on mitigation measures that aim to protect Tribal protected resources. Under CEQ regulations, incorporated in the former Department regulations, mitigation measures were considered enforceable "when the record of decision incorporates mitigation and the analysis of the reasonably foreseeable effects of the proposed action is based on implementation of that mitigation." 40 C.F.R. § 1505.2(c) (2024). Under these regulations, agencies were required to "identify

the authority for enforceable mitigation, such as through permit conditions, agreements, or other measures, and prepare a monitoring and compliance plan consistent with § 1505.3(c)." *Id.* Under the Handbook's guidance, however, bureaus are instructed that "NEPA requires bureaus to consider reasonable mitigation measures, [but] it does not require bureaus to evaluate or select any specific form of mitigation," and states that "NEPA itself does not authorize bureau to approve or implement mitigation." Sec. 1.3(e)(1). There is no mention of enforceability. Without such enforcement protection, there is a risk that federal actions may be approved with mitigation conditions, and then mitigation conditions may be challenged independently, resulting in disjointed timelines for project development and the implementation of mitigation measures. This introduces more inefficiency into the system, and it may directly harm Tribal Nations who rely on the enforcement of mitigation measures to protect environmental and cultural resources, including ancestral remains.

VII. The Department's revisions of extraordinary circumstances categories make it more difficult for Tribal Nations to assert sovereign interests and protect Tribal rights in the environmental review process.

The Interim Final Rule removes several extraordinary circumstances categories under 43 C.F.R. §46.215, including (c), what counts as "highly controversial," and (i), for inconsistency with Federal, state, local, or Tribal laws imposed for protection of the environment.

For the former category, the Department states that it is eliminating redundancy in its extraordinary circumstances categories. However, the remaining category, for "[h]ighly uncertain and potentially significant environmental effects," is not the same as "highly controversial," in that the agency could, in theory, determine that there is relative certainty regarding the level of effects, even if evidence of controversy or flaws in the methods or data relied upon by the agency in reaching its conclusions has been presented. Tribal Nations have relied upon the "highly controversial" extraordinary circumstances category under the CEQ regulations to protect Tribal rights and resources. A prominent example of this was in the case of Standing Rock Sioux Tribe's NEPA challenge to the Army Corp of Engineer's environmental assessment of the Dakota Access Pipeline. The District Court of the District of Columbia determined in that case that where expert reports submitted to the Corp presented scientific critiques of the risk of a pipeline spill, those reports must be considered by the Corp. *See Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, 255 F. Supp. 3d 101, 127-29 (D.D.C. 2017). It is particularly concerning that the elimination of the "highly controversial" extraordinary category comes at the same time as the Department is minimizing the impacts of climate change.

For the latter category, the reason the Department gives for eliminating former 43 C.F.R. §46.215(i) is that:

> "[w]hether a proposed Federal action may violate a law imposed for the protection of the environment is a question that goes beyond the procedural requirements of NEPA and may be better considered and appropriately addressed by the Responsible Officer when making the decision on the proposed action. While a proposed action's inconsistency with such a law should be appropriately considered in the agency decision-making process—and may suggest that that the proposed action should not be approved—it is not relevant to the determination of whether the proposed action may have significant environmental effects."[7]

Essentially, if a project violates a Tribal Nation's law imposed for the protection of the environment, this fact will no longer trigger a higher level of scrutiny in the environmental

[7] 90 Fed. Reg. 29498 (Jul. 3, 2025).

review process. It is unclear from the Department's explanation why consideration of such a law would not be appropriate as part of a significance determination, particularly since there is no independent requirement at some other point in the NEPA process to consider such a violation. Moreover, the fact that proposed federal action violates a Tribal law imposed for the protection of the environment signals, as an extraordinary circumstance should, that a typically exempt action would in fact have a significant impact on the human environment in which it would occur.

On these bases, the Department should reinstate former 43 C.F.R. §§ 46.215(c) and (i).

VIII. Tribal Nations recognize the need for streamlined processes for Tribal development, but efficiency measures cannot come at the expense of Tribal consultation or in violation of Tribal rights.

As stated in earlier sections of this letter, the federal government has trust, treaty, and other federally mandated requirements and obligations to Tribal Nations, including for government-to-government consultation, that must be integrated into the NEPA process. In responding to Executive Order 14154,[8] which mandates efficiency measures over all other objectives, the Department cannot ignore or violate those legal obligations.

However, this does not mean that Tribal Nations do not recognize the benefits of efficiency. Tribal Nations have long recognized the need for more streamlined processes for environmental reviews in the context of Tribal development. In particular, there is a need for a streamlined process for environmental review of projects developed on Tribal lands held in trust by the federal government, which are often long-delayed. However, the specific development of policies that simultaneously reduce the regulatory burden for Tribal Nations and ensure that Tribal rights are not violated requires meaningful Tribal consultation on the development of further guidelines or regulations. Moreover, Tribal Nations recognize the need for clear and consistent cross-agency guidelines for consultation during the NEPA process.

a. Reliance on existing environmental documents and on programmatic environmental impact assessments for individual proposed actions, or "tiering," may violate obligations for government-to-government consultation with Tribal Nations.

Notwithstanding the general requirement the Department has to consult with Tribal Nations, the language in Sections 3.1 and 3.2 of the Handbook might be impermissibly construed to allow the Department to bypass its duty of government-to-government consultation with Tribal Nations by permitting the Department to rely on an existing environmental document or to tier a site-specific NEPA document from a prior, broader NEPA document without sufficient Tribal engagement. In particular, the Department instructs that a lead agency conducting a NEPA process is permitted to prepare an environmental assessment, even when there are significant effects, if it is tiered to an existing environmental impact statement, creating what the Department is calling a "finding of no *new* significant impact." Sec. 3.2(3). A "finding of no new significant impact" is not a term used in NEPA's statutory language. While such tiering where viable is more efficient than preparing complete, site-specific NEPA documents for each federal action, Sections 3.1 and 3.2 of the Handbook should be revised to clarify that tiering will not be implemented in a manner contrary to the preexisting obligation for government-to-government consultation where specific proposed federal actions would have Tribal implications. Specifically, "finding[s] of no *new* significant impact" should not be allowed

[8] *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 29, 2025) [hereinafter E.O. 14154].

without conducting separate government-to-government consultations for specific federal actions that may have substantial direct effects on one or more Indian tribes, in compliance with E.O. 13175. The Department must ensure that Tribal Nations are given the opportunity to meaningfully participate in the NEPA process and address concerns that are unique to each federal action.

b. Establishment or application of new or adopted Categorical Exclusions requires Tribal consultation.

Categorical exclusions, which permit the Department to take a major federal action without preparing any sort of environmental review document, can both threaten Tribal rights and resources and allow for expedited federal processes that may be beneficial for Tribal Nations. When agencies define categorical exclusions through their NEPA procedures, they are engaging in an agency action that falls within the scope of "policies that have Tribal implications" as defined in Section 1 of E.O. 13175. As such, the Department must clarify that when developing categorical exclusions, it will not merely provide public notice but will engage in full and meaningful government-to-government consultation with Tribal Nations.

In addition, the Interim Final Rule revises the procedure by which the agency may incorporate categorical exclusions listed in another agency's NEPA procedures to a proposed action or a category of proposed actions. Whereas under the CEQ regulations, the Department had to follow a procedure for adopting and applying another agency's categorical exclusion that included consultation with the other agency, public notification, and an extraordinary circumstances review, the Department's revised regulations under the Interim Final Rule simply state that the "Responsible Official *may rely* on another agency's determination that a categorical exclusion applies to a particular proposed action. . . [and] need not conduct extraordinary circumstances review." 43 C.F.R. §46.205(e) (emphasis added). This change lowers the threshold by which the bureau undertaking the NEPA process for a proposed action may apply a categorical exclusion, thereby exempting the proposed action from an environmental review. This may directly harm Tribal Nations, whose rights and interests may not be adequately considered in the initial agency's extraordinary circumstances review, prior to reliance. Since each federal agency is now responsible for promulgating its own set of NEPA regulations or guidance, the minimum extraordinary circumstances considered may not be consistent across agencies, and any categorical exclusion relied upon by the Department may result in a violation of treaty, statutory, executive order, or judicial-based Tribal rights. The Department should require an "extraordinary circumstances" review prior to relying on another agency's categorical exclusion for a proposed action.

Conclusion

In sum, the below signatories oppose the Interim Final Rule and the concurrent guidance published in the Department Handbook, which signals how the Department intends to interpret its obligations under NEPA. The Department fails to uphold its obligations to conduct government-to-government consultations with Tribal Nations on the complete dismantling of one of the most significant federal laws to directly impact Tribal lands, waters, and other cultural and environmental resources. The guidance that replaces the long-standing procedural protections for Tribal input and consideration of Tribal rights is empty of any recognition that Tribal Nations will be disproportionately negatively impacted by the changing—and inconsistent—approach federal agencies are taking to implementing NEPA.

Sincerely,

/s/ Melissa Kay

Melissa Kay

Tribal Water Institute Legal Fellow
Native American Rights Fund
250 Arapahoe Ave
Boulder CO, 80302
kay@narf.org
(303) 900-6960

On behalf of:

/s/ Whitney Gravelle
President
Bay Mills Indian Community

/s/ Kimberley Strong
President
Chilkat Indian Village (Klukwan)

/s/ Jarred Michael Erickson
Chairman of the Colville Business Council
Confederated Tribes of the Colville Reservation

/s/ AlexAnna Salmon
President of the Igiugig Village Council
Igiugig Village

/s/ Tamra Borchardt-Slayton
Chairwoman
Indian Peaks Band of Paiute Indians of Utah

/s/ Donna Thompson
Chairwoman of the Fort Hall Business Council
Shoshone-Bannock Tribes

/s/ Valerie J. Grussing
Executive Director
National Association of Tribal Historic Preservation Officers