

United States Senate

WASHINGTON, DC 20510

March 9, 2020

The Honorable Mary B. Neumayr
Chairman
The Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

RE: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, Docket ID: CEQ-2019-0003

Dear Ms. Neumayr:

We write in strong opposition to the Council on Environmental Quality's (CEQ) proposed rule that would fundamentally change National Environmental Policy Act (NEPA) regulations. CEQ's proposed changes would greatly reduce the opportunities for civic engagement that are afforded by the half-century-old law, which have long enabled public input to influence federal decision-making. Should the rule be finalized, the concerns and input from American Indian/Alaska Native (AI/AN) communities would be greatly inhibited.

For more than 50 years, the American people have relied on NEPA to ensure that federally-approved projects do not harm the environment. Signed into law in 1970, NEPA and its regulations mandate government agencies to consider the environmental impacts of projects, including any potential costs and consequences for nearby communities, before those projects are executed. Following centuries of systemic marginalization in this country, NEPA requirements have helped to make progress in ensuring that AI/AN communities are able to provide input on projects that affect their communities. Instead of fostering more participation in the federal decision-making process, CEQ's proposal would limit tribal input in decisions that directly impact their homelands.

Tribal consultation is one of the most basic tenets of the federal-tribal relationship, and it is unclear that any open and public tribal consultation process occurred during the rollout of this proposed rule. The process by which CEQ has or has not conducted tribal consultation on this proposal and the shortened time frame for public comment all run afoul of the principles laid out in Executive Order 13175 signed by President Bill Clinton in 2000, entitled, "Consultation and Coordination With Indian Tribal Governments." This shortened time frame for public comment on this proposed rule does not sufficiently allow for tribes, tribal members, and tribal organizations to submit informed and appropriate feedback on the proposed rule.

In addition, the proposed rule itself that CEQ has put forward would limit public input, further eroding the responsibility of the federal government to consult with tribes. Adequate time should be allowed for full tribal participation, especially when tribal communities are impacted. By imposing time limits on the publication of environmental studies, this proposal would only ensure that comprehensive, well-informed analyses are not conducted. This proposal and this process do not reflect the values of the government-to-government relationship that has long been shared between the federal government and tribal nations.

Another outcome of this proposal would allow for companies to write their own environmental analyses. The federal government should not cede its authority to non-federal entities, including profit-driven companies that do not share the same accountability to tribal communities as the federal government. The absence of federal involvement in environmental analyses in this proposal is an abrogation of the obligations the U.S. government owes to tribal nations. Sadly, this proposal serves as a departure from the government-to-government relationship and is inconsistent with the federal government's responsibility to AI/AN communities.

American Indian/Alaska Native communities often view the environment in more holistic terms, and this proposed rule runs counter to those beliefs. By limiting the consideration of cumulative impacts, this draft rule will ensure that indirect and lasting effects of federally-approved decisions are not taken into account. Allowing federal agencies to disregard the cumulative impacts and indirect effects of a project could have a disastrous effect on AI/AN communities that have historically already had higher exposure to land, air and water pollution.

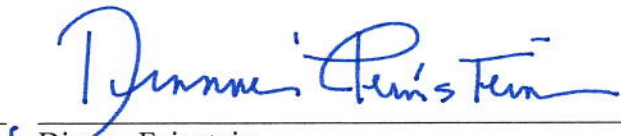
While we have substantial concerns with the vast majority of proposed revisions to the NEPA regulations, there are several improvements from the current regulations. For example, the proposed regulations add "Tribal" to the phrase "State and local" to ensure consultation with tribal entities and to reflect existing NEPA practices. The proposed regulations also update provisions in the current regulations by eliminating the limitation of tribal interests to reservations. Although these are positive steps, those changes do not ease our concerns that tribal communities will be negatively impacted under this proposal rule.

The reverence for the environment shared by tribes and tribal members should be mirrored in the NEPA process. Instead, this proposed rule moves the needle in the opposite direction. This proposed rule would result in damage to core protections currently enjoyed by tribal communities and should be rewritten to strengthen the federal government's responsibility to America's first people, not weaken it.

Sincerely,



Thomas R. Carper
United States Senator



Dianne Feinstein
United States Senator



Bernard Sanders
United States Senator



Kamala D. Harris
United States Senator