IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION
No. 3:18-cv-00113-GEC

SOUTHERN ENVIRONMENTAL LAW CENTER Plaintiff, v. COUNCIL ON ENVIRONMENTAL QUALITY, Defendant.	**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... **ERROR! BOOKMARK NOT DEFINED.**
INTRODUCTION 2
FACTUAL BACKGROUND 4
I. National Environmental Policy Act 4
II. CEQ's Advanced Notice of Proposed Rulemaking 5
III. SELC's FOIA Request and Subsequent Litigation 6
IV. CEQ's Production of Public Documents 7
V. CEQ's Proposed Rulemaking 8
STANDARD OF REVIEW 10
ARGUMENT 11
I. The Court has Jurisdiction to Enjoin CEQ from Taking Further Action in the NEPA Rulemaking Pending the Resolution of SELC's FOIA Claim 12
II. SELC is Likely to Succeed on the Merits of its Case 13
III. SELC will Suffer Irreparable Harm if an Injunction is Not Granted 15
A. CEQ's inadequate public comment period and continued withholding of public documents undermines SELC's ability to participate in a fully-informed and meaningful manner 16
B. CEQ's continued withholding of documents irreparably harms SELC's public education and outreach efforts 19
C. SELC is placed at a disadvantaged in litigation if unable to timely raise issues in its comments to CEQ. 21
IV. The Balance of Harms Favors a Preliminary Injunction 22
V. Granting an Injunction is in the Public Interest 24
CONCLUSION 26
CERTIFICATE OF SERVICE 28

TABLE OF AUTHORITIES

Page(s)

Cases

Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, Inc.,
462 U.S. 87 (1983) 4, 25

Center to Prevent Handgun Violence v. U.S. Dep't of Treasury,
49 F. Supp. 2d 3 (D.D.C. 1999) 24

Citizens for Responsibility and Ethics in Washington v. Federal Election Com'n ("*CREW*")
711 F.3d 180 (D.C. Ct. App. 2013) 13

Columbia Packing Co. v. U. S. Dep't of Agriculture,
563 F.2d 495 (1st Cir. 1977) 13

Dep't of Transp. v. Pub. Citizen,
541 U.S. 752 (2004) 24

Di Biase v. SPX Corp.,
872 F.2d 224 (4th Cir. 2017) 10

Direx Israel, Ltd. v. Breakthrough Medical Corp.,
952 F.2d 802 (4th Cir. 1991) 15

Elec. Privacy Info. Ctr. v. U.S. Dep't of Justice,
416 F. Supp. 2d 30 (D.D.C. 2006) 15, 21, 22

Elec. Privacy Infor. Ctr. v. U.S Dep't of Justice,
25 F. Supp. 32 (D.C. Cir. 2006) 19

Ft. Funston Dog Walkers v. Babbitt,
96 F. Supp. 2d 1,021 (N.D. Cal. 2000) 23, 26

Gilmore v. U.S. Dep't of Energy,
33 F. Supp. 2d 1,184 (N.D. Cal. 1998) 14

Idaho Farm Bureau Fed. v. Babbitt,
58 F.3d 1,392 (9th Cir. 1995) 16

Leadership Conference on Civil Rights v. Gonzales,
404 F. Supp. 2d 246 (D.D.C. 2005) 21

Lennon v. Richardson,
378. F. Supp. 39 (S.D.N.Y. 1974) 13

Lewis v. Reagan,
660 F.2d 124 (5th Cir. 1981) 12

Marsh v. Oregon Natural Resources Council,
490 U.S. 360 (1989).....5, 24

Nat'l Archives and Records Admin. v. Favish,
541 U.S. 157 (2004).....20

Nat'l Council of La Raza v. Dep't of Justice,
411 F.2d 350 (2d Cir. 2005).....14

Nishnic v. U.S. Dep't of Justice,
671 F. Supp. 776 (D.D.C. 1987) 14

North Carolina Growers' Ass'n, Inc. v. Solis,
644 F. Supp. 2d 664 (M.D. N.C. 2009) 23

Or. Natural Desert Ass'n v. Bureau of Lnd Mgmt.,
625 F.3d 1,092 (9th Cir. 2010) 24

Pashby v. Delia,
709 F.3d 307 (4th Cir. 2013) 11

Payne Enterprises, Inc. v. U.S.,
835 F.2d 486 (D.C. Ct. App. 1988) 19

Per v. EPA,
No. 16-cv-2112 (D.D.C. May 25, 2017).....15

Perdue Farms, Inc. v. N.L.R.B.,
927 F. Supp. 897 (E.D.N.C. 1996).....22

Pleasant Valley Hosp., Inc. v. Shalala,
32 F.3d 67 (4th Cir. 1994) 21

Renegotiation Board v. Bannercraft Clothing Co.,
415, U.S. 1 (1974).....12

Roe v. Dep't of Defense,
2020 WL 110826 (4th Cir. Jan. 10, 2020).....11

Roebuck & Co. v. N.L.R.B.,
473 F.2d 91 (D.C. Cir. 1972), *cert. denied*, 415 U.S. 950 (1974) 12

Sai v. Transportation Security Admin.,
54 F. Supp. 3d 5 (D.D.C. 2014) 19

Sampson v. Murray,
415 U.S. 61 (1974) 15

Sears v. Gottschalk,
502 F.2d 122 (4th Cir. 1974) 12

Seavey v. U.S. Dep't of Justice,
266 F. Supp. 3d 241 (D.D.C. 2017) 15

SELC v. EPA,
No. 3:17-CV-0061 (W.D. Va. Feb. 2, 2018) 15

Sierra Club v. U.S. Forest Serv.,
46 F.3d 835 (8th Cir. 1995) 4, 24

St. Elizabeth's Hospital v. NLRB,
407 F. Supp. 1357 (N.D. Ill. 1976) 13, 22

U.S. Dep't of Justice v. Reporters Committee for Freedom of Press,
489 U.S. 749 (1989) 20

United States v. Nova Scotia Food Products Corp.,
586 F.2d 240 (2d Cir. 1977) 17, 23

United Telephone Company of Pa. v. FCC,
375 F. Supp. 992 (M.D. Pa. 1974) 12, 13

Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.,
435 U.S. 519 (1978) 4

Wash. Cnty., N.C. v. U.S. Dep't of the Navy,
317 F. Supp. 2d 626 (E.D.N.C. 2004) 10

Washington Trollers Ass'n v. Kreps,
645 F.2d 684 (9th Cir. 1981) 11, 16, 17, 19

Waterkeeper Alliance, Inc. v. U.S. Envt'l Prot. Agency,
No. 17-cv-7400 (VEC) (S.D.N.Y. Nov. 3, 2017) 15

Western Watersheds Project v. Kraayenbrink,
2006 WL 2348080, No. CV05-297-E-BLW, 2006 WL 2348080 (D. Idaho Aug. 11, 2006) 24

Western Watersheds Project v. Zinke,
336 F. Supp. 3d 1 (D. Idaho 2018) 19, 23

Westinghouse Elec. Corp. v. Schlesinger,
542 F.2d 1,190 (4th Cir. 1976) 12

Winter v. Natural Res. Def. Council,
555 U.S. 7 (2008) 10, 11

Statutes and Regulations

National Environmental Policy Act

42 U.S.C.A. §§ 4321-4370 (West 2020) 4

42 U.S.C. § 4331(a) 24

42 U.S.C. § 4342 5

42 U.S.C. § 4344 5

Administrative Procedure Act

5 U.S.C. §§551-559 16

5 U.S.C. § 552 13

Regulations Implementing the Procedural Provisions of NEPA

40 C.F.R. §§ 1506.5, 1508.7, 1508.8 5

Other Authorities

51 Fed. Reg. 15,618 (April 25, 1986) 5

83 Fed. Reg. 28,591 (June 20, 2018) 5, 6, 9

85 Fed. Reg. 1684 (Jan. 10, 2020) 8, 17, 18, 25

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SOUTHERN ENVIRONMENTAL LAW CENTER Plaintiff, v. COUNCIL ON ENVIRONMENTAL QUALITY, Defendant.	**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Southern Environmental Law Center ("SELC") submits this memorandum in support of its Motion for Preliminary Injunction to enjoin Defendant Council of Environmental Quality ("CEQ") from closing the comment period on its Notice of Proposed Rulemaking ("NPRM") to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act ("NEPA") until CEQ has provided SELC with the documents it requested in its September 5, 2018 Freedom of Information Act ("FOIA") request.

The requested injunction is necessary in order to stop CEQ from making unprecedented sweeping changes to the regulations that implement NEPA before it has provided SELC and the public a full and complete opportunity to understand and participate in the rulemaking process. SELC requested documents from CEQ over seventeen months ago in order to fully understand the rulemaking. To date, CEQ has failed to provide those documents, in violation of FOIA. Until CEQ complies with its legal responsibility to be transparent with the public it cannot be permitted to move forward with the related rulemaking.

INTRODUCTION

The CEQ is currently engaged in a breathtaking attempt to re-write our nation's fundamental law that requires transparency in government decision-making: NEPA. Worse, CEQ is doing all this in the dark. For almost a year and half CEQ has shirked its legal responsibility to fulfil a straightforward request for records related to the rulemaking—prohibiting SELC from the full and transparent look at government to which it is entitled. In short, the agency is taking huge steps to eliminate transparency in the future, and is doing so by violating the transparency laws already on the books. This Court must ensure that the longstanding safeguards in place to ensure informed, open, accountable governance do not whither in the darkness as the agency doubles down on closed-door opacity.

The law under attack, NEPA, has long been hailed as our nation's bedrock environmental law. For fifty years NEPA has proven a bulwark against hasty or wasteful government decision-making by ensuring transparency and accountability. It has ensured that government decisions are democratic at their core by guaranteeing meaningful public review and involvement. And it has achieved its goal of protecting the environment by ensuring that agencies disclose harmful environmental impacts to affected communities, the public, and decision-makers.

The regulations implementing NEPA have stood largely unchanged during the past fifty years. But in June 2018, CEQ signaled its intent to overhaul the longstanding protections with an Advanced Notice of Proposed Rulemaking ("ANPRM") that contemplated unprecedented, sweeping changes to every single aspect of the law. In July 2018, SELC submitted its initial FOIA request seeking public documents related to the proposed overhaul. For over seventeen months, SELC has assiduously pursued disclosure of these documents. And for over seventeen

months CEQ has failed to act in the diligent and timely manner FOIA requires— processing and disclosing only a tiny fraction of the 2,595 records identified as responsive to SELC's request.

In November 2018, SELC filed suit before this Court to compel production of the public documents. SELC has taken every opportunity to resolve the case, filing motions for judgment on the pleadings and summary judgment. The latter motion is pending before this Court.

In the meantime, on January 10, 2020, CEQ issued a Notice of Proposed Rulemaking ("NPRM") continuing the Agency's efforts to dramatically overhaul NEPA's implementing regulations. The proposed rule would strip away opportunities for public participation, drastically limit the scope of NEPA review, and eliminate long-standing procedural safeguards that insulate the environmental review process from political bias and conflicts of interest. The NPRM relies on the ANPRM and select comments received on the ANPRM to justify dramatically reshaping NEPA implementation, although it does not explain why it relied on some comments and ignored others.

Despite multiple requests from the public and from 141 members of Congress for an extension of time to comment, CEQ is currently allowing a mere sixty days to comment on the rulemaking that will upend fifty years of practice and legal precedent. SELC has twice requested that CEQ extend the comment period. CEQ has not responded to these requests. In order to participate in the notice-and-comment process for the proposed rule as fully and as meaningfully as possible SELC must have access to the records it has requested and is legally entitled to. Yet CEQ has informed SELC that it does not intend to fulfill SELC's request until November 2020, long after the comment period is set to close, and potentially after the rulemaking is final.

As such, SELC respectfully asks this Court for preliminary injunctive relief to enjoin CEQ from closing the opportunity for public comment on the rulemaking until CEQ has provided SELC with the documents it is entitled to.

Without relief from this Court, SELC will suffer irreparable injury in three ways: First, SELC will be unable to participate in the public comment period as fully and meaningfully as it otherwise could; Second, SELC will be unable to disseminate information and foster public debate about the important rulemaking in a meaningful timeframe; and third, SELC will be placed at a disadvantage in any future litigation regarding the rulemaking, should it move forward.

A preliminary injunction requiring CEQ to comply with the law will not harm CEQ's interests; in fact the increased opportunity for informed comment will benefit the agency. Moreover, an injunction will benefit the public, which is well-served by a meaningful chance to engage in this unprecedented re-write of our nation's bedrock environmental law.

FACTUAL BACKGROUND

I. National Environmental Policy Act

The National Environmental Policy Act was signed into law by President Richard M. Nixon on January 1, 1970. *See* 42 U.S.C. § 4321 (West 2020). NEPA has twin aims: "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action … Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 98, 103 S.Ct. 2,246, 2,252 (1983) (quoting *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 553 (1978)) (internal citations omitted); *see Sierra Club v. U.S.*

Forest Serv., 46 F.3d 835, 837 n.2 (8th Cir. 1995) ("[t]he purpose of NEPA is to ensure that government agencies act on full information and that interest groups have access to such information.") (*citing Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989)).

Congress created CEQ to effectuate NEPA's aims and "formulate and recommend national policies to promote the improvement of the quality of the environment." 42 U.S.C. § 4342, *see also* 42 U.S.C. § 4344. In 1978, CEQ developed regulations implementing the procedural aspects of NEPA, which sought to standardize implementation of the statute across government agencies.[1] The 1978 regulations memorialize many important aspects of NEPA compliance, including the requirements that agencies consider indirect effects and cumulative impacts, 40 C.F.R. §§ 1508.7, 1508.8, rigorously explore and objectively evaluate alternatives to a proposed action, *id.* at § 1502.14, and avoid conflicts of interests by contractors preparing Environmental Impact Statements ("EIS"), *id.* at § 1506.5(c). The 1978 regulations have remained largely unchanged for the last four decades[2] and have preserved the values of transparency, accountability, and democratic decision-making NEPA demands.

II. CEQ's Advanced Notice of Proposed Rulemaking

On June 20, 2018, CEQ published an Advanced Notice of Proposed Rulemaking ("ANPRM") in the Federal Register titled "Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act." 83 Fed. Reg. 28,591 (June 20, 2018). The ANPRM consisted of twenty questions and contemplated changes to every aspect of CEQ's NEPA regulations. *Id.* The ANPRM requested public comments to help inform a forthcoming Notice of Proposed Rulemaking to amend the regulations. *Id.*

[1] National Environmental Policy Act – Regulations, Implementation of Procedural Provisions, 43 Fed. Reg. 55,978 (Nov. 29, 1978) (codified at 40 C.F.R. pt. 1500 et seq.).
[2] In 1986 CEQ made one minor alteration, eliminating the 1978 regulations' "worst case" analysis requirement. 51 Fed. Reg. 15,618 (April 25, 1986) (codified at 40 C.F.R. pt. 1502)

SELC submitted extensive comments on the ANPRM on behalf of fifty-three environmental groups from across the Southeast on August 20, 2018. Dkt. No. 1, Compl. ¶ 15; Dkt. No. 9, Answer ¶ 15.[3] SELC was also one of 341 public interest organizations from across the nation that together submitted comments on the ANPRM.[4] These comments explained that the existing CEQ regulations already address many of the questions raised in the ANPRM, and that CEQ must provide data and analysis upon which any rulemaking is premised to justify departure from the Agency's long-standing interpretation of NEPA.[5]

III. SELC's FOIA Request and Subsequent Litigation

On September 5, 2018, SELC submitted a FOIA request to CEQ. Dkt. No. 1, Compl. The request sought "all records in the possession of [CEQ] that in any way relate to CEQ's proposed rulemaking to update CEQ's implementing regulations for the procedural provisions of [NEPA], including but not limited to all records that relate to CEQ's [ANPRM] titled 'Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,' published in the Federal Register on June 20, 2018. 83 Fed. Reg. 28591." *Id.*[6]

CEQ confirmed receipt of SELC's request on September 7, 2018. Dkt. No. 1, Compl. ¶ 22; Dkt. No. 9, Answer ¶ 22. On November 14, 2018, SELC emailed CEQ to inquire about the status of the request, as CEQ had yet to respond with a determination. Dkt. No. 1, Compl. ¶ 23; Dkt. No 9, Answer ¶ 23. SELC never received a response to this inquiry. As of November 30, 2018, CEQ had failed to issue a determination in response to SELC's FOIA request and had failed to produce any documents. With no alternative, SELC filed the instant action to compel

[3] Letter from Kym Hunter and Sam Evans, SELC, to Mary Neumayr, CEQ (Aug. 20, 2018), Exhibit 1.
[4] Letter from the Partnership Project to Mary Neumayr, CEQ (Aug. 20, 2018) https://earthjustice.org/sites/default/files/files/Final-Coalition-Comment-Letter-on-NEPA-ANPRM.pdf, Exhibit 2.
[5] *Id.*
[6] SELC previously submitted a similar FOIA request to CEQ on July 19, 2018, seeking "all records in possession of [CEQ] that in any way relate to CEQ's [ANPRM] titled 'Update to Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act[.]'" Dkt. No. 1, Compl.

CEQ to "provide all nonexempt, responsive documents to SELC without further delay" on November 30, 2018. Dkt. No. 1, Compl. ¶ 7.

On February 15, 2019, SELC filed a Motion for Judgment on the Pleadings. On September 16, 2019, this Court issued an order denying SELC's motion, stating that it could not resolve SELC's claims on the pleadings alone. Dkt. No. 19, Mot. for J. on the Pleadings at 1.

On December 13, 2019, SELC filed a Motion for Summary Judgment. CEQ filed its response and Cross Motion for Summary Judgment on January 13, 2020, and SELC filed its response and reply on January 28, 2020, and CEQ its reply on February 12, 2020. These motions are still under consideration by this Court.

IV. CEQ's Production of Public Documents

To date, CEQ has made only four productions of records in response to SELC's FOIA request. The productions have been highly irregular, arriving as many as four months apart. Dkt. No. 23-1; Dkt. No. 23-2; Letter from Howard Sun, Att'y Advisor, CEQ to Kym Hunter, Senior Att'y, SELC (December 17, 2019) (Exhibit 3); Letter from Howard Sun, Att'y Advisor, CEQ to Kym Hunter, Senior Att'y, SELC (January 21, 2020) (Exhibit 4). To date, CEQ has processed 1,500 documents, Dkt. No. 23-1; Dkt. No. 23-2; Letter from Howard Sun, Att'y Advisor, CEQ to Kym Hunter, Senior Att'y, SELC (December 17, 2019) (Exhibit 3); Letter from Howard Sun, Att'y Advisor, CEQ to Kym Hunter, Senior Att'y, SELC (January 21, 2020) (Exhibit 4), and disclosed only 465 documents.[7] CEQ states that it will not "complete production of responsive documents to SELC [until] November 2020." Dkt. No. 24-1 at 8. Under this production schedule, SELC will have waited over two years for its FOIA request to be completed.

[7] CEQ, First Production for FOIA Request FY2018-150 (May 15, 2019) (available upon request); CEQ, Second Production for FOIA Request FY2018-150 (Sept. 19, 2019) (available upon request); CEQ, Third Production for FOIA Request FY2018-150 (Dec. 17, 2019) (available upon request); CEQ, Fourth Production for FOIA Request FY2018-150 (Jan. 31, 2019) (available upon request).

Furthermore, even the few documents CEQ has processed have been highly redacted. 54% of the 1,925 pages processed have been redacted in full, and 81% of the pages have been at least partially redacted.[8]

V. CEQ's Proposed Rulemaking

On January 10, 2020 CEQ continued to move forward with the rulemaking, publishing its Notice of Proposed Rulemaking ("NPRM") in the Federal Register.[9] The forty-seven page NPRM is unprecedented in its scope and seeks to completely change how NEPA is implemented.[10] Proposed changes include significantly limiting when NEPA would apply, eliminating important prohibitions on conflict of interest, removing the requirement that federal agencies consider long term, widespread impacts like climate change, removing key mechanisms for public participation, placing limits on judicial review, and much more.[11] In its attempt to justify this massive overhaul to undercut government transparency, the NPRM repeatedly cites to comments from the public on the ANPRM, *see, e.g.*, 85 Fed. Reg. at 1,691 (referencing the ANPRM twenty-nine times), but does not explain how it reviewed and evaluated comments or why certain comments were considered more persuasive than others. The few documents disclosed by CEQ in response to SELC's request indicate that interns at the Agency were responsible for reviewing and batching public comments on the ANPRM and it is currently unclear what happened to the comments from there.[12]

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[8] CEQ, First Production for FOIA Request FY2018-150 (May 15, 2019) (available upon request); CEQ, Second Production for FOIA Request FY2018-150 (Sept. 19, 2019) (available upon request); CEQ, Third Production for FOIA Request FY2018-150 (Dec. 17, 2019) (available upon request); CEQ, Fourth Production for FOIA Request FY2018-150 (Jan. 31, 2019) (available upon request).

[9] Council on Environmental Quality; Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 1,684 (Jan. 10, 2020).

[10] Jonathan Hahn, *Trump Targets the Heart of US Environmental Law*, SIERRA MAGAZINE (Jan. 30 2020) https://www.sierraclub.org/sierra/trump-targets-heart-us-environmental-law-nepa, Exhibit 5.

[11] *Id.*

[12] Email from Yardena M. Mansoor, EOP/CEQ, to Erin A. Carlin, EOP/CEQ (July 17, 2018, 14:20 EST), Exhibit 6.

Despite the breadth of the proposed changes, the NPRM sets a deadline of March 10, 2020 for receipt of any comments—a bare sixty days.[13] In addition, CEQ scheduled just two public hearings, both of which reached capacity within minutes of registration opening.[14]

This meager opportunity for public engagement stands in stark contrast to the extensive stakeholder engagement efforts CEQ undertook when promulgating the original NEPA regulations in 1978. When it drafted the original regulations, CEQ "sought the views of almost 12,000 private organizations, individuals, State and local agencies, and Federal agencies," and conducted public hearings in which testimony was solicited from diverse perspectives. 43 Fed. Reg. at 55,980. Rather than merely accepting and responding to comments, CEQ worked for two years to build consensus, with an iterative process that "continued until most concerns with the proposals were alleviated or satisfied." *Id.*

Because of the unprecedented scope of the rulemaking, and its potential to upturn fifty years of established precedent on government transparency hundreds of individuals, organizations, and lawmakers have requested that CEQ allow more time for public comment.[15] CEQ has not responded to these requests.

SELC itself has requested an enlargement of the comment period on two separate occasions.[16] On January 16, 2020, SELC requested an extension of the comment period and additional public hearings on behalf of thirty-eight public interest organizations from across the

[13] CEQ NEPA Regulations, https://ceq.doe.gov/laws-regulations/regulations.html (last visited Jan. 31, 2020).
[14] Rosalie Winn, EDF (@rosaliewinn), TWITTER (Jan. 28, 2020, 2:58 PM), https://twitter.com/rosaliewinn/status/1222247518316056576/photo/1, Exhibit 7; Justin McCarthy, The Partnership Project (jaymac1893), TWITTER (Feb. 7, 2020, 1:07) https://twitter.com/jaymac1893/status/1225843539046694912/photo/1, Exhibit 8.
[15] Rachael Franzin, *More than 320 groups seek more time to comment on Trump environmental law changes*, THE HILL (Jan. 24, 2020), https://thehill.com/policy/energy-environment/479840-more-than-320-groups-to-ask-for-additional-comment-time-for-trump, Exhibit 9; Eugene Mulero, *Democrats Urge Extension of Public Comment Period on NEPA Update*, TRANSPORTATION TOPICS (Jan. 23, 2020) https://www.ttnews.com/articles/democrats-urge-extension-public-comment-period-nepa-update, Exhibit 10.
[16] *See* Letter from Kym Hunter, Senior Att'y, SELC to Mary Neumayr, Chair, CEQ (January 16, 2020), Exhibit 11; Letter from Kym Hunter, Senior Att'y, SELC to Mary Neumayr, Chair, CEQ (January 29, 2020), Exhibit 12.

Southeast to ensure that these groups had sufficient time and opportunity to provide meaningful comments on the extensive NPRM.[17] On January 29, 2020, in light of representations made by CEQ in this case that it will not provide relevant documents until November 2020—long after the opportunity for public comment is scheduled to close—SELC requested an extension based on the fact that SELC needs the documents to "fully understand how the ANPRM process was used to guide [the] rulemaking."[18] CEQ has failed to respond to both requests.

STANDARD OF REVIEW

The purpose of a preliminary injunction is to protect the status quo and prevent irreparable harm during the pendency of a lawsuit. *Di Biase v. SPX Corp.*, 872 F.2d 224, 230 (4th Cir. 2017). "A preliminary injunction is not a final adjudication of the rights of the parties, but rather an order temporarily reserving the rights of the parties." *Wash. Cnty., N.C. v. U.S. Dep't of the Navy*, 317 F.Supp. 2d 626, 631 (E.D.N.C. 2004) (*citing Duckworth v. James*, 267 F.2d 224, 231 (4th Cir. 1959)).

Generally, "[a] plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008); *Roe v. Dep't of Defense*, 2020 WL 110826, at *7 (4th Cir. Jan. 10, 2020). Courts considering whether to impose preliminary injunctions must separately consider each *Winter* factor. *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013).

[17] Exhibit 11.
[18] Exhibit 12.

ARGUMENT

For over four decades, CEQ has faithfully implemented NEPA's procedural requirements through regulations that enshrine and reinforce the values Congress imbued in the law: democratic decision-making, transparency and accountability, and environmental protection. Now, CEQ is rushing to potentially undo decades' worth of regulation and legal precedent that protects and empowers communities and ensures that we "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations," as Congress proscribed in 1969. 42 U.S.C. § 4331(b)(1).

While CEQ moves to make long-term changes to reduce government transparency and accountability, the Agency is also standing in the way of the transparent, open rulemaking process the law currently requires. CEQ is required by law to provide for "intelligent, informed, meaningful" public review and comment, *Washington Trollers Ass'n v. Kreps*, 645 F.2d 684, 686 (9th Cir. 1981). But, not only has the Agency provided meager opportunity for public comment, it has refused to timely produce public documents which are critical to informed public participation.

SELC has sought access to these documents for almost a year-and-a-half, but CEQ has stated it will not turn all the documents over until more than two years after they were requested: November 2020. The delay means that SELC and the public will not have access to the documents until long after the opportunity for public participation in the rulemaking is over—and potentially until after the rulemaking is finalized. Without this Court's intervention, SELC will be irreparably harmed.

This Court has the authority to preserve SELC's rights by enjoining CEQ from proceeding with the rulemaking until the Agency has fulfilled its obligations under FOIA.

United Telephone Company of Pa. v. FCC, 375 F. Supp. 992, 995 (M.D.Pa.1974) ("[S]tays of ongoing administrative proceedings may be necessary to implement the policy behind [FOIA]").

The Court can protect the status quo by (1) ordering CEQ to produce the documents at issue before the close of the comment period; (2) ordering CEQ to delay the close of the comment period until CEQ anticipates completing SELC's request—November 2020, or (3) enjoining CEQ from closing the comment period until it provides SELC with the requested documents..

I. The Court has Jurisdiction to Enjoin CEQ from Taking Further Action in the NEPA Rulemaking Pending the Resolution of SELC's FOIA Claim

Our Courts have been clear that "FOIA does not limit the inherent powers of an equity court to grant relief." *Sears v. Gottschalk*, 502 F.2d 122, 128 fn. 13 (4th Cir. 1974); *Westinghouse Elec. Corp. v. Schlesinger*, 542 F.2d 1190, 1204 (4th Cir. 1976) ("[T]here was available to any proper party the right to invoke the broad general jurisdiction of equity in the assertion of a right under the [FOIA]."); *Renegotiation Board v. Bannercraft Clothing Co.*, 415, U.S. 1, 20, 94 S.Ct. 1028, 1038 (1974) ("there is little to suggest… that Congress sought to limit the inherent powers of an equity court.").

District Courts have jurisdiction to issue collateral injunctive relief, including enjoining agency action pending the resolution of a plaintiff's FOIA claim. *See, e.g., Lewis v. Reagan*, 660 F.2d 124, 128 (5th Cir. 1981) ("[A] district court has jurisdiction to enjoin agency action for violation of a[] FOIA claim"); *Roebuck & Co. v. NLRB*, 473 F.2d 91, 93 (D.C. Cir. 1972) ("The District Court was correct in its premise that there is jurisdiction to enjoin agency proceedings pending resolution of a [FOIA] claim"), *cert. denied*, 415 U.S. 950 (1974); *Columbia Packing Co. v. U. S. Dep't of Agriculture*, 563 F.2d 495, 500 (1st Cir. 1977) (District Court was "not without power to issue collateral injunctive relief if circumstances warranted"); *Lennon v.*

Richardson, 378. F. Supp. 39, 41 (S.D.N.Y. 1974) ("There seems little question that the District Court has jurisdiction to enjoin agency action for violation of a [FOIA] claim); *St. Elizabeth's Hospital v. N.L.R.B.*, 407 F. Supp. 1357, 1358 (N.D. Ill. 1976) (The court "clearly has jurisdiction" to enjoin administrative hearings until FOIA claim was resolved). In fact, "stays of ongoing administrative proceedings may be necessary to implement the policy behind [FOIA]." *United Telephone Company of Pa. v. FCC*, 375 F. Supp. 992, 995 (M.D. Pa. 1974).

This Court too has authority to protect SELC's rights under FOIA by ensuring that documents are provided in a timeframe that makes their production meaningful.

II. SELC is Likely to Succeed on the Merits of its Action

SELC has already set out in detail why it will prevail on the merits of its claims in its briefs in support of summary judgment. Dkt. No. 23, Pl.'s Br. Summ. J.; Dkt. No. 25, Pl.'s Reply Br. SELC fully incorporates those arguments here and provides a summary below.

FOIA requires agencies to make properly requested documents "promptly available" to the person making the request. *See* 5 U.S.C. § 552(a)(3)(A) ("[E]ach agency… shall make the records promptly available to any person."); 5 U.S.C. § 552(a)(6)(C)(i) ("Upon any determination by an agency to comply with a request for records, the records shall be made promptly available."). As the D.C. Circuit explained in *Citizens for Responsibility and Ethics in Washington v. Federal Election Com'n* ("*CREW*"), this "typically would mean within days or a few weeks of a 'determination,' not months or years." 711 F.3d 180, 188 (D.C. Cir. 2013) (quoting 5 U.S.C. § 552(a)(3)(A), (a)(6)(C)(i)).

The central purpose of FOIA is to, "promote honest and open government and assure the existence of an informed citizenry [in order] to hold the governors accountable to the governed." *Nat'l Council of La Raza v. Dep't of Justice*, 411 F.3d 350, 355 (2d Cir. 2005) (*quoting Grand.*

Cent. Partnership, Inc. v. Cuomo, 166 F.2d 473, 478 (2d Cir. 1999). Yet Congress recognized that "information is often useful only if it is timely." *Gilmore v. U.S. Dep't of Energy*, 33 F.Supp.2d 1184, 1189 (N.D. Cal. 1998) (*quoting* H.R. Rep. No. 93-876 (1974)). Therefore, "[a] bona fide request for production of documents must be honored in time for that information to be useful." *Nishnic v. U.S. Dep't of Justice*, 671 F. Supp. 776, 791 (D.D.C. 1987).

To date, CEQ has processed just four batches of documents, totaling 1,500 documents, in the nearly seventeen months since SELC's revised FOIA request. CEQ has only produced 465 documents out of 2,595 potentially responsive documents, Dkt. No. 24-1 at 6.[19] CEQ has indicated that it will complete production of responsive documents to SELC no sooner than November 2020, over two years after SELC's initial FOIA request. Dkt. No. 42-1 at 8. The pace at which CEQ is producing documents is sabotaging SELC's ability to exercise its legal rights pursuant to FOIA to further SELC's time-sensitive goal of being fully informed on a matter of significant public interest. Furthermore, the few documents CEQ has produced are heavily redacted—54% of pages have been redacted in full, and 81% have been partially redacted.[20]

"[U]nreasonable delays in disclosing non-exempt documents violate the intent and purpose of the FOIA, and courts have a duty to prevent [such] abuses." *Elec. Privacy Info. Ctr. V. U.S. Dep't of Justice*, 416 F. Supp. 2d 30, 35 (D.D.C. 2006) ("*EPIC*") (*quoting Payne*

[19] CEQ, First Production for FOIA Request FY2018-150 (May 15, 2019) (available upon request); CEQ, Second Production for FOIA Request FY2018-150 (Sept. 19, 2019) (available upon request); CEQ, Third Production for FOIA Request FY2018-150 (Dec. 17, 2019) (available upon request); CEQ, Fourth Production for FOIA Request FY2018-150 (Jan. 31, 2019) (available upon request).

[20] Most of these redactions have been made under the deliberative process privilege. *See, e.g.*, E-mail from Yardena M. Mansoor, EOP/CEQ, to Erin A. Carlin, EOP/CEQ (July 12, 2018, 14:29 EST), Exhibit 13. However, CEQ's own statements make clear that the privilege only extended until the time that the ANPRM was published – i.e., June 20, 2018. E-mail from Chad S. Whiteman, EOP/OMB to Theo J. Wold, EOP/WHO (May 7, 2018 9:38 EST), Exhibit 14; E-mail from Aaron L. Szabo, EOP/CEQ to Alex H. Herrgott, EOP/CEQ (May 8, 2018 10:18 EST), Exhibit 15. As such, the redactions and assertion of privilege today are improper and will be challenged by SELC at the appropriate time.

Enterprises, Inc. v. U.S., 837 F.2d 486, 495 (D.C. Cir. 1988)). Indeed, courts regularly require agencies to produce documents at a far more expeditious pace. *See SELC v. EPA*, No. 3:17-CV-00061 (W.D. Va. Feb. 2, 2018) (ordering EPA to review and produce responsive documents at a rate of approximately 1,000 documents per month); *Waterkeeper Alliance, Inc. v. U.S. Envt'l Prot. Agency*, No. 17-cv-7400 (VEC) (S.D.N.Y. Nov. 3, 2017), Dkt. 18 (extended to Jan. 17, 2018, Dkt. 25) (ordering EPA to produce 8,000 documents within three months); *Seavey v. U.S. Dep't of Justice*, 266 F. Supp. 3d 241, 248 (D.D.C. 2017) (ordering FBI to produce 2,850 pages a month); *Per v. EPA*, No. 16-cv-2112 (D.D.C. May 25, 2017) (ordering EPA to process "at least 1,000 potentially responsive documents per month").

Moreover, CEQ's delay in producing documents responsive to SELC's request is unreasonable even relative to CEQ's usual pace of FOIA production. In FY 2018 (the most recent year for which CEQ's annual FOIA report is available on its website) CEQ took an average of just **80 days** to fully process complex FOIA requests. By contrast, **526 days** have passed since SELC's updated FOIA request (and 574 days have passed since SELC's initial FOIA request). None of CEQ's filings explain a discrepancy of this magnitude. Dkt. No. 24, Def.'s Br. Summ. J.; Dkt. No. 26, Def.'s Reply Br.

III. SELC will Suffer Irreparable Harm if an Injunction is not Granted

"[T]he basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." *Direx Israel, Ltd. v. Breakthrough Medical Corp.*, 952 F.2d 802, 812 (4th Cir. 1991) (*quoting Sampson v. Murray*, 415 U.S. 61, 88 (1974)).

Without a preliminary injunction, SELC will suffer irreparable harm. SELC will lose its sole opportunity to provide fully-informed, meaningful comments on a rulemaking that is set to fundamentally alter the implementation of the country's bedrock law governing environmental

protection and government transparency. Moreover, absent a preliminary injunction, SELC will be unable to share complete, accurate information about this critically important rulemaking with partners, elected officials, and the public at a time when the information is useful and actionable. Finally, any issue SELC is unable to raise in formal comments, due to CEQ's continued withholding of public records, could be deemed waived under the Administrative Procedure Act, 5 U.S.C. §§ 551-559 ("APA") were SELC involved in future litigation, and thus place SELC at a disadvantage.

A. CEQ's inadequate public comment period and continued withholding of public documents undermines SELC's ability to participate in a fully-informed and meaningful manner.

The purpose of the notice and comment requirement is to provide for "meaningful public participation in the rule-making process." *Idaho Farm Bureau Fed. v. Babbitt*, 58 F.3d 1392, 1404 (9th Cir. 1995). Congress's goals are only effectuated "if the public is able to make intelligent, informed, meaningful comments." *Washington Trollers Ass'n*, 645 F.2d at 686. Therefore, agencies are required to "provide information sufficient to enable an interested or affected party to comment intelligently[.]" *Id.* Despite these requirements, CEQ has given SELC and other members of the public only a brief window of time to comment of the Agency's sweeping proposed changes to NEPA's implementing regulations, and has withheld access to public documents necessary for SELC to provide the most "intelligent, informed, meaningful comments." *Id.* CEQ's unjustified withholding of public documents relevant to a rulemaking until after the opportunity for public comment has passed irreparably harms SELC.

Without access to the documents it requested, SELC is unable to fully understand and respond to CEQ's stated reasons for overhauling NEPA implementation. CEQ's withholding of public documents until after the opportunity for public comment has passed irreparably harms

SELC by denying access to information necessary to engage in the rulemaking process in a fully informed and meaningful manner. *See id.* ("To suppress meaningful comment by failure to disclose the basic data relied upon is akin to rejecting comment altogether") (*quoting United States v. Nova Scotia Food Products Corp.*, 586 F.2d 240, 252 (2d Cir. 1977)).

There are numerous instances where the NPRM alters critical aspects of the existing regulations with little or no explanation, and the public records requested by SELC provide an essential means of uncovering the Agency's reasons for proposing these changes. In many cases, the NPRM cites to comments on the ANPRM to support proposed changes, but does not explain the content of these comments or why they were compelling. *See, e.g.*, 85 Fed. Reg. at 1693. Moreover, it does not explain why certain comments were deemed informative and others not. CEQ's failure to explain the basis for its decision-making is not consonant with the purpose of a rule-making proceeding and deprives SELC and the public of a meaningful opportunity to comment. *Washington Trollers Ass'n*, 645 F.2d at 686.

For example, Section 1506.5(c) of the current NEPA regulations provides that when a private contractor is hired to prepare an EIS, that contractor must be selected by the lead agency or a cooperating agency "to avoid any conflict of interest." 40 C.F.R. § 1506.5(c). The contractor must further "execute a disclosure statement … specifying that they have no financial or other interest in the outcome of the project." *Id.* The NPRM deletes all references to conflicts of interest in Section 1506.5(c). 85 Fed. Reg. at 1725. CEQ's only explanation for revising Section 1506.5(c) at all is that doing so will "give agencies more flexibility" and allow "applicants and contractors to be able to assume a greater role[.]" 85 Fed. Reg. at 1705. The NPRM does not explain why it has proposed changing the regulations to allow private parties with a conflict of interest to prepare EISs and whether it has considered the potentially serious

ramifications of this change. One former CEQ official stated that he would be "hard pressed" to show why this proposed revision makes sense "unless you take the very perverse position" that the Agency wants "someone who has an internal bias to the outcome" to prepare an EIS.[21] Without access to the requested public documents, SELC cannot know where the idea to permit conflicts of interest came from and whether CEQ has taken adequate steps to study the potentially serious repercussions of proposals such as this one.

The NPRM also fails to meaningfully engage with comments that disagreed with CEQ's proposed changes. For instance, the NPRM states that certain revisions "are supported by many comments", *id.* at 1693, but fails to discuss the content of those comments and whether they were grounded in law or fact. Troublingly, the few documents CEQ has disclosed in response to SELC's request indicate that interns at the Agency were responsible for reviewing and batching public comments on the ANPRM.[22] Without access to additional documents detailing what happened to the comments after treatment by the interns, SELC is unable to understand how the public feedback informed the rulemaking. While the NPRM frequently references comments on the ANPRM to justify its proposed changes, it fails to identify why certain comments were given weight and others seemingly ignored.

Without a preliminary injunction, SELC will not know whether and how CEQ seeks to justify its unprecedented proposed changes to long-established regulations implementing our nation's bedrock environmental law in time to include this information in comments on the NPRM. This unjustified withholding of public documents relevant to a rulemaking until after the opportunity for public comment has passed violates not only FOIA but the APA. *See Elec.*

[21] Long-Time CEQ Official Raises Major Concerns about NEPA Overhaul, Inside EPA (Jan. 31, 2020) https://insideepa.com/daily-news/long-time-ceq-official-raises-major-concerns-about-nepa-overhaul, Exhibit 16.
[22] E-mail from Yardena M. Mansoor, EOP/CEQ, to Erin A. Carlin, EOP/CEQ (intern) (July 17, 2018, 14:20 EST), Exhibit 6.

Privacy Infor. Ctr. v. U.S Dep't of Justice, 25 F. Supp. 32, 40 (D.C. Cir. 2006) (withholding public records until they are no longer useful is tantamount to a denial) (*quoting* H.R. Rep. No. 93-876, at 6 (1974)); *Washington Trollers Ass'n*, 645 F.2d at 686 (Congress's goals are only effectuated "if the public is able to make intelligent, *informed*, meaningful comments.").

CEQ's withholding of public records until they are no longer useful constitutes irreparable harm. *Sai v. Transportation Security Admin.*, 54 F. Supp. 3d 5, 10 (D.D.C. 2014) ("[A] movant's general interest in timely processing of FOIA requests may be sufficient to establish irreparable harm if the information sought is 'time-sensitive'"). The Agency's promise to complete production by November 2020 "provides scant comfort … stale information is of little value" because by that time the rulemaking process may well be over. Certainly the opportunity for public input will have passed. *Payne Enterprises, Inc.*, 835 F.2d at 494. CEQ's decision to deprive commenters of an opportunity to fully, meaningfully participate and force them to "hurriedly clamber to [participate] … because of the limited time frame and other constraints upon public participations" irreparably harms SELC. *Western Watersheds Project v. Zinke*, 336 F. Supp. 3d 1204, 1239 (D. Idaho 2018).

B. CEQ's continued withholding of documents irreparably harms SELC's public education and outreach efforts

SELC will further suffer irreparable harm absent an injunction because it will be hampered in its efforts to fully inform the public, partner groups, and elected officials about the proposed rulemaking in a meaningful timeframe.

SELC has long been engaged in public education and advocacy surrounding NEPA.[23] SELC is currently actively engaged in disseminating information to the public about the proposed rulemaking. It has created and disseminated a short video to explain the importance of

[23] Decl. of Kym Hunter at ¶¶ 9-13, Exhibit 17.

NEPA, set up a webpage to facilitate public comment on the rulemaking,[24] posted on social media accounts about the changes, spoken to reporters and on podcasts, and disseminated fact sheets to partner groups.[25] SELC is working to inform elected officials and policy makers at the federal, state, and local levels about the importance of NEPA and the impact the proposed changes could have.[26] SELC will also attend CEQ's public hearing on the NPRM in Washington, DC.[27]

As the Supreme Court has made clear, public awareness of the government's actions is "a structural necessity in a real democracy." *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004). The purpose of FOIA is to facilitate democratic governance by "open[ing] agency action to the light of public scrutiny." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 722 (1989).

There is no doubt that there is widespread concern among the constituencies served by SELC about the rulemaking. The United State House of Representatives recently introduced a resolution supporting "the continued enforcement of longstanding legal requirements" of NEPA and opposing CEQ's "efforts to undermine [NEPA] through the regulatory process."[28] And SELC is working with a coalition of more than 160 environmental groups across the Southeastern United States to educate them about the rulemaking and its potential consequences. SELC's FOIA request is essential to its efforts to inform and participate in this public debate,

[24] SELC, Protect NEPA (last visited Feb. 20, 2020) https://www.southernenvironment.org/protect-nepa, Exhibit 18.
[25] SELC, *Administration launches major attack on core environmental safeguard*, (June 20, 2018), https://www.southernenvironment.org/news-and-press/news-feed/administration-launches-major-attack-on-core-environmental-safeguard, Exhibit 19_; Decl. of Kym Hunter at ¶ 16, Exhibit 17.
[26] Decl. of Kym Hunter at ¶ 17, Exhibit 17.
[27] Eventbrite Ticket, Public Hearing (Evening Session) on CEQ's Update to its NEPA Regulations, Exhibit 20.
[28] H.R. Con. Res. __116th Cong. (2020), available at, https://debbiedingell.house.gov/uploadedfiles/200211nepa_resolution.pdf, Exhibit 21.

and the development of the public record.[29] *See EPIC*, 416 F. Supp. 2d at 41 (holding that meaningful public debate "can only occur if [the agency] processes its FOIA requests in a timely fashion and releases the information sought."); *Cf. Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (granting expedited processing because "[p]laintiff's FOIA requests could have a vital impact on development of the substantial record in favor of re-authorizing or making permanent special provisions of the Voting Rights Act.").

SELC's efforts to drive awareness and foster meaningful public debate regarding CEQ's unprecedented proposed rulemaking are irreparably harmed by CEQ's withholding of public documents until after the NPRM comment period has passed. Absent a preliminary injunction, SELC will not receive the public documents it is legally entitled to prior to CEQ's public comment deadline and will not be able to share vital information about the rulemaking with its partners, elected officials and members of the public in a meaningful timeframe.

C. SELC is placed at a disadvantaged in litigation if unable to timely raise issues in its comments to CEQ.

Absent a preliminary injunction, SELC may be substantially disadvantaged in future litigation regarding the rulemaking. As a general matter, courts reviewing appeals of agency rulemaking lack authority to consider arguments not raised before the administrative agency. *Pleasant Valley Hosp., Inc. v. Shalala*, 32 F.3d 67, 70 (4th Cir. 1994). Therefore, issues SELC is unable to raise in sufficient detail in comments—due to CEQ's continued withholding of public documents—may be considered waived by a reviewing court. The combination of an adverse administrative decision and a stringent judicial standard of review "could combine to do irreparable injury" to SELC. *St. Elizabeth's Hosp.*, 407 F. Supp. at 1359. To compound the injury to SELC, the NPRM itself includes a provision whereby public comments on EISs will be

[29] Decl. of Kym Hunter at ¶¶ 6-13, Exhibit 17 (noting that SELC has long been engaged in the dissemination of information about NEPA to partner groups, elected officials, and the public at large.)

considered "exhausted and forfeited" if not raised in highly specific and technical terms under tight timeframes, 85 Fed. Reg. at 1722. Thus, CEQ is proposing changes that would require hyper-technical comments in the future, but is doing so in a rulemaking where it is inhibiting SELC from raising all the comments it might by withholding critical information.

Moreover, SELC will likely lose access to evidence that would support SELC's position that the proposed rule, if finalized, would be unnecessary and unlawful. *Cf. Perdue Farms, Inc. v. N.L.R.B.*, 927 F. Supp. 897, 905 (E.D.N.C. 1996)[30]; *St. Elizabeth's Hosp.*, 407 F. Supp. at 1359 ("if the issue of whether or not the requested documents should be made available to the plaintiff is not resolved before [the agency takes action], the plaintiff will be denied access to documents to which it may be entitled and the plaintiff's case may not be effectively put forth."). Without a preliminary injunction, SELC will be irreparably harmed by the loss of access to public information that may be critical to its success in future litigation.

IV. The Balance of Harms Favors a Preliminary Injunction

As discussed above, SELC will suffer serious irreparable harm without a preliminary injunction. By contrast, CEQ will not suffer any substantial harm if an injunction is granted. An agency "cannot … be burdened by a requirement that it comply with the law." *EPIC*, 416 F. Supp. 2d at 41; *Perdue Farms, Inc. v. N.L.R.B.*, 927 F. Supp. at 906 (Agency does not suffer an injury when ordered to "carry out their mandatory lawful duties" and comply with FOIA). Furthermore, a preliminary injunction will simply maintain the regulatory status quo until after CEQ has produced the public records SELC has requested. *See North Carolina Growers' Ass'n, Inc. v. Solis*, 644 F. Supp. 2d 664, 671-72 (M.D.N.C. 2009) (holding that requiring a government

[30] After granting a temporary restraining order, 927 F. Supp. at 906, the District Court in *Perdue Farms, Inc.* subsequently held a hearing on the plaintiff's motion for a preliminary injunction. The District Court granted the plaintiff's preliminary injunction in *Perdue Farms Inc. v. N.L.R.B.*, 935 F. Supp. 713 (E.D.N.C. 1996), *vacated*, 108 F.2d 519 (4th Cir. 1997). The Fourth Circuit determined that plaintiff's claims were not ripe, and "express[ed] no opinion as to . . . the merits of [Purdue's] claim." 108 F.2d at 521-22.

agency to continue to administer an existing rule does not impose significant harm upon the agency). Timely processing of public records or a short delay in the rulemaking will not harm Defendant.

Moreover, the Agency actually *benefits* from informed public input. *Western Watersheds Project*, 336 F. Supp. 3d at 1239 (When the public is "not being allowed to participate… or [has to] hurriedly clamber to do so because of … the limited time frame and other constraints upon public participation" decisions are made "without the full benefit of public input."); *U.S. Nova Scotia Food Products Corp.*, 568 F.2d at 252 (explaining that unless the public receives sufficient information "the comments are unlikely to be of a quality that might impress a careful agency … inadequacy of comments in turn leads in the direction of arbitrary decision-making."). This benefit is outsized in situations such as this one, where the agency's proposal is especially controversial. *Ft. Funston Dog Walkers v. Babbitt*, 96 F. Supp. 2d 1021, 1036 (N.D. Cal. 2000) ("[T]he more controversial a proposal in the classic sense of strongly-divided public opinion, the more appropriate is an opportunity for public input, so that the decision-maker has the benefit of all views and advice.").

Ironically, CEQ actually references the workload associated with this rulemaking as one reason for its delay in processing SELC's FOIA request. Dkt. No. 24 at 1-2. If CEQ proceeded in a less rushed manner and sought out well-informed, meaningful public input instead of quashing it, the Agency would be better positioned to fulfill its duties under both NEPA and FOIA. As one former CEQ official noted, "[w]hat the people know has great value to a government that seeks their knowledge and takes it seriously."[31]

[31] Environmental Law Institute, *NEPA Success Stories: Celebrating 40 Years of Transparency and Open Governmen*t 4, (Aug. 2010), https://www.eli.org/research-report/nepa-success-stories-celebrating-40-years-transparency-and-open-government, Exhibit 22.

As such, quite apart from subjecting CEQ to any harm, it is in CEQ's interest to delay the close of the comment period on the NPRM until after SELC's FOIA request has been fulfilled and the public is equipped with the knowledge to provide meaningful, fully-informed comments on the rulemaking.

V. Granting an Injunction is in the Public Interest

Where, as here, a proposed rulemaking contemplates diluting the public participation provisions for a Congressionally-mandated "democratic decisionmaking tool", the public is well-served by a temporary injunction that ensures a meaningful opportunity to provide well-informed comments. *Or. Natural Desert Ass'n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1121 n. 24 (9th Cir. 2010); *see also Center to Prevent Handgun Violence v. U.S. Dep't of Treasury*, 49 F. Supp. 2d 3, 5 (D.D.C. 1999) ("There is a public benefit in the release of information that adds to citizens' knowledge[.]"); *Western Watersheds Project v. Kraayenbrink*, 2006 WL 2348080, at *8 (D. Idaho Aug. 11, 2006) ("the public interest is advanced by enjoining limits on public input.").

NEPA's entire statutory framework rests on a foundation of public participation. Congress has explained that federal agencies are to fulfill their obligations under NEPA "in cooperation with … concerned public and private organizations." 42 U.S.C. § 4331(a). Courts have emphasized this role. *See, e.g.*, *Sierra Club v. U.S. Forest Serv.*, 46 F.3d 835, 837 n.2 (8th Cir. 1995) ("The purpose of NEPA is to ensure that government agencies act on full information and that interest groups have access to such information.") (*citing Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989)); *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) ("The informational role of an EIS is to give the public the assurance that the agency has indeed considered environmental concerns in its decisionmaking . . . and, perhaps more significantly, provide a springboard for public comment in the agency decisionmaking process")

(internal quotation marks omitted) (*quoting Baltimore Gas & Electric Co. v. Natural Resource Defense Council, Inc.*, 462 U.S. 87, 97 (1983).

The NPRM—which absent a preliminary injunction the public will be unable to fully engage with and comment on—dramatically curtails opportunities for public involvement in the NEPA process. For example, the NPRM reframes the purpose and policy of NEPA as informing the public rather than a means of ensuring public participation in the process. 85 Fed. Reg. at 1712. The NPRM also proposes several substantive changes to agencies' responsibilities vis-à-vis the public, including making responding to public comments permissive rather than mandatory, *id.* at 1704, eliminating the requirement that agencies make a draft EIS available to the public at least fifteen days in advance of a public hearing, *id.* at 1725, and requiring that comments identifying additional alternatives, information, or analysis not included in the DEIS be raised in highly specific and technical terms within 30 days or be considered "exhausted and forfeited." *Id.* at 1722. CEQ's attempt to deny the public a meaningful and fully-informed opportunity to comment on regulations that would strip them of their right to participate in decision-making that affects their communities is antidemocratic, unjust, and contrary to Congress's intent.

Moreover, the public has demonstrated great interest in this rulemaking. In response to CEQ's ANPRM, groups and individuals across the country submitted over 12,500 comments. 85 Fed. Reg. at 1691. The limited public speaking slots at public hearings were fully subscribed in a matter of minutes.[32] CEQ's sweeping proposed changes to regulations that have stood largely unchanged for decades is exactly the kind of controversial proposal that demands an opportunity

[32] Rosalie Winn, EDF (@rosaliewinn), TWITTER (Jan. 28, 2020, 2:58 PM), https://twitter.com/rosaliewinn/status/1222247518316056576/photo/1, Exhibit 7; Justin McCarthy, The Partnership Project (jaymac1893), TWITTER (Feb. 7, 2020, 1:07) https://twitter.com/jaymac1893/status/1225843539046694912/photo/1, Exhibit 8.

for meaningful, fully-informed public input. *See Ft. Funston Dog Walkers*, 96 F.Supp.2d at 1036.

As such it is critical and very much in the public interest for information about CEQ's priorities, data, and factors influencing the Agency's decision-making to be made public *before* the comment period closes.

CONCLUSION

For the foregoing reasons, SELC respectfully requests that the Court GRANT its Motion for a Preliminary Injunction. Specifically, SELC respectfully requests that the Court protect the status quo by: (1) ordering CEQ to produce the documents at issue before the close of the public comment period for the rulemaking; (2) ordering CEQ to delay the close of the public comment period for the rulemaking until CEQ anticipates completing SELC's request—November 2020; or (3) enjoining CEQ from closing the comment period until it provides SELC with the requested documents.

SELC further requests that the Court set this matter for an expedited briefing and schedule a hearing in the next twenty-one days and to order any additional relief the Court deems proper.

Respectfully submitted, this 13th day of February, 2020.

/s/ Kimberley Hunter
Kimberley Hunter – NC Bar No. 41333 (*pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of February, 2020, I served the foregoing on the party below by electronically filing it with the Clerk of Court on this date using the CM/ECF system, which will sent notification of such filing to, and pursuant to Local Civil Rule 7(g)(3) shall constitute service upon, the following:

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