June 29, 2020

Dear Chairman Barrasso, Ranking Member Carper, and Committee Members,

We the undersigned academic researchers understand that the Senate Committee on Environment and Public Works is holding a hearing on July 1, 2020, titled "Better, Faster, Cheaper, Smarter, and Stronger: Infrastructure Development Opportunities to Drive Economic Recovery and Resiliency." We comment as scholars across disciplines who study NEPA and federal decisionmaking. We are all involved in a long-term project called NEPAccess, which is described at the end of this letter.

We write to address one relevant aspect of federal decisions related to infrastructure and other projects: The time required for agencies to produce an Environmental Impact Statement (EIS) to satisfy the National Environmental Policy Act (NEPA). Any consideration of amending NEPA to speed federal projects should be data driven. The data we provide constitute an important component of understanding the NEPA process.

In summary, this letter provides the following data:

- The midpoint, or median time for an agency to complete an EIS process is 3.6 years. A few projects that involved lengthy EIS processes are not representative.

- The initial phase of the EIS process—from Notice of Intent (NOI) to Draft EIS (DEIS)—is the most significant determinant of overall time to completion. The opportunity for the public to comment on a DEIS is less of a factor.

- The final phase of the EIS process—from Final EIS (FEIS) to Record of Decision (ROD)—lasts longer than required by NEPA indicating that factors other than NEPA contribute to overall duration.

NEPA requires an EIS for "major federal actions that significantly affect the quality of the human environment."[1] The vast majority of federal actions do not require an EIS; the non-partisan Government Accountability Office has estimated that federal agencies rely on EISs to comply with NEPA for less than 1% of federal projects.[2]

Nonetheless, concerns that NEPA may unduly delay federal decisions often focus on examples of EISs that have taken many years to complete. Concerns are also sometimes raised that NEPA's public participation requirement results in undue delay.

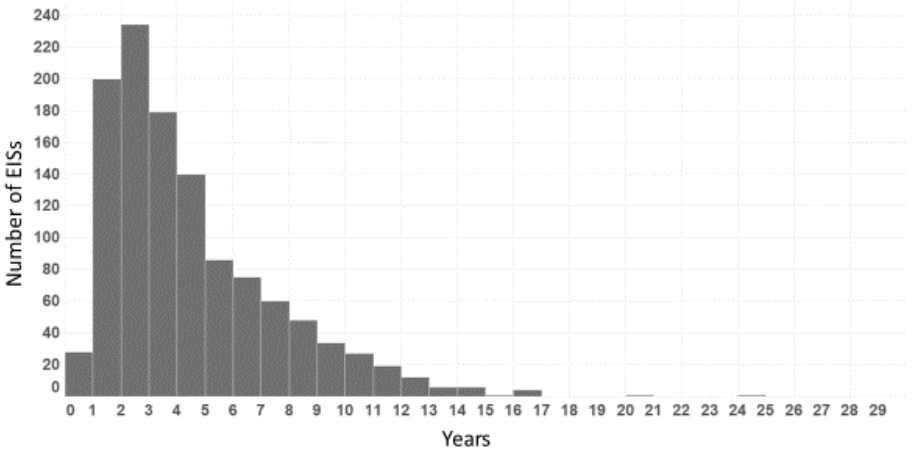
The analysis we offer is based on data contained in a spreadsheet posted on the Council of Environmental Quality (CEQ) website providing information about all EISs published in support of RODs signed between 2010-2017.[3] The spreadsheet consists of 1,161 EISs published by 51 lead agencies.

[1] 42 U.S.C. § 4332(2)(C).
[2] U.S. Government Accountability Office, GAO-14-370, *National Environmental Policy Act: Little Information Exists on NEPA Analyses* 8 (April 2014).
[3] https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timeline_Data_2020-6-12.xlsx

During this seven-year period, the average EIS process lasted 4.5 years—measured from NOIs to RODs. That average is, however, significantly affected by the long duration of a small number of what may be large, complex projects. The midpoint or median duration of EIS processes was 3.6 years. The duration of the EIS process was less than 2.2 years for 25% of projects and less than 6 years for 75% of projects. Figure 1 graphs these data and indicates that the distribution of projects has a long "tail" with a small number of projects requiring substantially more time than most.

Figure 1: Length of the EIS Process (in Years)

Mean	4.5
Median	3.6
25%	2.2
75%	6.0



The data in Figure 2 indicate that the initial phase of the NEPA process—from the publication of an NOI to DEIS—is the largest contributor to overall duration, accounting for 84% of the observed variation. The average time from NOI to DEIS was 2.6 years, the median time was 1.9 years, 25% of projects completed this phase within 1.1 years and 75% percent of projects completed this phase within 3.4 years.

In comparison, the time from the DEIS to the FEIS— during which agencies are required to allow the public to comment—the average was 1.4 years, the median was 1 year, 25% of projects completed this phase in 0.6 years and 75% of projects completed it within 1.7 years. During this phase of the EIS process, the CEQ regulations require that (1) the public has an opportunity to comment on the DEIS, and (2) the lead agency responds to public comments.[4]

The contrast between these two phases of the EIS process indicates that agencies' obligation to solicit and respond to public comments on DEISs is not the most important determinant of the duration of the EIS process.

The data in Figure 2 also indicate that the time required for agencies to make decisions is not always attributable to the NEPA review process itself. Federal regulations generally require that an agency must wait 30 days after publication of an FEIS to sign a ROD.[5] That pause affords the agency with

[4] 40 C.F.R. § 1503.1, 1503.4.
[5] 40 CFR 1506.10(b)(2). Agencies may be exempt from the 30-day waiting period if they have an internal process through which the public may appeal the agencies' decisions. *Id.* § 1506.10(b).

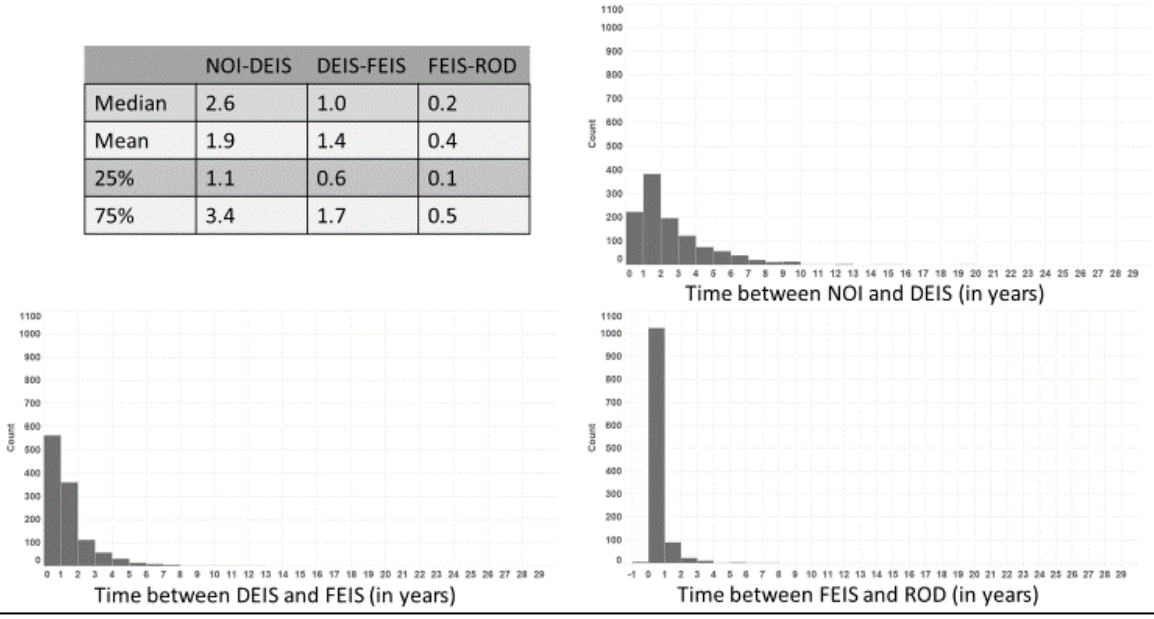
the opportunity for further internal deliberation before deciding but does not implicate any procedural obligation of NEPA.

Nonetheless, this phase lasted more than 10 months for 150 projects and more than two years for 41 projects. NEPA compliance is unlikely to have caused agencies to issue a ROD more than 30 days after publishing an FEIS, indicating that considerations unrelated to NEPA account for this delay.

These data raise questions about the extent to which the amount of time involved in other phases of the NEPA process is influenced by considerations unrelated to NEPA compliance, and relatedly, the extent to which amending NEPA will speed agency decision-making processes.

Figure 2: Length of Major Phases of the EIS Process (in Years)

	NOI-DEIS	DEIS-FEIS	FEIS-ROD
Median	2.6	1.0	0.2
Mean	1.9	1.4	0.4
25%	1.1	0.6	0.1
75%	3.4	1.7	0.5



The data we have discussed provide a fuller picture of the time required for EISs that support the broad array of federal decisions to which NEPA applies than references to a few unrepresentative projects involving lengthy delays. Other important questions remain, however, that the data provided by CEQ do not answer. For example, a full understanding of NEPA would require, among other things, data about NEPA compliance at different federal agencies, data about different categories of projects, and data about the relationship of cooperating agencies to the duration of the EIS process.

The NEPAccess project is designed to study and inform these and other questions. NEPAccess is a multi-disciplinary research effort at the University of Arizona and funded in part by the National Science Foundation to create an integrated knowledge, discovery, and engagement platform that provides access to geo-referenced, published EISs (more than 37,000) and their supporting documents and to enable analysis using cutting-edge data science and natural language processing techniques to answer here-to-fore unanswerable questions about how NEPA has functioned.

More information about NEPAccess can be found at nepaccess.org.

Any effort to reform NEPA should be informed by data. We are committed to developing and analyzing policy-relevant data about the NEPA process and look forward to future opportunities to present our work to this Committee.

Sincerely,

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