

118TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

To amend the National Environmental Policy Act of 1969 to impose time limits on the completion of certain required actions under that Act, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mr. LEE introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To amend the National Environmental Policy Act of 1969 to impose time limits on the completion of certain required actions under that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Undoing NEPA’s Sub-  
5 stantial Harm by Advancing Concepts that Kickstart the  
6 Liberation of the Economy Act” or the “UNSHACKLE  
7 Act”.

1 **SEC. 2. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969**  
2 **MODIFICATIONS.**

3 (a) PROCESS REQUIREMENTS.—Section 107 of the  
4 National Environmental Policy Act of 1969 (42 U.S.C.  
5 4336a) is amended to read as follows:

6 **“SEC. 107. PROCESS REQUIREMENTS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) FEDERAL AGENCY.—The term ‘Federal  
9 agency’ includes a State that has assumed the re-  
10 sponsibility of a Federal agency under—

11 “(A) section 109; or

12 “(B) section 327 of title 23, United States  
13 Code.

14 “(2) HEAD OF A FEDERAL AGENCY.—The term  
15 ‘head of a Federal agency’ includes the governor or  
16 head of an applicable State agency of a State that  
17 has assumed the responsibility of a Federal agency  
18 under—

19 “(A) section 109; or

20 “(B) section 327 of title 23, United States  
21 Code.

22 “(b) APPLICABLE TIMELINES.—

23 “(1) NEPA PROCESS.—

24 “(A) IN GENERAL.—The head of a Federal  
25 agency shall complete the NEPA process for a  
26 proposed action of the Federal agency, as de-

1 scribed in section 113(10)(B)(ii), not later than  
2 2 years after the date described in section  
3 113(10)(B)(i).

4 “(B) ENVIRONMENTAL DOCUMENTS.—  
5 Within the period described in subparagraph  
6 (A), not later than 1 year after the date de-  
7 scribed in section 113(10)(B)(i), the head of  
8 the Federal agency shall, with respect to the  
9 proposed action—

10 “(i) issue—

11 “(I) a finding that a categorical  
12 exclusion applies to the proposed ac-  
13 tion; or

14 “(II) a finding of no significant  
15 impact; or

16 “(ii) publish a notice of intent to pre-  
17 pare an environmental impact statement in  
18 the Federal Register.

19 “(C) ENVIRONMENTAL IMPACT STATE-  
20 MENT.—If the head of a Federal agency pub-  
21 lishes a notice of intent described in subpara-  
22 graph (B)(ii), within the period described in  
23 subparagraph (A) and not later than 1 year  
24 after the date on which the head of the Federal  
25 agency publishes the notice of intent, the head

1 of the Federal agency shall complete the envi-  
2 ronmental impact statement and, if necessary,  
3 any supplemental environmental impact state-  
4 ment for the proposed action.

5 “(D) PENALTIES.—

6 “(i) DEFINITIONS.—In this subpara-  
7 graph:

8 “(I) DIRECTOR.—The term ‘Di-  
9 rector’ means the Director of the Of-  
10 fice of Management and Budget.

11 “(II) FEDERAL AGENCY.—The  
12 term ‘Federal agency’ does not in-  
13 clude a State.

14 “(III) FINAL NEPA COMPLIANCE  
15 DATE.—The term ‘final NEPA com-  
16 pliance date’, with respect to a pro-  
17 posed action, means the date by which  
18 the head of a Federal agency is re-  
19 quired to complete the NEPA process  
20 under subparagraph (A).

21 “(IV) HEAD OF A FEDERAL  
22 AGENCY.—The term ‘head of a Fed-  
23 eral agency’ does not include the gov-  
24 ernor or head of a State agency of a  
25 State.

1                   “(V) INITIAL EIS COMPLIANCE  
2                   DATE.—The term ‘initial EIS compli-  
3                   ance date’, with respect to a proposed  
4                   action for which a Federal agency  
5                   published a notice of intent described  
6                   in subparagraph (B)(ii), means the  
7                   date by which an environmental im-  
8                   pact statement for that proposed ac-  
9                   tion is required to be completed under  
10                  subparagraph (C).

11                  “(VI) INITIAL NEPA COMPLIANCE  
12                  DATE.—The term ‘initial NEPA com-  
13                  pliance date’, with respect to a pro-  
14                  posed action, means the date by which  
15                  the head of a Federal agency is re-  
16                  quired to issue or publish a document  
17                  described in subparagraph (B) for  
18                  that proposed action under that sub-  
19                  paragraph.

20                  “(VII) INITIAL NONCOMPLIANCE  
21                  DETERMINATION.—The term ‘initial  
22                  noncompliance determination’ means  
23                  a determination under clause  
24                  (ii)(I)(bb) that the head of a Federal  
25                  agency has not complied with the re-

1 requirements of subparagraph (A), (B),  
2 or (C).

3 “(ii) INITIAL NONCOMPLIANCE.—

4 “(I) DETERMINATION.—

5 “(aa) NOTIFICATION.—As  
6 soon as practicable after the date  
7 described in section  
8 113(10)(B)(i) for a proposed ac-  
9 tion of a Federal agency, the  
10 head of the Federal agency shall  
11 notify the Director that the head  
12 of the Federal agency is begin-  
13 ning the NEPA process for that  
14 proposed action.

15 “(bb) DETERMINATIONS OF  
16 COMPLIANCE.—

17 “(AA) INITIAL DETER-  
18 MINATION.—As soon as  
19 practicable after the initial  
20 NEPA compliance date for a  
21 proposed action, the Direc-  
22 tor shall determine whether,  
23 as of the initial NEPA com-  
24 pliance date, the head of the  
25 Federal agency has complied

1 with subparagraph (B) for  
2 that proposed action.

3 “(BB) ENVIRON-  
4 MENTAL IMPACT STATE-  
5 MENT.—With respect to a  
6 proposed action of a Federal  
7 agency in which the head of  
8 the Federal agency publishes  
9 a notice of intent described  
10 in subparagraph (B)(ii), as  
11 soon as practicable after the  
12 initial EIS compliance date  
13 for a proposed action, the  
14 Director shall determine  
15 whether, as of the initial  
16 EIS compliance date, the  
17 head of the Federal agency  
18 has complied with subpara-  
19 graph (C) for that proposed  
20 action.

21 “(CC) COMPLETION OF  
22 NEPA PROCESS.—As soon as  
23 practicable after the final  
24 NEPA compliance date for a  
25 proposed action, the Direc-

1                   tor shall determine whether,  
2                   as of the final NEPA com-  
3                   pliance date, the head of the  
4                   Federal agency has complied  
5                   with subparagraph (A) for  
6                   that proposed action.

7                   “(II) IDENTIFICATION; PENALTY;  
8                   NOTIFICATION.—If the Director  
9                   makes an initial noncompliance deter-  
10                  mination for a proposed action—

11                  “(aa) the Director shall  
12                  identify the account for the sala-  
13                  ries and expenses of the office of  
14                  the head of the Federal agency,  
15                  or an equivalent account;

16                  “(bb) beginning on the day  
17                  after the date on which the Di-  
18                  rector makes the initial non-  
19                  compliance determination, the  
20                  amount that the head of the Fed-  
21                  eral agency may obligate from  
22                  the account identified under item  
23                  (aa) for the fiscal year during  
24                  which the determination is made  
25                  shall be reduced by 0.5 percent



1 from the amount initially made  
2 available for the account for that  
3 fiscal year; and

4 “(cc) the Director shall no-  
5 tify the head of the Federal  
6 agency of—

7 “(AA) the initial non-  
8 compliance determination;

9 “(BB) the account  
10 identified under item (aa);  
11 and

12 “(CC) the reduction  
13 under item (bb).

14 “(iii) CONTINUED NONCOMPLIANCE.—

15 “(I) DETERMINATION.—Every  
16 90 days after the date of an initial  
17 noncompliance determination, the Di-  
18 rector shall determine whether the  
19 head of the Federal agency has com-  
20 plied with the applicable requirements  
21 of subparagraphs (A) through (C) for  
22 the proposed action, until the date on  
23 which the Director determines that  
24 the head of the Federal agency has

1 completed the NEPA process for the  
2 proposed action.

3 “(II) PENALTY; NOTIFICATION.—  
4 For each determination made by the  
5 Director under subclause (I) that the  
6 head of a Federal agency has not  
7 complied with a requirement of sub-  
8 paragraph (A), (B), or (C) for a pro-  
9 posed action—

10 “(aa) the amount that the  
11 head of the Federal agency may  
12 obligate from the account identi-  
13 fied under clause (ii)(II)(aa) for  
14 the fiscal year during which the  
15 most recent determination under  
16 subclause (I) is made shall be re-  
17 duced by 0.5 percent from the  
18 amount initially made available  
19 for the account for that fiscal  
20 year; and

21 “(bb) the Director shall no-  
22 tify the head of the Federal  
23 agency of—

1                                   “(AA) the determina-  
2                                   tion under subclause (I);  
3                                   and

4                                   “(BB) the reduction  
5                                   under item (aa).

6                                   “(iv) REQUIREMENTS.—

7                                   “(I) AMOUNTS NOT RESTORED.—

8                                   A reduction in the amount that the  
9                                   head of a Federal agency may obligate  
10                                  under clause (ii)(II)(bb) or  
11                                  (iii)(II)(aa) during a fiscal year shall  
12                                  not be restored for that fiscal year,  
13                                  without regard to whether the head of  
14                                  a Federal agency completes the  
15                                  NEPA process for the proposed action  
16                                  with respect to which the Director  
17                                  made an initial noncompliance deter-  
18                                  mination or a determination under  
19                                  clause (iii)(I).

20                                  “(II) REQUIRED TIMELINES.—

21                                  The violation of subparagraph (B) or  
22                                  (C), and any action carried out to re-  
23                                  mediate or otherwise address the vio-  
24                                  lation, shall not affect any other appli-

1 cable compliance date under subpara-  
2 graph (A), (B), or (C).

3 “(E) UNEXPECTED CIRCUMSTANCES.—If,  
4 while carrying out a proposed action after the  
5 completion of the NEPA process for that pro-  
6 posed action, a Federal agency or project spon-  
7 sor encounters a new or unexpected cir-  
8 cumstance or condition that may require the re-  
9 evaluation of the proposed action under this  
10 title, the head of the Federal agency with re-  
11 sponsibility for carrying out the NEPA process  
12 for the proposed action shall—

13 “(i) consider whether mitigating the  
14 new or unexpected circumstance or condi-  
15 tion is sufficient to avoid significant effects  
16 that may result from the circumstance or  
17 condition; and

18 “(ii) if the head of the Federal agency  
19 determines under clause (i) that the sig-  
20 nificant effects that result from the cir-  
21 cumstance or condition can be avoided,  
22 mitigate the circumstance or condition  
23 without carrying out the NEPA process  
24 again.

25 “(2) AUTHORIZATIONS AND PERMITS.—

1           “(A) IN GENERAL.—Not later than 90  
2 days after the date described in section  
3 113(10)(B)(ii), the head of a Federal agency  
4 shall issue—

5                   “(i) any necessary permit or author-  
6 ization to carry out the proposed action; or

7                   “(ii) a denial of the permit or author-  
8 ization necessary to carry out the proposed  
9 action.

10           “(B) EFFECT OF FAILURE TO ISSUE AU-  
11 THORIZATION OR PERMIT.—If a permit or au-  
12 thorization described in subparagraph (A) is  
13 not issued or denied within the period described  
14 in that subparagraph, the permit or authoriza-  
15 tion shall be considered to be approved.

16           “(C) REIMBURSEMENT OF APPLICATION  
17 FEES.—

18                   “(i) IN GENERAL.—If a permit or au-  
19 thorization described in subparagraph (A)  
20 is not issued or denied within the period  
21 described in that subparagraph, the head  
22 of the Federal agency shall reimburse the  
23 project sponsor for all applicable applica-  
24 tion fees associated with the applicable  
25 proposed action.

1           “(ii) EFFECT.—If application fees are  
2 reimbursed to a project sponsor under  
3 clause (i), that reimbursement shall not af-  
4 fect the disposition of the application for  
5 the proposed action.

6           “(D) DENIAL OF PERMIT OR AUTHORIZA-  
7 TION.—

8           “(i) IN GENERAL.—If a permit or au-  
9 thorization described in subparagraph (A)  
10 is denied, the head of the Federal agency  
11 shall describe to the project sponsor—

12                   “(I) the basis of the denial; and

13                   “(II) recommendations for the  
14 project sponsor with respect to how to  
15 address the reasons for the denial.

16           “(ii) RECOMMENDED CHANGES.—If  
17 the project sponsor carries out the rec-  
18 ommendations of the head of the Federal  
19 agency under clause (i)(II) and notifies the  
20 head of the Federal agency that the rec-  
21 ommendations have been carried out, the  
22 head of the Federal agency—

23                   “(I) shall decide whether to issue  
24 the permit or authorization described  
25 in subparagraph (A) not later than 90

1 days after date on which the project  
2 sponsor submitted the notification;  
3 and

4 “(II) shall not carry out the  
5 NEPA process with respect to the  
6 proposed action again.

7 “(c) PROHIBITIONS.—In carrying out the NEPA  
8 process, the head of a Federal agency may not—

9 “(1) consider whether a proposed action or an  
10 alternative to the proposed action considered by the  
11 head of the Federal agency, including the design, en-  
12 vironmental impact, mitigation measures, or adapta-  
13 tion measures of the proposed action or alternative  
14 to the proposed action, has an effect on climate  
15 change;

16 “(2) with respect to a proposed action or an al-  
17 ternative to the proposed action considered by the  
18 head of the Federal agency, consider the effects of  
19 the emission of greenhouse gases on climate change;

20 “(3) consider an alternative to the proposed ac-  
21 tion if the proposed action is not technically or eco-  
22 nomically feasible to the project sponsor; or

23 “(4) consider an alternative to the proposed ac-  
24 tion that is not within the jurisdiction of the Federal  
25 agency.

1 “(d) ENVIRONMENTAL DOCUMENTS.—

2 “(1) EIS REQUIRED.—In carrying out the  
3 NEPA process for a proposed action that requires  
4 the preparation of an environmental impact state-  
5 ment, the head of a Federal agency shall produce for  
6 the proposed action not more than 1—

7 “(A) environmental impact statement;

8 “(B) if necessary, environmental assess-  
9 ment; and

10 “(C) record of decision.

11 “(2) EIS NOT REQUIRED.—In carrying out the  
12 NEPA process for a proposed action that does not  
13 require the preparation of an environmental impact  
14 statement, the head of a Federal agency shall  
15 produce for the proposed action not more than 1—

16 “(A) environmental assessment; or

17 “(B) finding of no significant impact.

18 “(3) REQUEST FOR PUBLIC COMMENT.—Each  
19 notice of intent to prepare an environmental impact  
20 statement under section 102 shall include a request  
21 for public comment on alternatives or impacts and  
22 on relevant information, studies, or analyses with re-  
23 spect to the proposed agency action.

24 “(4) STATEMENT OF PURPOSE AND NEED.—

25 Each environmental document shall include a state-



1       ment of purpose and need that briefly summarizes  
2       the underlying purpose and need for the proposed  
3       agency action.

4           “(5) PAGE LIMITS.—

5               “(A) ENVIRONMENTAL IMPACT STATE-  
6               MENTS.—

7                   “(i) IN GENERAL.—Except as pro-  
8                   vided in clause (ii), an environmental im-  
9                   pact statement shall not exceed 150 pages,  
10                  not including any citations or appendices.

11                  “(ii) EXTRAORDINARY COM-  
12                  PLEXITY.—An environmental impact state-  
13                  ment for a proposed agency action of ex-  
14                  traordinary complexity shall not exceed  
15                  300 pages, not including any citations or  
16                  appendices.

17               “(B) ENVIRONMENTAL ASSESSMENTS.—  
18               An environmental assessment shall not exceed  
19               75 pages, not including any citations or appen-  
20               dices.

21           “(6) SPONSOR PREPARATION.—

22               “(A) IN GENERAL.—A lead agency shall  
23               prescribe procedures to allow a project sponsor  
24               to prepare an environmental assessment or an  
25               environmental impact statement under the su-

1           pervision of the lead agency, and the lead agen-  
2           cy may provide the project sponsor with appro-  
3           priate guidance and assist in the preparation.

4           “(B) INDEPENDENT REVIEW.—If a lead  
5           agency allows a project sponsor to prepare an  
6           environmental assessment or environmental im-  
7           pact statement under subparagraph (A), the  
8           lead agency shall independently evaluate the en-  
9           vironmental document and take responsibility  
10          for the contents of that environmental docu-  
11          ment.

12          “(e) REUSE OF WORK; DOCUMENTS PREPARED BY  
13          QUALIFIED 3RD PARTIES.—

14                 “(1) IN GENERAL.—In carrying out the NEPA  
15          process for a proposed action—

16                         “(A) subject to paragraph (2), the head of  
17          a Federal agency shall—

18                                 “(i) use any applicable findings and  
19                                 research from a prior NEPA process of  
20                                 any Federal agency; and

21                                 “(ii) incorporate the findings and re-  
22                                 search described in clause (i) into any ap-  
23                                 plicable analysis under the NEPA process;  
24                                 and

1           “(B) a Federal agency may adopt as an  
2 environmental impact statement, environmental  
3 assessment, or other environmental document  
4 to achieve compliance with this title—

5           “(i) an environmental document pre-  
6 pared under the law of the applicable State  
7 if the head of the Federal agency deter-  
8 mines that the environmental laws of the  
9 applicable State—

10           “(I) provide the same level of en-  
11 vironmental analysis as the analysis  
12 required under this title; and

13           “(II) allow for the opportunity of  
14 public comment; or

15           “(ii) subject to paragraph (3), an en-  
16 vironmental document prepared by a quali-  
17 fied third party chosen by the project spon-  
18 sor, at the expense of the project sponsor,  
19 if the head of the Federal agency—

20           “(I) provides oversight of the  
21 preparation of the environmental doc-  
22 ument by the third party; and

23           “(II) independently evaluates the  
24 environmental document for the com-

1 compliance of the environmental document  
2 with this title.

3 “(2) REQUIREMENT FOR THE REUSE OF FIND-  
4 INGS AND RESEARCH.—The head of a Federal agen-  
5 cy may reuse the applicable findings and research  
6 described in paragraph (1)(A) if—

7 “(A)(i) the project for which the head of  
8 the Federal agency is seeking to reuse the find-  
9 ings and research was in close geographic prox-  
10 imity to the proposed action; and

11 “(ii) the head of the Federal agency deter-  
12 mines that the conditions under which the ap-  
13 plicable findings and research were issued have  
14 not substantially changed; or

15 “(B)(i) the project for which the head of  
16 the Federal agency is seeking to reuse the find-  
17 ings and research was not in close geographic  
18 proximity to the proposed action; and

19 “(ii) the head of the Federal agency deter-  
20 mines that the proposed action has similar  
21 issues or decisions as the project.

22 “(3) REQUIREMENTS FOR CREATION OF ENVI-  
23 RONMENTAL DOCUMENT BY QUALIFIED 3RD PAR-  
24 TIES.—

1           “(A) IN GENERAL.—A qualified third  
2 party may prepare an environmental document  
3 intended to be adopted by a Federal agency as  
4 the environmental impact statement, environ-  
5 mental assessment, or other environmental doc-  
6 ument for a proposed action under paragraph  
7 (1)(B)(ii) if—

8           “(i) the project sponsor submits a  
9 written request to the head of the applica-  
10 ble Federal agency that the head of the  
11 Federal agency approve the qualified third  
12 party to create the document intended to  
13 be adopted by a Federal agency as the en-  
14 vironmental impact statement, environ-  
15 mental assessment, or other environmental  
16 document; and

17           “(ii) the head of the Federal agency  
18 determines that—

19           “(I) the third party is qualified  
20 to prepare the document; and

21           “(II) the third party has no fi-  
22 nancial or other interest in the out-  
23 come of the proposed action.

24           “(B) DEADLINE.—The head of a Federal  
25 agency that receives a written request under



1                   “(ii) has the jurisdiction or special ex-  
2                   pertise such that the Federal agency needs  
3                   to be consulted—

4                   “(I) to use a categorical exclu-  
5                   sion; or

6                   “(II) to prepare an environ-  
7                   mental assessment or environmental  
8                   impact statement, as applicable.

9                   “(B) LEAD AGENCY.—The term ‘lead  
10                  agency’ means the Federal agency selected  
11                  under paragraph (2)(A).

12                  “(2) AGENCY DESIGNATION.—

13                  “(A) LEAD AGENCY.—In carrying out the  
14                  NEPA process for a proposed action that re-  
15                  quires authorization from multiple Federal  
16                  agencies, the heads of the applicable Federal  
17                  agencies shall determine the lead agency for the  
18                  proposed action.

19                  “(B) INVITATION.—The head of the lead  
20                  agency may invite any relevant State, local, or  
21                  Tribal agency with Federal authorization deci-  
22                  sion responsibility to be a cooperating agency.

23                  “(3) RESPONSIBILITIES OF LEAD AGENCY.—

24                  The lead agency for a proposed action shall—

1           “(A) as soon as practicable and in con-  
2           sultation with the cooperating agencies, deter-  
3           mine whether a proposed action requires the  
4           preparation of an environmental impact state-  
5           ment; and

6           “(B) if the head of the lead agency deter-  
7           mines under subparagraph (A) that an environ-  
8           mental impact statement is necessary—

9                   “(i) be responsible for coordinating  
10                  the preparation of an environmental im-  
11                  pact statement;

12                   “(ii) provide cooperating agencies with  
13                  an opportunity to review and contribute to  
14                  the preparation of the environmental im-  
15                  pact statement and environmental assess-  
16                  ment, as applicable, of the proposed action,  
17                  except that the cooperating agency shall  
18                  limit comments to issues within the special  
19                  expertise or jurisdiction of the cooperating  
20                  agency; and

21                   “(iii) subject to subsection (c), as  
22                  soon as practicable and in consultation  
23                  with the cooperating agencies, determine  
24                  the range of alternatives to be considered  
25                  for the proposed action.



1           “(4) ENVIRONMENTAL DOCUMENTS.—In car-  
2           rying out the NEPA process for a proposed action,  
3           the lead agency shall prepare not more than 1 of  
4           each type of document described in paragraph (1) or  
5           (2) of subsection (d), as applicable—

6                   “(A) in consultation with cooperating  
7                   agencies; and

8                   “(B) for all applicable Federal agencies.

9           “(5) PROHIBITIONS.—

10                   “(A) IN GENERAL.—A cooperating agency  
11                   may not evaluate an alternative to the proposed  
12                   action that has not been determined to be with-  
13                   in the range of alternatives considered under  
14                   paragraph (3)(B)(iii).

15                   “(B) OMISSION.—If a cooperating agency  
16                   submits to the lead agency an evaluation of an  
17                   alternative that does not meet the requirements  
18                   of subsection (c), the lead agency shall omit the  
19                   alternative from the environmental impact  
20                   statement.

21           “(g) REPORTS.—

22                   “(1) NEPA DATA.—

23                   “(A) IN GENERAL.—The head of each  
24                   Federal agency that carries out the NEPA  
25                   process shall carry out a process to track, and

1           annually submit to Congress a report con-  
2           taining, the information described in subpara-  
3           graph (B).

4           “(B) INFORMATION DESCRIBED.—The in-  
5           formation referred to in subparagraph (A) is,  
6           with respect to the Federal agency issuing the  
7           report under that subparagraph—

8                   “(i) the number of proposed actions  
9                   for which a categorical exclusion was  
10                  issued during the reporting period;

11                  “(ii) the length of time the Federal  
12                  agency took to issue the categorical exclu-  
13                  sions described in clause (i);

14                  “(iii) the number of proposed actions  
15                  pending on the date on which the report is  
16                  submitted for which the issuance of a cat-  
17                  egorical exclusion is pending;

18                  “(iv) the number of proposed actions  
19                  for which an environmental assessment  
20                  was issued during the reporting period;

21                  “(v) the length of time the Federal  
22                  agency took to complete each environ-  
23                  mental assessment described in clause (iv);

24                  “(vi) the number of proposed actions  
25                  pending on the date on which the report is

1 submitted for which an environmental as-  
2 sessment is being drafted;

3 “(vii) the number of proposed actions  
4 for which an environmental impact state-  
5 ment was issued during the reporting pe-  
6 riod;

7 “(viii) the length of time the Federal  
8 agency took to complete each environ-  
9 mental impact statement described in  
10 clause (vii); and

11 “(ix) the number of proposed actions  
12 pending on the date on which the report is  
13 submitted for which an environmental im-  
14 pact statement is being drafted.

15 “(2) NEPA COSTS.—

16 “(A) IN GENERAL.—Not later than 1 year  
17 after the date of enactment of the  
18 UNSHACKLE Act, the Chair of the Council  
19 and the Director of the Office of Management  
20 and Budget shall jointly develop a methodology  
21 to assess the comprehensive costs of the NEPA  
22 process.

23 “(B) REQUIREMENTS.—The head of each  
24 Federal agency that carries out the NEPA  
25 process shall—

1 “(i) adopt the methodology developed  
2 under subparagraph (A); and

3 “(ii) use the methodology developed  
4 under subparagraph (A) to annually sub-  
5 mit to Congress a report describing—

6 “(I) the comprehensive cost of  
7 the NEPA process for each proposed  
8 action that was carried out within the  
9 reporting period; and

10 “(II) for a proposed action for  
11 which the head of the Federal agency  
12 is still completing the NEPA process  
13 at the time the report is submitted—

14 “(aa) the amount of money  
15 expended to date to carry out the  
16 NEPA process for the proposed  
17 action; and

18 “(bb) an estimate of the re-  
19 maining costs before the NEPA  
20 process for the proposed action is  
21 complete.

22 “(h) JUDICIAL REVIEW.—

23 “(1) STANDING.—Notwithstanding any other  
24 provision of law, a plaintiff may only bring a claim  
25 arising under Federal law seeking judicial review of

1 a portion of the NEPA process if the plaintiff pleads  
2 facts that allege that the plaintiff has personally suf-  
3 fered, or will likely personally suffer, a direct, tan-  
4 gible harm as a result of the portion of the NEPA  
5 process for which the plaintiff is seeking review.

6 “(2) STATUTE OF LIMITATIONS.—

7 “(A) IN GENERAL.—Notwithstanding any  
8 other provision of law and except as provided in  
9 subparagraph (B)(ii), a claim arising under  
10 Federal law seeking judicial review of any por-  
11 tion of the NEPA process shall be barred un-  
12 less it is filed not later than the earlier of—

13 “(i) 150 days after the final agency  
14 action under the NEPA process has been  
15 taken; and

16 “(ii) if applicable, an earlier date after  
17 which judicial review is barred that is spec-  
18 ified in the Federal law pursuant to which  
19 the judicial review is allowed.

20 “(B) NEW INFORMATION.—

21 “(i) CONSIDERATION.—A Federal  
22 agency shall consider for the purpose of a  
23 supplemental environmental impact state-  
24 ment new information received after the  
25 close of a comment period if the informa-

1                   tion satisfies the requirements for a sup-  
2                   plemental environmental impact statement  
3                   under the regulations of the Federal agen-  
4                   cy.

5                   “(ii) STATUTE OF LIMITATIONS  
6                   BASED ON NEW INFORMATION.—If a sup-  
7                   plemental environmental impact statement  
8                   is required under the regulations of a Fed-  
9                   eral agency, a claim for judicial review of  
10                  the supplemental environmental impact  
11                  statement shall be barred unless it is filed  
12                  not later than the earlier of—

13                         “(I) 150 days after the publica-  
14                         tion of a notice in the Federal Reg-  
15                         ister that the supplemental environ-  
16                         mental impact statement is final; and

17                         “(II) if applicable, an earlier date  
18                         after which judicial review is barred  
19                         that is specified in the Federal law  
20                         pursuant to which the judicial review  
21                         is allowed.

22                         “(C) SAVINGS CLAUSE.—Nothing in this  
23                         paragraph creates a right to judicial review.

24                         “(3) REMEDIES.—

1                   “(A) PRELIMINARY INJUNCTIONS AND  
2                   TEMPORARY RESTRAINING ORDERS.—

3                   “(i) IN GENERAL.—Subject to clause  
4                   (ii), in a motion for a temporary restrain-  
5                   ing order or preliminary injunction against  
6                   a Federal agency or project sponsor in a  
7                   claim arising under Federal law seeking ju-  
8                   dicial review of any portion of the NEPA  
9                   process, the plaintiff shall establish by  
10                  clear and convincing evidence that—

11                  “(I) the plaintiff is likely to suc-  
12                  ceed on the merits;

13                  “(II) the plaintiff is likely to suf-  
14                  fer irreparable harm in the absence of  
15                  the temporary restraining order or  
16                  preliminary injunction, as applicable;

17                  “(III) the balance of equities is  
18                  tipped in the favor of the plaintiff;  
19                  and

20                  “(IV) the temporary restraining  
21                  order or preliminary injunction is in  
22                  the public interest.

23                  “(ii) ADDITIONAL REQUIREMENTS.—  
24                  A court may not grant a motion described  
25                  in clause (i) unless the court—

1                   “(I) makes a finding of extraor-  
2                   dinary circumstances that warrant the  
3                   granting of the motion;

4                   “(II) considers the potential ef-  
5                   fects on public health, safety, and the  
6                   environment, and the potential for sig-  
7                   nificant negative effects on jobs re-  
8                   sulting from granting the motion; and

9                   “(III) notwithstanding any other  
10                  provision of law, applies the require-  
11                  ments of Rule 65(c) of the Federal  
12                  Rules of Civil Procedure.

13                  “(B) PERMANENT INJUNCTIONS.—

14                  “(i) IN GENERAL.—Subject to clause  
15                  (ii), in a motion for a permanent injunc-  
16                  tion against a Federal agency or project  
17                  sponsor a claim arising under Federal law  
18                  seeking judicial review of any portion of  
19                  the NEPA process, the plaintiff shall es-  
20                  tablish by clear and convincing evidence  
21                  that—

22                  “(I) the plaintiff has suffered an  
23                  irreparable injury;

24                  “(II) remedies available at law,  
25                  including monetary damages, are in-



1 adequate to compensate for the in-  
2 jury;

3 “(III) considering the balance of  
4 hardship between the plaintiff and de-  
5 fendant, a remedy in equity is war-  
6 ranted;

7 “(IV) the public interest is not  
8 disserved by a permanent injunction;  
9 and

10 “(V) if the error or omission of a  
11 Federal agency in a statement re-  
12 quired under this title is the grounds  
13 for which the plaintiff is seeking judi-  
14 cial review, the error or omission is  
15 likely to result in specific, irreparable  
16 damage to the environment.

17 “(ii) ADDITIONAL SHOWING.—A court  
18 may not grant a motion described in clause  
19 (i) unless—

20 “(I) the court makes a finding  
21 that extraordinary circumstances exist  
22 that warrant the granting of the mo-  
23 tion; and

24 “(II) the permanent injunction  
25 is—

1 “(aa) as narrowly tailored as  
2 possible to correct the injury; and

3 “(bb) the least intrusive  
4 means necessary to correct the  
5 injury.”.

6 (b) OTHER REFORMS.—Title I of the National Envi-  
7 ronmental Policy Act of 1969 (42 U.S.C. 4331 et seq.)  
8 is amended—

9 (1) by redesignating sections 108 through 111  
10 as sections 110 through 113, respectively; and

11 (2) by inserting after section 107 the following:

12 **“SEC. 108. EPA REVIEW.**

13 “(a) DEFINITION OF FEDERAL AGENCY.—In this  
14 section, the term ‘Federal agency’ includes a State that  
15 has assumed the responsibility of a Federal agency  
16 under—

17 “(1) section 109; or

18 “(2) section 327 of title 23, United States  
19 Code.

20 “(b) EPA COMMENTS.—The Administrator of the  
21 Environmental Protection Agency (referred to in this sec-  
22 tion as the ‘Administrator’) may comment on a draft or  
23 final submission of an environmental impact statement  
24 from any Federal agency.

1           “(c) TECHNICAL ASSISTANCE.—The Administrator  
2 may, on request of a Federal agency preparing a draft  
3 or final environmental impact statement, provide technical  
4 assistance in the completion of that environmental impact  
5 statement.

6           **“SEC. 109. PROJECT DELIVERY PROGRAMS.**

7           “(a) DEFINITION OF AGENCY PROGRAM.—In this  
8 section, the term ‘agency program’ means a project deliv-  
9 ery program established by a Federal agency under sub-  
10 section (b)(1).

11           “(b) ESTABLISHMENT.—

12                   “(1) IN GENERAL.—The head of each Federal  
13 agency, including the Secretary of Transportation,  
14 shall carry out a project delivery program.

15                   “(2) ASSUMPTION OF RESPONSIBILITY.—

16                           “(A) IN GENERAL.—Subject to subpara-  
17 graph (B), the head of each Federal agency  
18 shall, on request of a State, enter into a written  
19 agreement with the State, which may be in the  
20 form of a memorandum of understanding, in  
21 which the head of each Federal agency may as-  
22 sign, and the State may assume, the respon-  
23 sibilities of the head of the Federal agency  
24 under this title with respect to 1 or more

1 projects within the State that are under the ju-  
2 risdiction of the Federal agency.

3 “(B) EXCEPTION.—The head of a Federal  
4 agency shall not enter into a written agreement  
5 under subparagraph (A) if the head of the Fed-  
6 eral agency determines that the State is not in  
7 compliance with the requirements described in  
8 subsection (c)(4).

9 “(C) ADDITIONAL RESPONSIBILITY.—If a  
10 State assumes responsibility under subpara-  
11 graph (A)—

12 “(i) the head of the Federal agency  
13 may assign to the State, and the State  
14 may assume, all or part of the responsibil-  
15 ities of the head of the Federal agency for  
16 environmental review, consultation, or  
17 other action required under any Federal  
18 environmental law pertaining to the review  
19 or approval of a specific project;

20 “(ii) at the request of the State, the  
21 head of the Federal agency may also as-  
22 sign to the State, and the State may as-  
23 sume, the responsibilities of the head of  
24 the Federal agency under this title with re-  
25 spect to 1 or more projects within the

1 State that are under the jurisdiction of the  
2 Federal agency; but

3 “(iii) the head of the Federal agency  
4 may not assign responsibility for any con-  
5 formity determination required under sec-  
6 tion 176 of the Clean Air Act (42 U.S.C.  
7 7506).

8 “(D) PROCEDURAL AND SUBSTANTIVE RE-  
9 QUIREMENTS.—A State shall assume responsi-  
10 bility under this section subject to the same  
11 procedural and substantive requirements as  
12 would apply if that responsibility were carried  
13 out by the Federal agency.

14 “(E) FEDERAL RESPONSIBILITY.—Any re-  
15 sponsibility of a Federal agency not explicitly  
16 assumed by the State by written agreement  
17 under subparagraph (A) shall remain the re-  
18 sponsibility of the Federal agency.

19 “(F) NO EFFECT ON AUTHORITY.—Noth-  
20 ing in this section preempts or interferes with  
21 any power, jurisdiction, responsibility, or au-  
22 thority of an agency, other than the Federal  
23 agency for which the written agreement applies,  
24 under applicable law (including regulations)  
25 with respect to a project.

1           “(G) PRESERVATION OF FLEXIBILITY.—

2           The head of the Federal agency may not re-  
3           quire a State, as a condition of participation in  
4           the agency program of the Federal agency, to  
5           forego project delivery methods that are other-  
6           wise permissible for projects under applicable  
7           law.

8           “(H) LEGAL FEES.—A State assuming the  
9           responsibilities of a Federal agency under this  
10          section for a specific project may use funds  
11          awarded to the State for that project for attor-  
12          neys’ fees directly attributable to eligible activi-  
13          ties associated with the project.

14          “(c) STATE PARTICIPATION.—

15                 “(1) PARTICIPATING STATES.—Except as pro-  
16                 vided in subsection (b)(2)(B), all States are eligible  
17                 to participate in an agency program.

18                 “(2) APPLICATION.—Not later than 270 days  
19                 after the date of enactment of the UNSHACKLE  
20                 Act, the head of each Federal agency shall amend,  
21                 as appropriate, regulations that establish require-  
22                 ments relating to information required to be con-  
23                 tained in any application of a State to participate in  
24                 the agency program, including, at a minimum—

1           “(A) the projects or classes of projects for  
2           which the State anticipates exercising the au-  
3           thority that may be granted under the agency  
4           program;

5           “(B) verification of the financial resources  
6           necessary to carry out the authority that may  
7           be granted under the agency program; and

8           “(C) evidence of the notice and solicitation  
9           of public comment by the State relating to par-  
10          ticipation of the State in the agency program,  
11          including copies of comments received from that  
12          solicitation.

13          “(3) PUBLIC NOTICE.—

14                 “(A) IN GENERAL.—Each State that sub-  
15                 mits an application under this subsection shall  
16                 give notice of the intent of the State to partici-  
17                 pate in an agency program not later than 30  
18                 days before the date of submission of the appli-  
19                 cation.

20                 “(B) METHOD OF NOTICE AND SOLICITA-  
21                 TION.—The State shall provide notice and so-  
22                 licit public comment under this paragraph by  
23                 publishing the complete application of the State  
24                 in accordance with the appropriate public notice  
25                 law of the State.

1           “(4) SELECTION CRITERIA.—The head of a  
2 Federal agency may approve the application of a  
3 State under this section only if—

4           “(A) the regulatory requirements under  
5 paragraph (2) have been met;

6           “(B) the head of the Federal agency deter-  
7 mines that the State has the capability, includ-  
8 ing financial and personnel, to assume the re-  
9 sponsibility; and

10           “(C) the head of the State agency having  
11 primary jurisdiction over the project enters into  
12 a written agreement with the head of the Fed-  
13 eral agency as described in subsection (d).

14           “(5) OTHER FEDERAL AGENCY VIEWS.—If a  
15 State applies to assume a responsibility of the Fed-  
16 eral agency that would have required the head of the  
17 Federal agency to consult with the head of another  
18 Federal agency, the head of the Federal agency shall  
19 solicit the views of the head of the other Federal  
20 agency before approving the application.

21           “(d) WRITTEN AGREEMENT.—A written agreement  
22 under subsection (b)(2)(A) shall—

23           “(1) be executed by the Governor or the top-  
24 ranking official in the State who is charged with re-  
25 sponsibility for the project;



1           “(2) be in such form as the head of the Federal  
2 agency may prescribe;

3           “(3) provide that the State—

4                 “(A) agrees to assume all or part of the re-  
5 sponsibilities of the Federal agency described in  
6 subparagraphs (A) and (C) of subsection (b)(2);

7                 “(B) expressly consents, on behalf of the  
8 State, to accept the jurisdiction of the Federal  
9 courts for the compliance, discharge, and en-  
10 forcement of any responsibility of the Federal  
11 agency assumed by the State;

12                 “(C) certifies that State laws (including  
13 regulations) are in effect that—

14                         “(i) authorize the State to take the  
15 actions necessary to carry out the respon-  
16 sibilities being assumed; and

17                         “(ii) are comparable to section 552 of  
18 title 5, United States Code, including pro-  
19 viding that any decision regarding the pub-  
20 lic availability of a document under those  
21 State laws is reviewable by a court of com-  
22 petent jurisdiction; and

23                 “(D) agrees to maintain the financial re-  
24 sources necessary to carry out the responsibil-  
25 ities being assumed;

1           “(4) require the State to provide to the head of  
2 the Federal agency any information the head of the  
3 Federal agency reasonably considers necessary to en-  
4 sure that the State is adequately carrying out the  
5 responsibilities assigned to the State;

6           “(5) have a term of not more than 5 years; and

7           “(6) be renewable.

8           “(e) JURISDICTION.—

9           “(1) IN GENERAL.—The United States district  
10 courts shall have exclusive jurisdiction over any civil  
11 action against a State for failure to carry out any  
12 responsibility of the State under this section.

13           “(2) LEGAL STANDARDS AND REQUIRE-  
14 MENTS.—A civil action under paragraph (1) shall be  
15 governed by the legal standards and requirements  
16 that would apply in such a civil action against the  
17 head of a Federal agency had the head of the Fed-  
18 eral agency taken the actions in question.

19           “(3) INTERVENTION.—The head of a Federal  
20 agency shall have the right to intervene in any ac-  
21 tion described in paragraph (1).

22           “(f) EFFECT OF ASSUMPTION OF RESPONSI-  
23 BILITY.—A State that assumes responsibility under sub-  
24 section (b)(2) shall be solely responsible and solely liable  
25 for carrying out, in lieu of and without further approval

1 of the head of the Federal agency, the responsibilities as-  
2 sumed under subsection (b)(2), until the agency program  
3 is terminated under subsection (k).

4 “(g) LIMITATIONS ON AGREEMENTS.—Nothing in  
5 this section permits a State to assume any rulemaking au-  
6 thority of the head of a Federal agency under any Federal  
7 law.

8 “(h) AUDITS.—

9 “(1) IN GENERAL.—To ensure compliance by a  
10 State with any agreement of the State under sub-  
11 section (d) (including compliance by the State with  
12 all Federal laws for which responsibility is assumed  
13 under subsection (b)(2)), for each State partici-  
14 pating in an agency program, the head of a Federal  
15 agency shall—

16 “(A) not later than 180 days after the date  
17 of execution of the agreement, meet with the  
18 State to review implementation of the agree-  
19 ment and discuss plans for the first annual  
20 audit;

21 “(B) conduct annual audits during each of  
22 the first 4 years of State participation; and

23 “(C) ensure that the time period for com-  
24 pleting an annual audit, from initiation to com-  
25 pletion (including public comment and re-

1           sponses to those comments), does not exceed  
2           180 days.

3           “(2) PUBLIC AVAILABILITY AND COMMENT.—

4                 “(A) IN GENERAL.—An audit conducted  
5           under paragraph (1) shall be provided to the  
6           public for comment.

7                 “(B) RESPONSE.—Not later than 60 days  
8           after the date on which the period for public  
9           comment ends, the head of the Federal agency  
10          shall respond to public comments received  
11          under subparagraph (A).

12          “(3) AUDIT TEAM.—

13                 “(A) IN GENERAL.—An audit conducted  
14          under paragraph (1) shall be carried out by an  
15          audit team determined by the head of the Fed-  
16          eral agency, in consultation with the State, in  
17          accordance with subparagraph (B).

18                 “(B) CONSULTATION.—Consultation with  
19          the State under subparagraph (A) shall include  
20          a reasonable opportunity for the State to review  
21          and provide comments on the proposed mem-  
22          bers of the audit team.

23          “(i) MONITORING.—After the fourth year of the par-  
24          ticipation of a State in an agency program, the head of  
25          the Federal agency shall monitor compliance by the State

1 with the written agreement, including the provision by the  
2 State of financial resources to carry out the written agree-  
3 ment.

4 “(j) REPORT TO CONGRESS.—The head of each Fed-  
5 eral agency shall submit to Congress an annual report that  
6 describes the administration of the agency program.

7 “(k) TERMINATION.—

8 “(1) TERMINATION BY FEDERAL AGENCY.—The  
9 head of a Federal agency may terminate the partici-  
10 pation of any State in the agency program of the  
11 Federal agency if—

12 “(A) the head of the Federal agency deter-  
13 mines that the State is not adequately carrying  
14 out the responsibilities assigned to the State;

15 “(B) the head of the Federal agency pro-  
16 vides to the State—

17 “(i) a notification of the determina-  
18 tion of noncompliance;

19 “(ii) a period of not less than 120  
20 days to take such corrective action as the  
21 head of the Federal agency determines to  
22 be necessary to comply with the applicable  
23 agreement; and

24 “(iii) on request of the Governor of  
25 the State, a detailed description of each re-

1                   sponsibility in need of corrective action re-  
2                   garding an inadequacy identified under  
3                   subparagraph (A); and

4                   “(C) the State, after the notification and  
5                   period provided under subparagraph (B), fails  
6                   to take satisfactory corrective action, as deter-  
7                   mined by the head of the Federal agency.

8                   “(2) TERMINATION BY THE STATE.—A State  
9                   may terminate the participation of the State in an  
10                  agency program at any time by providing to the  
11                  head of the applicable Federal agency a notice by  
12                  not later than the date that is 90 days before the  
13                  date of termination, and subject to such terms and  
14                  conditions as the head of the Federal agency may  
15                  provide.

16                  “(1) CAPACITY BUILDING.—The head of a Federal  
17                  agency, in cooperation with representatives of State offi-  
18                  cials, may carry out education, training, peer-exchange,  
19                  and other initiatives as appropriate—

20                  “(1) to assist States in developing the capacity  
21                  to participate in the agency program of the Federal  
22                  agency; and

23                  “(2) to promote information sharing and col-  
24                  laboration among States that are participating in  
25                  the agency program of the Federal agency.

1           “(m) RELATIONSHIP TO LOCALLY ADMINISTERED  
2 PROJECTS.—A State granted authority under an agency  
3 program may, as appropriate and at the request of a local  
4 government—

5                 “(1) exercise that authority on behalf of the  
6 local government for a locally administered project;  
7 or

8                 “(2) provide guidance and training on consoli-  
9 dating and minimizing the documentation and envi-  
10 ronmental analyses necessary for sponsors of a lo-  
11 cally administered project to comply with this title  
12 and any comparable requirements under State law.”.

13           (c) PROHIBITION ON GUIDANCE.—No Federal agen-  
14 cy, including the Council, may reissue the final guidance  
15 of the Council entitled “Final Guidance for Federal De-  
16 partments and Agencies on Consideration of Greenhouse  
17 Gas Emissions and the Effects of Climate Change in Na-  
18 tional Environmental Policy Act Reviews” (81 Fed. Reg.  
19 51866 (August 5, 2016)) or substantially similar guidance  
20 unless authorized by an Act of Congress.

21           (d) DEFINITIONS.—Section 113 of the National En-  
22 vironmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
23 (as redesignated by subsection (b)(1)) is amended—

24                 (1) in paragraph (2), by striking “designated as  
25 a cooperating agency under section 107(a)(3)” and

1 inserting “invited to be a cooperating agency under  
2 section 107(f)(2)(B)”;

3 (2) by striking paragraph (8);

4 (3) by redesignating paragraphs (9), (10), (12),  
5 and (13) as paragraphs (8), (9), (13), and (14), re-  
6 spectively;

7 (4) in subparagraph (B) of paragraph (8) (as  
8 so redesignated), by striking “designated under sec-  
9 tion 107(a)(1)” and inserting “selected under sec-  
10 tion 107(f)(2)(A)”;

11 (5) in subparagraph (B)(iv) of paragraph (9)  
12 (as so redesignated), by striking “section 7(a) or (b)  
13 and of the Small Business Act ( U.S.C. 636(a)), or”  
14 and inserting “subsection (a) or (b) of section 7 of  
15 the Small Business Act (15 U.S.C. 636) or”;

16 (6) by inserting after paragraph (9) (as so re-  
17 designated) the following:

18 “(10) NEPA PROCESS.—

19 “(A) IN GENERAL.—The term ‘NEPA  
20 process’ means the entirety of every process,  
21 analysis, or other measure, including an envi-  
22 ronmental impact statement, required to be car-  
23 ried out by a Federal agency under this title be-  
24 fore the agency undertakes a proposed action.



1                   “(B) PERIOD.—For purposes of subpara-  
2 graph (A), the NEPA process—

3                   “(i) begins on the date on which the  
4 head of a Federal agency receives an appli-  
5 cation for a proposed action from a project  
6 sponsor; and

7                   “(ii) ends on the date on which the  
8 Federal agency issues, with respect to the  
9 proposed action—

10                   “(I) a record of decision, includ-  
11 ing, if necessary, a revised record of  
12 decision;

13                   “(II) a finding of no significant  
14 impact; or

15                   “(III) a categorical exclusion  
16 under this title.”; and

17                   (7) by inserting after paragraph (11) the fol-  
18 lowing:

19                   “(12) PROJECT SPONSOR.—The term ‘project  
20 sponsor’ means a Federal agency or other entity, in-  
21 cluding a private or public-private entity, that seeks  
22 approval of a proposed action.”.

23                   (e) CONFORMING AMENDMENTS.—

24                   (1) POLICY REVIEW.—Section 309 of the Clean  
25 Air Act (42 U.S.C. 7609) is repealed.



1           “(G) ‘special factor’ does not include knowl-  
2           edge, expertise, or skill in environmental litigation.”.

3           (b) UNITED STATES AS PARTY.—Section 2412(d)(2)  
4 of title 28, United States Code, is amended—

5           (1) in subparagraph (H), by striking “and” at  
6           the end;

7           (2) in subparagraph (I), by striking the period  
8           at the end and inserting “; and”; and

9           (3) by adding at the end the following:

10           “(J) ‘special factor’ does not include  
11           knowledge, expertise, or skill in environmental  
12           litigation.”.