

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

Wild Virginia, Virginia Wilderness Committee,
Upstate Forever, South Carolina Wildlife Federation,
North Carolina Wildlife Federation, National Trust for
Historic Preservation, Mountaintrue, Haw River
Assembly, Highlanders for Responsible Development,
Defenders of Wildlife, Cowpasture River Preservation
Association, Congaree Riverkeeper, The Clinch
Coalition, Clean Air Carolina, Cape Fear River Watch,
Alliance for the Shenandoah Valley, *and* Alabama
Rivers Alliance,

Plaintiffs,

v.

Council on Environmental Quality *and*
Mary Neumayr, in her official capacity as Chair of the
Council on Environmental Quality,

Defendants,

American Farm Bureau Federation, American Forest
Resource Council, American Fuel & Petrochemical
Manufacturers, American Petroleum Institute,
American Road & Transportation Builders Association,
Chamber of Commerce of the United States of
America, Federal Forest Resource Coalition, Interstate
Natural Gas Association of America, *and* National
Cattlemen's Beef Association,

Defendants-Intervenors.

Civ. No. 3:20-cv-45-JPJ

Hon. James P. Jones

BUSINESS ASSOCIATIONS' CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendants-Intervenors American Farm Bureau Federation, American Forest Resource Council, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, American Road & Transportation Builders Association, Chamber of Commerce of the United States of America, Federal Forest Resource Coalition, Interstate Natural Gas Association of America, and National Cattlemen’s Beef Association (the “Business Associations”) hereby move for summary judgment as to all claims for relief in this case. In support of this motion, the Business Associations will rely on the accompanying Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment and in Support of Cross-Motion for Summary Judgment, any reply memorandum that the Business Associations may file in support of this cross-motion for summary judgment, and any oral argument permitted at a hearing on this motion.

For the reasons to be set forth in the Business Associations’ briefing, the “NEPA Rule” at issue in this case (85 Fed. Reg. 43,304 (July 16, 2020)) is not unlawful under the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.* In promulgating the NEPA Rule, Defendant Council on Environmental Quality complied with all applicable requirements for reasoned decisionmaking under the APA. The Rule accordingly is not “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Nor, contrary to Plaintiffs’ assertions, is the NEPA Rule “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right” (*id.* § 706(2)(A)), as the Rule is entirely consistent with the text of the National Environmental Policy Act. Accordingly, there is no basis under the APA for setting aside or vacating the NEPA Rule, and judgment should be entered in the Business Associations’ favor as to each of Plaintiffs’ claims.

Dated: December 21, 2020

Respectfully submitted,

/s/ Michael B. Kimberly

MICHAEL B. KIMBERLY (*pro hac vice*)

JOSHUA D. ROGACZEWSKI

McDermott Will & Emery LLP

500 North Capitol Street NW

Washington, DC 20001

mkimberly@mwe.com

jrogaczewski@mwe.com

(202) 756-8000

Attorneys for Business Associations

CERTIFICATE OF SERVICE

I certify that on December 21, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System, which will automatically send e-mail notification of such filing to all counsel of record.

/s/ Michael B. Kimberly