

Congress of the United States

Washington, DC 20515

July 28, 2022

Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Administrator Regan:

We are investigating the recent decision by the U.S. Environmental Protection Agency (EPA) to allow special interest groups to “sue and settle” with federal agencies without the input of the public and stakeholders.¹ During the Trump Administration, EPA implemented an order to ensure that the public and other stakeholders had visibility into “sue and settle” cases.² The practice of “sue and settle” allows special interest groups to achieve regulatory goals through litigation—in secret—and bypass the legislative and regulatory processes. The Biden Administration’s decision to reverse course and allow special interest groups to make policy without stakeholder input is troubling. We are requesting documents and information regarding the decision to rescind the prior order.

“Sue and settle” is the practice in which a federal agency “accepts a lawsuit from outside advocacy groups that effectively dictates the priorities and duties of the agency through legally-binding, court-approved settlements negotiated behind closed doors—with no participation by other affected parties or the public.”³ Often times these cases affect state-level considerations while shutting out the states and other critical stakeholders from the decision-making process.⁴ Previously, federal agencies had transparency tools that allowed every entity—state legislatures, private companies, interest organizations, and others—affected by the regulation at issue to have the opportunity to participate in the decision-making process. The U.S. Chamber of Commerce found the Trump Administration’s EPA policy to be “well-founded.”⁵ However, after the Biden

¹ Brugger, Kelsey, *EPA revokes Trump-era ‘sue and settle’ memo*, E&E NEWS (Mar. 24, 2022).

² Memorandum from E. Scott Pruitt, EPA Administrator, to All Staff, *Adhering to the Fundamental Principles of Due Process, Rule of Law, and Cooperative Federalism in Consent Decrees and Settlement Agreements* (Oct. 16, 2017) available at https://www.epa.gov/sites/default/files/2017-10/text_of_memo_from_epa_administrator_scott_pruitt_to_epa_managers_adhering_to_the_fundamental_principles_of_due_process_rule_of_law_and_cooperative_federalism_in_consent_decrees_and_settlement_agreements_october_16_2017.txt.

³ U.S. Chamber of Commerce, *Sue and Settle Updated: Damage Done* (May 2017) available at https://www.uschamber.com/assets/documents/u.s._chamber_sue_and_settle_2017_updated_report.pdf.

⁴ *Id.*

⁵ *Id.*

Administration changed the policy, special interest groups are now essentially taking taxpayer dollars without any public or stakeholder participation.

The EPA memorandum released on March 18, 2022, offers no protection for taxpayers. The EPA memorandum states, the agency is “committed to fair, transparent, and efficient resolution of environmental claims brought against the EPA.”⁶ The next sentence, however, states that “[t]o help fulfill these commitments, I am revoking the... ‘Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements.’”⁷ The agency claims to be fair, transparent, and efficient but its memorandum favors special interest groups over the American people.

EPA’s actions raise new questions about the Biden Administration’s commitment to transparency and accountability. To assist the Republicans on the Committee in conducting oversight of the effects of the March 18, 2022, EPA Memorandum, please produce the following documents and information no later than August 11, 2022:

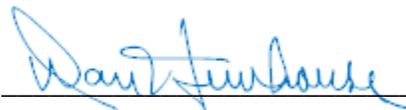
1. All documents and communications referring or relating to the March 18, 2022 EPA Memorandum;
2. All documents and communications referring or relating to Biden Administration policy regarding litigation against executive agencies, including what is referred to as sue and settle cases;
3. All documents and communications between EPA and any groups or individuals outside the agency regarding what is referred to as sue and settle practices.

To make arrangements to deliver documents or ask any related follow-up questions, please contact the Committee on Oversight and Reform Republican Staff at 202-225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and may investigate “any matter” at “any time” under House Rule X. Thank you for your cooperation with this inquiry.

Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



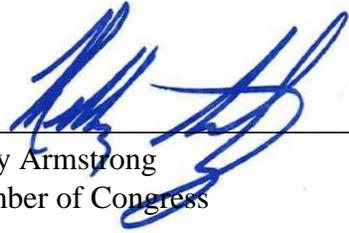
Dan Newhouse
Chairman
Congressional Western Caucus

⁶ Memorandum from Michael S. Regan, EPA Administrator, to All Staff, *Consent Decrees and Settlement Agreements to Resolve Environmental Claims Against the Agency* (Mar. 18, 2022) available at https://www.epa.gov/system/files/documents/2022-03/ogc-22-000-2698_0.pdf

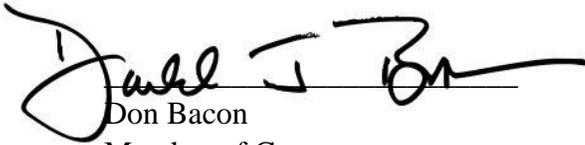
⁷ *Id.*



Mark Amodei
Member of Congress



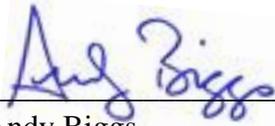
Kelly Armstrong
Member of Congress



Don Bacon
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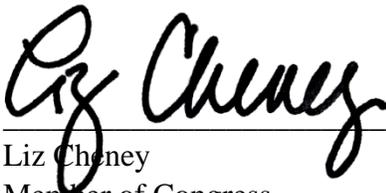
Cliff Bentz
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Andy Biggs
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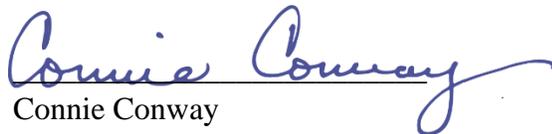
Earl L. "Buddy" Carter
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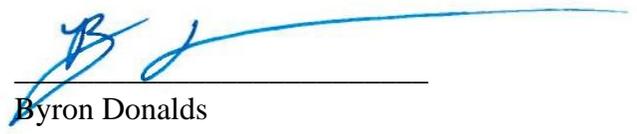
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Connie Conway
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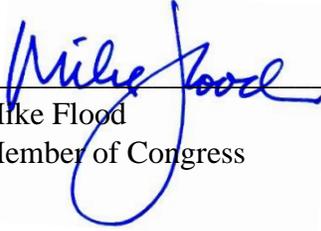
Byron Donalds
Member of Congress



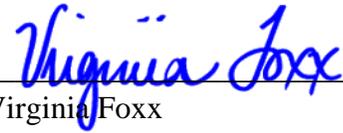
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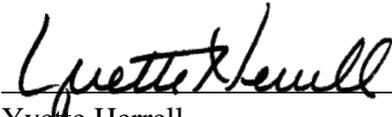
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Yvette Herrell
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Jody Hice
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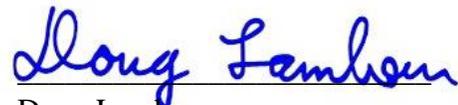
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Fred Keller
Member of Congress



Doug LaMalfa
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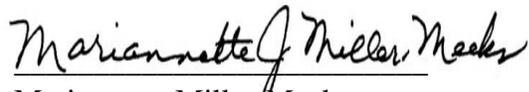
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Nancy Mace
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Tom McClintock
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Mariannette Miller Meeks
Member of Congress



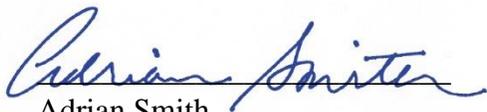
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Aumua Amata Coleman Radewagen
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Adrian Smith
Member of Congress



Pete Stauber
Member of Congress



Chris Stewart
Member of Congress



David G. Valadao
Member of Congress

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform