

November 29, 2017

The Honorable Rob Bishop, Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
United States House of Representatives
Washington, D.C. 20515

The Honorable Raúl Grijalva, Ranking
Member
House Committee on Natural Resources
1324 Longworth House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Bishop and Ranking Member Grijalva:

We appreciate the opportunity to provide written comments for the Committee's November 29, 2017 hearing titled "Modernizing NEPA for the 21st Century." On behalf of the undersigned organizations and our millions of members and supporters, please accept these comments for the hearing's official record.

The National Environmental Policy Act (NEPA) is rightfully referred to as the "Magna Carta" of environmental laws. Like that famous charter, NEPA enshrines fundamental values into government decision-making. NEPA has been a proven bulwark against hasty or wasteful federal decisions by fostering government transparency and accountability. It has ensured that federal decisions are at their core democratic, by guaranteeing meaningful public involvement. It has achieved its stated goal of improving the quality of the human environment by relying on sound science to reduce and mitigate harmful environmental impacts.

As a tangible example of the power of NEPA to improve lives and communities through better decision-making, attached in an appendix of just a handful of projects that have benefited every state or district represented on this committee.

We welcome a reasoned discussion aimed at modernizing NEPA's implementation to increase transparency, better facilitate public input, and reduce the environmental impacts of government decisions so that NEPA continues to improve decision-making for the next fifty years.

At the outset, however, we want to emphasize that the most severe threats to this law's sound and efficient implementation are not failures in the law itself, but, rather, legislative attacks from Congress and a critical lack of funding for agencies to adequately and efficiently conduct environmental reviews. Over the last several years, hundreds of pieces of legislation have been introduced that would weaken NEPA or waive it entirely. The 115th Congress alone has already been the source of over 40 such proposals that would waive NEPA via legislative categorical exclusions, limit the scope of environmental reviews so that they specifically ignore climate impacts, or even reduce government accountability to the public it serves by placing limitations on judicial review. The volume of these attacks evidences a disturbing ideological effort focused on eliminating, not improving or "streamlining," this law.

All of these bills are based on the persistent but demonstrably false premise that NEPA and other regulations are the major cause of delay in infrastructure development and government decision-making. This theory has been comprehensively examined and thoroughly rebuffed by numerous

studies, including ones conducted by the Congressional Research Service (CRS) and the U.S. Department of Treasury. The CRS has repeatedly concluded that NEPA is not a primary or major cause of delay in project development. Rather, CRS identified causes entirely outside the NEPA process, such as lack of funding.¹ In a report released in December of 2016, the Treasury Department similarly concluded that “a lack of funds is by far the most common challenge to completing” major transportation infrastructure projects.²

As this Committee prepares to consider ways to modernize NEPA for the 21st century, we urge you to reject changes that are premised in rhetoric and instead focus on improving NEPA’s implementation so that the government can better address the manifold environmental threats of the next century. The Committee should consider ways to foster better decisions, improve transparency and accountability, and ensure taxpayer dollars are spent on resilient decisions that protect our health our communities, and our environment. While we welcome further dialogue on the issue, below are some illustrative examples of how NEPA could be modernized and improved in a responsible way:

- **Increased Funding** – Nearly every study examining ways to improve NEPA implementation indicates that increased funding is necessary to ensure Federal agencies charged with performing environmental reviews are adequately staffed, trained, and resourced. The Council on Environmental Quality (CEQ) is charged with the considerable responsibility of overseeing NEPA policy and implementation across all Federal agencies, but its staff and resources have stagnated at a historic low for the last several years. CEQ had a staff of 50 to 70 full-time employees in the 1980s, but now is left to fulfill the same responsibilities with only 24 full-time employees. Similarly, Federal agencies have had to deal with consistently diminishing personnel, resources, and training. Unfortunately, many of the above described legislative attacks on NEPA ignore this fundamental problem.
- **Reinstate the CEQ Guidance on Climate Change** – There is no question climate change is the fundamental challenge of the 21st century. Earlier this year, the Trump Administration revoked a much-needed and long overdue guidance clarifying exactly how Federal agencies should incorporate climate change into environmental reviews. Revocation of the guidance did not eliminate the existing legal requirement for Federal agencies to consider climate impacts. Rather, it left Federal agencies and project sponsors uncertain on how to fulfill their responsibilities. Reinstating the guidance will restore a consistent framework for agencies and project sponsors and will help ensure that future infrastructure is developed and built to withstand rising seas, increased droughts, and the longer fire seasons associated with climate change.
- **Leverage Technology to Improve Transparency, Coordination, and Public Input** – Institutionalizing wide-spread technology tools across the government will not only improve coordination, public participation, and transparency, it will also reduce the costs associated with the permitting process. The Permitting Dashboard that was instituted by

¹ Congressional Review Service (CRS), *Accelerating Highway and Transit Project Delivery: Issues and Options for Congress*, (Aug. 3, 2011), available at <http://www.aashtojournal.org/Documents/August2011/CRSinfrastructure.pdf>.

² Toni Horst, et al., *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance*. AECOM, (2016). <https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf> (last accessed March 20, 2016).

the Obama administration and recently codified is a useful model for what a successful, publicly available website can achieve. That website, however, includes only a select few projects chosen by the Federal Permitting Improvement Council. Congress should consider providing the resources necessary to provide a one-stop website for mapping ongoing environmental reviews, outlining comment deadlines, tracking ongoing mitigation and monitoring, and providing relevant agency links for engagement. An interactive website that sorts projects and analyses by geographic location would allow stakeholders, local governments, and project sponsors to more efficiently navigate the process. Critically, such a website should also include disclosure of agency application of categorical exclusions under NEPA.

We believe modernization efforts in line with these recommendations are a reasonable approach to improving NEPA implementation for the coming century. Congress should place its focus on funding and administrative solutions that will allow the federal government to meet the challenges of the 21st century. At the same time, we reiterate our strong opposition to legislative attempts that undermine this bedrock law under the guise of improvement. A modernized NEPA must secure and strengthen the fundamentals of informed decision-making, public engagement and accountability for major federal actions which are as relevant and critical today as they were when NEPA first became law.

Sincerely,

American Bird Conservancy
Bold Alliance
Center for Biological Diversity
Clean Water Action
Climate Law and Policy Center
Coalition for American Heritage
Conservatives for Responsible Stewardship
Defenders of Wildlife
Earthjustice
Earthworks
Environmental Protection Information
Center
Friends of the Sonoran Desert
Grand Canyon Trust
Hands Across the Sand

Information Network for Responsible
Mining
Klamath Forest Alliance
Los Padres ForestWatch
National Parks Conservation Association
Natural Resources Defense Council
Oceana
Ocean Conservancy
San Juan Citizens Alliance
Save EPA
Sierra Club
The Surfrider Foundation
Western Environmental Law Center
Western Watersheds Project
Wilderness Workshop
The Wilderness Society