

February 27, 2023

Re: Legislative Hearing on H.R. ____, “Building United States Infrastructure Through Limited Delays and Efficient Reviews Act of 2023”

Dear Representative,

On behalf of the undersigned organizations, and our millions of supporters and members, we write to you to express our strenuous opposition to Representative Grave’s “BUILDER Act.” This legislation proposes sweeping reforms to the National Environmental Policy Act (NEPA) that will prioritize private profit over the public interest and exhibits an astonishing disregard for government accountability and the voices and welfare of communities impacted by federal decisions.

We note at the outset that NEPA is appropriately referred to as the “Magna Carta” of environmental laws. Like that famous charter, NEPA enshrines fundamental values into government decision-making. NEPA is a proven bulwark against hasty or wasteful federal decisions by fostering government transparency and accountability. This bedrock environmental law 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. NEPA is an absolutely critical tool to guarantee our Nation swiftly and equitably transitions to a clean energy economy.

The bill, however, is an extreme attack on principles of government accountability, meaningful public input, and review provided for under NEPA and its implementing regulations. The bill radically limits scope of reviews by federal agencies and entirely eliminates government accountability when agencies fail to adequately consider the health, environmental, or economic impacts of their decisions. If passed, this legislation would fundamentally undermine the purpose of NEPA and essentially silence the voices of frontline communities and local governments.

As an initial matter, we note that the entirety of this bill is seemingly premised on the persistent, but demonstrably false, myth that NEPA reviews are the primary cause of permitting delay. This theory has been comprehensively examined and thoroughly debunked by administrations of both parties through numerous studies, including ones conducted by the Congressional Research Service (CRS), the Government Accountability Office (GAO), the U.S. Department of Treasury, and other federal agencies as well as academia.¹ 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 project funding, changes in project design, and other factors. Subsequent studies have confirmed that to the extent that there are delays within the NEPA process, they are not attributable to the law or

¹ See, Linda Luther, *The National Environmental Policy Act: Streamlining NEPA*, Congressional Research Service, RL33152, 26 (2011) (citing study indicating “factors ‘outside the NEPA process’” the NEPA process were identified as the cause of delay the majority of time); Bureau of Land Management Operations report available at https://www.blm.gov/sites/blm.gov/files/docs/2021-03/Table12_TimetoCompleteAPD_2020.pdf indicating that the agency spends more time waiting for information from operators than it spends reviewing oil well drilling permit applications; U.S. Government Accounting Office, GAO-09-611, *Federal Land Management: BLM and the Forest Service Have Improved Oversight of the Land Exchange Process, But Additional Actions are Needed* 15 (2009), indicating lack of qualified staff and shifts in agency priorities caused delay in the BLM review process; Toni Horst, et al., 40 *Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance*. AECOM, (2016) (finding that “a lack of funds is by far the most common challenge to completing” major infrastructure projects).

regulations themselves, but rather to lack of staff and funding – a problem that Congress addressed last year by including historic investments for environmental review in the Inflation Reduction Act.

Since this bill essentially eliminates meaningful judicial review, it is also worth addressing the often repeated and easily debunked allegation that NEPA is simply a tool for frivolous litigation. This is a pernicious canard, threatening the foundation of informed, democratic decision-making by the federal government. Simply put, legal challenges to NEPA decisions are rare. Agency data and a review of court filings demonstrates that less than .25% of actions subject to NEPA result in litigation.²

Overwhelmingly, the clear majority of actions subject to NEPA go unchallenged. But the ability to challenge NEPA violations and obtain an injunction prior to a project impacting the health, economy, and environment of frontline communities and the broader public is essential to accountability.

Despite these facts, the BUILDER Act proposes sweeping revisions to NEPA that would essentially prioritize project approval above informed decision making and private profits above the public interest. The list of problems with this bill is extensive, but several merit particular attention. The proposed legislation would:

- **Dramatically Narrow Application of NEPA and Limit the Scope of Reviews** – The bill would radically limit the application of NEPA by redefining the threshold consideration of what is a “major federal action” for the purposes of NEPA. Further, the bill excludes federal loans, loan guarantees, and other forms of financial assistance from NEPA, which could allow projects such as coal fired generating facilities and concentrated animal feeding operations to evade any review or public scrutiny. For reviews that do occur, it relieves agencies of any responsibility to undertake any new research necessary for informed decision making and potentially prevents the consideration of upstream and downstream impacts of decisions.
- **Essentially Eliminate Judicial Review** – In addition to reducing the statute of limitations to a mere 120 days, the bill would bar legal challenges to categorical exclusions, which account for nearly 98% of actions subject to NEPA. For example, under this provision, the misapplication of the categorical exclusion to the disastrous Deepwater Horizon project could never be challenged. The bill also prohibits challenges to many environmental assessments where no public comment was provided. Further, the bill limits judicial review to alternatives and effects “considered” in an environmental document, when it is invariably the lack of consideration of reasonable alternatives or important environmental effects in environmental documents that is the reason for NEPA litigation. For the few remaining projects subject to judicial review, injunctive relief would be prohibited, thus ensuring that projects move forward regardless of how egregiously deficient a review or harmful the impacts of a project on a community or the environment.
- **Allow Inherent Conflicts of Interests In Review** – The bill would allow project sponsors to prepare their own environmental reviews, thus eliminating objective analyses about the environmental and related social and economic effects of federal actions and institutionalizing bias in the review process. This potentially undermines the entire purpose of NEPA to have federal agencies make informed, unbiased decisions in the public interest.
- **Prioritize Project Sponsors Over the Public Interest** – The legislation not only would impose arbitrary timelines on reviews, but would also prohibit an agency from extending the time if needed to do essential scientific work, or to accommodate public comment, unless the project sponsor agrees. Further, the bill would severely narrow what has long been considered the “heart”

² John C. Ruple and Kayla M. Race, Measuring the Litigation Burden: A Review of 1,499 Federal Court Cases, *Environmental Law* Vol 50 486, 500 (2020).

of the NEPA process, by prioritizing consideration of alternatives that meet the project sponsor goals.

In the wake of the ongoing environmental and public health disaster unfolding in East Palestine, Ohio, it is astonishing that a bill fundamentally undermining the review of environmental, health, and economic impacts of federal decisions is even advanced for consideration. The potential catastrophic consequences of uninformed decision making on communities and the environment is alarmingly clear.

Our organizations are eager to see a swift and equitable buildout of the critical infrastructure necessary to transition to a clean energy economy. However, the proposed legislation makes such a transition impossible. The bill is an extreme attack on government accountability, meaningful public input, and review under the National Environmental Policy Act (NEPA). If this committee is interested in meaningful permitting reform, it should focus on legislation such as the “Environmental Justice for All Act” which ensures the Nation transitions to a just and equitable clean energy economy.

Sincerely,

350.org

Alaska Wilderness League

Alliance of Nurses for Healthy Environments

Atchafalaya Basinkeeper.

Azul

Bold Alliance

Center for Biological Diversity

Change the Chamber

Chautauqua-Conewango Consortium

Chesapeake Bay Foundation

Chesapeake Climate Action Network

Climate Crisis Policy

Climate Hawks Vote

Coastal Carolina Riverwatch

Columbia Riverkeeper

Defenders of Wildlife

Earthjustice

Earthworks

Endangered Species Coalition

Environment America

Environmental Law and Policy Center

Environmental Protection Information Center

Food & Water Watch

Fridays For Future Cleveland

Friends of the Earth

Grand Riverkeeper

Great Old Broads for Wilderness

Greater New Orleans Housing Alliance (GNOHA)

GreenLatinos

Gunpowder RIVERKEEPER

Healthy Ocean Coalition

Hispanic Federation

HousingLOUISIANA
HousingNOLA
Idaho Organization of Resource Councils
Information Network for Responsible Mining
Interfaith Power & Light
John Muir Project
League of Conservation Voters
Los Padres ForestWatch
Milwaukee Riverkeeper
National Parks Conservation Association
Natural Resources Defense Council
NextGen America
Northeastern Minnesotans for Wilderness
Ocean Conservancy
Ocean Conservation Research
Ocean Defense Initiative
Oceana
Operation HomeCare, Inc
Oxfam America
Project Eleven Hundred
Seneca Lake Guardian, A Waterkeeper Alliance Affiliate
Seven Circles Foundation
Sierra Club
Southern Environmental Law Center
The Climate Reality Project
The Earth Bill Network
The Wilderness Society
Tualatin Riverkeepers
U.S. PIRG
Voices for Progress
Waterkeeper Alliance
Western Environmental Law Center
Western Organization of Resource Councils
Western Watersheds Project
Winter Wildlands Alliance