

July 16, 2021

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232, U.S. Capitol
Washington, D.C. 20515

The Honorable Charles Schumer
Majority Leader
U.S. Senate
S-221, U.S. Capitol
Washington, D.C. 2051

Dear Speaker Pelosi & Majority Leader Schumer:

We are writing to share serious concerns we have with provisions relating to environmental review and natural resources that we understand may be included as part of the infrastructure framework. The provisions below underscore a misplaced focus on limiting the environmental review and public input process, which threatens to undermine the principles of racial and climate equity that should guide an infrastructure package. Taken together, these provisions would result in comprehensive limitations on meaningful public input and management of critical public resources. These provisions are also antithetical to the climate goals of the American Jobs Plan because some may have the effect of contributing to climate change, rather than supporting the climate solutions we urgently need.

We ask that you work to ensure the following provisions are not included in any final infrastructure package:

- **Permanent Reauthorization of Title 41 of “Fixing America’s Surface Transportation Act” (FAST-41):** We oppose including this reauthorization in its current form in a broader infrastructure package. FAST-41 applies an abbreviated permitting scheme to an astonishingly broad category of projects of incredible size, cost, complexity, and community impacts – energy, mining, and infrastructure projects of more than \$200 million. In effect, FAST-41 limits consideration of alternatives that may be more responsive to the climate crises, places presumptive limits on public input, and places severe limits on government accountability and public access to the courts on the country’s largest infrastructure projects where full consideration of the socio-economic, environmental, and community impacts are most warranted.
- **Waivers of Environmental Review and Public Input Under NEPA:** Legislative categorical exclusions like those included in the Surface Transportation Reauthorization Act (STRA) and the Energy Infrastructure Act (EIA) completely bypass environmental review and public input on projects with potentially severe health and environmental impacts. Specifically, we oppose the following provisions included in STRA and EIA
 - **Daines Amendment to EIA #103** - This amendment creates a categorical exclusion from NEPA that eliminates nearly all environmental review and public

input under NEPA for prescribed management activities, such as application of pesticides and timber cuts on parcels up to 3000 acres.

- **Daines Amendment to EIA #106** - This amendment entirely waived the application of NEPA for a broad category of emergency situations declared at the sole discretion of the secretary, bypassing normal opportunities for public input on potentially harmful activities such as salvage logging. Existing regulations already provide for alternative arrangements for compliance with NEPA during disasters and emergencies, while still providing for meaningful environmental review and public input.
 - **Section 1318 of STRA** - This categorical exclusion would exempt thousands of natural gas, oil, and wastewater pipelines known as “gathering lines” from review and public input under NEPA.
 - **Section 1317 of STRA** - This provision broadens and further entrenches a legislative categorical exclusion that arbitrarily waives any environmental and health review, public scrutiny, and public input on projects up to \$35 million dollars, which can have potentially serious impacts on communities.
- **Sweeping Erosion of Meaningful Review and Input Under NEPA:** A litany of provisions in the senate transportation bill coalesce to fundamentally undermine informed decisionmaking and meaningful review under NEPA. These provisions include, but are not limited to:
 - **Section 1301 - Codification of Executive Order Rescinded by President Biden:** This provision codifies a Trump era executive order, One Federal Decision, that President Biden found problematic enough to rescind early in his administration in Executive Order 13990. Among other problems, this would place arbitrary time and page limits on reviews of health and environmental impacts.
 - **Section 1315 - Allows Prescribed Activities to Occur Prior to Impact Review:** This provision renders the review of environmental and health impacts meaningless by allowing activities to occur, regardless of impacts.
 - **Section 1313 - Extends Problematic NEPA Assignment Program** - This provision entirely ignores problems thoroughly detailed by the Government Accountability Office with the NEPA Assignment programs. Although the GAO recommended more scrutiny and audits of this program, this extends existing agreements with states from 5 to 10 years, regardless of the state of their compliance with the review and input requirements of NEPA.
 - **Lack of science-based sideboards:** The sections of the EIA focused on public forests and lands (Sections 8001, 8003, and 8004) have multiple provisions that are not evidence- and science-based, and could exacerbate the global climate, biodiversity and wildfire crises. This legislation needs to add safeguards so these sections only fund projects and programs that are ecologically and scientifically sound, improve the health

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of our forests, lands and waters, and protect communities from wildfire risks in a meaningful way, decided with stakeholder feedback.

- **Limiting environmental review of mines:** Section 2006 of the EIA is intended to shorten the already troubling permitting process for large hardrock mines, encouraging more toxic mines with little environmental review and feedback from communities. We are operating under an extremely permissive mining law from 1872 that effectively gives mining companies free reign over our public lands, and this provision exacerbates issues already plaguing communities impacted by mining.

Thank you for your consideration and we urge you to take action to ensure these harmful provisions do not advance.

Signed,

Center for Biological Diversity
Earthjustice
Earthworks
Environmental Law and Policy Center
Food and Water Watch
Natural Resources Defense Council
Sierra Club
Southern Environmental Law Center
Western Environmental Law Center