

June 21, 2017

Dear Senator:

On behalf of our millions of supporters, we ask that you strongly oppose any attacks on the integrity of our environmental laws, any attempts to limit the ability of ordinary citizens' access to the courts, or limit consideration of environmental, economic and social justice impacts of public projects in any infrastructure bill considered by this Congress.

A comprehensive plan for ensuring our nation's infrastructure is in good repair and provides adequate services does not require us to sacrifice environmental protections. On the contrary, a full consideration of environmental and social welfare is essential to ensure better, more informed decisions and to expend taxpayer money wisely and in the public interest. Fixing our country's aging water system, building modern mass transit and improving our road network, and shifting to a sustainable electrical system based on renewable energy can all be accomplished without sacrificing these principles.

The American Society of Civil Engineer's most recent report card currently rates the U.S. infrastructure overall at a D+ level.¹ Our bridges, dams, drinking water, inland waterways, levees, and public parks all receive inadequate funding and are in need of urgent repair. Undermining public safeguards will not move these infrastructure projects forward any faster, but they will make it harder to ensure that taxpayers and citizens benefit fully and are not harmed from the infrastructure that is built.

Unwilling to address the full funding need and under the guise of "streamlining," however, President Trump and some in Congress propose to undermine a host of public safeguards including, the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), environmental justice, and citizen access to the courts. These attacks are unnecessary, counterproductive, and harmful. The safeguards provide crucial government oversight and help to produce better project outcomes, ensure that taxpayers' money are used wisely, avoid conflict and corruption, and prevent significant harms and injustices that occur when federal agencies cut corners in approving large projects. The situation in Flint, Michigan is emblematic of the infrastructure challenges our nation faces. The city needs funding to address its lead-contaminated water system. Attacking regulatory safeguards will not help the people of Flint. If anything, such rollbacks are likely to lead to more situations like the one in Flint in the future. Undermining our safeguards is akin to putting our "head in the sand." And it puts at risk the well-being of ordinary people across the country. In short, we need to oppose these attacks because our safeguards matter.

The National Environmental Policy Act Saves Lives and Taxpayer Funds

Large scale infrastructure projects approved without adequate review and oversight often lead to the waste of millions of dollars, undermine entire communities, and harm the public health and environment. The National Environmental Policy Act, or NEPA, acknowledges that while industry may profit from a federal project, it is the public that must live with its consequences.

¹ American Society of Civil Engineers, 2017. Infrastructure Report Card, available at: <https://www.infrastructurereportcard.org/wp-content/uploads/2016/10/2017-Infrastructure-Report-Card.pdf>.

NEPA is the backstop that provides the public with the information, the analysis, and the forum to address projects that may not represent wise investments.

Without NEPA, for example, no one would have discovered that a vehicle battery manufacturing facility construction project in Michigan was going to contaminate the air at a nearby day-care. The project would have disturbed soil that had already been contaminated with dioxin, a highly toxic carcinogen that also causes developmental problems in children. Fortunately, the NEPA review process uncovered the problem and provided the opportunity for simple adjustments to the project that protected the children's health while allowing the factory to go forward.²

In 2011, the City of Los Angeles was going to force construction of a railway through a community, upending homes and businesses at an enormous cost to the public. The NEPA review, however, identified an alternative route for the project over derelict pre-existing tracks. The NEPA alternative alleviated significant community opposition to the project and saved taxpayers millions.

Short-cutting the NEPA review process increases the risk of disasters. For example, in 2010 the government approved BP's drilling plan for the Deepwater Horizon project without any environmental review by categorically excluding it from a NEPA analysis.³ This categorical exclusion was premised on an inadequate environmental review that simply ignored the possibility of a catastrophic blowout. The Deepwater Horizon disaster killed eleven people, spilled 4.9 million barrels of oil, bankrupted businesses and sickened clean-up worker exposed to the spill, resulting in billions of dollars in damage that will take decades to restore.

Proposals that weaken NEPA review or curtail public input – and certainly those that waive NEPA outright – would render infrastructure projects more susceptible to waste, fraud and abuse and open the door to shoddy, ill-considered projects that put people at risk and harm the environment.

The Endangered Species Act Saves Wildlife and Facilitates Smarter Infrastructure

Poorly designed infrastructure can cause significant harm to endangered wildlife and plants that virtually all Americans want to protect. The Endangered Species Act (ESA) is our nation's most effective means of protecting wildlife and other species in danger of extinction. The consultation provisions and flexibilities already built into the ESA provide the information, forum, and opportunity to advance smart development projects that include plans for protecting endangered species and the habitats on which they depend.

For example, between 2008 and 2015, the Fish and Wildlife Service conducted over 88,000 consultations under Section 7 of the ESA. In every single case, the Service worked with project proponents and used the ESA's flexibility to provide a pathway for the projects to move forward. In addition, the overwhelming majority of these reviews are completed well within the 135 day deadline required under the law.⁴ And, by ensuring that an infrastructure project is properly

² See, Department of Energy, Examples of Benefits from the NEPA Process for ARRA Funded Activities (May 2011) at Section D. https://energy.gov/sites/prod/files/2013/09/f2/ARRA_NEPA_Benefits_List_May122100.pdf

³ See, National Commission on BP Deepwater Horizon Oil Spill & Offshore Drilling, Report to the President. Deep Water: The Gulf Oil Disaster and the Future of Offshore Drilling 82 (2011).

⁴ Malcom J, Li Y-W (2015) *Data contradict common perceptions about a controversial provision of the US Endangered Species Act*. Proceedings of the National Academy of Sciences USA 112(52):15844–15849

designed at the outset, we can prevent projects from causing unintended harm to wildlife and protect taxpayer's conservation investment at the same time.

Infrastructure legislation that undermines the ESA — by exempting projects from compliance, undermining consultations, or otherwise — would increase the threats to already imperiled species. It also would undermine conservation investments already made and make future efforts more expensive.

Public Access to the Courts is Critical to Ensuring Safe Infrastructure

All of our environmental safeguards are put at risk if they cannot be enforced by the public. Federal agencies are not immune from mistakes and sometimes make rushed decisions that they, and the public, will later regret. Allowing citizens and organizations from across the political spectrum to challenge poorly conceived projects and violations of the law is squarely in the public interest and can prevent waste of taxpayers' funds. Facts show that lawsuits challenging projects are rare, but those that have been filed have exposed boondoggles and blatant violations of the law. They also ensure that the government complies with the law and is accountable to the people. The prospect of judicial scrutiny also serves as a disincentive to project proponents who might otherwise attempt to defraud agencies or steamroll communities with unsavory projects. Instead, a project's proponents are encouraged to engage communities to resolve conflict before anyone thinks of going to court.

Punitive bonding requirements, forced arbitration, and other efforts to undermine public access to the courts tip the scales and are squarely intended to favor wealthy special interests. Such proposed changes would block or severely undermine the ability of citizens seeking to protect their communities. Barring the courtroom door undermines our system of checks and balances. And, making the courts the exclusive province of wealthy special interests is antithetical to our country's tradition of justice.

Undermining our Safeguards Leads to Greater Social Injustice

The issue of public safeguard rollbacks is a problem for all Americans but acutely so for people of color and other disenfranchised communities. These communities continue to disproportionately suffer from the adverse human health and environmental impacts of infrastructure.⁵ They are consistently exposed to higher levels of air pollution, are more likely to drink from unsafe water systems, and are more likely to be exposed to toxic chemicals. Removing lead from water lines, from cities like Flint and many others, funding lead-paint remediation and cleaning up toxic waste sites are just a few of the infrastructure-related issues that must be addressed to deal with current environmental justice issues.⁶

An infrastructure package needs to enhance, not undermine, environmental justice. It must preserve the responsibility of agencies to disclose project impacts and the public's ability to

⁵ See, e.g., U.S. Department of Justice, 2016 Implementation Progress Report on Environmental Justice at 6, <https://www.justice.gov/file/929616/download>

⁶ See, e.g., Pennsylvania Dept. of Health, 2014. Childhood Lead Surveillance Annual Report, available at: <http://www.health.pa.gov/My%20Health/Infant%20and%20Childrens%20Health/Lead%20Poisoning%20Prevention%20and%20Control/Documents/2014%20Lead%20Surveillance%20Annual%20Report%20r2.pdf> (finding 17 cities in Pennsylvania had a higher percentage of children with blood lead levels ($\geq 5 \mu\text{g}/\text{dL}$) above those in Flint, MI.)

influence those projects; and ensure the right of citizens to full access to the courts to remedy injustices. It must fund projects that meet critical needs. And it must empower people of color and other disenfranchised communities to fight past injustices and prevent future ones caused by taxpayer-funded infrastructure.

Undermining Our Safeguards Can Cause Delay and is Unnecessary

More attacks on safeguards could exacerbate delays while contributing to the safety problems chronic underfunding has already caused. In fact, the misguided obsession with undermining time-tested safeguards has already led to a bottleneck that has contributed to delay. The Department of Transportation's Inspector General has found that numerous delays under the Moving Ahead for Progress in the 21st Century Act (MAP-21) are the result of the additional — and conflicting — safeguard rollbacks mandated in the Fixing America's Surface Transportation Act (FAST Act).⁷ Indeed, the Department of Treasury identified 40 economically significant infrastructure projects and found that “a lack of public funding is by far the most common factor hindering the completion of transportation and water infrastructure projects.”⁸

Furthermore, the success of the American Recovery and Reinvestment Act of 2009 illustrates that with adequate funding and environmental review, projects are completed that stimulate the economy without compromising our core laws and environmental principles. All projects went through environmental review under the National Environmental Policy Act (NEPA), allowed for judicial review of each project, and nearly all projects were completed on time, helping the U.S. economy recover from the Great Recession.

We urge you to pass legislation that funds the infrastructure we need while preserving critical public safeguards and access to the courts access so that we protect taxpayers, communities, social justice and our environment.

Sincerely,

Center for Biological Diversity
Earthjustice
Food & Water Watch
Greenpeace USA
League of Conservation Voters
Oceana
Public Citizen
The Wilderness Society

500 Women Scientists
Advocates for Snake Preservation
Alaska Wilderness League
Altamaha Riverkeeper

Defenders of Wildlife
Friends of the Earth
GreenLatinos
League of United Latin American Citizens
Natural Resources Defense Council
Oil Change International
Sierra Club
Waterkeeper Alliance

⁷ Department of Transportation, Office of Inspector General Audit Report, *Vulnerabilities Exist In Implementing Initiatives Under Map-21 Subtitle C To Accelerate Project Delivery*. March 6, 2017

<https://www.oig.dot.gov/sites/default/files/DOT%20Implementation%20of%20MAP-21%5E3-6-17.pdf>

⁸ *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance*. prepared for the Department of the Treasury, at 6 <https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf>

American Bird Conservancy
American Rivers
Animal Legal Defense Fund
Animal Protection League of New Jersey
Animals Are Sentient Beings, Inc.
Animas Riverkeeper
Animas Valley Institute
Appalachian Voices
Atchafalaya Basinkeeper
Basin and Range Watch
Battle Creek Alliance
Bayou City Waterkeeper
Beyond Toxics
Big Blackfoot Riverkeeper, Inc.
Black Warrior Riverkeeper
Bold Alliance
Bold visions conservation
Boulder Creek, a Waterkeeper Alliance Affiliate
Broad River Alliance, a Waterkeeper Affiliate
Cahaba River Society
California Native Plant Society
California Wolf Center
Californians for Alternatives to Toxics
Californians for Western Wilderness
Cape Fear River Watch
Center for Public Environmental Oversight
Center for Sierra Nevada Conservation
Center for Water Advocacy
Chattahoochee Riverkeeper
Choctawhatchee Riverkeeper
Clean Water Action
Clemson University Students for Environmental Action
Climate Justice Alliance
Coastal Carolina Riverwatch
Conservation Council for Hawai'i
Coosa Riverkeeper
CORALations
Cottonwood Environmental Law Center
Crawford Stewardship Project
Crystal Coast Waterkeeper
CSGA
Desert Tortoise Council
Don't Waste Arizona
Earthworks
Ecology Center
Ecology Party of Florida
Endangered Habitats League

Endangered Species Coalition
Environmental Committee for the San Lorenzo Valley
Environmental Protection Information Center
Environmental Stewardship
Fairmont, MN Peace Group
Food Empowerment Project
Freedom Center for Wildlife Inc.
Friends of Dragon Run
Friends of Harbors, Beaches and Parks
Friends of the Bitterroot
Friends of the Clearwater
Friends of the Earth
Friends of the Eel River
Friends of the Kaw - Kansas Riverkeeper
Friends of the Northern San Jacinto Valley
Friends of the Santa Clara River
GAIA: Global Alliance for Incinerator Alternatives
GARDEN, Inc.
Georgia ForestWatch
Grand Canyon Trust
Green Delaware
Green For All
Green River Action Network
Gulf Restoration Network
Gunpowder Riverkeeper
Hackensack Riverkeeper
Harford County Bird Club
Hells Canyon Preservation Council
Hip Hop Caucus
Howard County Bird Club
In Defense of Animals
Information Network for Responsible Mining
Iowa Environmental Council
Kentucky Heartwood
Kettle Range Conservation Group
Laramie Audubon Society
League of Humane Voters of New Jersey
Maryland Ornithological Society
Midshore Riverkeeper Conservancy
Milwaukee Riverkeeper
MountainTrue
NC WARN
North Sound Baykeeper
Northeast Oregon Ecosystems
Northern Jaguar Project
Northwest Environmental Advocates
NY/NJ Baykeeper

Ocean Conservation Research
Oil Change International
One More Generation
Peace and Freedom Party, Ca.
Potomac Riverkeeper Network
Power Shift Network
Prairie Rivers Network
Prince William Soundkeeper
Project Coyote
Public Lands Project
Raritan Riverkeeper
Rocky Mountain Wild
Rogue Riverkeeper
Sailors for the Sea
San Diego Coastkeeper
San Francisco Baykeeper
Save Our Sky Blue Waters
Save the Colorado
Save the Frogs!
Save the Pine Bush
Save The River / Upper St. Lawrence Riverkeeper
Selkirk Conservation Alliance
Seneca Lake Guardian A Waterkeeper Affiliate
Sequoia ForestKeeper
Southeast Alaska Conservation Council/Inside Passage Waterkeeper
Southern Environmental Law Center
Southern Utah Wilderness Alliance
Surfrider Foundation
Swan View Coalition
Tennessee Environmental Council
The Conservation Alliance
The Enchanted Biscuit
The Lands Council
The Rewilding Institute
The Shalom Center
The Trust for Public Land
Tuolumne River Trust
Turtle Island Restoration Network
Upstate Forever
Virginia Eastern Shorekeeper
Virginia Organizing
Wasatch Clean Air Coalition
Waterkeepers Chesapeake
Western Environmental Law Center
Western Wildlife Conservancy
White River Waterkeeper
Wild Horse Education

Wildcoast
WildEarth Guardians
Xun Biosphere Project
Yellow Dog Watershed Preserve