

**Alaska Wilderness League * American Rivers * Clean Water Action
Conservatives for Responsible Stewardship * Defenders of Wildlife * Earthjustice
Environment America * League of Conservation Voters
Natural Resources Defense Council * Oceana * Sierra Club
Southern Environmental Law Center * The Wilderness Society**

September 20, 2016

The Honorable Lisa Murkowski
Chairman
Energy and Natural Resources Committee
United States Senate
Washington, DC 20510

The Honorable Fred Upton
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Maria Cantwell
Ranking Member
Energy and Natural Resources Committee
United States Senate
Washington, DC 20510

The Honorable Frank Pallone
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairmen Murkowski and Upton and Ranking Members Cantwell and Pallone:

On behalf of our millions of members and supporters, we urge you to only report an energy bill if it will facilitate our nation's transition to cleaner sources of energy and doesn't have provisions that would further climate disruption or harm our air, water, wildlife, and other natural resources.

The latest scientific evidence dictates that our transition to clean, low-carbon energy must be accelerated if we are to mitigate the worst effects of the climate change. Unfortunately, the provisions in Senate-passed Energy Policy and Modernization Act (EPMA), S.2012, do not meet that urgent need. This conference will not be able to rectify that deficiency but could advance modest but important provisions to upgrade our grid, improve energy efficiency, invest in new renewables and train the workforce needed to implement this transition.

Positive provisions included in EPMA include permanent extension of the Land and Water Conservation Fund, new programs to support grid storage and advanced grid technologies, the Sensible Accounting to Value Efficiency (SAVE) Act, many provisions from the Energy Savings and Industrial Competitiveness Act (Portman-Shaheen), Senate building code language, Senate America COMPETES Act reauthorization, workforce training, and manufacturing initiatives. In order to make any progress in transitioning to clean energy these provisions must be included in the final version of this bill.

Unfortunately, EPMA also includes several provisions that would weaken current law, undermine climate science and are at odds with the overwhelming desire of the American public to protect the environment. Unless these harmful provisions are removed this bill would lock in fossil fuel development and infrastructure with its attendant air, water and land pollution for decades to come.

The bill passed in the House is even more concerning. The House-passed bill is littered with extreme ideological provisions that undermine many of our current protections including those secured under the Clean Air Act, the Equal Access to Justice Act, National Environmental Policy Act, the Clean Water Act, the Endangered Species Act, and other key laws. The House bill (HB) contains the legislative language from H.R.8, H.R. 2898, H.R. 2406, H.R. 1937, H.R. 538, H.R. 2647 and H.R. 1806, all of which are controversial, have veto threats from the Obama Administration, and should not be included in a final bill.

We understand that Senate conferees intend to narrow the vast number of policies under consideration for the conference report. Still, we remain concerned that even this more limited universe may include provisions that undermine the positive provisions of the bill or harm our environment, climate, and public health.

Our organizations will vigorously oppose a final bill if it would do damage to the environment.

Noted below are provisions of strong concern.

Energy Efficiency:

- **EPMA Section 1015/HB Sec. 3116:** This provision repeals Section 433 of the Energy Independence and Security Act (EISA) which requires all new and modified federal buildings to eliminate fossil fuel generated energy by 2030. A repeal of this provision alone would undermine our transition to a clean, low-carbon energy future. The federal government has tremendous potential to reduce pollution and leverage the significant benefits of energy efficiency to reduce the \$6 billion it spends on energy in its buildings and should be demonstrating leadership in this transition.
- **EPMA Section 1020, Elimination of Green Building Programs:** This provision requires the federal government to review green building programs and look for duplication. The Government Accountability Office (GAO) report referenced in the section recommends enhanced coordination between agencies to increase effectiveness of complementary programs. Nothing in the GAO report suggests elimination of programs, and the report asserts in some areas “it may be appropriate for multiple agencies or entities to be involved in the same programmatic or policy area due to the nature or magnitude of the federal efforts.”
- **EPMA Section 1103, Furnace Efficiency Standard Delay:** This provision would delay and damage an essential federal efficiency measure for furnaces and reduce its carbon and monetary savings. The legislation developed regarding minimum efficiency standards for

residential furnaces has been highly contentious and controversial. The language approved by the House is the result of negotiation and represents a broad consensus of stakeholders. The language in the EPMA Sec. 1103 does not reflect the efforts of stakeholders to find common ground and enjoys no such support. The Senate language would further delay a standard that is already 25 years overdue and will cut energy waste, netting consumers almost \$700 on average over the life of the furnace. DOE is on track to finalize an improved standard through a thorough, open and transparent stakeholder process, and policymakers should avoid setting a negative precedent undermining the progress made to bring this standard to a meaningful resolution.

- **EPMA Section 1104, Third-Party Certification Under Energy Star Program:** This section removes the checks and balances for consumer electronics products within Energy Star. The proposed amendment would essentially gut the front end certification of the ENERGY STAR program for consumer, home office, and electronic products. Manufacturers would be allowed to self-certify that their products meet the ENERGY STAR requirements and their submissions would no longer be subject to review by an independent third-party certification body, which all other products are required to do. The proposal opens the door for products to falsely qualify for the ENERGY STAR label.
- **HB Division A Sec. 3152, Clarifying Rulemaking Procedures:** This provision mandates a public comment period before the Department of Energy can issue a notice of proposed rulemaking, creating an inflexible, unnecessary statutory requirement. Further the provision is highly skewed to consider only manufacturers' interests on areas that DOE already considers throughout the regulatory process. Finally, the provision risks negatively impacting as many as 11 of the 13 rules currently under development at DOE.

Infrastructure

- **EPMA Section 2201-3, Expedited Project Review - LNG:** This provision expedites the review of applications to export liquefied natural gas. It does not give DOE sufficient time to consider all factors, including full economic and environmental reviews, in approving LNG export terminals. Speeding up the process of approving LNG export terminals ties our economy more closely to fossil fuels at a time when we should be transitioning away from their use.
- **HB Section 1101, Natural Gas Pipeline Review:** This section attempts to limit the environmental review of major interstate natural gas pipelines by allowing inaccurate or inadequate aerial surveys to assess land impacts and allowing conditional approval without verification of environmental data, sets an arbitrary deadline for agency decisions that can be used to expedite pipeline permits at the expense of thorough environmental review, and limiting environmental analysis in other ways.
- **HB Section 1115, National Energy Security Corridors:** This section would eliminate the established federal review processes under the National Environmental Policy Act for approval of pipelines and affiliated infrastructure in National Parks and other federal lands. This would eliminate environmental and public review of these land use changes

and transfers authority over these lands to the Department of Energy, an agency with no practical experience in proper stewardship of federal lands.

Supply

- **EPMA Section 3001, Hydropower Relicensing:** We appreciate that in the markup of S. 2012 the Committee removed the most egregious anti-environmental provisions from the hydropower title, and we are pleased that the bill does not contain the provisions in H.R. 8 that weaken the Clean Water Act, the Endangered Species Act, or the protections for fish, wildlife, and public lands in Sections 18 and 4(e) of the Federal Power Act, respectively. And we are pleased that S. 2012 makes it easier for States to process water quality certifications in a timely fashion by requiring power companies to submit completed applications. This provision in particular will prevent power companies from intentionally delaying their relicensing proceedings in order to avoid compliance with the Clean Water Act. However, we share the concerns of States, Tribes, and the White House about how the provisions in Section 3001 would be implemented. For example, we are concerned that if enacted as written, Section 3001 could limit agencies from, as part of the relicensing process, requiring power companies to conduct new studies into the impacts of their dams. This section would apply even if the dam's existing license, and thus the studies that the current license depends on, are more than 50 years old and pre-date modern environmental statutes and changing climate conditions. Further, we share the concerns of many stakeholders that elevating disputes over license conditions to the Council on Environmental Quality, and ultimately the President, politicizes what should be a technical and science-based decision process. Finally, we are concerned that provisions in Section 3001 require federal natural resource agencies to conduct costly, wasteful and time-consuming review of matters outside of their scope of expertise and jurisdiction. Taken together, the effect of these provisions could lead to increased costs to taxpayers and unnecessary delays in licensing, which is contrary to the goals of all parties to license proceedings.
- **EPMA Section 3017, Biomass Definition:** This provision categorically asserts that all types of forest bioenergy should be treated as carbon-neutral, and that biomass is a renewable energy source as long as it is harvested from forest land that remains as forest land. This is scientifically inaccurate. Using biomass from whole trees or "thinings" for electricity can take several decades to achieve net carbon reductions, during which time the carbon dioxide burden to the atmosphere increases. Additionally, the language of this provision creates ambiguity over the respective roles of EPA, Department of Energy (DOE) and the U.S Department of Agriculture (USDA). This could undermine EPA's statutory authority over carbon pollution under the Clean Air Act.
- **EPMA Section 3115, Renewable Energy Definition:** This provision revises the definition currently used in the federal purchasing of renewable energy to include waste heat. Yet, this provision does not increase the purchasing requirements. Without increasing the requirements, this definition change will ultimately decrease the amount of renewable energy the federal government is using because it will award the government for what it already does.

- **EPMA Section 3101, Methane Hydrate Research and Development:** This provision would dramatically expand methane hydrates research and development with the goal of unlocking a fossil fuel that could contribute massively to carbon pollution. At a time when our economy is transitioning away from these fuels to meet our carbon reduction goals, our government shouldn't be subsidizing the development of new ones. Additionally, the vast majority of methane hydrates are located offshore where environmental damage is more likely to occur. For example, a newly authorized activity under this program is seismic exploration in the Gulf of Mexico. Seismic exploration involves the use of powerful airgun bursts that has been shown to harm marine life and fisheries over large areas of ocean and has proven highly controversial off the southeast U.S. and elsewhere.
- **EPMA Section 3305, Expedited Project Review - Mining:** This section would require federal land management agencies to develop expedited review processes for new mining permits. This is a misguided approach that will sacrifice protection of public resources and our environment.
- **EPMA Section 3402, Carbon Capture and Sequestration Modifications:** This section establishes a new coal technology program at DOE to replace existing programs. While the section includes laudable goals of developing technologies to make coal less environmentally harmful, it also subsidizes coal systems that are incompatible with climate protection. For example, it would subsidize converting coal to other products like transportation fuels. Additionally, a proposed modification to this section would create a system that assumes that co-firing biomass combined with capture automatically creates negative carbon emissions. As previously stated, biomass is not automatically carbon neutral, and Congress should leave the determination of its carbon emission profile to scientists and other experts.
- **EPMA Section 3501; HB Title XXXIII, Nuclear Research:** This provision spends taxpayer resources to expand the already heavily subsidized nuclear industry's research arm in clearly uneconomic areas despite its demonstrated risks. Moreover, the provision lacks any of the required environmental and security reviews to ensure that the program's long term impacts do not significantly erode the quality of the human environment and nuclear nonproliferation goals.

Accountability

- **EPMA Section 4301, Bulk-power System Reliability Impact Statement:** This provision establishes unnecessary and duplicative assessments by requiring the Electric Reliability Organization (ERO), also known as the North American Electric Reliability Corporation (NERC), to issue "reliability impact statements" for all major rulemakings at Federal agencies that may impact electric utilities. It also requires agencies to consider these statements in their rulemakings, as well as respond to the reliability impact statement in detail in the final rule. NERC is a private corporation that does not allow for public participation in their deliberations. Furthermore, NERC's approach assumes that there will be no corrective actions or future investment in electric transmission or replacement generation. Therefore, the loss of old generation, which is primarily fossil

fuel-based, is always determined to be a risk, and the basis for a negative review of reliability impacts.

- **EPMA Section 4401, Sale of Public Lands:** This provision would require the Secretary of the Interior to develop a multipurpose cadastral survey of Federal real property and identify inaccurate, duplicate, and out-of-date Federal land inventories to facilitate proposals to sell off America's public lands. We strongly support data transparency, but heed the caution raised by the U.S. Geological Survey on a similar proposal in 2013 that the approach would yield limited value at a significant cost, potentially billions of dollars. Furthermore, we're concerned that this provision would encourage the inappropriate sale of public lands and other assets to address short-term needs, which is in direct contrast with consistent public polling showing that Westerners from all political parties strongly oppose proposals to sell off America's public lands.

Resources

- **EPMA Section 10101, National Parks Budget Cut:** This provision requires the Director of the National Park Service to reimburse states that paid to reopen national parks during the October 2013 government shutdown. Though we believe that the funding of national parks is first and foremost a federal responsibility, utilizing funds from the fiscal year in which the states are reimbursed will result in an effective cut to the National Park Service's operating budget. Our parks are already underfunded and deserve more funding, especially in the year of their centennial.
- **HB Division C, Section 2064, Imposed Hunting in National Parks:** This section would require the National Park Service to use volunteer hunters to reduce wildlife populations unless the agency has permissions from the respective state not to use volunteer hunters. This would directly conflict with that Park Service's fundamental stewardship responsibilities. We are concerned with the continued attempts to impose hunting in national park units where it conflicts with the visitor experience and values of the park.
- **HB Division C, Section 2151, Bison Management:** This section is premature - the National Park Service is currently preparing a Bison Management Plan for the hybrid bison in Grand Canyon National Park. Wildlife management of any species should be based on the best available and objective scientific analysis, not the prescription of a management plan by Congress.

Water

- **HB Division C, Title I, California Water Management:** The House bill includes language from H.R. 2898 to override the Endangered Species Act in California's Bay-Delta watershed. This bill is a non-starter that the White House has threatened to veto. Other legislative proposals to address California's drought include titles that mandate or authorize water project operations that are similar to those implemented over the past several years of the drought. However, these legislative efforts would also adversely affect thousands of fishing jobs that depend on healthy salmon runs, and new scientific information shows that such water project operations would likely result in the

extinction of several native fish species in California. In light of enormous declines in key species due to drought, federal agencies have reinitiated consultation under the Endangered Species Act. In light of these administrative responses, the inclusion of legislation regarding water project operations in California's Bay-Delta watershed in the conference report is wholly inappropriate and inconsistent with the Endangered Species Act and state law. In contrast, legislation and funding that improves agricultural and urban water use efficiency, funds wastewater recycling, or the development of similar sustainable water supplies would help advance meaningful solutions to water issues across the West.

Opposition to House-passed legislation

- **H.R. 8, the North American Energy Security and Infrastructure Act**, contains efficiency provisions that would increase energy use and costs to consumers, a hydropower title that curtails NEPA review along with state, local, and tribal authority over projects on their own lands, allows pipelines to be built on National Park land without the necessary environmental reviews, and provisions that could lock in dirty fossil energy for decades to come at a time when we should be investing in cleaner, cheaper alternatives.
- **H.R.538, the Native American Energy Act**, would limit public involvement in energy projects on tribal lands.
- **H.R.1937, the National Strategic and Critical Minerals Production Act**, weakens environmental review for the hardrock mining industry and jeopardizes the water quality of nearby communities.
- **H.R.2406, the SHARE Act**, threatens wildlife and public lands while undermining our bedrock environmental protections.
- **H.R.2647, the Resilient Federal Forests Act of 2015**, would legislatively promote devastating logging projects and subvert environmental review.
- **H.R.2898, the Western Water and American Food Security Act**, weakens protections for salmon, migratory birds, and other fish and wildlife in California's Bay-Delta estuary and threatens the jobs that depend on the health of these species.
- **H.R.1806, the America COMPETES Reauthorization Act of 2015**, would undermine investments in science and federal research and development.

We stand ready to work with you to ensure that the final conference report not only addresses America's energy future, but also protects our environment, climate, and public health.

Thank you for your consideration,

Alaska Wilderness League
American Rivers
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cc: Senators John Barrasso, Jim Risch, John Cornyn, Ron Wyden, and Bernie Sanders;
Representatives Rob Bishop, Joe Barton, John Shimkus, Robert Latta, Cathy McMorris Rodgers,
Pete Olson, David McKinley, Mike Pompeo, Morgan Griffith, Bill Johnson, Bill Flores,
Markwayne Mullin, Don Young, Cynthia Lummis, Jeff Denham, Bruce Westerman, Lamar Smith,
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