

TESTIMONY BY  
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NATURAL RESOURCES DEFENSE COUNCIL

Subcommittee on Communications and Technology

Committee on Energy and Commerce

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Thank you for the opportunity to testify today. My name is Scott Slesinger, and I am the Legislative Director for the Natural Resources Defense Council (NRDC). NRDC is a nonprofit organization of scientists, lawyers, and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has more than 3 million members and online activists nationwide, served from our offices in New York, Washington, Los Angeles, San Francisco, Chicago, and Beijing. I appreciate the opportunity to testify and will concentrate my remarks on the LIFT Act, H.R. 2479 and the supposed barriers to new infrastructure environmental reviews.

This Congress has a very important responsibility to address the failing infrastructure that has made America less globally competitive and is undermining our quality of life. Our airports, our transportation system, our sewer and drinking water systems have been systematically underfunded since 1993 when the gas tax was last raised. Inflation has eroded the Transportation Trust Fund by over 40 percent. The funding for sewers and drinking water systems have suffered similar erosion. Any world traveler, and in fact, President Trump himself, has noted that the airports and roads of our country now suffer in comparison to other developed and even some developing countries. Lack of access to broadband limits economic vitality and limits educational opportunities in many underserved communities.

Every conversation on Capitol Hill about solving our infrastructure crisis begins with earnest statements that “all options are on the table” before immediately rescinding the solution.

The poor state of our infrastructure is not because of environmental reviews or permitting. Our problem is cash. The solution is the political will to appropriate the needed dollars. Environmental reviews and permitting are scapegoats.

A recent hearing of the Transportation and Infrastructure Committee on Army Corps of Engineer projects highlighted this point. The Corps has over \$90 billion in approved, authorized projects—virtually all with completed environmental reviews. Some members

and witnesses argued for less environmental reviews as a solution. One of the witnesses, Nicole Carter of Congressional Research Service, was asked if NEPA is the cause of delay. She responded that in a study of 40 projects, 39 projects were slowed by a lack of federal funding<sup>1</sup>. With an annual budget of \$5 billion; the problem is the missing \$85 billion, not NEPA.

It's as though our house is burning down and instead of calling the fire department, our solution is to lower the thermostat.

Numerous studies from GAO and CRS show that it is not federal rules that are causing the delays. The number one problem is lack of funding, followed by state and local laws, citizen opposition to projects, and zoning restrictions. The widely quoted "Two Years Not Ten: Redesigning Infrastructure Approvals"<sup>2</sup> is based on questionable logic and outdated statistics debunked by Kevin DeGood of the Center for American Progress. For instance, the "Two Not Ten" study claimed the average permit time was 10 years for completion of an EIS but those statistics covered 1999 to 2011. DeGood's analysis<sup>3</sup> shows the average length is down to 3.6 years between 2012 through 2016. We believe newer data within the administration will show the trend toward faster processes is continuing.

Broadband deployment is not delayed by Environmental Impact Statements; in fact, no broadband project was ever required to do one by the Federal Communication Commission. Drinking water projects suffer from a lack of financing, not environmental review.

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<sup>1</sup> January 18, 2018 <https://transportation.house.gov/calendar/eventsingle.aspx?EventID=402108>)

<sup>2</sup> Philip K. Howard, "Two Years Not Ten: Redesigning Infrastructure Approvals" (New York: Common Good, 2015), available at [http://commongood.3cdn.net/c613b4cfda258a5fcb\\_e8m6b5t3x.pdf](http://commongood.3cdn.net/c613b4cfda258a5fcb_e8m6b5t3x.pdf)

<sup>3</sup> <https://www.americanprogress.org/issues/economy/reports/2017/05/03/431651/debunking-false-claims-environmental-review-opponents/>

Scapegoating NEPA may be a cheap applause line, but we cannot “streamline” our way to universal broadband access, new tunnels under the Hudson, a bridge over the Ohio River, or new sewer systems.

### **Why NEPA Matters**

I would like the Committee to appreciate why the National Environmental Policy Act (NEPA) and the federal permitting requirements to protect our air, water and wildlife are so important. With an emphasis on "smart from the start" federal decision making, NEPA protects our health, our homes, and our environment. Led by Representative John Dingell and Senator Scoop Jackson and signed into law by President Nixon, the law was prompted in part by concerns from communities whose members felt their views had been ignored in setting routes for the Interstate Highway System. NEPA has empowered the public, including citizens, local officials, landowners, industry, and taxpayers, and demanded government accountability for more than 40 years.

NEPA is democratic at its core. In many cases, NEPA gives citizens their only opportunity to voice concerns about a federal project's impact on their community. When the federal government undertakes a major project such as constructing a dam, a highway, or a power plant, or if a private entity needs a federal permit so it can pollute the air or water, it must ensure that the project's impacts – environmental, economic and otherwise – are considered and disclosed to the public. And because informed public engagement often produces ideas, information, and solutions that the government might otherwise overlook, NEPA leads to better decisions – and better outcomes – for everyone. The NEPA process has saved money, time, lives, historical sites, endangered species, and public lands while encouraging compromise and resulting in better projects with more public support. Our website [put in footnote <https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories> highlights NEPA success stories that prove this point.

Most recommendations to cripple the process try to limit public notice and comment are undemocratic. The first time a rancher learns of a pipeline going through his property

shouldn't be when an attorney shows up at his door with an offer to purchase under threat of taking the property by eminent domain. Thanks to NEPA, tens of thousands of Americans have participated in important federal decisions and projects have been made better because of it. And yes, some wasteful projects have died.

### **Recent Changes to the NEPA and Permitting Process**

“Streamlining” or, more accurately, “steamrolling” has been an easy, no-cost way to pretend we are addressing delays in project delivery. Because many congressional committees have tried to assert jurisdiction over NEPA, there have been numerous and contradictory changes to the NEPA process made by Congress since 2005. Various bills have shortened public comment periods, changed the statute of limitations to four different time periods depending on the project, limited access to courts, and set up arbitrary deadlines for permit approvals. USDOT-led projects can now fine other agencies that miss deadlines; a provision that makes as much sense as debtors' prison.

Major changes occurred in October 2015 with the passage of the Fixing America Surface Transportation Act (The FAST Act). Title 41 of that bill, mandated a new inter-agency administrative apparatus called the Federal Infrastructure Permitting Improvement Steering Council—largely controlled by the Office of Management and Budget (OMB)—to set presumptive deadlines, push the resolution of interagency disputes, and allocate funding and personnel resources to support the overall decision-making process.

This infrastructure council was barely operational when the Administration changed. President Trump's first Infrastructure Permitting Executive Order – as the chief Senate sponsors, Senators Portman and McCaskill wrote in a letter to the President<sup>4</sup> – contradicted authorities and responsibilities already in FAST-41, to the consternation of project sponsors that were already participating in the permitting board's existing process. If the objective is to improve infrastructure project reviews and permitting,

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<sup>4</sup> [https://www.portman.senate.gov/public/index.cfm/files/serve?File\\_id=8D346523-409C-4893-8DB2-DF364423CA11](https://www.portman.senate.gov/public/index.cfm/files/serve?File_id=8D346523-409C-4893-8DB2-DF364423CA11)

Congress' most important challenge is to exercise oversight over implementation. While we don't applaud everything in the law, its robust provisions were enacted just two years ago. The House appropriation for the steering council was a meager \$1 million; probably not even enough to carry out the council's statutory requirement to track project schedules online. Why pass changes to NEPA to "reform", when Congress then fails to appropriate money to effectuate those changes but continues to try to layer on additional changes?

The President's revised Infrastructure Executive Order of August 15, 2017, ameliorated most of the inconsistencies with the earlier order. However, that EO also gave a green light to wasteful federal construction in areas susceptible to flooding by revoking an executive order (E.O. 13690) that previously updated flood protection standards. These standards would make sure that public schools, hospitals, military bases, water treatment plants — all public facilities and infrastructure built with federal funding — are constructed with a higher margin of safety for floods and future sea level rise. Revoking these standards will ensure that billions of dollars are wasted rebuilding vulnerable public facilities that could have been built with greater resiliency features or in a safer location.

Despite enactment of this legislation in 2015 and other recent changes to NEPA, this Congress has seen many bills introduced in both chambers that would further amend the NEPA process without regard for their impact on process changes already made in FAST-41. Rather than simplifying current processes, these bills would create new conflicts, sow confusion, and delay project reviews.

Legislation has reached the House floor that would establish new and different and inconsistent permitting and NEPA processes for hydroelectric power projects, water supply projects, natural gas pipelines, international pipelines, fisheries and timber management, and other projects. Besides threatening our environment and natural heritage adopting new measures now would exacerbate effective administration of existing law. For example, USDOT's Inspector General confirmed the agency has been

hamstrung by repeated policy changes in recent Congresses. Although USDOT had completed most of the reforms mandated by MAP-21 in 2012, the Department was forced to delay implementation of others because they had to be revised to comply with additional requirements of the FAST Act.<sup>5</sup>

The recent draft infrastructure proposal from the White House is not a serious proposal but follows a pattern of falsely blaming project delays on basic environmental protections. The leaked provision would repeal critical clean air, clean water and endangered species protections and undermine basic environmental statutes. It would also set up a process guaranteed to neuter public input into federal actions and give agency heads free reign to virtually exempt any project from NEPA, free from court challenge.

Polling shows that Americans rightfully believe we do not have to sacrifice our environment to have a modern infrastructure system. We don't need to give the Interior Secretary carte blanche to build pipelines through every national park. We do need NEPA to help build a modern infrastructure system that is resilient, energy efficient, and takes into account the impact of a changing climate.

### **What should a new infrastructure bill do?**

Last spring, NRDC released 21st-century infrastructure principles that we believe would produce real benefits to the nation. These principles that are detailed on our website, include:

- Public dollars must be used for the public good. When taxpayers pick up the tab, the public should be the beneficiary of that investment. We must prioritize performance-based infrastructure and projects that deliver economic, social and environmental benefits—such as jobs, improved mobility, and climate resiliency.

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<sup>5</sup> Office of the Inspector General, *Vulnerabilities Exist in Implementing Initiatives Under MAP-21 Subtitle C to Accelerate Project Delivery*, March 6, 2017, available at: <https://www.oig.dot.gov/sites/default/files/DOT%20Implementation%20of%20MAP-21%5E3-6-17.pdf>

Innovative financing and management through public-private partnerships are encouraged. However, any project that gives private investors special incentives must demonstrate value to the community over the long term, result in fair but not excessive profits, and allow for joint management with the public sector to ensure the public purpose is maintained.

- Innovation in clean energy and water should be a priority. Water and energy systems should meet 21st century needs. Unfortunately, almost all of these critical infrastructure systems were built in the 20th or even 19th century, in many cases relying on outdated technologies and practices. Technological innovations like smart meters and energy storage as well as upgrades to the nation's power infrastructure will enable us to take advantage of the clean, reliable, and cost-effective energy resources. We need water systems that rely more on distributed green infrastructure, water efficiency, and water reuse to complement our existing investments in gray infrastructure systems.
- Investment in Climate Resilient Infrastructure Projects and Smart Technology is critical. Climate and living patterns are changing rapidly. Infrastructure needs to be designed to meet the challenges of the next century, including rising sea levels, more intense storms, and longer droughts. It also means investment in new technologies and increasing demands on infrastructure systems as urbanization increases. Deploying information technology like broadband and wireless will help us get the data to run our cities and towns more efficiently and decrease the wear and tear on infrastructure. These systems can be added at minimal costs today. Projects should include high-quality connectivity in communities that don't have it, to promote affordable access for all.
- Accountability for Every Dollar. There must be public input and a public review of the project's benefits and potential impacts on wildlife, air and water quality, jobs and public health before any work is undertaken.
- Flexible funding should be allocated for local and regional infrastructure planning. The stream of federal dollars for infrastructure should go directly to communities

rather than solely to states. Metropolitan Planning Organizations in the nation's large and small urban areas should be able to have direct access to funding so that local communities can fulfill their own infrastructure visions. This addresses, for example, the historic challenge of implementation funding for innovative local plans—some of which were years in the making under the interagency Partnership for Sustainable Communities—but were not funded by states. This local focus should also include the hiring of local workers for community projects, putting economic opportunity in the hands of the very people affected.

- Good, forward-looking jobs are important. We must prepare Americans for the future. Infrastructure projects are an opportunity for good jobs beyond construction. It's important that for construction projects, costs aren't reduced on the backs of bad deals for workers. New industries that accelerate an entire supply, like clean energy jobs are our future. The growth in clean energy and sustainable jobs is one of the brightest spots on our economic horizon.

We believe one of the bills that is subject of this hearing, H.R. 2479 Leading Infrastructure for Tomorrow's America Act, is a positive alternative to the scapegoating and diversionary tactics of attacking environmental laws and properly addressing our infrastructure needs. For jurisdictional purposes, it only covers programs and projects in this Committee's purview but is a good template for the other committees with jurisdiction over infrastructure to really address the issue rather than pretend we can make a silk purse out of a sow's ear.

I want to specifically mention the LIFT's Act provisions addressing our drinking water problems including lead pipes. Toxic lead that impacts children's mental development cannot be a partisan issue. Making American children safe from lead poisoning needs to be addressed and addressed now. The more detailed testimony of my colleague Larry Levine<sup>6</sup> addresses both drinking and surface water infrastructure needs and recommendations to address the very important affordability issues.

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<sup>6</sup> <https://www.nrdc.org/resources/larry-levine-testifies-house-transportation-and-infrastructure-committee-subcommittee>

We ask the Congress to seriously address our infrastructure needs, to take into account the threats from climate change and build resilient and energy efficient systems that improve the quality of life with an infrastructure plan attuned to the needs of the 21st century. We can do this smarter and better --by using --not crippling, the environmental review process.

NRDC stands ready to assist this Committee in its further deliberations. Thank you again for the opportunity to participate in this hearing and I look forward to your questions.