

FACT SHEET

STOP THE WAR ON ENVIRONMENTAL REVIEWS: PROTECTING NEPA PROTECTS OUR PLANET

President Nixon signed the National Environmental Policy Act (NEPA) into law in 1970, requiring federal agencies to consider the potential climate, environmental, and economic impacts of major federal actions on local communities. The law was enacted in large part as a response to the construction of the Interstate Highway System, which arbitrarily obliterated many neighborhoods that lay in its path.¹

NEPA today is greatly misunderstood. This law is democratic at its core. In many cases, NEPA gives citizens their only opportunity to voice concerns about a federal project's potential 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 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.

However, NEPA has become the preferred scapegoat of developers, fossil fuel companies, timber interests, and the Koch brothers and their Congressional allies. They blame NEPA for delays in infrastructure projects and misrepresent its scope. For instance, NEPA only requires the federal agency to consider the environmental impact of their project and contemplate mitigating any harm; it doesn't *require* the least environmentally harmful alternative. Moreover, independent studies have shown that NEPA has not increased project delays.² In fact, many states and other project sponsors have seamlessly integrated NEPA into their normal project planning.

Despite this, special interests have led a sustained attack to weaken the law for decades. In 2018, literally hundreds of bills were introduced to weaken NEPA, and Congress was successful in passing anti-environmental amendments



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in 2005, 2012, and 2014. Ironically, several of these changes were contradictory and caused additional delays in project approvals. Too often, environmental leaning members have gone along with these anti-environmental amendments to gain support for their own infrastructure bills. Instead of continuing to pick away at NEPA in the name of “streamlining,” Congress must begin vigorously defending this crucial law.

PROPERLY IMPLEMENT OLD NEPA AMENDMENTS BEFORE PROPOSING NEW ONES

NEPA was thoroughly overhauled in 2015, when Senator Rob Portman (R-OH) proposed substantial changes to the NEPA process as part of the last major transportation bill. Known as FAST-41, this law created an Interagency Permitting Board to speed up the environmental review and permitting process for large infrastructure projects.³ However, the FAST-41 amendments have largely gone unimplemented.

Determining whether the 2015 amendments will actually increase efficiency in the permitting and environmental review process and result in better environmental outcomes will require adequate funding. Until now, the same Congress that passed FAST-41 has offered only token funding for the Permitting Board to operate, and it took President Trump



two years to appoint an executive director. In addition, the president undercut the Permitting Board's authority by setting up

a separate board at the Commerce Department with the same responsibilities. These dueling boards understandably created confusion among project sponsors, until the president quietly reversed course in another executive order eight months later. Before NEPA is subject to additional debilitating amendments, the Permitting Board needs a chance to fully implement the FAST-41 changes.

FAST-41 ASIDE, NEPA WORKS

Critics avoid the fact that NEPA is successful and has a solid record of improving projects, protecting the environment, and helping communities. For example, NEPA was used to turn an unpopular, environmentally destructive plan for the I-70 Mountain Corridor in Colorado into an infrastructure project that won awards for innovative design and environmental sensitivity.⁴ In Mississippi, plans to build a hydraulic water pump that would have benefited a small group of farmers were scrapped when a NEPA review revealed that the expensive project would have damaged or destroyed 200,000 acres of wetlands that protected whole communities from storm surges.⁵

President Trump's recent attacks on NEPA were based on myths: in fact, every single project cited by the White House as a poster child of unnecessary NEPA delays was done in a reasonable time frame, or, in one case, was a state project never subject to NEPA.⁶

THE PROBLEM ISN'T NEPA. THE PROBLEM IS FUNDING

Focusing on NEPA only distracts us from the real problem with our infrastructure: inadequate funding—a fact acknowledged by highway developers and water systems operators. The U.S. Army Corps of Engineers currently

has a pipeline of over \$90 billion in approved projects with completed permits and environmental reviews. However, the Corps' construction budget is about \$5 billion a year—leaving a funding gap of \$85 billion.⁷ Despite this obvious lack of funding, Republicans continue to make NEPA a scapegoat for Congress' failure to adequately fund our crumbling roads and transit and drinking water systems.

NEPA IS BEING USED AS A PAWN IN THE WAR ON CLIMATE CHANGE

The courts maintain that you can't do an environmental impact review of a large project without considering the climate impacts.⁸ The Trump White House, however, in its zeal to deny the existence of climate change, has revoked the guidance for federal agencies to consider greenhouse gas emissions and the effects of climate change when conducting NEPA reviews. The lack of guidance will likely lead to more delays—the very thing Republicans claim they want to avoid—and possible litigation that would slow down project approvals. Even pipeline companies are complaining about the chaos created by revoking the guidance. Aside from increasing delays and confusion, there is also a real environmental concern that this White House will issue a feeble alternative to the recently revoked climate standards.

Protect NEPA, Protect our Infrastructure and our Planet

NEPA is under regular attack from certain lawmakers and special interests who claim it needs streamlining, when what they really want is free rein to run roughshod over our communities and our environment. It's time for member of Congress to see through these lies and stop considering NEPA as expendable. As lawmakers consider infrastructure



legislation, additional changes to weaken NEPA should not be on the table. It is time for Congress to defend this critical law and reconsider some of the irresponsible changes made over the last decade.

ENDNOTES

1 Before NEPA required public participation and environmental impact reviews, the builders of the Interstate Highway system planned to build I-70 in Baltimore through the now booming community of Fells Point and through the city's Inner Harbor. Scott Slesinger, *We Don't Need NEPA—A Modest Proposal*, NRDC, May 2013, <https://www.nrdc.org/experts/scott-slesinger/we-dont-need-nepa-modest-proposal>

2 Linda Luther, *The National Environmental Policy Act: Background and Implementation*, Congressional Research Service, 2008, <https://fas.org/sgp/crs/misc/RL33152.pdf>. Linda Luther, *The Role of the Environmental Review Process in Federally Funded Highway Projects: Background and Issues for Congress*, Congressional Research Service, 2012, http://environment.transportation.org/pdf/proj_delivery_stream/crs_report_envrev.pdf. Kevin DeGood, "Debunking False Claims of Environmental Review Opponents," *Center for American Progress*, May 2017, <https://www.americanprogress.org/issues/economy/reports/2017/05/03/431651/debunking-false-claims-environmental-review-opponents>. Department of Treasury, AECOM, *40 Proposed U.S. Transportation and Water Infrastructure Projects of Major Economic Significance*, <https://www.treasury.gov/connect/blog/Documents/final-infrastructure-report.pdf>

3 42 U.S. Code § 4370m et seq.

4 Elly Pepper, *Never Eliminate Public Advice: NEPA Success Stories*, NRDC, February 2015, <https://www.nrdc.org/resources/never-eliminate-public-advice-nepa-success-stories>

5 *ibid*

6 Scott Slesinger, *Of Course, It's OK, We Are Only Lying About NEPA*, NRDC, June 2018, <https://www.nrdc.org/experts/scott-slesinger/course-its-ok-we-are-only-lying-about-nepa>

7 "However, according to the Corps, there is a current backlog of projects valued at \$96 billion (\$75 billion in project construction and \$21 billion for dam safety and operations and maintenance). In comparison, Corps funding between FY2004-FY2018 has only averaged just over \$5 billion (in nominal terms) annually." Committee on Transportation and Infrastructure, U.S. House of Representatives, Republican Committee Staff Memo, January 12, 2018, https://republicans-transportation.house.gov/uploadedfiles/2018-01-18_-_water_ssm_final.pdf

8 *Sierra Club v. Fed. Energy Regulatory Comm'n*, 867 F.3d 1357, 1363 (D.C. Cir. 2017).