

**PERMITTING PROCESSES AT THE DEPARTMENT
OF THE INTERIOR AND THE FEDERAL ENERGY
REGULATORY COMMISSION FOR ENERGY AND
RESOURCE INFRASTRUCTURE PROJECTS**

**HEARING
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED FIFTEENTH CONGRESS**

FIRST SESSION

TO

EXAMINE THE PERMITTING PROCESSES AT THE DEPARTMENT OF THE
INTERIOR AND THE FEDERAL ENERGY REGULATORY COMMISSION
FOR ENERGY AND RESOURCE INFRASTRUCTURE PROJECTS AND OP-
PORTUNITIES TO IMPROVE THE EFFICIENCY, TRANSPARENCY, AND
ACCOUNTABILITY OF FEDERAL DECISIONS FOR SUCH PROJECTS

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PERMITTING PROCESSES AT THE DEPARTMENT OF THE INTERIOR AND THE FEDERAL ENERGY REGULATORY COMMISSION FOR ENERGY AND RESOURCE INFRASTRUCTURE PROJECTS AND OPPORTUNITIES TO IMPROVE EFFICIENCY, TRANSPARENCY, AND ACCOUNTABILITY OF FEDERAL DECISIONS FOR SUCH PROJECTS

TUESDAY, DECEMBER 12, 2017

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 10:04 a.m. in Room SD-366, Dirksen Senate Office Building, Hon. Lisa Murkowski, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

The CHAIRMAN. Good morning. The Committee will come to order.

We were hoping to be able to move out two of our nominees that are currently pending before the Committee. We obviously have to have the requisite number of members here, so until such time as we have a quorum, we will move to our scheduled Full Committee hearing on infrastructure permitting. If we are able to get the quorum of 12, we will take up the business meeting at that point in time. I would anticipate that it would be relatively quick.

We have names on the table in front of us. I invite you each to come to the table as I provide an opening statement. Mr. Cason, Ms. Pfleeger, Mr. Turpin, Mr. Brown, Ms. Perruso and Mr. Russell, if you just want to join us there.

We are here today to discuss infrastructure permitting challenges, ongoing efforts to streamline federal approvals, and opportunities to improve the responsiveness, the transparency and the predictability of our system of permit review. I think we all recognize the need to make investments that will both upgrade and modernize our infrastructure.

We have had hearings in this Committee, many hearings, to look specifically at the needs in the energy and the resource sectors. But as we continue to discuss energy infrastructure, I think it is impor-

tant that we take steps to rationalize how projects are reviewed and approved.

The existing regulatory regime impacts the cost effectiveness of our federal infrastructure spending. Beyond that, the length and uncertainty associated with the permitting process limits the willingness of the private sector to finance, build and operate energy infrastructure. This drives dollars overseas, rather than into jobs and growth and prosperity for our nation.

So whether we are talking about a pipeline, a mine, a power plant, a public-private partnership, a water system or a company building a factory, we know that the deployment of capital is too often delayed, sometimes by years and sometimes deliberately.

When investment is impeded, how can we expect capital to be deployed here, where an environmental impact statement alone averages almost five years and final approval can take a decade or more? We look to other countries, for example, Canada and Germany, they are moving similar projects in just a couple years.

I look forward to hearing from federal witnesses who are working to make our system work better and hearing about the permitting reforms of FAST-41, which we enacted roughly two years ago, and how those are being implemented.

I am also pleased to have three non-federal witnesses who have experience, they might say, perhaps, too long of an experience, navigating the federal permitting gauntlet for electric transmission, hydropower and mining projects.

New and upgraded transmission lines are crucial to a reliable and secure electric grid and to bring new sources of energy to our markets. Despite that, the number of federal, state and local agencies involved in a single project makes permitting notoriously cumbersome.

We have also talked at length in this Committee about the challenges of licensing and relicensing hydro facilities. When I tell people about the time that is involved in a relicense, it is almost breathtaking. We need to fix the FERC process before the number of projects up for relicensing increases dramatically over the next decade.

Finally, when it comes to permitting delays for new mines, our nation is among the worst in the world and it is leading us to be dependent on foreign nations for the fundamental building blocks of a wide range of energy, defense, health care and other modern technologies.

The Energy and Natural Resources Act that Senator Cantwell and I reintroduced this year has provisions that take important steps to streamline project reviews in all three of these industries. This is an important bill that will help us make needed progress. But we also recognize that the challenges we will hear about today represent a subset of the infrastructure sectors that are also struggling to permit projects. So whether it is energy production, pipelines, pumped storage, water supply, LNG or something else, our system needs to be improved across the board.

We absolutely have the ability to establish a permitting process that works, one that protects the environment and promotes state and local input, while not miring projects in red tape and driving away private investment. To achieve that goal, we have to set aside

the misguided idea that accelerating or coordinating approvals somehow weakens those protections or that simply spending more money will fix all the problems. It doesn't, we know that, and it will not work. Both common sense and experience tell us that we can maintain our high standards while speeding reviews and approvals.

I view this hearing as the next step in our effort to improve our nation's infrastructure. I look forward to the insights and ideas from our witnesses to do just that.

Thank you all for being here with us this morning.

Senator Cantwell, I welcome your comments this morning.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Madam Chair, and I certainly welcome this infrastructure permitting oversight hearing, but I do think it's interesting, the Wall Street Journal reported just this last week that President Trump will roll out an infrastructure plan in January. It will propose \$200 billion of spending offset by cutting other federal programs.

Before we start the hearing today, I just want to remind my colleagues that the tax proposal before us is trying to be jammed through when we could be having this discussion right now about infrastructure investment.

We obviously started the year with a lot of conversation between our colleagues and our leaders, Senator Schumer and Speaker Ryan, about doing an infrastructure bill that got set aside. So I want to make sure that people understand we have been more than willing to talk about our crumbling infrastructure for a long time.

This morning we are going to hear about permitting reform, which is a good discussion, but we need an infrastructure bill that is about funding.

I'm proud over the last two years that the Chair, Senator Murkowski, and I have tried to address some of the permitting issues on hydro and critical minerals. And obviously we've passed legislation out of the Senate that has not made it through a final process because of our House colleagues' lack of interest in making sure that we take up improving hydro and other issues. Part of the answer, I believe, is making sure we adequately fund the permitting agencies.

I'm pleased that Chad Brown is here from the Washington Department of Ecology. They have been credited with an innovative solution for hydro resources. Dam owners pool money to provide dedicated funds to complete water quality reviews on time. I believe this is a good model, and I look forward to hearing more about it this morning. I think it could work on the federal level as well. We should provide dedicated license fees directly to resource agencies.

I'm pleased that we have a witness who can speak to the experience with the Western Area Power Administration's transmission program. I hope my colleagues will agree that existing federal programs that support investing in transmission deserve our support.

And when it comes to the Department of the Interior, I definitely want to make sure that we have some questions here. I think Sec-

retary Zinke has been very abrupt in his actions at Department of the Interior. It seems like it's just about whether you want permission to drill, and if so, then you get the keys to whatever public lands.

In less than a year, the Interior Department has left \$750 million in taxpayer royalties on the table. The Secretary has abandoned his obligation to stop natural gas waste. We in the Senate said very strongly that we wanted to continue to see the management of methane flaring. He has ditched sage grouse plans negotiated with the states, he has ditched master leasing plans, he has skipped public comment periods, illegally suspended regulations and turned NEPA on its head. President Trump has followed his advice to strip protection from two million acres in Utah. This is the largest rollback of public lands protection in history, opening pristine desert to drilling and mining.

The Washington Post confirmed over the weekend that Energy Fuels Resources petitioned Interior to open up Bears Ears to uranium mining. And Secretary Zinke has proposed even more rollbacks.

So when it comes to hearing these issues this morning, I hope we will take into context the larger things that are happening as well.

I know that we will hear a lot from our witnesses, and I remain committed to improving our process, but I also want to make sure that we are protecting those things that are in the taxpayers' interest.

Thank you, Madam Chair.

The CHAIRMAN. Thank you, Senator Cantwell.

Let's now turn to our panel.

We are joined this morning by Mr. Jim Cason, who is the Associate Deputy Secretary at the Department of the Interior. We welcome you this morning.

Ms. Janet Pfleeger is the Acting Executive Director for the Federal Permitting Improvement Steering Council. Thank you for joining us.

Mr. Terry Turpin is the Director for the Office of Energy Projects at the Federal Energy Regulatory Commission (FERC).

Mr. Chad Brown, as Senator Cantwell has noted, is the Water Quality Unit Supervisor at the Washington Department of Ecology. We thank you for traveling across the country.

Ms. Roxane Perruso is the Vice President and Associate General Counsel for TransWest Express. Thank you for being here.

And Mr. Luke Russell is with us from Hecla Mining Company where he is the Vice President for External Affairs.

We welcome each of you to the Committee. We would ask that you provide your comments in, hopefully, about five minutes or so. Your full statements will be included as part of the record, and once you have completed your comments we will have an opportunity for questions.

Again, if we need to interrupt because we need to do a quick business meeting, we certainly hope you understand.

Mr. Cason, if you would like to begin.

**STATEMENT OF JAMES CASON, ASSOCIATE DEPUTY
SECRETARY, U.S. DEPARTMENT OF THE INTERIOR**

Mr. CASON. Thank you, Madam Chairman, and I, for one, will be very happy with the break for what you're planning to do.

Chairman Murkowski, Ranking Member Cantwell, members of the Committee, my name is Jim Cason. I serve as the Associate Deputy Secretary of the Department of the Interior.

Thank you for inviting me to testify today on the Department's efforts to improve the efficiency and accountability of federal permitting for infrastructure projects. I ask that my entire written record or my entire written statement be incorporated in the record.

The CHAIRMAN. It will be included.

Mr. CASON. Thank you.

The CHAIRMAN. As will everyone else's.

Mr. CASON. Thank you.

The Department is acutely aware that the President has a vision for empowering the private sector, as well as state and local governments, through infrastructure enhancements and improvements. Interior believes that creating greater efficiencies in the overall federal permitting process is crucial to addressing infrastructure needs.

Executive Order (E.O.) 13807 ignited an Administration-wide assessment about how best to address inefficiencies in the current infrastructure project decisions that delay investments, decrease job creation or are costly to the American taxpayer.

In turn, the Department signed Secretarial Order 3355, which includes: setting page and time limitations for most Environmental Impact Statements, setting target page and time limitations for the preparation of Environmental Assessments, reviewing the Department's current NEPA procedures and providing recommendations to streamline the process, and implementing E.O. 13807 to the fullest extent possible. We believe our efforts to accelerate and streamline NEPA compliance efforts will also help us achieve our responsible energy development goals.

Executive Order 13783 directed agencies to immediately review and report on all agency actions that potentially burden the safe, efficient development of domestic energy resources.

In turn, the Department released the "Review of the Department of the Interior Actions that Potentially Burden Domestic Energy" report on October 25, 2017. We believe the report is a useful tool to reduce impediments to processes including permitting to promote safe, efficient development of domestic energy resources.

My written testimony further discusses Interior's efforts regarding offshore energy as well as implementation of Title 41 of the Fixing America's Surface Transportation, or FAST, Act.

Chairman Murkowski, I appreciate the opportunity to testify before the Committee and I look forward to answering questions.

Thank you.

[The prepared statement of Mr. Cason follows:]

Testimony of James Cason
Associate Deputy Secretary of the Department of the Interior
Before the Senate Committee on Energy and Natural Resources
“Current Agency Efforts and Further Needs to Improve the Efficiency and Accountability
of Federal Permitting for Infrastructure Projects”

December 12, 2017

Chairman Murkowski, Ranking Member Cantwell, and Members of the Committee, I am Jim Cason. I serve as the Associate Deputy Secretary of the Department of the Interior (Department or Interior). Thank you for inviting me to testify before you today on the Department’s ongoing efforts to improve the efficiency and accountability of federal permitting for infrastructure projects. I ask that my entire written statement be incorporated into the record.

At Interior, we administer the activities that take place on 1/5 of all the land in the United States, most of which are impacted in some capacity by infrastructure demands. We know that the substance, the procedure, and the pace of our decision-making can have a significant impact on our ability to permit our diverse infrastructure needs. We manage more than 500 million acres of Federal lands, over 900 parks and wildlife refuges, and a billion submerged offshore acres. We collect billions of dollars in rents and royalties annually. Millions of people visit Interior-managed lands each year for camping, hiking, hunting, and other outdoor recreation opportunities. Departmental bureaus also provide access to public lands for energy development and manage rural water projects that are a lifeline and economic engine for many communities in the West.

The Department is acutely aware that President Trump, even as a candidate, clearly communicated a vision of empowering the private sector, as well as state and local governments, by unleashing our nation’s economic growth through infrastructure enhancements and improvements. In order to meaningfully address infrastructure issues, Interior believes creating greater efficiencies in the overall federal permitting process is crucial.

Executive Order (E.O) 13807 highlighted the costs to American households of the poor condition of America’s infrastructure, and the inefficiencies in current infrastructure project decisions. E.O. 13807 ignited an Administration-wide assessment as to how best to address inefficiencies in current infrastructure project decisions that delay investments, decrease job creation, and are costly to the American taxpayer. The Department, under the direction of the President, has been proactive in these efforts, specifically focusing upon environmental reviews and permitting authorizations.

Given the Department’s diverse mission as well as the considerable role we play in permitting activity that takes place on federal lands, an effort to bring greater efficiencies to our process has been at the forefront of our priorities. Following the signing of E.O. 13807, the Department followed suit with Secretarial Order (S.O.) 3355, which provides a number of directives to streamline environmental assessments. Such efforts include:

- Setting page and time limitations for most Environmental Impact Statements;

- Setting target page and time limitations for the preparation of Environmental Assessments;
- Reviewing the Department's current National Environmental Policy Act (NEPA) procedures and providing recommendations to streamline the process; and
- Implementing E.O. 13807 to the fullest extent.

With regard to specific Departmental policies, given President's Trump's push to advance energy dominance, a significant focus for the Department has been encouraging responsible energy development. We believe our efforts to accelerate and streamline NEPA compliance efforts will also help us achieve our energy goals.

Executive Order 13783 directed agencies to immediately review and report on all agency actions that potentially burden the safe, efficient development of domestic energy resources. In response, the Department released the "Review of the Department of the Interior Actions that Potentially Burden Domestic Energy" (Energy Burdens Report) on October 25, 2017. The Energy Burdens Report identified specific rules and regulations that hamper domestic energy development. A copy of the report has been submitted for the record and is publicly available on the Department's website (https://www.doi.gov/sites/doi.gov/files/uploads/interior_energy_actions_report_final.pdf). The report will be a useful tool as the Department continues its efforts to reduce impediments to safe, efficient development of domestic energy resources.

Executive Order 13795 outlined the President's America First Offshore Energy Strategy. In response, the Department is initiating a new National Outer Continental Shelf Oil and Gas Leasing Program development process to replace the 2017-2022 Program. In addition, the Department has announced Proposed Lease Sale 250, the largest oil and gas lease sale ever held in the United States, for March 2018. The proposed region-wide lease sale offers an area about the size of New Mexico, and includes all available unleased areas on the Gulf's Outer Continental Shelf. Providing opportunities for developing offshore resources is part of the Department's strategy to spur local and regional economic dynamism and job creation, and is a pillar of the President's plan to make the United States energy dominant.

The Department is also looking at ways to streamline leasing and permitting for hardrock mining, while at the same time addressing the backlog of mining notices, exploration plans, and mine plans. We intend to do this by ensuring that adequate resources are available to address notice-level and plan-level work for exploration and mining and to efficiently process new applications for hardrock mining. It is also important to enhance coordination with states, tribes, and other agencies, in a way that will result in streamlined review and approval of the NEPA documents related to hardrock mining.

In addition to the significant efforts underway to implement the vision outlined in the President's Executive Orders, the Department has worked to further execute Title 41 of the Fixing America's Surface Transportation (FAST) Act, while fulfilling the Secretary's priority of making environmental review and permitting processes more efficient. As detailed by the U.S. Fish and Wildlife Service (Service) in a July 26, 2017, hearing before the Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, FAST-41

provides a platform for more efficient and effective review and permitting of large and complex infrastructure projects. The Service typically carries out these activities in the field as a participating or coordinating agency under FAST-41, working with the lead agency for a project in reviewing and commenting or consulting on the project plan within set deadlines. Furthermore, they engage at the national level to advise the Federal Permitting Improvement Steering Council in identifying and implementing best practices and policies related to FAST-41. The Service continues to focus on building efficiencies into the review and permitting processes that will improve and expedite consideration of many projects.

I appreciate the opportunity to testify before your Committee this morning on the Department's progress on improving the efficiency and accountability of federal permitting for infrastructure projects, and I look forward to answering any questions that you might have.

The CHAIRMAN. Thank you, Mr. Cason.
Ms. Pfleeger, welcome.

**STATEMENT OF JANET PFLEEGER, ACTING EXECUTIVE
DIRECTOR, FEDERAL PERMITTING IMPROVEMENT STEER-
ING COUNCIL**

Ms. PFLEEGER. Chairman Murkowski, Ranking Member Cantwell and members of the Committee, thank you for the opportunity to appear before you today.

The Federal Permitting Improvement Steering Council, known as the Permitting Council, was created by Title 41 of the FAST Act, known as FAST-41. FAST-41 brings accountability and transparency to what has been for too long an uncertain and unpredictable process. FAST-41 upholds existing environmental laws and statutory responsibilities of the 16 Permitting Council agencies. Additionally, FAST-41 is a voluntary program in which project sponsors apply to become covered projects.

As Acting Executive Director of the Permitting Council, my office and the Council are bringing about a new way of doing business to improve the efficiency and the effectiveness of the federal permitting process for complex infrastructure projects in our nation.

The Permitting Council is comprised of top leadership, Deputy Secretary or equivalent, so they can ensure permit streamlining occurs throughout all levels of their organizations, including at the very important field level.

In addition, the Permitting Council is working with the Administration to improve the permitting process through Executive Order 13807, establishing discipline and accountability in the environmental review and permitting process for infrastructure projects.

The Office of the Executive Director, known as OED, oversees FAST-41 implementation and serves as a one-stop shop for project sponsors. OED is changing institutional behavior and culture, enhancing agency collaboration, resolving disputes, assuring transparency in the permitting process and ensuring agencies better coordinate and synchronize environmental reviews and authorizations.

My office is focused on three areas that I would like to highlight for you: early and formalized cross-agency coordination, increased transparency through the Permitting Dashboard and project-specific coordination and dispute resolution.

To my first point, FAST-41 requires the development of inter-agency coordinated project plans, CPPs, an essential tool for cross-agency planning and implementing best practices. The initial development and quarterly updates of CPPs formalize interagency collaboration. This allows difficult issues to be addressed early in the process to prevent confusion and delays later in the process. Moving forward, my office is working with agencies to ensure CPPs emphasize concurrent, rather than sequential, permitting actions.

Earlier this month, the Permitting Council released its 2018 recommended best practices for infrastructure permitting. My office will be ensuring agency implementation of these best practices to generate efficiencies in the permitting process and the Executive Director is required to report to Congress each April on agency progress.

To my second point, the Permitting Dashboard brings an unprecedented degree of transparency to the process. The permitting timetables on the dashboard list target completion dates for permits. Each quarter my office and the permitting agencies review those dates and my office enforces restrictions for modifications to those dates. With nationwide visibility and a built-in accountability structure, the dashboard provides the public, project sponsors and other stakeholders with clarity and certainty in the permitting process.

To my third point, project sponsors have contacted my office for help with specific issues such as when a sponsor received contradictory information from headquarters and field offices or when agencies working together on a project disagreed on a path forward. A notable success in this area was my office using the FAST-41 dispute resolution process to address a stalled review. The resulting coordination among agencies allowed subsequent authorizations to move forward and, as relayed by the project sponsor, saved an estimated six months and \$300 million in capital costs to the project.

Going forward, my office will continue to use the FAST-41 tools of oversight, transparency, collaboration and accountability to improve the permitting process. The Fiscal Year 2018 President's budget request of \$10 million provides the funding support we need to fully use these FAST-41 tools. As new projects come on board, from the start they will benefit from the enhanced transparency, coordination and agency accountability of FAST-41.

Thank you for the opportunity to testify and I welcome your questions.

[The prepared statement of Ms. Pfleeger follows:]

Janet Pfleeger
Acting Executive Director
Federal Permitting Improvement Steering Council
Testimony before
Senate Committee on Energy and Natural Resources
December 12, 2017

Good morning Chairman Murkowski, Ranking Member Cantwell, and distinguished Members of the Committee, thank you for the opportunity to testify today concerning the permitting processes employed at Department of Interior and the Federal Energy Regulatory Commission. My name is Janet Pfleeger and I am the Acting Executive Director of the Federal Permitting Improvement Steering Council (the “Permitting Council”) and I am here to discuss the progress being made on environmental streamlining by the Permitting Council in improving the efficiency and timeliness of the Federal permitting process for infrastructure projects through increased transparency, predictability, and accountability.

The Permitting Council’s work to create a more standardized, predictable permitting process that protects public health, safety and the environment focuses on: conducting project-specific coordination to ensure multi-agency collaboration for large and complex infrastructure projects; incorporating best practices identified by industry and government into the Federal permitting process; and establishing recommended performance schedules for use by agencies in developing permitting timetables with target completion dates.

The Permitting Council is actively working with the Administration to improve the permitting process for infrastructure projects. On August 15, 2017, President Trump signed Executive Order (E.O.) 13807, entitled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” in which the Permitting Council has several prominent roles and responsibilities. This E.O. will further enhance the work of the Permitting Council through the establishment of a “One Federal Decision” policy for major infrastructure projects determined under the National Environmental Policy Act (NEPA) as requiring an Environmental Impact Statement. The framework for implementing “One Federal Decision” will be developed by the Council on Environmental Quality (CEQ) and the Office of Management and Budget (OMB), in consultation with the Permitting Council. The E.O. also requires OMB to establish an accountability and tracking system to ensure the project review schedules are met, the guidance for which will be issued in consultation with the Permitting Council.

The Permitting Council is uniquely positioned to transform Federal permitting practices by implementing Title 41 of the Fixing America Surface Transportation Act (FAST-41). FAST-41 allows the Permitting Council to oversee the Federal permitting process for covered projects that require authorization or environmental review by a federal agency, including NEPA reviews. The Council has had recent successes in both systematic improvements, such as increased Permitting Dashboard transparency, and project-specific permitting process improvements, including enhanced coordination and dispute resolution procedures. These improvements helped save one project six months and \$300 million in capital costs, as estimated by the project sponsor.

Implementation of FAST-41 began soon after the law was enacted through recruitment of an Executive Director to oversee the permitting improvement process, designation of the U.S. General Services Administration as the agency to provide administrative support, initiation of enhancements to the Permitting Dashboard to address FAST-41 requirements, and establishment

of a physical Permitting Council office. With initial Cross-Agency Priority (CAP) Goal funding, the Office of the Executive Director, in cooperation with Permitting Council agencies, has made significant progress in establishing the FAST-41 governance structure:

- Permitting Council agencies have appointed both Council members and senior-level staff to serve as Chief Environmental Review and Permitting Officers (agency CERPOs). These agency leaders have taken a proactive role in FAST-41 implementation and success. With an eye toward enhanced transparency and accountability, the CERPO appointments have been posted on the publicly-available Permitting Dashboard.
- In 2016, the Permitting Council released an initial inventory of 34 infrastructure projects considered to be “covered projects” under the requirements of FAST-41. FAST-41 covered projects may include large infrastructure projects such as roads, bridges, pipelines, and energy production, or projects which are likely to benefit from designation as “covered projects.”
- Since the initial inventory of projects, four projects have voluntarily submitted FAST-41 Initiation Notices and been approved to become covered projects. One project is currently under evaluation to become a covered project.
- The inventory of all covered projects, including project specific permitting timetables with target completion dates, is posted on the publicly-available Permitting Dashboard for an unprecedented degree of transparency and accountability. The Dashboard serves as a key FAST-41 tool for tracking permitting timetables and keeping projects on schedule.
- Permitting Council agencies have developed inter-agency Coordinated Project Plans (CPPs) for covered projects. CPPs promote inter-agency problem solving, accountability and predictability by identifying lead, cooperating, and participating agencies for the project; all Federal environmental reviews and authorizations required for the project and associated target completion dates; a discussion of potential avoidance, minimization, and mitigation strategies; and plans for public and tribal outreach and coordination.
- As of December 2017, the Permitting Council Office of the Executive Director has three full-time career federal staff, five detailees from other agencies, and eleven contract support employees.
- In January of 2017, OMB and CEQ, in coordination with the Permitting Council, jointly issued guidance for agencies to carry out their responsibilities under FAST-41. In addition to addressing statutory requirements, the guidance introduced a framework for tracking covered projects on the Permitting Dashboard.
- The Permitting Council participated in multiple tribal consultations conducted by the US Department of Justice, US Army, and US Department of the Interior to identify additional opportunities to improve the infrastructure permitting process. Following these consultations, a report called *Improving Tribal Consultation and Tribal Input in Federal Infrastructure Decisions* was produced in January of 2017. The Advisory Council on Historic Preservation (ACHP) released a companion report in May 2017 *Improving Tribal Consultation in Infrastructure Projects* (<http://www.achp.gov/docs/achp-infrastructure-report.pdf>), which I distributed and highlighted to the Permitting Council as a roadmap for federal agencies in improving the permitting process.
- Most recently, the Permitting Council received additional support and responsibilities from the President in E.O. 13807 of August 15, 2017. In addition to several prominent roles in the process enhancements required under the E.O., the General Services Administration (GSA), which was recently included as an official member agency to the Permitting Council, is identified as the agency to provide the necessary administrative and organizational support to the Permitting Council, unless otherwise determined by the Director of the Office of Management and Budget (OMB).

I was hired as Deputy Director in the Permitting Council's Office of the Executive Director in January of 2017 and have been serving as Acting Executive Director since January 20, 2017. From my first day, I have sought to improve the permitting process by focusing on four main areas: transparency and accountability; project specific coordination and dispute resolution; interagency coordination, collaboration, and technical support; and stakeholder outreach.

1) Transparency and Accountability: Permitting Dashboard and Coordinated Project Plans (CPPs)

The permitting timetable developed in every project's CPP is made public on the Permitting Dashboard. The Permitting Dashboard serves as a single point of reference for information on covered projects, where anyone can view the timetable schedule and status for all the environmental reviews and authorizations required for any covered project. The Office of the Executive Director, in cooperation with the Permitting Council, is improving the quality and usefulness of the Permitting Dashboard in the following ways:

- Since the beginning of 2017, the Office of the Executive Director has worked with Permitting Council agencies to improve the data accuracy and completeness of permitting timetables to the Dashboard. The quarterly assessments following the March, June, and September 2017 quarterly updates, the Office of the Executive Director provided each agency with a data assessment from which to track agency progress in publishing the requisite data to the Dashboard, and now is ensuring Dashboard administrators fully understand the requirements and have the necessary training to meet these Dashboard requirements. Complete Dashboard data is not only key to transparency and accountability in the permitting process, but is essential for collecting two years of baseline data for use in developing recommended performance schedules that agencies can use in the future to establish their permitting timetables.
- The Office of the Executive Director continues to improve the Permitting Dashboard, with technical support from the U.S. Department of Transportation (USDOT), through enhancements such as automated notifications to agencies when authorization deadlines are approaching or when a deadline is being changed.
- New dynamic reporting and visualization enhancements for the Dashboard are planned to better allow users to view criteria and learn how federal agencies are performing in critical areas. Project sponsors and the public will be able to track how projects are progressing through visualizations controlled by user-selected data fields. Agencies will be able to report on their effectiveness and every covered project's status will be displayed through a color-coded system.
- The Dashboard is a useful tool for Federal agencies, project sponsors, and interested members of the public to track the environmental reviews and authorizations required for large or complex infrastructure projects. The Dashboard currently tracks all covered projects under FAST-41 as well as projects subject to 23 U.S.C. 139 under the authority of the USDOT. E.O. 13807 reinforces this practice by the USDOT and requires milestone dates for all projects tracked on the Dashboard to be updated monthly, or on another appropriate timeline as determined by the Executive Director. The E.O. also allows for other projects or classes of projects to be tracked on the Dashboard at

the discretion of the Executive Director.

- In addition to being a tool for transparency and accountability, the Dashboard plays an important role in process improvements. FAST-41 requires Executive Director approval for certain modifications to the Permitting Dashboard timetables. These approvals help the agencies and Executive Director identify issues specific to a particular project, and with time, recurring bottlenecks for overlapping or contingent permitting processes.

The permitting timetable posted to the Dashboard is only part of the CPP, which establishes a concise plan for coordinating public and agency participation in, and completion of, any required Federal environmental review and authorization for the project. The CPP therefore serves as the foundation for interagency coordination, early identification of difficulties and issues that could delay Federal decision-making, and verification of implementation of best practices. To facilitate effective and timely decision-making, the Office of the Executive Director, in cooperation with the Permitting Council, is improving the quality and usefulness of CPPs in the following ways:

- A CPP template has been developed, primarily for use in new covered projects, but recommended and available for use for all current covered projects.
- The Office of the Executive Director has met with each agency serving in a lead and cooperating agency role on a covered project to discuss remaining work for CPPs to be deemed accurate and complete.
- The Office of the Executive Director reviews CPPs for ongoing projects in its FAST-41 oversight role and, when necessary, brings together Federal agencies to ensure that they are using the most efficient and effective permitting processes available that are then reflected in the CPPs. Based on these meetings and work to date, the Office of the Executive Director is updating the CPP template to reflect lessons learned. The Office of the Executive Director will also participate in the development of CPPs for new projects on an as needed basis to ensure that early coordination and potential issue identification takes place at the start of the FAST-41 process.

2) Project-Specific Coordination and Dispute Resolution

The Office of the Executive Director conducts project-specific agency and project sponsor coordination and implements the FAST-41 dispute resolution provisions to ensure successful implementation of permitting timetables for covered projects. Initial examples of project-specific issues identified and addressed through the implementation of FAST-41 include:

- Project sponsors have contacted the Executive Director for help with project specific issues—for instance, when an agency did not respond to their questions, when different staff within an agency provided contradictory responses, and when different agencies working together on a project provided conflicting information. In these situations, my office has been able to intervene when communication within and among agencies breaks down to facilitate and resolve a misunderstanding, disagreement, or dispute.
- As reported at the Permitting Council's September 2017 Council meeting, the Office of the Executive Director coordinated closely with involved agencies, including FERC, to address a stalled Section 106 review under the National

Historic Preservation Act. The resulting coordination among agencies allowed subsequent authorizations to move forward and, as relayed by the project sponsor, saved an estimated 6 months and \$300 million in capital costs to the project. As more projects elect to use the FAST-41 process, we expect to hear of more cases where these sorts of benefits are achieved. Similarly, the Office of the Executive Director coordinated with DOI to facilitate project sponsor understanding and action on DOI information needs from state agencies.

- The Office of the Executive Director worked with an agency whose inefficient internal environmental review process did not comply with the agency's responsibilities under FAST-41. The corrected, more efficient review process resulted in a 6-8 week shorter environmental review period.
- The Office of the Executive Director has facilitated conflict resolution between agency headquarters and field offices to coordinate and deliver consistent information to project sponsors.
- Upon advice from our office, multiple field offices within a single agency performed a pre-meeting collaboration and, for the first time for a covered project, met with the project sponsor with one voice. Ensuring coordinated decision making among district and field offices facilitated information sharing and enhanced predictability for project sponsors.
- The Office of the Executive Director has convened meetings with agencies facing unusual circumstances outside of their control to identify and implement creative solutions to keep the permitting process on schedule while ensuring that those agencies' statutory responsibilities are not compromised.

Additionally, E.O. 13807 establishes new policies that will further enhance dispute resolution for all major infrastructure projects. The E.O. requires agencies to automatically elevate instances where a milestone is missed, or anticipated to be missed, to appropriate senior agency officials of the lead Federal agency and the cooperating and participating Federal agency or agencies to which the milestone applies. E.O. 13807 authorizes CEQ to mediate interagency disputes concerning Federal environmental review or authorization decisions upon the request of a Federal lead, cooperating, or participating agency, except where dispute resolution processes are otherwise provided for in law, such as FAST-41.

The Permitting Council Executive Director remains the established point of contact, or "one-stop shop," for project sponsors and government agencies to request assistance in resolving an issue or initiating the formal dispute resolution process for issues affecting the timeline of covered projects under FAST-41. The E.O. further authorizes the Executive Director to, upon request of a project sponsor or Permitting Council member agency, work with the lead agency or any cooperating and participating agencies to facilitate the environmental review and authorization process for any infrastructure project, regardless of whether the project is a "covered project" under FAST-41.

3) Interagency Coordination, Collaboration, and Technical Support

The Permitting Council's Office of the Executive Director is leading the effort to implement one of the FAST-41 cornerstones for systematic change to the permitting process: best practices. This is accomplished through the Best Practices Report, in which the Permitting Council issues recommendations on best practices for environmental reviews and authorizations common to covered projects. It is through agency-wide implementation of these best practices that improvements in the permitting process will

be realized.

- The Permitting Council's first Best Practices Report was published in January 2017, and provides a compendium of established best practices for each of the eight categories of best practices identified in FAST-41.
- The Permitting Council's second Best Practices Report was published on December 1, 2017 (<https://www.permits.performance.gov/documentation/fiscal-year-2018-best-practices-report>) and builds on the January 2017 Best Practices Report by identifying those best practices that can be implemented across agencies for maximum impact in addressing common stakeholder concerns. This report will serve as the roadmap for systematic permitting process improvement as Permitting Council agencies implement and institutionalize these best practices during fiscal year 2018 at all levels within their organizations, including critical field offices that interact with project sponsors on a regular basis.

The Office of the Executive Director submits an annual report to Congress every April assessing agency progress in making improvements consistent with best practices.

- The Office of the Executive Director's FY 2016 Annual Report to Congress was published in April of 2017.
- Preparation of the FY 2017 Annual Report to Congress (due in April 2018) is currently underway and will assess agency progress in implementing best practices identified in the January 2017 Best Practices Report.

Through regular meetings of the Permitting Council Working Group, monthly CERPO meetings, and quarterly Council meetings, agencies collaborate and share lessons learned from best practices to help other agencies establish their own effective programs. Agencies also are able to share feedback from stakeholders on how to improve the permitting process. For example, the Advisory Council on Historic Preservation issued a report on Improving Tribal Consultation in Infrastructure Projects (May 2017) to provide recommendations for improving tribal consultation in the Section 106 of the National Historic Preservation Act review process for federal infrastructure decisions. This report is a companion to the January 2017 Improving Tribal Consultation and Tribal Input in Federal Infrastructure Decisions report. The Permitting Council will work to determine the best solution for implementing ACHP's recommendations. E.O. 13807 reinforces the Permitting Council's work by directing agencies to implement appropriate best practices identified by the Permitting Council and to ensure that such implementation is established at the agencies' field level.

The Permitting Council continues to develop policies and procedures to govern the implementation of FAST-41. For example, when the Permitting Council received its first FAST-41 application from a Project Sponsor to become a covered project, there was no defined process to make the determination as to whether that project would be a covered project. The Office of the Executive Director, in cooperation with the Permitting Council, is nearing completion of a set of procedures that clarify how a project sponsor's application is processed and evaluated to meet the statutorily required 14 day deadline. Additionally, last week the Permitting Council adopted a Charter describing roles and responsibilities and establishing the Council's purpose and operating procedures.

4) Stakeholder Outreach

The Permitting Council continues to engage in education and outreach efforts with stakeholders and to meet with groups and individuals representing state, local, and tribal governments engaged in the infrastructure permitting process. These efforts are building sustainable relationships and increasing engagement in the Permitting Council's efforts to improve the infrastructure permitting process. Specific outreach efforts include meetings with:

- Current and potential project sponsors - individual meetings with current project sponsors as well as outreach and education to potential project sponsors through industry and trade organization events, industry panels, and infrastructure-themed conferences;
- State government representatives - Environmental Council of the States (State Environmental Protection Meeting) and State Historic Preservation Officers (Permitting Dashboard Training; similar training planned for Tribal Historic Preservation Officers);
- Tribal entities - National Tribal Preservation Conference;
- Local government representatives - National Association of Counties Annual Conference, including meeting with the Western Interstate Region; and
- Non-Governmental Organizations - individual meetings and infrastructure-themed meetings, workshops, and conferences.

Conclusion

I am proud to say that the Permitting Council has made significant progress across the board in each of these priority areas. We are already beginning to observe improved transparency, predictability, and accountability in our covered projects in the form of avoided delays in the permitting process. As more projects elect to use the FAST-41 process, these benefits will increase substantially.

FAST-41 is not the first time the Federal government has tried to reform the permitting process, but this is the first time the framework to accomplish real reform is in place. The Permitting Council Office of the Executive Director is positioned to truly change the siloed nature of the permitting process. Additionally, the Permitting Council is poised to play a major role in the Administration's Infrastructure Initiative, and is actively working with the Administration on the implementation of FAST-41 and Executive Order 13807.

Going forward, in addition to the reforms and activities mentioned above, our office intends to be fully engaged with agencies and project sponsors to improve the process for permitting decision making. Our capacity and resources over the next year, including fully funding the FY 2018 President's Budget request of \$10 million for the Environmental Review Improvement Fund in the General Services Administration appropriation, will determine our ability to scale up and provide the promised benefits to covered projects, including enhancement of the Permitting Dashboard. FAST-41 provides the authority to issue fee regulations and the Permitting Council is working together to take advantage of this important tool provided by statute.

I thank you for the opportunity to testify before the Committee today, and I welcome your questions and the opportunity to further discuss how we can work with Congress to make this unprecedented opportunity for transformational change a reality.

The CHAIRMAN. Thank you, Ms. Pfleeger.
Mr. Turpin, welcome to the Committee.

STATEMENT OF TERRY L. TURPIN, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

Mr. TURPIN. Thank you.

Good morning, Chairman Murkowski, Ranking Member Cantwell and members of the Committee.

My name is Terry Turpin and I'm Director of the Office of Energy Projects at the Federal Energy Regulatory Commission. The Office is responsible for taking a lead role in carrying out the Commission's duties and siting infrastructure projects, including non-federal hydropower projects, interstate natural gas pipelines and storage facilities and liquefied natural gas terminals.

Thank you for the opportunity to appear before you today to discuss federal infrastructure permitting and the Commission's processes for conducting environmental reviews required under the National Environmental Policy Act.

As a member of the Commission's staff, the views I express in my testimony are my own and not necessarily those of the Commission or of any individual commissioner.

Under the Federal Power Act, the Commission regulates over 1,600 non-federal hydropower projects at over 2,500 dams. Together, these represent about 56 gigawatts of hydropower capacity which is more than half of all the hydropower in the United States.

In the last five years, the Commission has authorized 71 new projects with a combined capacity of over 2,400 megawatts and has relicensed 42 projects which continue to provide over 91 megawatts of generating capacity.

The Commission is also responsible under the Natural Gas Act for authorizing the construction and operation of interstate natural gas facilities and facilities for the import and export of natural gas.

Since 2000, the Commission has authorized nearly 18,000 miles of interstate natural gas pipeline which totals more than 159 billion cubic feet per day of transportation capacity, over one trillion cubic feet of interstate storage capacity and 23 facility sites for the import or export of LNG.

For both of these types of infrastructure, the Commission acts as the lead agency for the purposes of coordinating federal authorizations and for the purposes of complying with the National Environmental Policy Act.

As described in my written testimony, this environmental review is carried out through a process that allows cooperation from numerous stakeholders, including federal, state and local agencies, Native Americans and the public.

The Commission's current approach allows for a systematic and collaborative process and has resulted in substantial additions to the nation's infrastructure. To a great extent the processes and vision by legislation such as FAST-41 and the recent Executive Order 13807 parallel the Commission's own approaches in improving early consultation and increasing transparency of project review.

Commission staff is committed to working with all federal agencies to assist in successful implementation of these goals and to ensure the most effective processing of infrastructure matters before the Commission.

So this concludes my opening remarks. I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Turpin follows:]

Testimony of

Terry L. Turpin
Director, Office of Energy Projects

Federal Energy Regulatory Commission
888 First Street, N.E. Washington, DC, 20426

Chairman Murkowski, Ranking Member Cantwell, and Members of the Committee:

My name is Terry Turpin and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission. The Office is responsible for taking a lead role in carrying out the Commission's responsibilities in siting infrastructure projects including: (1) licensing, administration, and safety of non-federal hydropower projects; (2) authorization of interstate natural gas pipelines and storage facilities; and (3) authorization of liquefied natural gas (LNG) terminals.

I appreciate the opportunity to appear before you to discuss federal infrastructure permitting and the Commission's processes for conducting environmental reviews required under the National Environmental Policy Act. As a member of the Commission's staff, the views I express in this testimony are my own, and not necessarily those of the Commission or of any individual Commissioner.

Under both the Federal Power Act (FPA) and the Natural Gas Act (NGA), the Commission acts as the lead agency for the purposes of complying with the National Environmental Policy Act (NEPA). Consistent with its role as lead agency, the Commission has developed processes to engage Indian Tribes, state and federal agencies, and other stakeholders and provide them the opportunity to identify significant issues regarding proposed infrastructure. The Commission's practices allow for a systematic, efficient, and collaborative process, which has resulted in substantial additions to the nation's infrastructure.

I. The Commission's Hydropower Program

The Commission regulates over 1,600 non-federal hydropower projects at over 2,500 dams pursuant to Part I of the FPA. Together, these projects represent about 56 gigawatts of hydropower capacity, which is more than half of all the hydropower capacity in the United States. Together, public and private hydropower capacity total about eight percent of U.S. electric generation capacity.

Under the FPA, non-federal hydropower projects must be licensed by the Commission if they: (1) are located on a navigable waterway; (2) occupy federal land; (3) use surplus water from a federal dam; or (4) are located on non-navigable waters over which Congress has jurisdiction under the Commerce Clause, involve post-1935 construction, and affect interstate or foreign commerce.

The FPA authorizes the Commission to issue licenses for projects within its jurisdiction, and exemptions (which are actually a simpler form of license) for projects that would be located at existing dams or within conduits, as long as these projects meet specific

criteria. Licenses are issued for terms of between 30 and 50 years and may be renewed. Exemptions are perpetual and do not need to be renewed.

The Commission also must ensure compliance with other statutes, each containing its own procedural and substantive requirements, including: the Clean Water Act; the Coastal Zone Management Act; the Endangered Species Act; the Wild and Scenic Rivers Act; and the National Historic Preservation Act.

The Commission has established three licensing processes and allows an applicant to request the process that it believes to be best suited to its individual situation. All of these processes, which involve specified procedural steps, are transparent and involve extensive coordination among the applicant, Commission staff, Indian Tribes, state and federal agencies, and other stakeholders.

The integrated licensing process, which frontloads issue identification and decisions on information needs to the period before an application is filed, is suited to the more complex or controversial cases. The alternative licensing process allows participants significant flexibility to tailor the licensing process in a manner that can work well in their particular case. The traditional licensing process typically works best for less complex or controversial projects and is the process used for exemptions.

The Commission's hydropower processes give stakeholders the opportunity to participate in collaborative, public proceedings, where all significant issues are identified and studied. Commission staff, consistent with the Commission's role as lead agency, develops detailed, thorough environmental analyses, pursuant to the FPA and NEPA. Stakeholders are afforded numerous opportunities to provide the Commission with information, comments, and recommendations. While the Commission's regulations establish detailed procedures, Commission staff may waive regulations or revise procedures where doing so will lead to the more efficient and effective processing of an application.

Statutory requirements also give other agencies a significant role in the licensing process, limiting the Commission's control of the cost and timing of licensing. For example, if a project is located on U.S. lands such as a national forest, section 4(e) of the FPA authorizes the federal land managing agency to impose mandatory conditions to protect those lands. Section 18 of the FPA gives authority to the Secretaries of the Departments of the Interior and Commerce to prescribe fishways. With respect to exemptions, section 30(c) of the FPA allows federal and state agencies to impose conditions to protect fish and wildlife resources. In addition, section 401(a)(1) of the Clean Water Act precludes the Commission from issuing a final license for a hydroelectric project until the project has first obtained a water quality certification, or a waiver thereof, and requires the Commission to adopt all conditions contained in the water quality certification. There are instances where Commission staff has completed its analysis of a hydroelectric project but final Commission action on the application has been delayed, sometimes for years, awaiting the issuance by a state, acting under delegated federal authority, of a water quality certification under the Clean Water Act.

In addition to licensing projects and issuing exemptions, the Commission is responsible for ensuring compliance with license and exemption conditions during the life of regulated projects. The Commission also maintains a strong, effective program of inspecting jurisdictional dams to ensure that human life and property are kept safe.

II. The Commission's Natural Gas Program

The Commission is responsible for authorizing the construction and operation of interstate natural gas pipeline and storage facilities under section 7 of the NGA and, under section 3 of the NGA, for authorizing the construction and operation of facilities necessary for either the import or export of natural gas by pipeline, or by sea as LNG. Authorizations for the import or export of the commodity of natural gas, including LNG, are issued by the Department of Energy.

As part of its responsibilities, the Commission conducts both a non-environmental and an environmental review of proposed natural gas projects. The non-environmental review focuses on a project's engineering design, market demand, costs, rates, and consistency with the Commission's regulations and policies. Under the NGA, the Commission acts as the lead agency for the purposes of coordinating all applicable federal authorizations, including, but not limited to, those issued under the Endangered Species Act, National Historic Preservation Act, Clean Water Act, Clean Air Act, and Coastal Zone Management Act, as well as for the purposes of complying with NEPA. Congress has instructed each federal and state agency considering an aspect of an application for federal authorization to work with the Commission and to comply with the deadlines established by the Commission, unless a schedule is otherwise established by federal law. Commission staff establishes a publicly noticed schedule for all decisions or actions taken by other federal agencies and/or state agencies acting under delegated federal authority.

The environmental review, pursuant to NEPA, is carried out through a process that encourages cooperation from federal, state, and local agencies and that provides for the input of other interested stakeholders. There are several distinct phases in the Commission's review process for interstate natural gas facilities under sections 3 and 7 of the NGA:

- Project Preparation: the project sponsor identifies customers and markets, defines a proposed project, and identifies potentially affected federal and state agencies and Indian Tribes in the project area, prior to formally engaging Commission staff;
- Pre-Filing Review: Commission staff begins working on the environmental review and engages with stakeholders, including agencies, with the goal of identifying and resolving issues before the filing of an application;
- Application Review: the project sponsor files an application with the Commission under NGA section 7 for interstate pipeline and storage facilities and/or under NGA section 3 for import or export facilities. Commission staff prepares an environmental review document, analyzes the non-environmental aspects of projects related to the public interest determination, and prepares an order for Commission consideration; and
- Post-Authorization Compliance: Following issuance of a Commission order approving a project, Commission staff works with the project sponsor and stakeholders, including agencies and Tribes, to ensure compliance during construction with environmental and other conditions included in the order.

The Commission's natural gas project review processes are thorough, efficient, and have resulted in the timely approval of interstate natural gas pipelines, LNG facilities, and facilities at our international borders for the import or export of natural gas. Since 2000, the Commission has authorized nearly 18,000 miles of interstate natural gas transmission pipeline totaling more than 159 billion cubic feet per day of transportation capacity, over one trillion cubic feet of interstate storage capacity, and 23 facility sites for the import and export of LNG. Over the past ten years, the Commission has also issued 15 NGA section 3 authorizations and Presidential Permits for border crossing facilities. Since August when the Commission regained a quorum, the agency has authorized more than 12 billion cubic feet per day of additional pipeline capacity and more than 1,300 miles of pipeline.

III. Recent Efforts in Process Improvements

The Fixing America's Surface Transportation Act was enacted on December 4, 2015. Title 41 of that act (FAST-41) established new coordination and oversight procedures for infrastructure projects being reviewed by federal agencies. Executive Order 13807, *"Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,"* issued August 15, 2017, establishes a federal government policy of providing public transparency, agency accountability, and timeliness regarding environmental review and authorization decisions.

To a great extent, the processes envisioned by both FAST-41 and Executive Order 13807 parallel the Commission's own processes to improve early consultation and to increase transparency of project review. Commission staff is committed to working with all federal agencies to assist in the successful implementation of these goals and to ensure the most effective processing of energy infrastructure matters before the Commission.

Since the passage of the FAST-41, Commission staff has regularly participated in various FAST-41 working groups, including the Interagency Working Group, the Fees Working Group, and the Information Technology Working Group, as well as all meetings of the Council and of agency Chief Environmental Review Permitting Officers. Further, staff has assisted in the preparation of a number of FAST-41 related documents, including: Office of Management and Budget and the Council on Environmental Quality Implementation Guidance (January 13, 2017); Best Management Practices Report (January 18, 2017 and December 6, 2017); Performance Targets Report (January 18, 2017); and Quarterly Assessments (July and November 2017), and an Annual Report to Congress (April 15, 2017). Commission staff is also participating with the working groups set up by the Office of Management and Budget and the Council on Environmental Quality under Executive Order 13807.

IV. Conclusion

This concludes my remarks. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you, Mr. Turpin.
Mr. Brown, welcome.

STATEMENT OF CHAD BROWN, WATER QUALITY UNIT SUPERVISOR, WASHINGTON STATE DEPARTMENT OF ECOLOGY

Mr. BROWN. Thank you. Good morning.

Madam Chair, Ranking Member Cantwell and members of the Committee, thank you for inviting the Washington State Department of Ecology to speak today.

For the record, my name is Chad Brown and I supervise a team of staff responsible for the development and implementation of our state water quality standards.

Washington State is fortunate to have more hydropower energy than any other state in the nation. With this valuable, renewable and carbon-free resource and its importance to our state, also comes the responsibility to manage a variety of regulations associated with the licensing of these energy projects. Among these is the responsibility to ensure that the water quality is sufficient to support swimmable and fishable rivers.

As the water quality authority in the state, Ecology's work includes the issuance of state certifications for hydropower projects licensed by the Federal Energy Regulatory Commission. These certifications are issued through authority provided to states under Section 401 of the Federal Clean Water Act. These 401 certifications provide assurance to hydropower producers that their project development and operations will meet applicable state environmental regulations.

In the last decade, several large hydropower projects in Washington completed the FERC relicensing process. In this period, Washington successfully issued sixteen 401 certifications which accounts for more than two thirds of all FERC-regulated hydropower in our state. This was a significant effort for our agency as well as for those hydropower producers, yet we met the challenge and we met this challenge collaboratively in large part due to the financial support provided by the hydropower industry through Washington's Water Power License Fee program.

The fee began in 2007. In collaboration with the hydropower industry and other stakeholders, Ecology worked with our state legislature to institute a new fee based on the amount of water each licensed project uses to generate electricity. By basing the fee on the quantity of electricity a project can produce, the fees are distributed in a manner consistent with each project's revenue-generating capabilities.

For a decade, these fee revenues have helped support the regulatory workload to efficiently and effectively meet licensing timelines for new and relicensed hydropower projects.

The Washington State legislature recognized that this fee program was not without controversy and therefore included a provision requiring periodic reporting on the use of fee revenue. The reporting provides oversight and ensures accountability to periodically determine whether to continue assessing these fees.

We utilized this provision in 2016 as we engaged with the hydropower industry and stakeholders to review the program, improve the quality of service and increase transparency of the spending of

these revenues. With this, the state legislature extended this program to the year 2023.

The Washington State Department of Ecology recognizes that the importance of finding efficiencies and improving licensing procedures in new and continuing energy projects. The water power license fee revenue model has become one such successful strategy to support this efficiency.

We also acknowledge that there is room for improvement through federal legislation. House Bill 3043 and Senate Bill 1460 both contain language which would act to improve the FERC licensing process. However, we believe that it is important that any new legislation be consistent with the current federal and state laws and maintain appropriate authorities in place to ensure protection of natural resources. My agency has provided comment on similar bills in past legislative sessions, and we appreciate improvements that were made in this regard. We have confidence that through collaborative development and review, final legislation can meet both goals.

It is important that certifications, permits and other authorizations required to license energy projects be defensible in order to avoid challenge from project opponents. That any legislation that would improperly abbreviate environment review timelines or otherwise limit the authorizing agencies' ability to fully carry out environmental studies may lessen the defensibility of these projects. Limiting the ability to complete a full environmental review, may exchange efficiencies gained in the licensing process for greater delays in the courts.

In closing, the Washington Department of Ecology supports the legislative intent of Senate Bill 1460 to improve licensing procedures, and we also believe that it is an imperative that final legislation also protect the current independent authority of states to ensure that projects meet important environment regulation. We also thank you for the opportunity to highlight our fee program as a means to improve one step in the licensing process. We believe the success of this program stems from the early engagement of hydropower producers and proper funding and dedicated staff which effectively retains expertise and supports continuity and consistency within the process.

Thank you.

[The prepared statement of Mr. Brown follows:]



STATE OF WASHINGTON

**Water Quality Unit Supervisor
Department of Ecology
Chad Brown**

Madam Chair, Ranking Member Cantwell, and members of the committee, thank you for inviting the Washington State Department of Ecology to speak to this committee today. For the record, my name is Chad Brown and I supervise a team of staff responsible for the development and implementation of our state water quality standards.

Washington State is fortunate to have ample natural resources to support the production of more hydropower energy than any other state in the nation. With this valuable, renewable, carbon-free resource and its importance to our state comes the responsibility to manage a variety of regulations associated with licensing of these energy projects. Among these is the responsibility to ensure that water quality is sufficient to support swimmable and fishable rivers. This is the basis for much of our environmental review of hydropower projects.

As the water quality authority in our state, Ecology's work includes the issuance of state certifications for hydropower projects licensed by the Federal Energy Regulatory Commission. These certifications are issued through authority provided to states under Section 401 of the Federal Clean Water Act. These 401 certifications provide assurance to hydropower producers that their project development and operations will meet applicable state environmental regulations.

In the last decade, several large hydropower projects in Washington completed the FERC relicensing process. In this period, Washington successfully issued sixteen 401 certifications which accounts for more than two thirds of all FERC-regulated hydropower in our state. This was a significant effort for our agency as well as for those hydropower producers. Yet, we met the challenge collaboratively, in large part due to the financial support provided by the hydropower industry through Washington's Water Power License Fee program.

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This fee program began in 2007 as hydropower leaders in our state recognized the growing workload associated with issuing 401 certifications necessary for them to meet their FERC licensing requirements.

In collaboration with the hydropower industry and other stakeholders, Ecology worked with our state legislature to institute a new fee based on the amount of water each licensed project uses to generate electricity. By basing the fee on the quantity of electricity a project can produce, the fees are distributed in a manner consistent with each project's revenue generating capability.

For a decade these fee revenues have supported the regulatory workload to efficiently and effectively meet licensing timelines for new and relicensed hydropower projects. This program provides greater certainty in the timing of the license process which is important to hydropower producers so they may continue to provide important renewable energy while also meeting current environmental regulations.

The Washington State legislature recognized that this fee program was not without controversy and therefore included a provision requiring periodic reporting on the use of fee revenue to provide oversight and to be used for future consideration of fee continuance. We utilized this provision in 2016 as we engaged with the hydropower industry and stakeholders to; review the program, improve the quality of service, and increase transparency of revenue expenditures. The fee program was then extended through the year 2023.

The Washington State Department of Ecology recognizes the importance of finding efficiencies and improving licensing procedures for new and continuing energy projects. The water power license fee revenue model has been one such successful strategy to support efficiency of Washington's role in FERC hydropower licensing.

However, we acknowledge that there is room for further improvements through federal legislation. House Bill 3043 and Senate Bill 1460 both contain language which would act to improve the FERC licensing process. We believe it is important that any new legislation be consistent with current federal and state laws and maintain appropriate authorities in place to ensure protection of natural resources. My agency has provided comment on similar bills in past legislative sessions and we appreciate improvements made in this regard. We have

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confidence that through collaborative development and review, final legislation can meet both goals.

It is important to recognize that certifications, permits, and other authorizations required to license energy projects must be defensible in order to avoid challenges from project opponents. Any legislation that would improperly abbreviate environment review timelines or otherwise limit the authorizing agencies' ability to fully carry out environment studies may lessen the defensibility of the license. This can lead to litigation, ultimately hindering a project's viability. Limiting the ability to complete full environmental reviews, may act to exchange efficiencies gained in the licensing process, for greater delays in the courts.

Regulatory agencies like the Department of Ecology share the goal of improving the licensing process. In Washington, we seek to work effectively with our hydropower applicants to determine the appropriate information necessary to deliver a timely and defensible 401 water quality certification. A well-funded program is an effective strategy to ensure regulatory certainty that is vital for the success of renewable energy projects.

In closing, the Washington Department of Ecology supports the legislative intent of SB 1460 to improve licensing procedures and we believe it is imperative that final legislation also protect the current independent authority of states to ensure that projects meet important environment regulations. We also thank you for the opportunity to highlight our fee program as a means to improve one step in licensing process. We believe the success of this program stems from early engagement with hydropower producers, and proper funding for dedicated staff which effectively retains expertise, and supports continuity and consistency within the process.

The CHAIRMAN. Thank you, Mr. Brown.
Ms. Perruso, welcome.

**STATEMENT OF ROXANE PERRUSO, VICE PRESIDENT AND
ASSOCIATE GENERAL COUNSEL, THE ANSCHUTZ CORPORATION**

Ms. PERRUSO. Good morning, Chairman Murkowski, Ranking Member Cantwell, members of the Committee and staff, I'm Roxane Perruso, Vice President and Associate General Counsel of The Anschutz Corporation.

Anschutz has been active for more than 75 years developing energy and resource infrastructure in the West. We've spent the last 10 years working with the Department of Interior to develop two large energy infrastructure projects.

The first project is the Chokecherry and Sierra Madre Wind Energy Project which is located in Wyoming and consists of up to 1,000 turbines with 3,000 megawatts of nameplate capacity. We applied to the Bureau of Land Management for a development grant for the wind project in 2008. After preparing an environmental impact statement and two environmental assessments, in 2016 the BLM authorized initial construction of the wind project and we started construction in 2016.

The second project is the TransWest Express Transmission Project which is a 730-mile, high-voltage direct current transmission line that crosses 4 states, 14 counties and multiple federal jurisdictions including 10 BLM field offices, two national forests, as well as Bureau of Reclamation lands. We applied to the BLM for a right-of-way grant for the TransWest Project in 2008. The BLM and Western Area Power Administration acted as joint leads on the environmental impact statement and the BLM issued a right-of-way grant for the transmission line nine years later in 2017.

Our hope is that the challenges that we faced in permitting these projects will provide opportunities to improve the process. But before I address the challenges, I want to acknowledge and thank the numerous federal employees that we've worked with over the past 10 years and continue to work with. And they are part, a very big part, of why the projects are where they are today.

But based on our experience, we do believe that federal permitting, that process, especially for large, multi-jurisdictional projects like TransWest, can be significantly improved through three things: increased consistency and policy, coordination with appropriate corresponding decision-making authority and finally, accountability.

One of the greatest challenges that we encountered was lack of consistency. We were faced with ever-changing policies. Two examples of significant policy changes that impacted us were one, Interior's policy on mitigation, and two, the BLM's competitive leasing rule. Over the last nine years, Interior's mitigation policy was revised seven different times resulting in project delays and additional costs as the goal post kept getting moved.

Next, the BLM's competitive leasing rule was issued in December 2016. That's more than eight years after analysis on our wind project began, but this rule significantly affects the economics of the wind project by raising the rents over the life of the develop-

ment grant for the wind project by about 60 percent. So our recommendation here is that policy revisions should be carefully considered and should clearly direct agencies on whether and how the new policies should be applied to projects that are already in development.

Next, coordination and communication with corresponding decision-making authority is essential. For TransWest, for example, routine coordination calls were held weekly and monthly. Yet, after having these calls for more than five years, major issues remained unresolved and while attempts at coordination and communication were, in fact, made, ultimately it was the lack of timely agency decisions or lack of line authority to ensure the decisions are made and issues are resolved, that resulted in substantially increasing permitting delays and costs.

And finally, there's a lack of accountability regarding schedule and budgets in the federal permitting process. With both our wind and transmission projects the original schedule and the estimated budget more than doubled.

This budget and schedule uncertainty and risk discourages the very development of energy and resource infrastructure that on federal land that the government is seeking to encourage.

Now, we do believe that the FAST Act and CEQs involvement are, in fact, a very good step forward in addressing these issues. However, there needs to be accountability at every level such that agency personnel understand the work they're doing is very important, it's time-sensitive and it has real consequences for project proponents like us and also the development of the nation's infrastructure.

In conclusion, while we acknowledge that the permitting process for large, multi-jurisdictional projects like ours will always be complex, reducing the permitting time, cost and complexity is achievable and it is necessary. And this, in turn, will encourage private investment in energy infrastructure projects and federal private partnerships.

Thank you for the opportunity to provide these remarks today.
[The prepared statement of Ms. Perruso follows:]

**Testimony of Roxane Perruso
Vice President and Associate General Counsel
The Anschutz Corporation
December 12, 2017**

I. Introduction

Thank you for the opportunity to provide a written statement and testimony regarding our experience with the Department of the Interior, as well as other federal agencies, over the last ten years permitting two large energy infrastructure projects – a wind farm located in Wyoming with 1,000 turbines and a nameplate capacity of over 3,000 megawatts, and a 600 kilovolt, direct current electricity transmission system designed to deliver energy from Wyoming 730 miles to the markets in the Desert Southwest.

As background, Power Company of Wyoming LLC (“PCW”) which is developing the wind farm, and TransWest Express LLC (“TransWest”), which is developing the transmission system, are both wholly owned subsidiaries of The Anschutz Corporation (“TAC”). TAC is a privately held, multi-billion dollar, highly diversified company based in Denver, Colorado. TAC has been active in the West for more than 75 years in the fields of ranching, agriculture, oil and gas development and distribution, transportation, telecommunications, hospitality and lodging, and sports and entertainment.

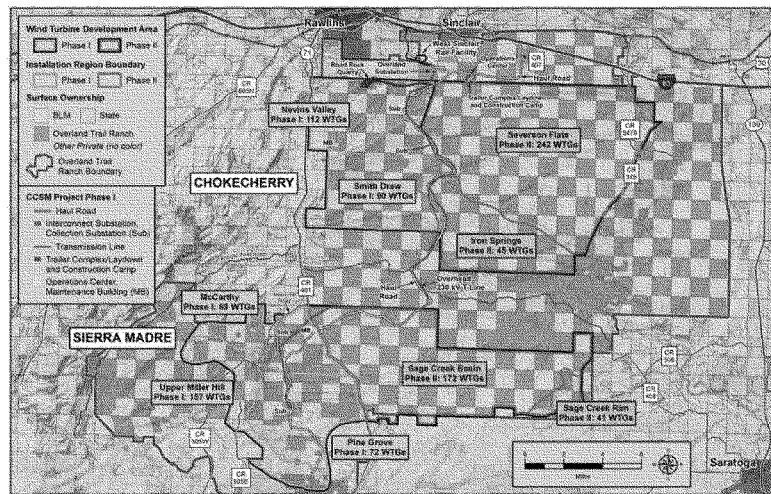
The wind farm and transmission projects together represent an \$8 billion investment in critical energy infrastructure that will contribute to the reliability and deliverability of electricity in the western grid. To date, TAC has invested ten years and over \$150 million of private capital in funding the development of the wind farm and transmission projects. Through the applicable permitting and regulatory processes, PCW and TransWest have worked with numerous federal agencies, including the Bureau of Land Management, United States Fish and Wildlife Service, United States Forest Service, Bureau of Reclamation, and Western Area Power Administration. The wind energy generation and energy transmission projects align with federal policies and with the goals set out in the 2005 Energy Policy Act, which called for 10,000 MW of renewable energy to be located on BLM-managed land by 2015.

II. Chokecherry and Sierra Madre Wind Energy Project

PCW’s Chokecherry and Sierra Madre Wind Energy Project (“CCSM Project”) is located on the Overland Trail Ranch in Carbon County, Wyoming. The Ranch is situated within Wyoming’s checkerboard of primarily private and federal land, with some state land interspersed. The Ranch’s private lands are owned by The Overland Trail Cattle Company LLC (“TOTCO”), another TAC affiliate, and PCW has obtained the wind development rights on the Ranch from TOTCO. The federal lands are administered by the BLM Rawlins Field Office.

A. CCSM Project Description

The CCSM Project will include up to 1,000 wind turbines with a combined nameplate capacity of at least 3,000 MW of renewable energy. It is being built in two phases consisting of 500 wind turbines, or 1,500 MW, each, along with associated roads and infrastructure such as a rail facility. The CCSM Project site features the nation's highest-intensity onshore winds. Within the turbine development areas, at typical turbine hub heights (about 90 to 100 meters above ground), the annual average wind speeds range from 8.5 to 11 meters per second. No other onshore U.S. wind project features this size and scale combined with a superior wind resource. At 3,000 megawatts of capacity, the CCSM Project will be the nation's largest and one of the largest in the world. It will provide enough competitively priced renewable electricity to serve over 1 million Desert Southwest households – while also contributing resource diversity that complements the power profile of other renewable energy sources. It is an estimated \$5 billion energy infrastructure project.



B. Federal Permitting

1. *BLM's Compliance with the National Environmental Policy Act*

PCW has been working on completing the federal permitting for the CCSM Project for almost ten years. Due to the mix of private and federal land on the CCSM Project site, PCW applied to BLM in January 2008 for right-of-way (ROW) grants to construct, operate, maintain and decommission the CCSM Project on federal lands within the CCSM Project Area. Over the next four years, BLM conducted extensive public scoping, performed numerous studies and surveys, analyzed multiple alternatives and prepared a Draft Environmental Impact Statement for the entire CCSM Project, which was published for public comment on July 22, 2011. BLM took the

next year to review and incorporate public comments on the Draft EIS and further refine its analysis. On June 29, 2012, the Notice of Availability for the Final Environmental Impact Statement concerning the CCSM Project was published in the Federal Register (77 FR 63328). On October 9, 2012, the Secretary of the Interior signed the Record of Decision (“ROD”) for the CCSM Project. In the project-wide ROD, BLM determined that over 200,000 acres within the CCSM Project Area are suitable for wind energy development – subject to the requirements described under the Selected Alternative in the ROD.

The ROD provides that, prior to issuing ROW grants, BLM must follow the tiering procedure and process that is set out in the CCSM Project ROD regarding the subsequent site-specific environmental analysis of PCW’s site-specific plans of development (“SPOD”). In other words, more federal environmental screening was required for all project elements. PCW has submitted all of its Site-Specific Plans of Development SPODs for Phase I (SPODs 1 through 4).

- BLM completed the secondary tiered environmental analysis of SPODs 1 through 3 in an Environmental Assessment (EA) for Infrastructure Components (EA1) that was released for public review on August 11, 2014. The BLM issued the Decision Record and Finding of No New Significant Impacts (FONNSI) for EA1 in December 2014.
- BLM completed the secondary tiered environmental analysis of SPOD 4 in an EA for the Phase I Wind Turbine Development (EA2) that was released for public review on March 9, 2016. The BLM issued the Decision Record and FONNSI for EA2 in January 2017.

BLM also has issued the corresponding ROW grants and notices to proceed for EA1 and EA2. Therefore, with respect to Phase I, the CCSM Project is fully permitted.

On December 1, 2017, PCW submitted its SPOD (SPOD 5) for the Phase II Haul Road and Facilities to BLM for its review in accordance with the tiering procedures set out in the CCSM Project ROD. The final BLM environmental review process will be its review of SPOD 6 for Phase II Wind Turbine Development, which PCW plans to submit in 2018.

Note that PCW, as the project proponent, has fully funded the BLM’s environmental analysis of the CCSM Project, through cost recovery agreements with the BLM and by paying a third-party contractor to work for the BLM in preparing the EIS. In short, there is no cost to the general U.S. taxpayer.

2. *U.S. Fish and Wildlife Service Eagle Permit*

While working with the BLM, at the same time, we’ve also been working hard to assure that our wind project avoids and minimizes potential impacts to a wide range of species, including birds, and specifically, golden and bald eagles. So, we have been working to meet the high federal conservation standards required to obtain Eagle Take Permits from the U.S. Fish and Wildlife Service (“USFWS”). This lengthy and complex process requires applicants like PCW to demonstrate they have done everything practical to avoid harming eagles – and we showed this by developing an extremely comprehensive Eagle Conservation Plan that includes mitigation for any accidental eagle takes. PCW’s Eagle Conservation Plan was developed based upon years

and years of site-specific environmental scientific data gathered by professional biologists and ecologists – again, at a cost of millions of dollars in private capital.

This work was followed on June 15, 2015, by PCW submitting its Eagle Conservation Plan (“ECP”) covering Phase I wind development (again, the first 500 turbines), along with its formal application for standard and programmatic Eagle Take Permits (“ETP”) to USFWS. In addition, PCW submitted its Phase I Bird and Bat Conservation Strategy (“BBCS”) to USFWS on August 3, 2015, to support the USFWS environmental analysis of PCW’s ETP application.

In response to PCW’s application, the USFWS prepared Draft and Final Environmental Impact Statements in compliance with the National Environmental Policy Act. In January 2017, the USFWS issued a ROD for Eagle Take Permits for the CCSM Project Phase I, documenting the USFWS’ decision to issue both standard and programmatic ETPs for the CCSM Phase I Project. PCW received the standard eagle permit for the CCSM Project on March 9, 2017, and PCW anticipates that the USFWS will issue the programmatic permit in the fourth quarter of 2017.

PCW will continue to work with the USFWS on an Eagle Take Permit regarding Phase II, or the second set of 500 turbines. We are developing and will submit a specific, science-based ECP and a specific, science-based BBCS to cover the Phase II components, and we anticipate receiving decisions from the USFWS in 2019. Again, the environmental analysis costs are fully paid for by PCW.

C. The CCSM Project is Under Construction

After ten years of permitting, PCW was able to commence construction on the CCSM Project on September 9, 2016. Since commencement of construction, PCW has continuously constructed the CCSM Project as allowed for by its federal, state and county permit conditions.

PCW engaged Oftedal Construction Inc. of Casper, Wyoming, to complete 2016 and 2017 construction activities on the CCSM Project. These activities include constructing portions of the CCSM Project that are critical to the construction and operation of the project, such as construction of roads that are integral to the operation and maintenance of the CCSM Project, wind turbine pads, laydown areas, water stations, and temporary facilities. The workforce generally consisted of between 40 and 70 people depending on the current week’s activities.

III. **BLM’s Competitive Leasing Rule**

During the ten years that PCW has been permitting the CCSM Project, it has been subject to various legislative and regulatory changes at both the federal and state levels that have injected uncertainty into the development process and potentially impact the economic viability of the CCSM Project. One example is the BLM’s Competitive Leasing Rule.

The BLM issued the final Competitive Leasing Rule on December 19, 2016, in the last few weeks of the previous administration. During the rulemaking process, numerous stakeholders raised serious concerns about the proposed rule, including the new fee structure applicable not only to future projects, but also to existing projects and those under development. Stakeholders expected the Final Rule would address their concerns, but it did not. Instead, the Final Rule

added complexity and cost to the already difficult task of developing renewable energy on public lands. Moreover, the Final Rule did not grandfather projects that were already under development from its application. It is reasonable to assume that the BLM sacrificed equity issues for existing projects and those under development to achieve one rate structure of all projects.

The Final Rule increased the administrative and regulatory burden on developing renewable energy on public lands by adding layers of complexity to what had been a fairly straightforward process and fee structure. First, the Final Rule expanded the regulations to allow BLM to use competitive leasing both inside and outside of designated leasing areas (“DLAs”) and to incentivize development inside DLAs by providing: (a) a reduced nomination fee; (b) a 10-year phase-in of the MW capacity fee instead of a 3-year phase-in; (c) more favorable bonding requirements; and (d) a 30-year fixed-term lease instead of merely preferred applicant status.

Next, under the Final Rule, the BLM added a new acreage rent for wind and solar development and made changes to the MW capacity fee. Thus, the holder of a right-of-way grant from the BLM for wind and solar development is now required to pay two types of fees instead of one: (1) an acreage rental fee; and (2) a MW capacity fee based upon the nameplate capacity approved in the ROW grant. The holder of the ROW grant must then choose either a Standard Rate Adjustment or a Scheduled Rate Adjustment. Only the Standard Rate Adjustment is discussed below as, overall it is less costly than the alternative choice of Scheduled Rate Adjustment.

A. The Standard Rate Adjustment Substantially Increases Fees

1. *Acreage Rent*

The per acre rent is calculated using the following formula: (Per Acre Zone Rate) x (Encumbrance Rate of 10% for wind and 100% for solar) x (Rate of Return 5.27%) x (1.021 Current IPD-GPD Rate) = Per acre rental rate. Then, the total acreage rent is calculated by multiplying the per acre rent by the total acreage.

2. *MW Capacity Fee*

The MW Capacity Fee is calculated as follows: (Hours 8760) x (Net Capacity of 35% for wind or 20% for photovoltaic solar) x (MWh Price) x (Rate of Return) = MW Capacity Fee. Then, the total MW Capacity Fee is calculated by multiplying the approved nameplate capacity of the project by the MW Capacity Fee. The current MW Capacity Fee for wind is calculated as follows: (Hours 8760) x (Net Capacity Factor of 35%) x (MWh Price of \$38.07) x (Rate of Return of 4.3%) = \$5,010.

The MW Capacity Fee is adjusted every five years starting in 2021 by calculating a new MWh Price based upon the full 5 calendar-year average of the annual weighted average wholesale prices of electricity per MWh for the major trading hubs serving the 11 Western States. 81 Fed. Reg. at 92173, 92221. The Rate of Return will also be reviewed every five years to reflect the preceding 10-year average of the 20-year U.S. Treasury bond yield, rounded to the nearest one-

tenth percent, with a minimum rate of 4 percent. *Id.* In addition, there is a phase-in of the MW Capacity Fee as follows: Year 1 - 25 percent; Year 2 - 50 percent and Year 3 - 100 percent. *Id.*

Based upon the current MW Capacity Fee of \$5,010 and no change, that is, no adjustment either upwards or downwards, over the 30 year period of the ROW Grant, the total MW Capacity Fees that PCW would pay are \$226,143,046. Based upon an estimate of the forward power curve through 2025, the total MW Capacity Fees PCW would pay is \$275,426,774. As summarized in the table below, under the final rule, PCWs fees would be raised under the Competitive Leasing Rule by a minimum of \$47 million up to an estimated \$106 million.

SUMMARY TABLE	Acreage Rent	MW Capacity Fee	Total	Additional Cost
Current	0	\$179,184,375	\$179,184,375 (\$/MWh \$1.01)	
Final Rule Standard Rate No Escalation in MW Capacity Fee	\$10,093,523	\$216,049,523	\$226,143,046 (\$/MWh \$1.27)	\$46,958,671
Final Rule Standard Rate with Forward Pricing Curve Estimate for MW Capacity Fee	\$10,093,523	\$275,426,774	\$285,520,298 (\$/MWh \$1.61)	\$106,335,923

B. Applying the Final Rule to Projects Already Under Development is Unfair

As outlined in the Final Rule, the Energy Policy Act of 2005 (“EPAct”) encouraged the Secretary to approve solar, wind and geothermal energy projects with a total combined generation capacity of at least 10,000 MWs of electricity by 2015 on BLM-managed public lands. 81 Fed. Reg. at 92125. A series of Secretarial Orders in 2009 and 2010 emphasized and prioritized the development of renewable energy on public lands. *Id.*

At that time, the right-of-way fees associated with wind and solar projects were contained in instruction memoranda (“IMs”) issued by the BLM in 2009 and 2011. *See* IM 2009-043, Wind Energy Development Policy and IM 2011-003, Solar Energy Development Policy. Yet, after developers relied upon these IMs that set out the applicable fees, such as the \$4,155 per MW of nameplate capacity for wind projects, the Final Rule unfairly imposed significant additional fees on projects, particularly wind energy projects, that were already under development on public lands. The BLM should not now change the rules of the game on these developers that were instrumental in the Department meeting the goal set out in the EPAct for the development of renewable energy on public lands.

We encourage the Committee to look into this regulation and consider including a provision in your energy bill that would exclude projects, like ours, from application of the rule. We have shared our concerns with the Administration through the rulemaking process and as part of the regulatory reform process.

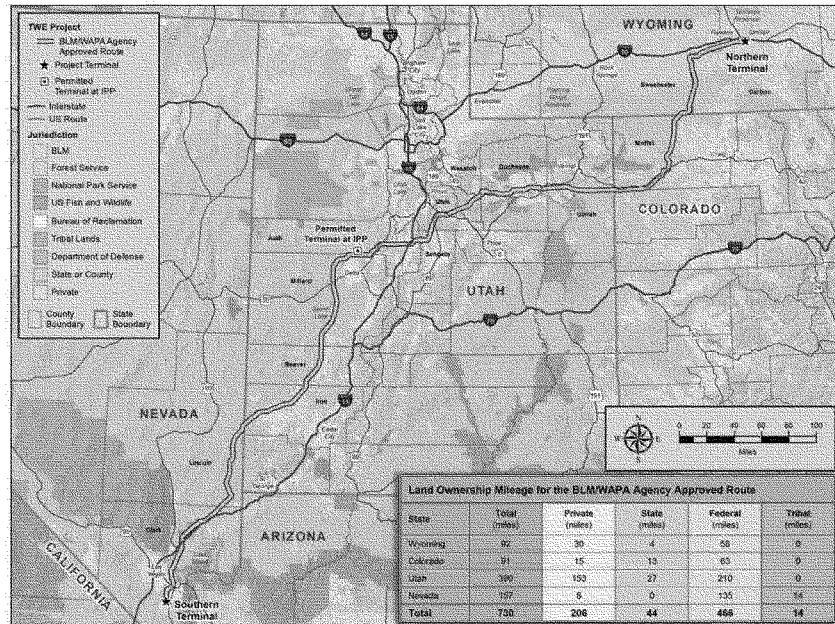
IV. TransWest Express Transmission Project

A. Project Description

The TWE Project is a 3,000 MW capacity, 600 kV, high-voltage direct current (HVDC) transmission line extending 730 miles between southern Nevada and south-central Wyoming. It is designed to provide the highly-populated states of California, Arizona and Nevada with direct access to Wyoming's high-capacity, competitively priced wind-generated and gas-generated electricity. With Wyoming's small population and small electric load, there currently is no in-state demand for the electricity that will be generated by Wyoming wind resources.

The TWE Project will provide for the efficient and cost-effective transmission of approximately 20,000 GWh per year of renewable energy from Wyoming to the Desert Southwest region. The TWE Project also represents a significant investment in strengthening the western U.S. power grid, specifically improving the linkages between the Rocky Mountain and Desert Southwest. It is an approximately \$3 billion infrastructure project.

The TWE Project crosses four states, 14 counties, two national forests and 10 BLM field offices. It will begin near Sinclair, Wyoming, be routed through northwest Colorado and through central Utah in a generally southwestern direction, and then follows the eastern edge of Nevada before ending near multiple 500 kV substations about 15 miles southwest of Boulder City, Nevada. Approximately two-thirds of the proposed route is sited on federal land mainly administered by the BLM and U.S. Forest Service; therefore, the project is subject to federal environmental analysis and review before a ROW grant(s) may be authorized. It also is co-located, or sited next to, existing linear infrastructure as much as possible.

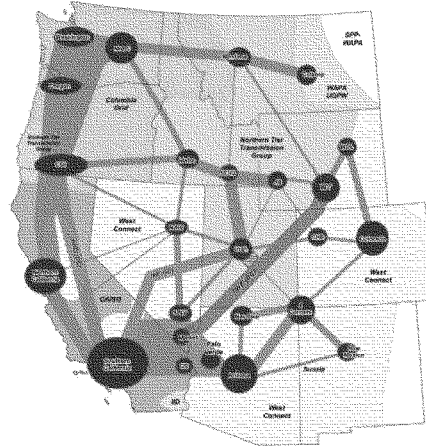


The fundamental purpose of the TWE Project is to provide transmission capacity between utilities in the Desert Southwest and the high-quality energy resources in Wyoming. The existing transmission grid has insufficient available capacity to make this connection. As a result, the TWE Project is planned to connect directly to the 500 kV Desert Southwest market transmission hub in southern Nevada, referred to as the Marketplace Hub.

However, the TWE Project also is designed to take advantage of an alternate, additional transmission hub located in central Utah near the Intermountain Power Project Station ("IPP") in Delta, Utah. IPP is interconnected to the 345 kV AC network in central Utah as well as to the IPP Southern Transmission System ("STS") 2,400 MW, two-terminal, 500 kV, HVDC line that terminates near Los Angeles. The final TWE Project configuration will depend on the interest in and availability of capacity by the market participants at each hub, as well as the potential for new market hubs being developed through other planned transmission projects.

TWE Project Expands Capacity, Connectivity of Western Power Grid

A “pipe diagram” of the Western Interconnection shows that the bulk of the existing transmission capacity, shown in gray, is built along the coast in a “C.” It also shows there is limited capacity between the California/Desert Southwest and Intermountain regions. Limited capacity means there is limited access to both diverse energy resources and to diverse load areas. However, adding a 3,000 MW DC line like the TWE Project, shown in green, directly between those regions would quadruple transmission capacity.



TransWest has entered into partnering agreements for the development and construction of the TWE Project with the International Brotherhood of Electrical Workers and the International Union of Operating Engineers. In addition, TransWest has entered into coordination and partnering agreements with the Ute Indian Tribe of the Uintah and Ouray Reservation for the construction of the TWE Project in eastern Utah.

B. Federal Permitting

Approximately two-thirds of the route for the TWE Project is sited on federal land managed by the BLM, U.S. Forest Service and Bureau of Reclamation. On November 30, 2007, the initial project proponents submitted to the BLM an application for a right-of-way grant over this federal land. TransWest acquired the development rights to the TWE Project in July 2008, and on December 12, 2008 – or nine years ago – TransWest submitted an amended ROW application to continue the environmental analysis.

In 2010, Western Area Power Administration, a power marketing agency of the U.S. Department of Energy, proposed to participate as a joint owner in the TWE Project under its Transmission Infrastructure Program. Therefore, the BLM and WAPA prepared the EIS as joint lead federal agencies. The U.S. Forest Service and four dozen other federal, state and local cooperating agencies participated in the development of the EIS.

The Draft EIS published July 3, 2013, and the Final EIS published May 1, 2015. BLM and WAPA each issued a Record of Decision that documents the agency’s decision pursuant to its unique purpose and need, including any required conditions. The BLM ROD issued on December 13, 2016, and the WAPA ROD issued on January 13, 2017, with the USFS ROD and

the BOR ROD published soon thereafter in 2017. On June 23, 2017, the TWE Project received the BLM ROW grant – over eight years after the ROW application was filed on December 12, 2008.

C. Remaining Permitting and Right-of-Way Requirements

With the federal decisions completed, TransWest has been able to move forward with securing the rights-of-way over the private and state lands along the route. It is also moving forward to complete state and local permitting. Two states, Nevada and Wyoming, have state permitting processes. TransWest has already obtained conditional approval of the Nevada state permit and plans to apply for the Wyoming state permit in 2018. Next, TransWest must obtain a permit in every county that the route crosses in each of the four states. The transmission line crosses 2 counties in Wyoming, 1 county in Colorado, 9 counties in Utah and 2 in Nevada for a total of 14 counties.

V. **Western Area Power Administration**

WAPA has been partnering with TransWest for the past seven years. WAPA is one of four power marketing administrations within the U.S. Department of Energy. Congress created WAPA in 1977 authorizing it to market and transmit electric power generated by federal hydropower generation projects operated by the United States Army Corps of Engineers, the Bureau of Reclamation, and the International Boundary and Water Commission. WAPA markets and delivers hydroelectric power and related services within a 15-state region of the central and western U.S. WAPA's transmission system carries electricity from 57 power plants with an installed capacity of 10,295 MW.

In 2009, the Hoover Power Plant Act of 1984 was amended to grant WAPA the authority to borrow up to \$3.25 billion from the U.S. Treasury Department for the purpose of constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities (i) that have at least one terminus within the area served by WAPA and (ii) that deliver or facilitate the delivery of power generated by renewable energy resources constructed after February 2009.¹

To implement its borrowing authority, WAPA developed the Transmission Infrastructure Program. The TIP provides project and program principles to guide WAPA's funding of partnerships to develop transmission infrastructure that delivers renewable energy to markets across the West. Projects that WAPA participates in must meet these criteria:

- Facilitate delivery to market of power generated by renewable resources constructed or reasonably expected to be constructed.
- In the public interest.
- Will not adversely impact system reliability or operations, or other statutory obligations.
- Reasonable expectation that the project will generate enough transmission service revenue to repay the principal investment; all operating costs, including overhead; and accrued interest.

¹ Hoover Power Plant Act of 1984, 42 U.S.C. § 16421a - Western Area Power Administration borrowing authority.

- Have at least one terminus within WAPA's service territory.
- Provide economic development benefits, including job creation.
- Satisfy WAPA's Open Access Transmission Tariff.
- Technical merits and feasibility.
- Financial stability and capability of potential project partners.
- Project readiness.
- Participation in region-wide or interconnection-wide planning groups or forums.

In April 2009, TransWest submitted a response to WAPA's request for proposals under the TIP program. WAPA determined that the TWE Project met the criteria; therefore, in 2010 WAPA and TransWest entered into a non-binding term sheet. Subsequently, in April 2010, WAPA and TransWest entered into a Memorandum of Understanding. The MOU provides that WAPA will act as a joint lead agency with the BLM in the preparation of the EIS, provides that both parties will use commercially reasonable efforts to execute an Interim Development Agreement, and outlines the parties' relationship until the IDA is executed.

On September 9, 2011, WAPA and TransWest entered into a Development Agreement. Under the terms of the development agreement, TransWest and WAPA agreed to each pay up to \$25 million to complete the development phase. However, on June 17, 2014, WAPA and TransWest executed an amendment to the Development Agreement that requires TransWest to fund 100% of the development costs of the TWE Project commencing on January 1, 2014. As a result, through the end of 2013, WAPA funded approximately \$18 million in development costs.

WAPA's participation in the TWE Project's development phase has been without any risk to the U.S. taxpayer. At any point in time during the development phase – should Western ultimately decide not to participate in the construction and ownership of the TWE Project for any reason, Western's development costs will be fully refunded, with interest, by The Anschutz Corporation, which has not only signed a Guaranty agreement, it has also provided Western with an irrevocable letter of credit to back up the Guaranty.

However, WAPA has not yet made a decision on its final participation in the TWE Project. Having the certainty of WAPA's participation would assist TransWest in determining how best to advance multiple development decisions related to state and local permitting, commercial operations, project costs and other important factors.

VI. Fixing America's Surface Transportation Act

Fixing America's Surface Transportation ("FAST") Act was signed into law on December 4, 2015 (Pub. L. 114-94, §41007 (2015)). In May 2016, TransWest was notified by the Wyoming State Office of the Bureau of Land Management that the TWE Project was identified as a potential "covered project" under Title 41 of the Fixing America's Surface Transportation ("FAST") Act. TransWest also received this same notification from WAPA in July 2016.

In fact, both the CCSM Project and the TWE Project met the criteria for inclusion in the FAST-41 program. The FAST Act applies to "Covered Projects" which meet the following criteria:

- any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission ... that is subject to the National Environmental Policy Act
- is likely to require a total investment of more than \$200 million; and
- does not qualify for an abbreviated authorization or environmental review process.

On September 22, 2016, Richard Kidd, Executive Director of the Federal Permitting Improvement Council, included both the CCSM Project and the TWE Project in a memorandum designating Covered Projects included in the FAST-41 program. There are several potential benefits of being designated a Covered Project. First, the statute of limitations to challenge an agency decision is two years after the date of publication in the Federal Register of the final record of decision or approval or denial of a permit. This replaces the general statute of limitations of six years. Second, the FAST Act provides that as part of any preliminary injunction standard, the court shall consider the following additional element:

Consider the potential effects on public health, safety, and the environment, and the potential for significant negative effects on jobs resulting from an order or injunction; and Not presume that the harms described in [the preceding] paragraph [] are reparable.

These provisions give developers more certainty that any challenges to agency decisions will be raised within a reasonable amount of time, two years instead of six years, and that the court will consider a wider range of the effects of enjoining a project when determining whether a preliminary injunction is appropriate.

VII. Opportunities to improve federal efficiency, transparency and accountability

The Committee asked for input on “opportunities to improve the efficiency, transparency, and accountability of federal decisions” for energy and resource infrastructure projects. Based on our experience with two large multi-jurisdictional energy and resource projects, the process could be improved through increased consistency, coordination, clear line authority, utilization of basic project management tools, and accountability.

One of the greatest challenges we encountered is consistency. Due to the complexity of the projects, long development and permitting timeframes, and the many jurisdictions involved, the projects were faced with ever-changing policies and the inconsistent application of policies between agencies and within agencies. The lack of coordination and communication across jurisdictions was a cause of inconsistent application of policies. This lack of communication between agencies and within agencies, as well as between agencies and stakeholders led to increased confusion and timeframes for approval.

During the TWE Project, multiple attempts at coordination and communication were made with mixed results. Although routine coordination calls were held weekly and monthly, after more than five years of these calls, major issues remained unresolved as decisions were only finalized if there was a “consensus.” Many unresolved issues were due to differing opinions and interpretations by agency personnel that were not resolved until senior level agency personnel were involved. Ultimately, the lack of timely issue resolution resulted in substantially increased

project permitting times and costs. It became evident that although the efforts at coordination and communication were important, to be effective they must be combined with a senior level position or team with decision making authority.

We also observed and experienced a high rate of staff turnover within the federal agencies, leading to “starting over” on various issues on a frequent basis. For example, all of the BLM State Directors, all of the BLM district managers, all of the BLM project managers and many of the BLM resource specialists have turned over at least once and often more than once over the course of the permitting of our projects. This turnover inevitably led to a loss of momentum as new personnel assigned to the projects had to get up to speed with the environmental analysis work that was done and the work that needed to be done. We observed this pattern at other federal agencies as well. In sum, consistency in personnel assigned to projects and project managers and teams with decision making authority are needed to provide consistent guidance and implementation across multiple jurisdictions and projects.

Finally, agencies should be implementing basic project management tools such as budgets and schedules and should be held accountable for meeting them.

The CHAIRMAN. Thank you, Ms. Perruso.

Mr. Russell, before we go to you, we are going to interrupt for this very important business message.

[Laughter.]

[RECESS]

The CHAIRMAN. We will now turn back to our full panel.

I thank members for coming here, and I thank the panel for your indulgence as we concluded our business meeting.

Mr. Russell, you are last up on the panel. We welcome your comments before us this morning. Please proceed.

STATEMENT OF LUKE RUSSELL, VICE PRESIDENT EXTERNAL AFFAIRS, HECLA MINING COMPANY

Mr. RUSSELL. Thank you.

Chairman Murkowski, Ranking Member Cantwell and members of the Committee, my name is Luke Russell. I'm the Vice President of External Affairs for Hecla Mining Company. We are the United States' oldest and largest silver producer and third largest producer of lead and zinc.

Metals and minerals are the building blocks of our nation's infrastructure. Simply put, it is impossible to create infrastructure without them. To quote our President and CEO, Phil Baker, "At the end of the day you can't have the infrastructure and everything that goes with it if you don't have the underlying commodities that go into the bridges and roads and everything else."

Silver, copper and zinc are just three important minerals associated with Hecla's operations which are also key minerals for infrastructure and renewable energy. A single wind turbine contains 335 tons of steel and almost five tons of copper, the primary ingredient in most solar panels is silver, and zinc is a component in battery technology critical to the future of electric vehicles and energy storage.

The United States is blessed with world class mineral endowment but sadly, has become increasingly dependent on foreign sources of minerals. We are now import-dependent for 50 different metals and minerals and 100 percent import-dependent for 20. The length of time it takes to secure permits in the U.S., which takes an average of 7 to 10 years or longer, is a key reason behind this dependency.

In addition, it is making the United States less attractive for investment. As an example, we were at a mining business development conference in Bear Creek, Colorado, earlier this year. We spoke to companies about 70 projects to invest in. Only two were in the United States.

Let me share an example of the very long timelines I've been involved with with permitting. As one of the largest private employers in Southeast Alaska, Hecla's Greens Creek Mine went into production in 1989, some 16 years from discovery to first production, and has operated in harmony with sensitive environmental conditions for more than 28 years. With that history, one would expect that a plan for a minor expansion could be permitted expeditiously. Unfortunately, our experience proved otherwise. Permitting a small, 10+ acre expansion took more than 5 years and added just 10 years to the mine's life. So we're already preparing to start the

permitting process again at a cost of millions of dollars in order to avoid shutting down the mine and laying off workers due to a lack of permitted tailings capacity.

Prior to working with Hecla, I worked with Coeur Mining which owns the nearby Kensington Mine, also in Southeast Alaska. Permitting of that mine started in 1988 and, with permitting delays and litigation, first production did not occur until 2010, some 22 years after initial project permitting.

Hecla recently acquired the Rock Creek project in Northwest Montana which is the largest undeveloped silver and copper project in the U.S. This project has been in permitting and litigation for over 25 years and counting.

Now to be clear, valid concerns about environmental protection need to be fully addressed and considered. At the same time, we should not confuse the length of the process with the rigor of review. In my experience, permitting delays are frequently caused by inefficient and duplicative processes that do not improve the rigor of review.

While mining is complex, there remains some of the permitting agencies that lack training on minerals and mining and the NEPA process. This serves only to exacerbate delays in the process which is driven by a lack of firm timelines, accountability for permitting and unreasonable exclusion of project proponents in the process.

Well, what can be done? Chairman Murkowski recently introduced legislation that would allow mining projects to be eligible for consideration as covered projects under the FAST Act. Clearly, expedited permitting regimes for infrastructure projects will have little or no effect if the mines that supply minerals and materials to those projects do not have the same accelerated process.

In addition, there's a great opportunity for the identification of regulations and policies across the federal agencies that needlessly delay or prevent mineral resource development, further jeopardizing the viability of our needed infrastructure projects. This can be accomplished by identifying the lead agency, defining clear roles of cooperating agencies to avoid duplication, establishing clear timelines, and providing accountability and predictability to the process.

Thank you for the opportunity to testify here this morning.

[The prepared statement of Mr. Russell follows:]

**Testimony of
Luke Russell**
V.P External Affairs - Hecla Mining Company
before the
Senate Committee on Energy and Natural Resources
December 12, 2017

Introduction

Chairman Murkowski, Ranking Member Cantwell and members of the Committee, my name is Luke Russell and I am V.P External Affairs for Hecla Mining Company. Hecla Mining Company (NYSE:HL) is the oldest precious metals mining company in North America and was established in 1891 in northern Idaho's Silver Valley. We are the United States' largest primary silver producer and third largest producer of lead and zinc. We currently have US operations and projects in Alaska, Idaho, Montana, Colorado and Nevada.

My experience includes more than 30 years in mine permitting and environmental compliance in several western states including: Idaho, Alaska, Nevada, South Dakota, and now Montana. In addition, I have permitted mines internationally in Chile, Argentina, New Zealand, Mexico and Bolivia. I have served as Trustee and past-President of the American Exploration & Mining Association and also have worked inside government serving as Remediation Manager with the Idaho Department of Environmental Quality.

Infrastructure Projects Depend on Minerals

Metals and minerals are the building blocks of our nation's infrastructure – simply put, it is impossible to create infrastructure without them. The U.S. mining industry is the source of raw materials necessary to make “planes, trains and automobiles” possible, not to mention runways, bridges, rail lines, and roads. Not only are metals and minerals direct inputs into infrastructure, they are integral to the manufactured product components of such projects such as support beams, construction pipes and electrical wiring.

The focus on infrastructure projects by this committee and the administration is justified by the crumbling nature of our nation's infrastructure. Consensus among the experts is that our infrastructure is in a dangerous state of disrepair. Earlier this year, the American Society of Civil Engineers (ASCE) issued its “report card” on the condition and performance of American infrastructure.¹ The grade for U.S infrastructure: a disappointing and disturbing D+. There is no question that we cannot repair our infrastructure without key raw materials.

• **Infrastructure Minerals Associated with Hecla's Projects**

Silver, copper and zinc are just three important minerals associated with Hecla's operations. Copper and silver, similar to uses of other minerals for infrastructure, overlap and converge in the field of renewable or “green” energy. Wind turbines would not be possible without mined materials. Just one turbine

¹ ASCE, 2017 *Report Card for America's Infrastructure* available at <http://www.infrastructurereportcard.org/making-the-grade>.

contains 335 tons of steel and almost 5 tons of copper.² Similarly, solar panels cannot be made without mined materials like steel, copper, silicon, aluminum and the unique metal that we produce, silver.

Silver has unique properties, with the highest electrical and thermal conductivity of all metals, as well as being the most reflective. These physical properties make it a highly valued industrial metal, especially when used in solar cells. Silver paste is a primary ingredient in 90% of the most common solar panels. In 2016, Photovoltaic (PV) demand for silver was up 43% over the previous year, the strongest growth since 2010. It was driven by a 49% increase in global solar panel installations, fueled largely by a doubling of annual solar panel installations in China and the United States, according to the *World Silver Survey 2017*. Worldwide consumption of silver for photovoltaic reached a record 76.6 million ounces.³

Today silver is also invaluable to solder and brazing alloys, batteries, dentistry, glass coatings, LED chips, medicine, nuclear reactors, photography, photovoltaic (or solar) energy, RFID chips (for tracking parcels or shipments worldwide), semiconductors, touch screens, water purification, wood preservatives and many other industrial uses. It is no wonder that the Silver Institute, a Washington-based industry group, calls it "the indispensable metal."

Copper, which we hope to produce from our Montana projects in a few years, has numerous beneficial qualities. It does not rust and is an excellent conductor of electricity. The transition to battery powered cars requires 4 times the amount of copper as in an internal combustion engine⁴. It is the key to the increased speed of modern high-speed trains which use 3 to 4 tonnes of copper per train.⁵ Additionally, copper is integral to construction, piping, refrigeration, air-conditioning, cookware, computers, and even some medicines.

Today, the single leading use of lead, another metal Hecla produces, is in the manufacturing of batteries but the metal is also used for some alloys and in nuclear reactors. Zinc, which is a critical component in battery technology, is likely to play a role in advancements in electric vehicles and power storage. Zinc also goes into galvanizing steel as a protection against corrosion and is an important metal when it comes to the die-casting industry and rolled zinc applications in gutters, roofing, pipes, and coinage.

The value added to America's gross domestic product (GDP) by major industries consuming mineral material is \$2.78 trillion – nearly 15 percent of U.S. GDP⁶. The importance of a secure supply of raw minerals and metals to a successful infrastructure sector is indisputable. There is a very serious question, however, about where those materials will come from if we fail to pursue proactive policies that promote domestic mining. This issue was addressed, in part, by this Committee in the March 28 hearing on our nation's increasing dependence on foreign sources of minerals.

The United States is Increasing Dependent on Foreign Minerals

The U.S. has become increasingly dependent on foreign sources of minerals and this vulnerability has serious national defense and economic consequences. The United States is now import-dependent for 50 different metals and minerals – and 100 percent import-dependent for 20.⁷ That's half of the naturally-

² <https://www.wind-watch.org/documents/metals-and-minerals-in-wind-turbines>

³ <https://www.silverinstitute.org/silver-solar-technology>

⁴ <http://copperalliance.org/wordpress/wp-content/uploads/2017/06/2017.06-E-Mobility-Factsheet-1.pdf>

⁵ <http://copperalliance.org/wordpress/wp-content/uploads/2012/01/ICSG-Factbook-2014.pdf>

⁶ USGS, *Mineral Commodity Summaries 2017*, available at <https://minerals.usgs.gov/minerals/pubs/mcs/2017/mcs2017.pdf>

⁷ Ibid.

occurring elements on the Periodic Table. According to the USGS, today we import about 34% of the copper we need and well over 65% of the silver we need. This troubling trend line is exacerbated by the decrease in U.S. exploration activities that are a prerequisite to expanded or new operations necessary to increase domestic mineral supplies. Last year marked the fourth consecutive year of globally declining exploration expenditure, with the U.S. showing the sharpest pullback in exploration last year, with its budgets falling more than 30%.⁸ As a result, the U.S. attracted only approximately 7 percent of the worldwide exploration budget in 2016.

Our growing dependence on imports leaves many key domestic industries unnecessarily vulnerable to disruptions from extended, complex and fragile supply chains. The length of time it takes to secure permits in the U.S. is a key reason behind this dependency on foreign sources.

The U.S.' Inefficient and Outdated Permitting Process

The U.S. has one of the longest permitting processes in the world for mining projects. In the U.S., necessary government authorizations now take approximately seven to 10 years to secure, or even longer in some of our experience, placing the U.S. at a competitive disadvantage in attracting investment for mineral development. By comparison, permitting in Australia and Canada, which have similar environmental standards and practices as the U.S., take between two and three years.

Authorities ranging from the National Academy of Sciences to the Departments of Energy and Defense to international mining consulting firms have identified permitting delays as among the most significant risks and impediments to mining projects in the U.S.⁹ Most recently, the U.S. Government Accountability Office highlighted the need to streamline the mine permitting process to mitigate supply risks.¹⁰

These delays have real consequences. The National Mining Association (NMA) commissioned a study from SNL Metals & Minerals to demonstrate empirically the destruction of value which results from unnecessary, extended delays to project development.¹¹ That study found is that on average, a typical mining project loses over one-third of its economic value as a result of protracted delays in receiving the numerous permits needed to begin production. The longer the wait, the more the value of the investment is eroded, even to the extent that the project ultimately becomes an unviable investment. Even a large high-grade deposit will remain unmined if the balance between costs, revenue and timetable are not favorable.

As I previously mentioned, other countries, such as Canada manage to ensure their mining industry's competitiveness and as a result, attracted more than double the exploration dollars in 2016. Canada, a nation that shares our core principles of responsible resource development is adept at implementing an efficient permitting system that strives for completing permitting within a two-year period. Several of the best practices in place there include:

- Deadlines early in the process for determining the type and scope environmental assessments;
- Specific timelines for completing those environmental assessments;

⁸ S&P Global Market Intelligence, *Worldwide Mining Exploration Trends*, March 2017

⁹ See National Resources Council, *Hardrock Mining on Federal Lands*, National Academy Press (1999); U.S. Department of Energy, *Critical Materials Strategy* (Dec. 2010); U.S. Geological Survey USGS, *the Principal Rare Earth Elements Deposits of the United States—A Summary of Domestic Deposits and a Global Perspective*, 2010; Behre Dolbear, *Where Not to Invest* (2015).

¹⁰ GAO Report 16-699, *Advanced Technologies: Strengthened Federal Approach Needed to Help Identify and Mitigate Supply Risks for Critical Raw Materials*, Dec. 2016

¹¹ SNL Metals & Mining, *Permitting, Economic Value and Mining in the United States*, June 2015.

- Legally binding deadlines for key regulatory permits;
- Enhanced coordination and consolidation of responsibilities for provincial and federal agencies reviewing projects; and
- Allowing provincial environmental assessments to substitute for federal assessments in order to eliminate duplication.

I would like to share a few examples of what I think are unreasonably long permitting processes I have been involved with.

Greens Creek – Alaska

One of the largest private employers in Southeast Alaska, Hecla's Greens Creek Mine is responsible for approximately 415 permanent, full-time jobs. The mine located near Juneau, Alaska and started production in 1989, producing almost 200 million ounces of silver since that time and still has over a 10-year mine life. The mine has provided over \$.75 billion in economic contributions to the SE Alaska economy in just the last 5 years alone. It is one of the world's largest silver mines and produces gold, lead and zinc in important quantities as well. The mine has had an exemplary environmental record and is located, in part, in a national monument area with the largest concentration of brown bears in the world.

The mine was originally permitted in the late 1980's and production commenced in 1989 (some 16 years from discovery to first production) and has operated in harmony with sensitive environmental conditions for more than 28 years. With this history, one would expect that a plan for only a minor expansion to the existing tailings facility could be permitted in an expeditious manner. Unfortunately, our experience proved otherwise. In 2010, Hecla began a permitting process that would ultimately consume more than 5 years to approve for a small 10-acre expansion to the existing facility. The \$60 million expansion extended the mine life by 10 years. However, based on long permitting timelines Hecla, is already preparing to start the multi-million dollar permitting process again to avoid shutting down the mine in 10 years- time due to a lack of permitted tailings storage capacity.

Kensington Mine – Alaska

Prior to working with Hecla, I worked with Coeur Mining which owns the near-by Kensington Mine in Southeast Alaska. Permitting of the Kensington mine started in 1988. In July of 1992, the USFS approved a Plan of Operations for the Kensington Gold Project. The mine did not receive all federal permits and did not proceed.

In 1994, the company submitted a revised plan of operation and in August 1997, the USFS approved a revised Plan of Operation for the Kensington Gold Project. While permitting was being completed, the price of gold decreased and the project economics were no longer favorable to commence construction.

In November 2001, however, the company submitted an amendment to its approved 1998 Plan of Operations to the USFS. In December of 2004, the USFS finalized the Supplemental Environmental Impact Statement and issued the Record of Decision for the modified Kensington project.

Permit appeals and litigation followed with the ultimate decision made by the U.S. Supreme Court ruling in favor of the agencies decision. The company then resumed construction of the estimated \$400 million project and the first gold production was in 2010, some 22 years after initial project permitting had begun.

Rock Creek – Montana

Hecla recently acquired the Rock Creek project in Northwestern Montana. Rock Creek is the largest undeveloped copper-silver project in the US and contains an estimated 180 million ounces of silver and over 1.8 billion pounds of copper. The project has a long permitting history dating back to the first application for a mining permit in 1987. The Forest Service and Montana Department of Environmental Quality (DEQ) jointly completed a FEIS and Record of Decision (ROD) in 2001. This was followed by several appeals and litigation. The Fish and Wildlife Service withdrew its Biological Opinion (BO) in 2002 to settle a lawsuit causing the Forest Service to withdraw its part of the 2001 ROD. A new BO and ROD were issued in 2003. Numerous additional appeals were filed leading to a new BO in 2006 which was further supplemented in 2007. Additional litigation again followed and in 2010 the US District Court remanded the 2003 FEIS back on to the Forest Service on two NEPA procedural issues for further action and vacated the 2003 ROD.

The Kootenai National Forest then commenced a Supplemental Environmental Impact Statement (SEIS) review to respond to the U.S. District Court Decision. Now nearly 8 years later the Forest anticipates issuing its final Record of Decision and FSEIS in early 2018. That is over 30 years of permitting and litigation.

Northwest Montana has nearly double the state unemployment rate and among school age children and over 70% are on the SNAP food stamp program. These statistics illustrate the severe economic and environment emergency for the families that are affected. The poverty that exists in Northwest Montana deserves to be evaluated and acted up as an egregious Environment Justice issue. In recent polling conducted by Hecla, over 80% of those living in Northwest Montana consider the environment very important but also believe mining can be done in a manner compatible with those values. Resource production offers a chance to get out of the poverty that has resulted from the decline in forest production and the ongoing regulatory morass and litigation of overall resource production in Northwest Montana.

Mineral Permitting Delays Impact Our Readiness To Advance Infrastructure Projects

At a March 21 hearing before the House Natural Resources Energy and Mineral Resources Subcommittee that examined the importance of domestically sourced raw materials for infrastructure projects, Subcommittee Chairman Paul Gosar (R-Ariz.) correctly noted that “expedited permitting regimes for infrastructure projects will have little to no effect if the mines that supply materials to those projects do not share the same accelerated process.” He further emphasized that “sourcing raw materials domestically keeps costs down, creates both direct and indirect jobs, reduces the holistic impact of mining by minimizing transportation costs, and keeps the dollars invested in American infrastructure in the United States.” And sourcing those materials at home provides the added benefit of allowing the mining industry to continue to be a key economic driver.

Unnecessary delays and duplication in the permitting process strands capital and discourages long term investments in producing domestic minerals. Compare the exceedingly long permitting times here in the US with Chile, Canada and Australia where the average permitting time is between 2 and 3 years and incorporating essential the same environmental and engineering standards. If land managers and environmental regulatory professionals in these countries can get the job done in 2-3 years, so can the U.S.

To be clear, valid concerns about environmental protection need to be fully considered and addressed. At the same time, we should not trap mining projects in a limbo of duplicative, unpredictable and endless review without a decision point. We should not confuse the length of the process with the rigor of review.

Rock Creek Illustrates Permit Delays Due to Repetitive Endangered Species Act Consultation

In October of this year the US FWS completed its 5th Biological Opinion for the Rock Creek project, all concluding no jeopardy. The agency has drafted 5 BO's due primarily to the extended permitting and litigation period for the project, which resulted in "new information". While the project description has not changed the project has been hampered by the need to repeat ESA consultation in spite of the exemplary plan for grizzly bear mitigation proposed some 20 years ago.

In fact, in 2011, the 9th Circuit Court of Appeals reviewed the 2007 biological opinion for Rock Creek. In their unanimous decision upholding the FWS decision, the 9th Circuit stated that the mitigation plan was so robust that the Fish and Wildlife Service concluded that it "*would in fact improve conditions over the long-term over the existing conditions, ultimately promoting the recovery of the [local] grizzly bear population.*" Getting to this point, however, required decades of Agency review including numerous delays and litigation – all for a project which has not significantly changed in description since conceptually proposed in 1984 and formally proposed in 1987. Sadly, due to endless litigation and permitting delays little of this mitigation plan has been implemented on the ground. In addition, the local communities in desperate need of economic opportunity have also suffered.

Causes of Permitting Delays

In my experience, permitting delays are frequently caused by ineffective project management, unnecessary bureaucratic red tape, inefficient workforce issues with the Bureau of Land Management (BLM) and U.S. Forest Service (USFS), and multiple appeals and litigation.

Lack of firm timeframes: Permitting agencies generally have the authority to impose and enforce timeframes for various environmental analyses or interagency consultations yet fail to establish them.

Poor project management skills: The management of the multi-faceted aspects of NEPA for a mining project requires good project management skills. The ability to develop a work breakdown structure, schedule assigned responsibility and hold people accountable for deliverables. A successful project has consistency in management- a good project manager, who stays with the project.

Restriction on Proponent Involvement: In the early days of NEPA project proponents had a much higher level of contribution in the process. The permitting timeline was much more reasonable. Today, however, they are kept at an arms-length and agencies and third-party contractors are left spending excessive amounts of time coming up to speed on the technical aspects of the project, understanding viability of alternatives, etc. Getting the technical input from project proponents, who know the project best, would help streamline the process and lead to better NEPA documents

Training on minerals and mining and NEPA process: Many resource professionals are experienced in grazing, timber and recreation, but are not informed on minerals and mining development. Additional training on the NEPA process and the role of lead agency is critical to improving the federal permitting process. The lead agency must lead and in many cases I have seen it defer to cooperating agencies or other stakeholder interests, instead of taking charge and leading the permitting process.

Litigation: We often hear BLM and USFS say they must make these documents bullet proof. This makes all issues potentially significant which is counter to NEPA which clearly envisioned the lead agency following scoping would focus on those truly significant issues that could affect the environment (40 CFR 1502.2).

Many mining projects “die from a 1000 cuts” through multiple appeals and litigation. The Rock Creek example illustrates how litigation is an effective strategy to delay and string out project development. Anti-mining groups have sued multiple times and continue to litigate on ESA and NEPA issues in separate litigation efforts. This legal process grinds down both the agencies that must defend their permitting decisions and the company’s in hopes the company will simply walk away from the project. While the company has millions of dollars and hundreds of high paying, family-wage jobs at risk, project opponents risk nothing with a chance to profit significantly by recovering their attorney fees through the Equal Access to Justice Act (EAJA).

Inefficient personnel system: Unfortunately, too often there are changes in management personnel during the project, changes in District Rangers, Forest Supervisors and BLM District Managers all which leads to reeducation, reevaluations and loss of time in the permitting process. For example, the Rare Earth Elements project in Wyoming required over 11 months to get an EIS project manager assigned to the project. Clearly a more efficient personnel system can be implemented to get people in place to manage projects. This factor is compounded by the fact that in the USFS performance reviews, promotions and raises do not include an employees’ performance in managing mineral projects.

Federal Register Notice Delay: Substantial delays result from a BLM Instruction Memorandum (IM) issued on December 23, 2009 (IM 2010-043) requiring *all* Federal Register Notices be sent to the BLM Washington Office for review and approval prior to publication in the Federal Register. For example, the Asarco Ray Mine land transfer recently had its Notice of Availability published in the Federal register – this after 29 months of waiting for the DOI to do so. This IM also implemented a 12 to 14 step review and approval process that is taking approximately four months per Notice, prior to publication. Notices are required for intent to start the NEPA process and public scoping, for a draft EIS and the final EIS. This Federal Register notice process can add almost a year, or longer in the Ray Mine example, for a simple administrative notice filing. Prior to 2000, these routine notices were processed and published in 30 to 45 days. DOI should rescind this policy and return to the previous process where *Federal Register* notices could be submitted directly by BLM state offices without stopping at DOI for additional reviews.

Recommendations

Understanding the critical permitting issue facing domestic mining industry, Senate Energy and Natural Resources Chairman Lisa Murkowski (R-Alaska) recently introduced the Energy and Natural Resources Act of 2017 (S. 1460). This legislation would allow mining projects to be eligible for consideration as a covered project under Section 41001(6)(A) of the Fixing America’s Surface Transportation Act (the FAST Act), which provides additional efficiencies in the federal permitting process for major infrastructure and other capital-intensive projects by better coordination and deadline-setting for permitting decisions. While this legislation is a step in the right direction, it’s incumbent upon all the federal agencies to identify regulations and policies that needlessly delay or prevent mineral resource development from occurring, further jeopardizing the viability of downstream investments such as manufacturing and infrastructure projects.

The overarching objectives for streamlining the permitting system for mining should be:

- Minimizing delays;
- Setting and adhering to timelines and schedules for completion of the permitting process; and
- Tracking progress and providing for accountability.

To achieve these objectives, federal agencies involved in reviewing projects for permits or other authorizations should be required to clearly establish a lead agency to:

- NEPA-Equivalence: Consider adopting a NEPA-equivalence policy that allows the agency to determine the requirements of NEPA—when applicable—has been satisfied if the lead agency determines that any State or Federal agency has addressed or will address the applicable NEPA considerations.
- Avoiding duplicative reviews: the lead agency shall defer to and rely on baseline data, analyses, and reviews performed by state agencies with jurisdiction over the proposed project.
- Concurrent reviews: federal agencies should conduct any consultations or reviews concurrently rather than sequentially to expedite the process.
- Establish timelines and accountability for each major step of the process including:
 - Scoping of the analysis
 - Baseline studies required under applicable law and use of existing studies already conducted for state or federal authorizations
 - Draft EIS or similar analysis under NEPA
 - Submission and review of public and agency comments
 - Publication of any required public notices
 - Final decisions
- Directives clearly setting forth that the permitting agency is not required to consider or respond to comments received after the close of any comment period.
- Encourage use of Memorandums of Agreement between the agencies and project proponents that will set goals and timelines for each step of the process.

Many of these recommendations for using best practices in the permitting process are reflected in the regulations from the Council on Environmental Quality (CEQ) on making the National Environmental Policy Act process more efficient. CEQ's NEPA regulations encourage streamlined review, adoption of deadlines, elimination of duplicative work, eliciting suggested alternatives and other comments early through scoping, cooperation among agencies, and consultation with applicants during project planning process. See e.g., 40 CFR 1501.7 (Scoping); 1501.8 (Time limits); 1502.20 (Tiering); and 1506.2 (Elimination of duplication). DOC's report should recommend that agencies treat these best practices as mandatory rather than as merely advisory. This can be accomplished easily by revising agency NEPA guidance to more clearly align with these best practices.

Conclusion

Domestic mining is an important economic driver. Mining's direct and indirect economic contribution includes nearly 2 million jobs with wage and benefits well above the state average for the industrial sector. In addition, domestic mining generates \$46 billion in tax payments to federal, state and local governments.

Yet, much of our domestic mineral resources remain locked beneath our feet by an outdated and inefficient mining permitting system plagued by unnecessary delays and redundancies at the local, state and federal levels. To unlock this vast potential for the benefit of downstream infrastructure projects we urge Congress to work together on enabling policies that ensure timely and responsible access to U.S. mineral and metal resources. If we do not, and become increasingly marginalized as a supplier of these essential resources, the consequences are severe for our nation's global competitiveness.

Thank you for the opportunity to testify today.

The CHAIRMAN. Thank you, Mr. Russell.

I think we have heard, we continue to hear, that uncertainty, unpredictability within the regulatory process—it adds time, it adds money. And when you mentioned the length of time that it takes to permit a mine in this country nowadays, Mr. Russell, you know, the two projects that you mentioned in Alaska, 22 years for one, 16 for another. For many, they would just walk away.

You look at the reality of the process here and it does cause you to wonder how we are even able to have much of a mining industry in this country.

We speak about how the United States is ranked, literally, at the bottom of the barrel when it comes to permitting for mines. I have also heard about how other countries, specifically Canada and Australia, have a competitive permitting—well, it is a permitting process, I guess, that gives them a competitive advantage.

Now we have had some issues with some of the mines that we are seeing come on in Canada, but can you speak, just very briefly, to the permitting process that we see in other countries that, again, allow for a more clearly defined, or certainly more predictable, process that allows these projects to move forward while here in the United States it may be a two-decade process?

Mr. RUSSELL. Thank you, Chairman.

Yes, I have experience in permitting in both those countries, Canada and Australia. I think the key difference is that there is a timeframe established at the beginning. The roles and the responsibilities of the cooperating agencies are well-defined so that there is certainly more predictability that the process will take two years or three years and then there will be a decision.

But we have—

The CHAIRMAN. And there is accountability at the end of that period?

Mr. RUSSELL. There's also accountability so that if the, if an agency is not moving within its timeframe, there is accountability. So that's a key aspect that's lacking in our system, is that even if schedules are established, there is no accountability to meet those schedules.

The CHAIRMAN. Mr. Cason, in your testimony you mentioned that an average EIS is now about 4.6 years. And we think about the reality of that and what that then means to cost, uncertainty, lack of predictability.

During the Obama Administration, President Obama acknowledged that permitting challenges were an impediment—they held back growth and opportunity. In his 2012 Executive Order he pushed us to work through some of the permitting challenges. Then when President Trump came into office he updated that in August 2017.

What actually have we seen then, if we are still sitting at about 4.5 years for processing of an EIS? We have had administrations, Republican and Democrat, that have said permitting is a challenge. They have laid down executive orders saying we need to do better than this. Have we accomplished anything?

Mr. CASON. Accomplished at this point, I think, is pretty thin, but we are working on the issue. We have several things that are going on at the same time to try to address this issue.

We, I'll say broadly in the Administration, recognize the NEPA process is taking way too long. You've quoted almost five years to get an EIS done, and there's a couple of things that are involved in that.

First is that the length of EISs keeps getting longer and longer and longer. The last two that I saw were 5,000 pages and 10,000 pages.

And——

The CHAIRMAN. Is it necessary that the EISs get longer?

Mr. CASON. No.

The CHAIRMAN. Why? I mean——

Mr. CASON. No.

The CHAIRMAN. ——if we acknowledge that this is part of our challenge here why are things getting longer and more complicated?

Mr. CASON. My opinion about that is that a lot of the length is generated by two things. The first is a lot of contractors get paid by the page and so the more pages they write, the more they make. And secondly, is fear of litigation.

We have a fairly long record where EISs are found, no matter what their length, to be insufficient and so you need to add more and more to it. So we've been trained, basically, to make them longer and longer and try to anticipate every possible question that anybody in the world might want to have an answer to and try to incorporate that in the EISs to offset the fear of litigation.

I don't think that's the way it has to be. We're currently working with CEQ and with the White House and across the Executive Branch to take a fresh look at how we do NEPA compliance, and we're going through a process right now within Interior where our Deputy Secretary has issued a Secretarial Order that basically puts a page limit and a time limit on our NEPA compliance documents.

It remains to be seen whether we'll be able to deal with litigation using these reduced page limits, but what we're going to try to do is move in a direction instead of having a 10,000-page EIS, have an EIS that's 300 pages or less and gets done in a year to two years.

So we're currently going through the process with a NEPA subgroup inside Interior which I chair, to look at the entire NEPA process to figure out what can't we cut out, what can we streamline, how can we write these better so that we can do them in less volume and less time. So that's an active process we're going through in concert with CEQ.

The CHAIRMAN. Thank you.

I recognize that the number of pages is not the end-all and be-all, it's the content in there.

Mr. CASON. Right.

The CHAIRMAN. I certainly hope that you don't work to reduce the font because it is already tedious enough to get through.

Let me go to Senator Cantwell.

Senator CANTWELL. Mr. Brown, you mentioned in the statement about your support for the Senate language on hydro licensing. I take it you don't like the House language. Is there a problem with it? Could you explain that?

Mr. BROWN. We believe that the House language does, may act to, preempt authorities under Section 401 of the Clean Water Act, the language including certifications as a federal authorization and then modifying the timelines and having authority over what studies should be appropriated for that, for the issuing of that 401 certification. I think the language can be improved and allow for showing of state authority without preempting it.

Senator CANTWELL. Thank you.

Ms. Perruso, one of the things I find puzzling is this issue of the Transmission Infrastructure Program and the proposed elimination of WAPA's borrowing authority. Can you comment on that?

Mr. PERRUSO. Yes, thank you, Ranking Member Cantwell.

We view the borrowing authority, WAPA's borrowing authority as written by Congress, as a very important program that creates public-private partnerships. We've been working with WAPA since 2011. WAPA acted as a joint lead on the EIS with the BLM and they've provided development funding for the project. We have viewed WAPA as our partner, and we want to keep them in the project.

I will say that WAPA's interpretation of how they can use their borrowing authority has changed over the course of our relationship with WAPA. We believe they are not interpreting it the way that it was set out in the statute. And that is a concern of ours because it is incredibly difficult to build interstate transmission. And so, WAPA can play a very important role. And a partnership with them provides an independent transmission developer like us with credibility. And so, we really want to see WAPA participate in this project.

Senator CANTWELL. Thank you.

Mr. Cason, Secretary Zinke stated at his confirmation hearing that he wanted to get a fair return for the taxpayer. Since then, the Department has reinstated the outdated, low price coal leasing. You guys have tried to suspend the BLM's methane rule, leaving millions of dollars on the table in royalties. You have suspended the royalty valuation rule—by your own estimates giving back \$75 million every year to oil and gas and coal companies. The Secretary has created a Royalty Policy Committee stacked with partisan members without a single public interest voice. It seems to me you are leaving a lot of money on the table.

Mr. CASON. I guess that's a point of view, thank you for sharing it.

The Department is taking a look at each one of these rules that we're working on right now to make modifications that we think in the end will provide benefit to the American public.

In some of these cases the royalty rules will be looked at by the Royalty Policy Committee which has about 20 members on it, representing states and Indian tribes and the industry and Department of the Interior and others, to take a look at how we fashion rules.

A lot of the changes that were made there were related to how we view deductions or credits that come as part of the oil and gas development process and the marketing of oil and gas.

The other rules, venting and flaring you mentioned, there were a lot of problems with the venting and flaring rule that as I under-

stand it from the conversations I've had at Interior, the industry and Interior, neither one were well prepared to implement that rule. And it has certain complications that we were attempting to levy royalties on methane that was vented when we didn't have the presence of gathering lines to actually gather the materials. So we're going back to basically a conservation resource thought process.

We, too, want to capture the methane. We just need to do it in a deliberate way, and we thought improvements to the rule would help with that.

Senator CANTWELL. Well, thank you.

I think Congress has spoken on that. So I'm sure you'll hear from other colleagues of mine about their concern. I will just note, we have had improvements in hydro licensing. My colleague from Idaho and I worked on those in the 2005 bill, and it improved the process.

I do think it is challenging for people to think of hydro licensing in the context of, you know, a 50-year licensing process that is basically about management and stewardship of a resource. But I will say that when people try to get the upper hand is usually when it goes wrong.

What we have seen is when people come to the table, comply, look at the resource, and look at the management of these issues in a collaborative fashion, you have a very quick process. Yes, there are a lot of "i"s to dot and a lot of "t"s to cross, but we have made progress.

I hope you'll go back and look at that and understand that there is great responsibility here. And it is not just about the size or how many pages it is, but about whether people are going to come to the table and collaborate.

Thank you.

Mr. CASON. Thank you.

Senator DAINES [presiding]. Thank you, Ranking Member Cantwell.

Chair Murkowski asked me to take over for a moment while she stepped out.

The issue of excessively long permitting timelines is becoming all too common. I am very glad we have focused on this issue multiple times this year, and I hope we don't let up until we see some improvement.

As Chair of the Senate Western Caucus, when our members develop priorities for any infrastructure package, streamlining the permitting process, like we are talking about here today, is a top priority. We will continue to encourage actions and hearings like this.

Debilitating permitting infrastructures and timeframes affect all of our sources of energy and our natural resource production. We have wind. We have coal. We have hydro. We have mineral projects held up for years, sometimes even decades, in places like Montana. This is leading to less investment, less made in America energy and less jobs.

Mr. Russell, as you well know, the Montanore and Rock Creek projects located in Lincoln and Sanders Counties in Montana—by the way, if you Google "poorest counties" in each respective state,

Sanders County is the poorest county in Montana. Double digit unemployment rates. Poverty rates in excess of 22 percent. And Lincoln County—recently I was having dinner with a couple up in Lincoln County and they said to me, "Steve, basically, we describe Lincoln County as poverty with a view."

That is where the two mines, the mines that you are talking about, Mr. Russell, are located. They will produce two of only four world-class, silver and copper deposits in the U.S. These projects have been thoroughly vetted, thoroughly researched, thoroughly reviewed, beginning back in the 1990s—you mentioned in your testimony, it's 25 years.

Cindy and I have four children. They are now all adults. My children, in some cases, were not even born yet when you began the permitting process for the Rock Creek and Montanore projects.

Mr. Russell, you mentioned the Rock Creek project in your written testimony. What can we do on this Committee to make sure that projects like Rock Creek and Montanore which bring critical minerals and metals, millions in wages and tax revenue—by the way, when I met some of the county commissioners up in that part of our state, one of our county commissioners sat across the table from me and said, we're at the point now in our county because we've lost the revenue stream on our federal lands—in some cases 90+ percent of the lands in those counties are owned by the Federal Government. We've lost the revenue stream. They have no tax base.

They are literally having to plow the roads in the wintertime as county commissioners because they had to lay off the road crews to get the kids to school, the school bus to get through.

So what do we do here? What do we need to do so these projects don't languish in a never-ending permitting loop?

Mr. RUSSELL. Senator, thank you.

I might notice the comment that the Rock Creek project over its life was forecast to generate \$170 million in state and local taxes. That would go a long way to plow some snow in Sanders County.

I think to answer your question is some of the key things that you've heard today is that we need to get more predictability and certainty in our timelines, have accountability on that timeline. That doesn't mean the review has less vigor. It's just that we set a predictable timeline.

There needs to be better coordination with the agencies. Kensington is an example that took five years to do a minor expansion. The EIS was completed in four. The Corps of Engineers then took over a year to issue its permit. So, rather than working conjunctively, they worked in sequence and that added 25 percent to the timeline.

And then thirdly, you've also heard this morning is the fear of litigation creates analysis paralysis. So there has to be some sort of a way to address the Equal Access to Justice Act or repeat litigants that continue to thwart economic development, responsible economic development, especially in poor counties like Sanders and Lincoln County which, I believe, is just a blatant environmental justice issue where these folks, very concerned about their environment, as you said, "room with a view" but also believe that they

can have responsible economic development. And it's a false choice for them to say it's one or the other.

Senator DAINES. I think that it has taken a quarter century and still counting here on the Rock Creek project. To me, that is outrageous.

Mr. Turpin, in the remaining time I have—

As I mentioned, permitting delays do not only affect our mining projects but renewables like hydro and wind. The Clark Canyon Dam project was recently approved by FERC after reapplication, and I thank you for that. We are still waiting on the Gibson Dam, but thank you for getting the Clark Canyon Dam project completed.

Chair Murkowski, I am out of time.

The CHAIRMAN [presiding]. Thank you, Senator Daines.

Senator Stabenow.

Senator STABENOW. Thank you, Madam Chair, for this hearing.

I know that the testimony today has primarily been focused on how we need to streamline permitting and environmental reviews to spur economic growth.

I want to raise a different issue that relates to economic growth that has been happening and is a concern of mine. I am very concerned about the implications of large volumes of LNG exports and the recent announcements regarding investments by China in U.S. gas businesses.

We have talked in the past in this Committee, for some time, about the importance of low-cost, domestic natural gas manufacturing. The good news is, according to the industry analysts, low-cost natural gas in America was the catalyst for \$160 billion in manufacturing investments over the last seven years, since 2012. That is a big deal. That is very, very important to us.

Yet, right now, our government is taking actions that will drive up gas prices, which is of great concern to the manufacturers that I talked to. The Energy Department has approved just under 55 billion cubic feet per day of LNG exports, which is a very large amount of gas, and the Energy Information Administration says natural gas prices will actually increase 2,018 percent by 2025 with some of that increase directly tied to new LNG export facilities coming online.

Now we have Chinese state-owned companies investing large amounts of capital in U.S. natural gas which raises a lot of concerns, and I believe that really requires closer scrutiny by all of us—what is happening with that?

The Natural Gas Act requires that approval of shipments to non-free trade countries must be in the public interest. I don't believe the shipments of these magnitudes of gas could possibly be in the public interest. I don't oppose LNG exports, but I think rushing to export a resource that is critically important for American jobs and manufacturing is something that should be a shared concern for all of us.

Mr. Turpin, I know FERC is responsible for the environmental review and not the ultimate approval of LNG exports, but could you speak to how low gas prices benefit the U.S. economy?

Mr. TURPIN. Well, as you stated, the Commission is involved in looking at the specific impacts related with the construction of

those facilities. The economic analysis, the price impact analysis that you're referring to are things that are done by the Department of Energy. And so, I really can't speak to those.

Senator STABENOW. Anyone else want to speak to the importance? Well, maybe you don't think it is important to have low gas prices for domestic manufacturers, but I am wondering if someone would want to speak to that because it certainly has been an important part of increasing jobs in the last number of years in manufacturing.

Mr. Russell, you are shaking your head.

Mr. RUSSELL. I certainly agree.

I mean, obviously, it's a major, energy is a big cost to mining and so, I echo your thoughts that the lower energy is very important to maintaining our competitiveness in our industry.

Senator STABENOW. Thank you.

Madam Chair, I really do think this is something, particularly the Chinese investments in U.S. gas projects, of concern to me as we go forward to be able to balance both the interests in exporting but also American jobs in terms of manufacturing.

There is one other thing also that I wanted to raise that is, again, not quite on point of the hearing, but I think is really important to talk about, and that is pipeline safety as we look at going forward.

I know that transporting oil and gas via pipeline certainly is safer than rail and other transportation modes, but at the same time, I am very concerned that pipeline safety is not improving as we are talking about all these issues.

Between 2010–2017, there were 4,269 pipeline incidences resulting in \$3.5 billion in damages and 64 fatal injuries. We know that specifically in Michigan because of a line that burst releasing a million barrels of oil into the Kalamazoo River—which was the largest ever U.S. inland oil spill, costing more than \$1.2 billion to clean up.

We are currently concerned about a gas and oil pipeline going under the Great Lakes, a 64-year-old plus pipeline where there is great concern about the integrity and safety of the line.

So I know that this, again, is about streamlining permitting for new pipelines, and I know FERC has jurisdiction over interstate gas lines, not oil pipelines, but again, I would ask Mr. Turpin, what is being done to ensure pipelines are safe by other federal agencies? Are you working with others on the safety end of things as all of this discussion is going on?

Mr. TURPIN. For the natural gas pipelines that are in the Commission's jurisdiction, of course, authority over the safety is under the Department of Transportation. We attempt to coordinate with them on their process. We involve them as cooperating agencies to the extent that they want to cooperate, and we have representation on their Advisory Committees for new pipeline rules.

Senator STABENOW. Thank you.

Madam Chair, I have a request that I would love to see us do a joint hearing with Commerce on pipeline safety issues at some point just to raise, as we are talking about streamlining and moving forward, the safety issues that are, obviously, very important as well.

Thank you.

The CHAIRMAN. Thank you, Senator Stabenow.

Senator Risch, I believe, is up next.

Senator RISCH. Well, thank you very much, Madam Chairman.

The CHAIRMAN. Or excuse me, wait, I am way out of line.

Senator RISCH. Yes, you are.

The CHAIRMAN. Yeah, yeah, yeah.

[Laughter.]

Senator Gardner was going to jump on you here.

You were sitting next to Senator Barrasso there and I got confused.

It is Senator Gardner, excuse me.

Senator GARDNER. Well, thank you, Madam Chair. If it will make my seniority greater on the Foreign Relations Committee, Senator Risch, I am happy to yield to you.

[Laughter.]

Thanks to all of you for your time and testimony today.

Madam Chair, thanks very much for holding the hearing today.

Ms. Perruso, we have had many conversations over the past several years, beginning in 2011, talking about some of the permitting challenges that this great renewable energy project has gone through. During one of our conversations that was focusing on WAPA, you stated the Western Area Power Administration signed on as a TransWest project participant in 2011 but now it is my understanding that they are taking a, perhaps, different view on whether they can be an equity partner versus a financier of the project.

Could you just talk through what changed, why that changed and why it is important?

Ms. PERRUSO. Thank you, Senator Gardner.

The statute itself that created Western's borrowing authority has not changed. It allows for constructing, financing, facilitating, planning, operating, maintaining and studying construction of new electric power lines.

And we actually are uncertain about why WAPA's view of how they can use their authority has changed. And you said it just right, they have changed their view from using it as potential equity for ownership to more of a financing mechanism, revolving financing account.

I'm not sure why their attitude has, or why their view has changed, but our commitment, in terms of wanting them to partner with us in a private-public partnership, remains the same, as is our commitment to mitigate any risk that there would be to WAPA or the taxpayers in using their authority.

Senator GARDNER. Well, thank you. I hope we can get an answer from WAPA on this important question.

Mr. Turpin, LNG exports, we have talked a little bit about it here today, such as Jordan Cove which will export natural gas from Colorado. It is becoming a bigger issue because as more development in the Midwest takes place, we are losing access, perhaps, to some of the markets we have had. And so, the Rocky's gas can become a little bit more stranded, perhaps, so we need a Western outlet for that incredible gas production that we have.

The Jordan Cove project would allow us to export to Asia, a market that is critical to the U.S. from both an economic standpoint and a security standpoint.

If you look at some of our potential trade partners there: South Korea, obviously, a very incredibly important trade partner; Taiwan, a very important trade partner; Japan, a very important trade partner; all of whom have expressed interest in a stable, affordable supply of energy from the United States. Helps us economically, creating tens of thousands of jobs in the Western United States, in particular, but it also gives our greatest allies the security that they need so they are not reliant on China or other nations for their energy.

So this is both an economic and security imperative that we would be moving forward with this, but the permitting process at Jordan Cove has been tough. It has been long and, of course, FERC has made that even more complex with the different, rigorous standards and road blocks that have been put in place.

What additional authority would be of help to FERC to accelerate the issuance of permits by cooperating agencies on a project, once it has been approved by FERC?

Mr. TURPIN. I think you've hit, probably, on sort of, one of the fundamental problems with how the U.S. has approached its permitting and it's been to give, sort of, decentralized permitting authority to many different agencies, each of which that has a slightly different mission or different take on the infrastructure.

I can't point to a single fix or a single authority to say, you know, give FERC this and things move better because for the most part what I've seen in my tenure at the Commission is that for every project it's a different bag of issues that come up that are raised or that might need solutions. So about the only thing that makes sense is more of what's been done with FAST-41 and others is that accountability for agencies, and we can engage as much as we like with agencies so it can lead the horse to water kind of thing.

We can get them on board and yet, in the end they still have their decision to issue under federal authority and that's what, you know, they'll take their time doing.

Senator GARDNER. So it is my understanding that FERC has not issued either a final or draft environmental impact statement in 2017, nor any orders, but there are 11 major LNG export projects that are now pending at FERC.

So is there a holdup? If there is, what is it and when can we expect additional authorizations?

Mr. TURPIN. So the LNG projects that are there, probably the longest lead time item for those has been coordination with the Department of Transportation over their siting regulations. That has been something that's evolved over the last four or five years as plants have moved from import to export, a different range of hazards that need to be considered and DOT has been working out how its siting regs can be applied.

So I think that coordination, you know, having that continue is vital and having DOT put the resources needed to get those things solved is vital.

Senator GARDNER. Well, thank you.

And I have additional questions, but I am out of time.

But I think it goes back to Ms. Perruso's comments at the very beginning when she laid out three things: consistency, coordination and accountability. And I think you mentioned both consistency and coordination in your answer. We didn't quite get to accountability but the accountability is there on our end to make sure that we solve this problem and make permitting a process that works for this country economically, and I look forward to doing that with all of you.

Thank you.

The CHAIRMAN. Thank you, Senator Gardner.

Senator Heinrich.

Senator HEINRICH. Thank you, Madam Chair.

Mr. Cason, I was surprised that the Interior Department's report on impediments to domestic energy development included no opportunities for improvement specific to permitting or siting of renewable resources on public land. Zero.

For a number of years now, I have worked with Senator Heller on legislation to improve the process for siting wind, solar and geothermal projects on public land. And we have a pretty substantial group of bipartisan co-sponsors now, including Senator Risch, Senator Gardner, Senator Daines, who was just here, all members of this Committee. Does the Department really not see any opportunities for improvements specific to clean energy projects on public land?

Mr. CASON. I think there's possibilities for drawing different conclusions about how to address those.

I've personally had both solar and wind groups come in to visit with me about how we can do things better within the Department of Interior. Each of them have views of things that we can do and we're taking a look at those.

One of the chief——

Senator HEINRICH. What are your ideas for improving that process?

Mr. CASON. Well, one of the chief things that seems to be an issue is in both siting wind and solar they tend to sprawl over a fairly large area to make it economic to do and one of the issues that seems to be in place is descriptions about BLM not being willing to allow those large areas to be set aside for them due to other, I'll say, complications like protecting endangered species or keeping open areas open. So it is an issue that we're taking a look at.

Senator HEINRICH. We do oil and gas at, you know, 40- and 160-acre spacings. How is that different than doing a wind turbine spacing?

Mr. CASON. Well, the difference is you may take 160-acre spacing and you have a well pad that takes up 100 feet by 100 feet out of that.

Senator HEINRICH. Just approximately what a wind turbine also——

Mr. CARSON. Well, one wind turbine, yeah.

Senator HEINRICH. Yes.

Mr. CASON. And for solar——

Senator HEINRICH. But my point is that on an oil and gas field you might have tens of thousands of acres——

Mr. CASON. You may.

Senator HEINRICH. —with 160-acre spacings. That doesn't really seem to be any different than a substantial wind project.

Mr. CASON. Okay.

Senator HEINRICH. And a solar project actually takes up less of a footprint, so I'm not sure I understand the logic.

Mr. CASON. Well, it depends on the size of the project. You can have very large projects or very small projects in all of the forms of energy.

I'm not quite sure why we don't have some suggested improvements we can make on the renewables, but if you have particular suggestions to make, I'd be happy to run those down to ground and get them into the process.

Senator HEINRICH. We would love to share our legislation with you.

Mr. CASON. Okay.

Senator HEINRICH. I want to go back to NEPA for a moment.

I think most folks wouldn't care if an EIS can be done in 10 pages or 1,000 pages, so long as the individual EIS actually addresses and analyzes the relevant environmental issues.

I think I would be a little concerned, or at least I think there would be a concern, that a hard cap, whether it is 300 pages or whatever the number is, on pages in an EIS could be seen as arbitrary. Do you understand that concern?

Mr. CASON. Yes, and it's not a hard cap, it's a goal, and the Assistant Secretaries under the Secretarial Order are allowed to go beyond the 300-page limit or 150 pages for easy EISs. So there is a mechanism in place in the Secretarial Order to exceed that threshold, if it's needed.

Senator HEINRICH. I want to go back to one other thing you said. You said there were significant problems with Interior's methane rule.

Yet, Colorado has very successfully implemented an almost identical rule. They have done that both successfully and profitably, and coming from a state where NASA has literally mapped the largest methane plume in the United States, a globally significant methane plume, I am having a hard time understanding why this is taking so long.

Can you go back and explain, once again, why this rule is not being implemented, and why we are seemingly not prioritizing public safety?

Mr. CASON. Well, it's not a matter of not prioritizing public safety on the venting and flaring rule.

When I came to Interior as part of the beachhead team, I received feedback from within Interior that we were not well prepared to actually implement the rule and received feedback from external groups that they were not prepared to comply with the rule and that certain things needed to be done to allow both parties to do their jobs well.

We recognize that there are a number of states that have adopted their own regulations dealing with venting and flaring. What we chose to do is suspend the effect of the rule and then go back and, basically, take a look at a public comment process so we can get feedback from the general public and the industry regarding how we should do this role better.

Senator HEINRICH. I am over my time here but I will just share with you, the frustration from my communities comes from looking across the border at BLM land in Colorado and seeing a set of, you know, regulations being implemented that have improved the way things are done and not seeing those changes in their own communities.

Mr. CASON. Okay.

Thank you.

The CHAIRMAN. Thank you, Senator Heinrich.

Senator Barrasso.

Senator BARRASSO. Thank you, Senator Murkowski.

Ms. Perruso, thank you for being here today to tell the story and tell us about your company's exciting project in Wyoming.

You know, in Wyoming we are blessed with many energy resources. We have vast reserves of coal, of oil, of natural gas. And we also have world class wind in addition to the uranium that we have. So it really is an all-of-the-above approach to energy dominance for America. And we need to use all of our energy resources to grow our economy and to keep energy prices low.

Now, your company's project is a multi-billion-dollar infrastructure project that is going to create jobs. It is going to deliver much needed power to the Western grid. So I look forward to the continued progress of the project and the benefits that it is going to bring to, certainly to, Wyoming, but also to the United States.

Now, you explain in your testimony that the Federal Government has actually added substantial new fees to your company's project without prior notice. Specifically, I think you stated that the BLM's so-called competitive leasing rule, issued in the final weeks of the Obama Administration, increased fees for wind and solar power generation projects that are developed on federal land. You also stated that this rule did not grandfather in existing projects, including projects such as yours, that have been in development for years.

Could you please describe the total cost impact of this rule, that was in the final days of the Obama Administration, on this project and explain whether you think that these increased fees imposed by the Obama Administration will have a chilling effect on the future development of energy resources on public lands?

Ms. PERRUSO. Yes, thank you, Senator Barrasso.

To put a little context on the timeframe, we actually started construction on the wind project on September 9th, 2016. Exactly three months later on December 9th, the BLM issued the final rule. The final rule does increase the fees associated with wind development on public lands. It will increase the fees for our project by an estimated \$47 million to \$106 million over the term of our development grant.

The purpose of the rule was to encourage development of renewable energy on public lands and there are incentives in the rule for developers going forward that includes streamlined permitting and some contractual advantages if you're located in a designated leasing area. However, we won't be receiving any of those benefits, nor will other developers like us who've already taken the risk to develop renewable energy on public lands. We are just getting this increased cost.

We shared our concerns with the Administration throughout the rulemaking process with no success, and we are asking the Committee to consider a provision in the Energy bill that would exclude projects like ours from application of the rule.

We understood that we were assuming risk when we went to develop our project on public lands, but we did that based on the rules of the game at the outset. The rules should not be changed for projects like ours at this late date.

Senator BARRASSO. So this is a rule that came out, not only late in the Obama Administration, actually after the election, after it was obvious that the election results were in. So this was into December in the final six weeks or so of the Obama Administration, kind of a midnight rule that came out.

You know, in your testimony you state that the TransWest Express Transmission Project in the Chokecherry and Sierra Madre Wind Energy Projects were designated as “covered projects.” You talked about that under the Fixing America’s Surface Transportation Act, the FAST Act.

You explain that the benefits of being designated a covered project are numerous, specifically, challenges to agency decisions that approve a covered project must be made within a short time-frame and courts must consider the economic impact when evaluating a challenge to the project. Could you please elaborate on the benefits of being designated a covered project under the FAST Act and explain whether you think Congress should consider broadening that scope of eligible projects under the FAST Act?

Ms. PERRUSO. Yes, thank you.

We were notified that both the transmission project and the wind project were designated as covered projects since September 2016, so toward the end of our permitting process.

Because our projects were so advanced at that point in time, we weren’t able to fully benefit from the dashboard and tracking provisions that you heard about, but they do provide a level of accountability and we do appreciate the follow-up that we did receive under that program regarding the status of permitting.

The other two benefits, though, that we see with the FAST Act relate to when agency decisions are challenged. Generally, challenging agency decisions falls under the general statute of limitations for actions against the United States of six years. Under the FAST Act, the statute of limitations is two years after the date of publication in the Federal Register. The FAST Act also provides that as part of any preliminary injunction proceeding that could conceivably stop progression of a project, the court will consider an additional element that includes consideration of potential effects on public health, safety, environment and also the potential for significant negative effects on jobs. So these two provisions, the two-year statute of limitations and the additional preliminary injunction standard, give developers more certainty that any challenges to the agency’s decision will be raised in a reasonable amount of time and that the court will consider the wider effects of adjoining a project when determining whether a preliminary injunction is appropriate.

Each of these factors reduces development risk and could assist in encouraging federal projects. And so, if the applicability of the statute were broadened, it could be helpful.

Senator BARRASSO. Thank you very much.

Thank you, Madam Chairman.

I have some other questions I will submit for written response. Thank you.

The CHAIRMAN. Thank you, Senator Barrasso.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Madam Chair, and thank you for this hearing.

Mr. Cason, the BLM has sent a request to the U.S. Forest Service to determine whether 54,000 acres in the Ruby Mountains in Nevada are suitable for oil and gas leasing. This request is opposed by state environmentalists, hunters, anglers and tribes. It also serves—if you don't know, the Ruby Mountains in Northern Nevada serve as a critical habitat for several species including the Lahontan cutthroat trout, which is Nevada's state fish. Can you tell me why the agency sent the request?

Mr. CASON. It's often the case that the BLM manages the subsurface of our state out in the federal country. We have about 700 million acres of subsurface estate that we manage. And often we'll have Forest Service as a surface owner over our subsurface estate. So we collaborate with them to find out what their views are on prospective entries that we would make into the subsurface and——

Senator CORTEZ MASTO. Can I ask why you made the request?

Mr. CASON. I'm not familiar with that particular request.

Senator CORTEZ MASTO. Can you get me that information, please?

Mr. CASON. Sure.

Senator CORTEZ MASTO. The concern is this. That is a pristine area that has for decades been utilized by people in Nevada who support continuing the protection and do not support opening it up to oil and gas leasing.

I am curious why the request all of a sudden came? Who was behind the request and asked you to send that over to the Forest Service? If you could provide that information, that would be very helpful.

Mr. CASON. Sure, happy to.

Senator CORTEZ MASTO. Thank you.

I am from the State of Nevada where we actually have a history of mining, along with—we are an incredible state right now—leading the country in renewable energy with solar, wind and geothermal.

I appreciate the comments today, because this is something that I hear from both industries—streamlining our permitting processes, doing away with the duplication and how we can do the coordination better amongst the federal agencies to help the companies and to continue to promote, as well, the industries.

So let me ask this question. I guess, is it Ms. Pfleeger?

My understanding is the Federal Permitting Improvement Steering Council was created to do just that—to engage in that coordina-

tion and streamline that permitting process. But it has only been in existence for about a year, is that correct?

Ms. PFLEEGER. The law was passed in December 2015, and the first permanent staff were hired in January. And we've been working with all of the Permitting Council agencies to do the very things that some of the non-government witnesses expressed——

Senator CORTEZ MASTO. I appreciate that. So you have heard the comments today. My thought is that you are there to address the issues that we have heard today. Nothing else needs to be done other than to let your agency do its job and coordinate amongst the federal agencies. Is that your understanding, or is that your intent with the Committee or the Council?

Ms. PFLEEGER. Yes.

The need for, that they expressed, the coordination, the accountability—that's happening through the dashboard.

Those principles are all part of FAST-41 and, as we've been rolling it out and standing up the law, people are hearing about it more and more. The projects are already benefiting.

The next step that you're going to see are new projects are coming in and benefiting from FAST-41 at the start.

As Ms. Perruso said, they were, kind of, covered as a pending project late in the process.

As these new projects come in, that's the key thing because right from day one there will be a lead agency assigned. That lead agency will bring together every cooperating and participating agency.

And another one of the witnesses mentioned roles and responsibilities need to be defined. Yes, that's part of this coordinated project plan——

Senator CORTEZ MASTO. I apologize, I only have so much time.

Ms. PFLEEGER. Yes.

Senator CORTEZ MASTO. Do you need additional tools? Should we be giving you additional tools to address the concerns that we are hearing today?

Ms. PFLEEGER. One of the things in the President's Fiscal Year 2018 budget request of \$10 million, that would allow us to use the existing FAST-41 tools to fully implement FAST-41.

Senator CORTEZ MASTO. Okay.

Thank you very much.

And then, Mr. Cason, the House Natural Resources Committee recently held a hearing on environmental regulation reform where they heard from a 27-year veteran of CEQ, who testified that two of the greatest reasons that cause delays in NEPA reviews deal with capacity within the agency: one, lack of staff with responsibility for NEPA implementation; and two, lack of NEPA review training. Would you agree?

Mr. CASON. I think those are contributors.

Senator CORTEZ MASTO. I am running out of time, but I would like your thoughts, and I will submit this for the record as well, a part of the thought with respect to giving responsibility back to some of the staff includes publishing Notices of Intent to the Federal Register. My understanding is that's mandated now that they have to come to DC, instead of letting the BLM managers make that decision. I am curious what you and the Secretary feel on pub-

lishing those Registers and giving that authority back to those BLM managers in the state.

So thank you very much.

Mr. CASON. You're welcome.

Senator CORTEZ MASTO. I appreciate it, and I am out of time.

Thank you.

The CHAIRMAN. Thank you, Senator.

Now let's go to Senator Risch. Long awaited.

Senator RISCH. Well, thank you so much. I never thought you would get to me.

The CHAIRMAN. Yeah, yeah, yeah.

Senator CORTEZ MASTO. Alphabetical.

Senator RISCH. Senator Cortez Masto, meet Mr. Russell, who helps make the silver state, the silver state. Fair statement, Mr. Russell?

Mr. RUSSELL. Thank you—

Senator RISCH. You know, in response to Senator Heinrich, he is quite right. I am a co-sponsor of the bill for helping to streamline the processing for renewable energy. My only regret is all the sponsors of that wouldn't be co-sponsors of the bill to do the same thing for non-renewable energy, but nonetheless, we are at least all in agreement on the renewable energy.

That brings me to you, Mr. Russell. I am so glad you were able to come here and tell the Committee the story of Rock Creek. I have tried to tell as many people as I can. I will also try to put it in perspective. Since the permitting started, I have finished up an almost 30-year career in the state senate, served as state's lieutenant governor, served as state's governor and now have been here almost a decade. Are we getting close?

[Laughter.]

Mr. RUSSELL. Chairman, Senator, I actually think we are.

The Rock Creek project is scheduled to have a supplemental EIS and final record of decision in the first quarter of 2018. Unfortunately, that's seven or eight years after it was remanded back by the judge.

Montanore, unfortunately, got caught up in the litigation as well and was remanded back, and the agencies are working to revise that record of decision. I must say, someone made the comment earlier, we've been very pleased with the attitude of the Forest Service to try to get this done. It just is taking a long, long time on both projects.

Senator RISCH. Well, thank you so much for your persistence. This is a project that is badly needed in the area that it is in for the reasons everyone stated with the poverty and everything else that is there.

In addition to that, I can say that having been intimately associated with this for decades that Hecla has gone the way extra mile in seeing that the environment is going to be protected.

Obviously, there are some very important lands, as you know, both in Montana and Idaho that you have been very sensitive to caring for as you have gone through this process. So thank you for that.

Most of all, these kinds of stories are just staggering when people go out as entrepreneurs, as people who are going to create wealth

and make life better for Americans and they get nothing but beat over the head from their government and very little help.

So thank you for your perseverance through various administrations, decades, through recessions and everything else to get to where you are and keep it up. Someday we are going to get there, and we sure appreciate what you have done.

Thank you, Madam Chair.

The CHAIRMAN. Thank you, Senator Risch. Your description of your timeline, just kind of boggles the mind.

But Mr. Russell, you mentioned in your statement you have gotten an extension for this expansion, small expansion, ten acres out at Greens Creek, and the reality is that you have to start the permitting request for the next leg of it before you have even allowed the ink to dry on the permit that has just been granted because it takes a full decade, and more than a full decade in many, many cases. Just quite, quite incredible.

Senator King.

Senator KING. Madam Chair, as I was listening to today's hearing I am reminded of a little-known passage in the Old Testament where God came to Moses and said, Moses, I have good news and bad news. Moses said, what's the good news? God said, I'm going to empower you to part the waters of the Red Sea, allow the Israelites to escape, and after they have escaped, the waters will come back and engulf the army of the Pharaoh. Moses said, that's wonderful, God. What's the bad news? God said, you have to prepare the environmental impact statement.

[Laughter.]

Senator RISCH. You know I have read the Old Testament. I am pretty sure that's not exactly the way that story went.

[Laughter.]

Senator KING. I find this hearing fascinating because this is an issue I've been wrestling with for 30 years. I've been an environmental advocate, a developer, a governor, and an administrator. What I said when I was the Governor of Maine, was we want the most stringent environmental standards in the country and the most timely, predictable and efficient permitting process.

I think that is exactly what we ought to be reaching for. To me, there should not be a conflict between environmental standards and a timely and efficient permitting process. The question is, how do we get there?

Mr. Russell, I think you outlined at the end of your testimony a set of standards that are worth discussing. As I have in my notes, identify a lead agency, I think that is crucial. In our experience in Maine, having one agency that is responsible, not multiple, serial permitting applications before multiple agencies. Define the responsibilities of all the agencies that are involved in making contributions to the process. Have parallel analysis among these agencies so it is not seriatim and therefore strings out the time. And then, establish reasonable time limits and hold people accountable. Is that an accurate statement of where you think we ought to be headed?

Mr. RUSSELL. Chairman, Senator, I think you've nailed that. That's exactly right.

And I think the provisions of the FAST best management practices are right along those lines.

Mining, however, is not currently a covered project. If we could bring mining into a similar regulatory regime, I think that would be tremendously helpful to accomplish those objectives.

Senator KING. Well, Ms. Pfleeger, I am a little unclear on where your agency resides in the constellation of federal agencies. Are you within another department? Are you independent? Where do you stand?

Ms. PFLEEGER. So, the Permitting Council, it's an independent Council and OMB was given the statutory authority to pick an agency to house it. We are housed in General Services Administration.

Senator KING. So the key is, I think you have articulated today, to give you some funding so that you can continue the function. And the outline that I gave, is that essentially the direction that you are trying to move federal agencies?

Ms. PFLEEGER. Yes and we are doing that.

As I just mentioned, it's when the new projects come on and they see these benefits from the start, that you all will start to see the improvements in the streamlining of the permitting process.

Senator KING. My concern is that in this situation we see the pendulum swinging back and forth to excessive and untimely regulation that impedes responsible development, but we don't want to swing back to the point where we open the floodgates to irresponsible environmental damage that we will have to live with for generations.

So I think, Madam Chair, the challenge is that in our desire to clean up the environmental, that's an odd choice of terms, cleanup the regulatory process, that we not go too far and undermine the goals of which the regulatory process was established to protect.

I do want to associate myself with Senator Stabenow. This is a separate issue. I am gravely concerned, Madam Chair, about the volume of natural gas exports. We had a hearing in this room three years ago where an expert witness for the natural gas industry sat where you are sitting Mr. Turpin—that's why I'm looking at you—and said, we will never export more than nine percent of domestic production.

We have now approved 55 billion cubic feet a day for export and annual production is 78 billion cubic feet a day.

The one law that this Congress cannot repeal is the law of supply and demand. It concerns me that we are squandering one of the few advantages we have, vis-à-vis Asia and China, in terms of the support for manufacturing and the low, relatively low, cost of natural gas.

If we give that away to these competitors, it will simply be one less advantage we have. Senator Gardner mentioned thousands of jobs—we are talking hundreds of thousands, if not millions of jobs—in the manufacturing sector that have been enabled by the low cost of natural gas.

I just am concerned. It is not relevant to this hearing, but I have to associate myself. I am afraid we are going to look back in four or five years and say, what were we thinking? We have given away

an enormous and national advantage in the energy field that is tremendously important to our manufacturing sector.

So with that, Madam Chair, I compliment you on this hearing. I think this presents very important issues that I am certainly willing to work with you to try to address.

Thank you.

The CHAIRMAN. I look forward to that, Senator King.

I would just note that Senator Inhofe has asked that a statement be included for the record in support of the bill that he has co-sponsored with you. This is S. 1844, the Coordinating Interagency Review of Natural Gas Infrastructure Act of 2017.

We are going to include that statement from Senator Inhofe.

Just not exactly speaking to your point there, but talking about natural gas. So that will be included as part of the record.

[The information referred to follows:]

**STATEMENT OF SENATOR JAMES M. INHOFE ON S. 1844 AND
PERMITTING ISSUES AT THE DECEMBER 12, 2017 SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES HEARING**

December 12, 2017

Thank you, Chairman Murkowski and Ranking Member Cantwell, for holding this hearing on permitting processes at the Department of Interior (DOI) and the Federal Energy Regulatory Commission (FERC) for energy and resource infrastructure projects.

Our infrastructure is failing us and we are falling behind our international competitors who can build out new infrastructure quicker, efficiently moving goods to market. We need to tackle new projects and we need to do more to maintain and upgrade existing infrastructure. Unfortunately, delays in the permitting process happen too often and add significant costs - to the detriment of taxpayers and consumers. One study by Common Good found that a six-year delay more than doubles the effective cost of a project. We must consider ways to make infrastructure funding go further and streamlining the permitting process is a natural fit in a broader infrastructure package. I am confident Congress will take action soon – action that is vital for the economic health of our nation.

The National Environmental Policy Act (NEPA) and the Clean Water Act (CWA) serve important purposes when implemented efficiently and as intended by Congress. The intent of these two statutes is to allow agencies and stakeholders to identify and assess potential impacts from infrastructure projects and collaboratively, and concurrently approve a project that minimizes environmental impacts and best addresses stakeholder concerns.

Unfortunately, implementation of NEPA and CWA by the previous administration has created a standard of delay and inefficiency – preventing economic development. Rather than allowing federal agencies, states and other agencies to act constructively together, these statutes

are increasingly being misused to create delays and foster unproductive entrenchments. Environmental reviews under NEPA have ballooned due, in part, to litigation fears, resulting in exhaustive documents and protracted efforts that leave no pebble unturned. Regulations promulgated by the Council on Environmental Quality in 1978 set a target size for Environmental Impact Statements (EIS). These regulations are still in effect and state that EISs should normally not exceed 150 pages in length and 300 pages in length for proposals of unusual scope or complexity. This is rarely followed. FERC, for example, has issued four Final EISs this year. Excluding appendices, they all weighed in well above that limit: 567; 866; 930; and, 485 pages, respectively. Including appendices, they don't even come close: 1,699; 7,378; 6,971; and, 2,473 pages, respectively. This is symptomatic of a system stretched well beyond its intent.

The framework of the Clean Water Act provides for all Section 401 permits to be acted upon within a reasonable period of time, not to exceed one year after receipt of a request. Some state environmental agencies increasingly abuse permit requests, insisting that applicants withdraw (and refile) requests because the state hasn't been able to meet its statutory obligation. This process re-starts the annual clock and clearly abuses the intent of the CWA. More troubling, states are increasingly abandoning their objectivity and withholding Section 401 permits, not as a result of reasoned analysis but rather in an attempt to obstruct infrastructure proposals.

In my role as Senate Environment and Public Works Committee Chairman, I led the way on a number of infrastructure bills that included provisions to make cumbersome and costly permitting processes better. We amended NEPA to create concurrent reviews between agencies and targeted timeframes for completion of reviews. We raised independent peer review triggers from \$45 million to \$200 million to prevent frivolous studies.

In that same vein, earlier this year I introduced the Coordinating Interagency Review of Natural Gas Infrastructure Act of 2017 (S. 1844) with Senator King. S. 1844 will improve the process to permit certain natural gas pipelines and liquefied natural gas facilities. FERC generally does a good job carrying out their infrastructure permitting responsibilities and Senator King and I drafted this legislation narrowly to target known interagency slowdowns in the permitting process for Natural Gas Act Section 3 and Section 7 applications. S. 1844 is supported by American Petroleum Institute, Interstate Natural Gas Association of America, Natural Gas Supply Association, and the Center for Liquefied Natural Gas and I encourage the Senate Committee on Energy and Natural Resources to consider and act on this important legislation.

Funding from private sources should not be discouraged from investing in infrastructure. Private investment, unquestionably, benefits everyone. Permitting processes, however, must provide consistency and demonstrate that agencies are urgently and constructively working together. Without this, competition among, and indeed participation by, private funding sources will not materialize. Streamlining efforts should always focus on these principles.

Thank you again, Chairman Murkowski and Ranking Member Cantwell, for holding this hearing. As you know, we must continue to assess what is working and what is not working in our existing statutes. I look forward to working with you and the full Senate as we take action to streamline infrastructure permitting.

The CHAIRMAN. Senator Duckworth.

We have just concluded with members, and you are next up.

Senator DUCKWORTH. Thank you, Madam Chair. I squeaked in under the wire. Thank you.

I just want to start by saying thank you for holding this hearing and just to say that while I support efficient permitting systems and understand that it can be extremely challenging to industry, I do believe we have to be discerning on what projects we permit and where. For example, I vehemently oppose the Administration's recent decision to make the largest ever reduction in public lands protection in American history at two national monuments.

In fact, when Secretary Zinke was nominated to be Secretary of the Interior, he likened himself to President Teddy Roosevelt, the father of our National Park System, and I cannot imagine a less accurate portrayal of Secretary Zinke's views of conservation. President Roosevelt is the father of the Antiquities Act and would never have recommended repealing land protections so that uranium mining, oil drilling and coal mining can take place.

Mr. Cason, does the Administration have plans to move forward on permitting activities on these lands?

Mr. CASON. Not at this time.

Senator DUCKWORTH. Okay.

Madam Chairwoman, I would like to submit for the record a couple of items.

One is a law review article published by the University of Virginia earlier this year that determines the President lacks the authority to reverse national monument designations.

The CHAIRMAN. That will be included as part of the record.

Senator DUCKWORTH. Thank you.

[The information referred to follows:]

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ESSAY

PRESIDENTS LACK THE AUTHORITY TO ABOLISH OR DIMINISH NATIONAL MONUMENTS.

INTRODUCTION

BY any measure, the Antiquities Act of 1906 has a remarkable legacy. Under the Antiquities Act, 16 presidents have proclaimed 157 national monuments, protecting a diverse range of historic, archaeological, cultural, and geologic resources.¹ Many of these monuments, including such iconic places as the Grand Canyon, Zion, Olympic, and Acadia, have been expanded and redesignated by Congress as national parks.

While the designation of national monuments is often celebrated, it has on occasion sparked local opposition, and led to calls for a President to abolish or shrink a national monument that a predecessor proclaimed.²

· Mark Squillace, Professor of Law, University of Colorado; Eric Biber, Professor of Law, University of California, Berkeley; Nicholas S. Bryner, Emmett/Frankel Fellow in Environmental Law and Policy, University of California, Los Angeles; Sean B. Hecht, Professor of Policy and Practice & Co-Executive Director, Emmett Institute on Climate Change and the Environment, University of California, Los Angeles. The authors express thanks to Emma Hamilton for research assistance.

¹ See Nat'l Parks Conservation Association, Monuments Protected Under the Antiquities Act (Jan. 13, 2017), <https://www.npca.org/resources/2658-monuments-protected-under-the-antiquities-act>.

² On April 26, 2017, President Trump issued an Executive Order calling for the Secretary of the Interior to review certain national monument designations made since 1996. Exec. Order No. 13,792, Review of Designations Under the Antiquities Act, 82 Fed. Reg. 20,429 (2017), <https://perma.cc/CA3A-QEEQ>. The Order encompasses Antiquities Act designations since 1996 over 100,000 acres in size or “where the Secretary determines that the designation or expansion was made without adequate public outreach and coordination with relevant stakeholders[.]” *Id.* at § 2(a). The Order asks the Secretary to make “recommendations for . . . Presidential actions, legislative proposals, or other actions consistent with law as the Secretary may consider appropriate to carry out the policy” described in the Order. *Id.* at

This article examines the Antiquities Act and other statutes, concluding that the President lacks the legal authority to abolish or diminish national monuments. Instead, these powers are reserved to Congress.

I. THE AUTHORITY TO ABOLISH NATIONAL MONUMENTS

The Property Clause of the Constitution vests in Congress the “[p]ower to dispose of and make all needful Rules and Regulations respecting [public property].”³ The U.S. Supreme Court has frequently reviewed this power in the context of public lands management and found it to be “without limitations.”⁴ Congress can, however, delegate power to the President or other members of the executive branch so long as it sets out an intelligible principle to guide the exercise of executive discretion.⁵

Congress did exactly this when it enacted the Antiquities Act and delegated to the President the power to “declare by public proclamation” national monuments.⁶ At the same time, Congress did not, in the Antiquities Act or otherwise, delegate to the President the authority to modify or revoke the designation of monuments. Further, the Federal Land Policy and Management Act of 1976 (“FLPMA”) makes it clear that the President does not have any implied authority to do so, but rather that Congress reserved for itself the power to modify or revoke monument designations.⁷

§ 2(d)-(e). The limits of presidential authority to abolish or diminish monuments has been the subject of prior analysis, including a report published by the Congressional Research Service in November 2016 and an analysis by the law firm Arnold & Porter Kaye Scholer. Alexandra M. Wyatt, Cong. Research Serv., R44687, *Antiquities Act: Scope of Authority for Modification of National Monuments* (2016), <https://perma.cc/RCT9-UJ8N>; Robert Rosenbaum et al., Arnold & Porter Kaye Scholer, *The President Has No Power Unilaterally to Abolish or Materially Change a National Monument Designation Under the Antiquities Act of 1906* (May 3, 2017), <https://www.npca.org/resources/3197-legal-analysis-of-presidential-ability-to-revoke-national-monuments>.

³ U.S. Const. art. IV, § 3, cl. 2.

⁴ See *Kleppe v. New Mexico*, 426 U.S. 529, 539 (1976) (quoting *United States v. San Francisco*, 310 U.S. 16, 29 (1940)). See also *Ivanhoe Irrigation Dist. v. McCracken*, 357 U.S. 275, 294-295 (1958).

⁵ *J. W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928). The Supreme Court has also made clear that any delegation of legislative power must be construed narrowly to avoid constitutional problems. *Mistretta v. United States*, 488 U.S. 361, 373 n.7 (1989).

⁶ 54 U.S.C. § 320301(a) (2012).

⁷ See *infra* Section I.A.

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A. The Antiquities Act does not grant authority to revoke a monument designation

The United States owns about one third of our nation's lands.⁸ These lands, which exist throughout the country but are concentrated in the western United States, are managed by federal agencies for a wide range of purposes such as preservation, outdoor recreation, mineral and timber extraction, and ranching. Homestead, mining, and other laws transferred ownership rights over large areas of federal lands to private parties. At the same time, vast tracts of land remain in public ownership, and these lands contain a rich assortment of natural, historical, and cultural resources.

Over its long history, Congress has “withdrawn,” or exempted, some federal public lands from statutes that allow for resource extraction and development, and “reserved” them for particular uses, including for preservation and resource conservation.⁹ Congress has also, in several instances, delegated to the executive branch the authority to set aside lands for particular types of protection. The Antiquities Act of 1906 is one such delegation.

The core of the Antiquities Act is both simple and narrow. It reads, in part:

[T]he President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected¹⁰

⁸ See Public Land Law Review Commission, *One Third of the Nation's Land* 19 (1970).

⁹ See, e.g., The Wilderness Act, 16 U.S.C. § 1133(d)(3) (2012) (“[E]ffective January 1, 1984, the minerals in lands designated . . . as wilderness are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing. . . .”); The Wild and Scenic Rivers Act, 16 U.S.C. § 1280(b) (2012) (“The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed [for study as wild and scenic] are hereby withdrawn from all forms of appropriation under the mining laws. . . .”).

¹⁰ Antiquities Act of 1906, 34 Stat. 225 (1906) (prior to 2014 amendment). The language of the Antiquities Act was edited and re-codified in 2014 at 54 U.S.C. § 320301(a)-(b) with the stated intent of “conform[ing] to the understood policy, intent, and purpose of Congress

The narrow authority granted to the President to *reserve* land¹¹ under the Antiquities Act stands in marked contrast to contemporaneous laws that delegated much broader executive authority to designate, repeal, or modify other types of federal reservations of public lands. For example, the Pickett Act of 1910 allowed the President to withdraw public lands from “settlement, location, sale, or entry” and reserve these lands for a wide range of specified purposes “*until revoked by him or an Act of Congress.*”¹² Likewise, the Forest Service Organic Act of 1897 authorized the President “to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification *may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve.*”¹³

Unlike the Pickett Act and the Forest Service Organic Administration Act, the Antiquities Act withholds authority from the President to change or revoke a national monument designation. That authority remains with Congress under the Property Clause.

This interpretation of the President’s authority finds support in the single authoritative executive branch source interpreting the scope of Presidential power to revoke monuments designated under the Antiquities Act: a 1938 opinion by Attorney General Homer Cummings.¹⁴ President Franklin D. Roosevelt had specifically asked Cummings through the Secretary of the Interior whether the Antiquities Act authorized the President to revoke the Castle Pinckney National Monument. In his opinion, Cummings compared the language noted above from the Pickett Act and the Forest Service Organic Act with the language in the Antiquities Act, and concluded unequivocally that the Antiquities Act

in the original enactments[.]” Pub. L. No. 113-287, §§ 2-3, 128 Stat. 3094, 3259 (2014) (codified at 54 U.S.C. § 320301(a)-(b)).

¹¹ In an opinion dated September 15, 2000, the Office of Legal Counsel in the Department of Justice found that the authority to reserve federal land under the Antiquities Act encompassed the authority to proclaim a national monument in the territorial sea—3-12 nautical miles from the shore—or the exclusive economic zone—12-200 nautical miles from the shore. Administration of Coral Reef Resources in the Northwest Hawaiian Islands, 24 Op. O.L.C. 183, 183-85 (Sept. 15, 2000), <https://perma.cc/E8J8-EDL3>.

¹² Pickett Act, Pub. L. No. 303, 36 Stat. 847 (1910) (repealed 1976) (emphasis added).

¹³ Forest Service Organic Act of 1897, ch. 2, 30 Stat. 34 (1897) (codified as amended at 16 U.S.C. § 475 (2006)) (emphasis added).

¹⁴ Proposed Abolishment of Castle Pinckney National Monument, 39 Op. Att’y Gen. 185 (1938).

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“does not authorize [the President] to abolish [national monuments] after they have been established.”¹⁵

B. FLPMA clarifies that only Congress can revoke or downsize a national monument

In 1976, Congress enacted FLPMA.¹⁶ FLPMA governs the management of federal public lands lacking any specific designation as a national park, national forest, national wildlife refuge, or other specialized unit. The text, structure, and legislative history of FLPMA confirm the conclusion of Attorney General Cummings that the President does not possess the authority to revoke or downsize a monument designation.

FLPMA codified federal policy to retain—rather than dispose of—the remaining federal public lands,¹⁷ provided for specific procedures for land-use planning on those lands, and consolidated the wide-ranging legal authorities relating to the uses of those lands.¹⁸ Prior to FLPMA’s enactment, delegations of executive authority to withdraw public lands from development or resource extraction were dispersed among federal statutes, including the Pickett Act and the Forest Service Organic Act. Moreover, in *United States v. Midwest Oil Co.*, the Supreme Court held that the President enjoyed an implied power to withdraw public lands as might be necessary to protect the public interest, at least in the absence of direct statutory authority or prohibition.¹⁹

FLPMA consolidated and streamlined the President’s withdrawal power. It repealed the Pickett Act, along with most other executive au-

¹⁵ Id. at 185–86 (1938).

¹⁶ Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (1976) (codified primarily at 43 U.S.C. §§ 1701–1782 (2012)) [hereinafter “FLPMA”].

¹⁷ See 43 U.S.C. § 1701 (2012).

¹⁸ Land use planning is specifically provided for under § 202 of FLPMA. Id. at § 1712. Additional public land use management authority is found at § 302 of FLPMA, which, among other things, requires the Secretary of the Interior to “take any action necessary to prevent the unnecessary or undue degradation of the lands.” Id. at § 1732(b).

¹⁹ 236 U.S. 459, 491 (1915). *Midwest Oil* involved withdrawals by President Taft of certain public lands from the operation of federal laws that allowed private parties to locate mining claims on public lands and thereby acquire vested rights to the minerals found there. The Secretary of the Interior recommended the withdrawals after receiving a report from the Director of the Geological Survey describing the alarming rate at which federal oil lands were being claimed by private parties. Noting the government’s own need for petroleum resources to support its military, the report lamented that “the Government will be obliged to repurchase the very oil that it has practically given away” Id. at 466–67 (quotation marks omitted).

thority for withdrawing lands—with the notable exception of the Antiquities Act.²⁰ In place of these prior withdrawal authorities, FLPMA included a new provision—section 204—that authorizes the Secretary of the Interior “to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section.”²¹

FLPMA left unchanged the President’s authority to create national monuments under the Antiquities Act, and included language confirming that Congress alone may modify or abolish monuments. Subsection 204(j) of FLPMA somewhat curiously states that “[t]he Secretary [of Interior] shall not . . . modify or revoke any withdrawal creating national monuments under [the Antiquities Act]. . . .”²² Because only the *President*, and not the Secretary of the Interior, has authority to proclaim national monuments, Congress’s reference to the *Secretary’s* authority under the Antiquities Act is anomalous and, as explained further below, may be the result of a drafting error. Nonetheless, this language reinforces the most plausible reading of the text of the Antiquities Act: that it deliberately provides for one-way designation authority. The President may act to create a national monument, but only Congress can modify or revoke that action.

An examination of FLPMA’s legislative history removes any doubt that section 204(j) was intended to reserve to Congress the exclusive au-

²⁰ FLPMA, § 704(a), 90 Stat. 2792 (1976). The authority to create or modify forest reserves was repealed in 1907 for six specific states before its repeal was extended to all states in FLPMA Section 704(a). 34 Stat. 1269, 1271 (1907).

²¹ 43 U.S.C. § 1714(a) (2012) (emphasis added).

²² *Id.* at § 1714(j). The provision reads in its entirety as follows, with emphasis on the part relating to the Antiquities Act:

The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; make a withdrawal which can be made only by Act of Congress; *modify or revoke any withdrawal creating national monuments under [the Antiquities Act]*; or modify, or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to October 21, 1976, or which thereafter adds lands to that System under the terms of this Act. Nothing in this Act is intended to modify or change any provision of the Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 668dd(a)).

Id. The reference in the first clause prohibiting the Secretary from “mak[ing]” a withdrawal “created by [an] Act of Congress” does not make sense because the Secretary cannot logically “make” a withdrawal already created by Congress. But it also is not relevant to the Antiquities Act since national monuments are created by the President, not Congress. *Id.* The second clause likewise addresses withdrawals made by Congress. The third clause is the only one that specifically addresses the Antiquities Act; it makes clear that the Secretary cannot modify or revoke national monuments. The final operative clause likewise prohibits the Secretary from revoking or modifying withdrawals, in that case involving National Wildlife Refuges.

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thority to modify or revoke national monuments. FLPMA's restriction of executive withdrawal powers originated in the House version of the legislation.²³ Skepticism in the House towards executive withdrawal authority dated back to the 1970 report of the Public Lands Law Review Commission (PLLRC), a Congressionally-created special committee tasked with recommending a complete overhaul of the public land laws. The PLLRC report called on Congress to repeal all existing withdrawal powers, including the power to create national monuments under the Antiquities Act.²⁴ The Commission suggested replacing this authority with a comprehensive withdrawal process run by the Secretary of the Interior and closely supervised by Congress.²⁵

The House Committee on Interior and Insular Affairs' Subcommittee on Public Lands largely followed this recommendation by including Section 204 in its draft of FLPMA.²⁶ Complementing this section, the bill presented to and passed by the House included a provision—ultimately enacted as Section 704(a) of FLPMA—that repealed the Pickett Act and other extant laws allowing executive withdrawals, as well as the implied executive authority to withdraw public lands that the Supreme Court had recognized in *Midwest Oil*.²⁷

Consistent with this approach, the Subcommittee on Public Lands drafted Section 204(j) in order to constrain executive branch discretion in the context of national monuments. The Subcommittee frequently discussed the issue during its detailed markup sessions in 1975 and early 1976 on its version of the bill that would eventually become FLPMA.²⁸

At an early markup session in May 1975, some subcommittee members, under the mistaken impression that the Secretary of the Interior created national monuments, expressed concerns that some future Secretary might modify or revoke them.²⁹ The Subcommittee therefore began

²³ See H.R. 13777, 94th Cong. § 604(b) (1976). The Senate bill contained no restrictions on executive withdrawal power. See S. 577, 94th Cong. (1975).

²⁴ See Public Land Law Review Commission, *supra* note 8, at 2, 54–57.

²⁵ *Id.* at 56–57.

²⁶ H.R. 13777, 94th Cong. § 204 (1976).

²⁷ See *id.* at § 604(b) (1976). See also *Midwest Oil*, 236 U.S. at 491.

²⁸ The subcommittee's hearings and markups focused on H.R. 5224, which eventually passed the full Committee in April 1976. An amended version was reintroduced as a clean bill, H.R. 13777, which was approved by the House and sent to the conference committee. See H.R. Rep. No. 94-1163, at 33 (1976), *reprinted in* 1976 U.S.C.C.A.N. 6175, 6207 (1976) (describing replacement of H.R. 5224 with H.R. 13777 by committee).

²⁹ See H.R. 5224, et al., Public Land Policy and Management Act of 1975: Hearing Before the Subcomm. on Pub. Lands of the H. Comm. on Interior and Insular Affairs, 94th Cong.

shaping the bill to eliminate any possibility of unilateral executive power to modify or revoke monuments, while maintaining the existing power to create monuments.³⁰

Once the Subcommittee's misunderstanding about Secretarial authority to designate monuments became apparent, the Subcommittee also proposed shifting the authority to create national monuments from the President to the Secretary, in the pattern of consolidating withdrawal authority in Section 204.³¹ The first version of what later became Section 204(j) of FLPMA was drafted after this discussion, as was a provision that would have amended the Antiquities Act to transfer designation authority from the President to the Secretary of the Interior.³² The Ford Administration appeared to object generally to constraining executive power to withdraw public lands.³³ As part of the subsequent changes to the draft legislation, the Subcommittee dropped the provision that would

88–93 (May 6, 1975) [hereinafter May 6 Hearing]. Later statements by subcommittee members indicate that their understanding was that the Secretary had delegated authority to propose the creation of monuments, but that they were ultimately proclaimed by the President. H.R. 5224 & H.R. 5622: Hearing before the Subcomm. on Pub. Lands of the H. Comm. on Interior and Insular Affairs, 94th Cong. 184 (June 6, 1975) [hereinafter June 6 Hearing].

³⁰ May 6 Hearing, *supra* note 29, at 91 (statement of Rep. Melcher):

I would say that it would be better for us if, in presenting this bill to the House, for that matter in full committee, if we made it clear that the Secretary and perhaps also make it part of the bill somewhere, that he can not revoke a national monument.

See also *id.* at 93 (statement of committee staff member Irving Senzel: “So we could put in here that—we can put in the statement that he cannot revoke national monuments once created.”); H.R. 5224 & H.R. 5622: Hearing Before the Subcomm. on Pub. Lands of the H. Comm. on Interior and Insular Affairs, 94th Cong. 176 (June 6, 1975) (statement of committee staff member Irving Senzel: “In accordance with the decision made the last time, there is a section added in there that provides that no modification or revocation of national monuments can be made except by act of Congress.”).

³¹ See June 6 Hearing, *supra* note 29, at 183–85.

³² See Public Land Policy and Management Act of 1975 Print No. 2: Hearing Before the Subcomm. on Pub. Lands of the H. Comm. on Interior and Insular Affairs, 94th Cong. 23–24 (Sept. 8, 1975) (prohibiting the Secretary from modifying or revoking a national monument). *Id.* at 92 (amending the Antiquities Act by substituting “Secretary of the Interior” for “President of the United States”).

³³ See H.R. Rep. No. 94-1163, at 41–42, 52 (May 15, 1976). The comments from the Assistant Secretary of the Interior from November 21, 1975, on Subcommittee Print No. 2 listed the proposed changes to withdrawal authority as one of the reasons for the Administration's opposition to that version of the bill, noting that under it, “the proposed . . . Act would be the only basis for withdrawal authority.” *Id.* at 52.

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have transferred monument designation authority from the President to the Secretary.³⁴

Nonetheless, the Subcommittee retained Section 204(j). Pairing Section 204(j) with the proposed transfer of monument designation power strongly suggests that the language of Section 204(j) was not an effort to constrain (non-existent) Secretarial authority to modify or revoke national monuments while retaining Presidential authority to do so. Instead, it was part of an overall plan to constrain and systematize all executive branch withdrawal power, and reserve to Congress the powers to modify or rescind monument designations.³⁵ The House Committee's Report on the bill makes clear that this provision was designed to prevent *any* unilateral executive modification or revocation of national monuments. In describing Section 204 of the bill as it was presented for debate on the House floor, the Report explains:

With certain exceptions, [the bill] will repeal all existing law relating to executive authority to create, modify, and terminate withdrawals and reservations. It would reserve to the Congress the authority to create, modify, and terminate withdrawals for national parks, national forests, the Wilderness System, Indian reservations, certain defense withdrawals, and withdrawals for National Wild and Scenic Rivers, National Trails, and for other "national" recreation units, such as National Recreation Areas and National Seashores. *It would also specifically reserve to the Congress the authority to modify and revoke withdrawals for national monuments created under the Antiquities Act* and for modification and revocation of withdrawals adding lands to the National Wildlife Refuge System. These provisions will insure that the integrity of the great national resource management systems will remain under the control of the Congress.³⁶

Thus, notwithstanding the anomalous reference to the Secretary in Section 204(j), Congress explicitly stated its intention to reserve for it-

³⁴ See See Public Land Policy and Management Act of 1975 Print No. 4: Hearing Before the Subcomm. on Pub. Lands of the H. Comm. on Interior and Insular Affairs 94th Cong. (March 16, 1976).

³⁵ See *id.* at 30.

³⁶ H.R. Rep. No. 94-1163, at 9 (May 15, 1976) (emphasis added). Floor debates in the House do not contain any record of discussing this particular issue, and the Conference Report on FLPMA, later in 1976, did not specifically address it.

self the authority to modify or revoke national monuments.³⁷ The plain language of this report, combined with other statements in the legislative history and the process by which Congress created Section 204(j), make clear that Congress' intent was to constrain all executive branch power to modify or revoke national monuments, not just Secretarial authority.

In light of the text of the Antiquities Act, the contrasting language in other statutes at the turn of the 20th century, and the changes to federal land management law in FLPMA, the Antiquities Act must be construed to limit the President's authority to proclaiming national monuments on federal lands. Only Congress can modify or revoke such proclamations.

II. AUTHORITY FOR SHRINKING NATIONAL MONUMENTS OR REMOVING RESTRICTIVE TERMS

If the President cannot abolish a national monument because Congress did not delegate that authority to the President, it follows that the President also lacks the power to downsize or loosen the protections afforded to a monument. This conclusion is reinforced by the use of the phrase "modify and revoke" in Section 204(j) of FLPMA to describe prohibited actions.³⁸ Moreover, while the Antiquities Act limits national monuments to "the smallest area compatible with the proper care and management of the objects to be protected,"³⁹ that language does not grant the President the authority to second-guess the judgments made by previous Presidents regarding the area or level of protection needed to protect the objects identified in an Antiquities Act proclamation.

³⁷ The most plausible interpretation of the reference to the Secretary in the text is that there was a drafting error on the part of the Subcommittee in failing to update the reference in Section 204(j) when it dropped the parallel language transferring monument designation authority from the President to the Secretary. The only other plausible interpretation of Section 204(j) is that the provision was designed to make clear that Section 204(a), which authorizes the Secretary to modify or revoke withdrawals, was not intended to grant new authority to the Secretary over national monuments. Under this reading, the reference to the Secretary in Section 204(j) would not be anomalous but would serve the specific purpose of restricting the scope of Section 204(a). But whether the reference to the Secretary in Section 204(j) was a drafting error, or simply a clarification about the limits of the Secretary's power under Section 204(a) does not really matter because either interpretation is consistent with the conclusion that Congress intended to reserve for itself the power to modify or revoke national monuments. FLPMA's legislative history strongly reinforces this point. See *supra* notes 29–36.

³⁸ FLPMA, § 204(j), 90 Stat. 2743, 2754 (1976).

³⁹ 54 U.S.C. § 320301(b).

A. Presidents lack legal authority to shrink national monuments

Over the first several decades of the Antiquities Act's existence, various Presidents reduced the size of various monuments that their predecessors had designated. Most of these actions were relatively minor, although the decision by President Woodrow Wilson to dramatically reduce the size of the Mount Olympus National Monument, which is described briefly below, was both significant and controversial.⁴⁰ Importantly though, no Presidential decision to reduce the size of a national monument has ever been tested in court, and so no court has ever ruled on the legality of such an action. Moreover, all such actions occurred before 1976 when FLPMA became law. As the language and legislative history of FLPMA make clear, Congress has quite intentionally reserved to itself "the authority to *modify* and revoke withdrawals for national monuments created under the Antiquities Act."⁴¹

In his 1938 opinion, Attorney General Cummings acknowledged the history of modifications to national monuments, noting that "the President from time to time has diminished the area of national monuments established under the Antiquities Act by removing or excluding lands therefrom."⁴² The opinion, however, does not directly address whether these actions were legal, and does not analyze this issue, other than to reference the language from the Antiquities Act that limits monuments to "the smallest area compatible with the proper care and management of the objects to be protected."⁴³

The Interior Department's Solicitors did review several presidential attempts to shrink monuments, but reached inconsistent conclusions. In

⁴⁰ See Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 Ga. L. Rev. 473, 561–64 (2003).

⁴¹ H.R. Rep. 94-1163, at 9 (emphasis added). 43 U.S.C. 1714(j) ("The Secretary shall not . . . *modify* or revoke any withdrawal creating national monuments under [the Antiquities Act].") (emphasis added).

⁴² Proposed Abolishment of Castle Pinckney National Monument, 39 Op. Att'y Gen. 185, 188 (1938).

⁴³ *Id.* at 188 (quoting 54 U.S.C. § 320301(b)). See also Wyatt, *supra* note 2, at 5. Much like the Attorney General's 1938 Opinion, the CRS report acknowledges that "there is precedent for Presidents to reduce the size of national monuments. . .", and that "[s]uch actions are presumably based on the determination that the areas to be excluded represent the President's judgment as to 'the smallest area compatible with the proper care and management of the objects to be protected.'" *Id.* But also like the Attorney General's Opinion, the report never actually analyzes the legal issue in depth and it does not address the particular question as to whether FLPMA might have resolved or clarified the issue against allowing presidential modifications. *Id.*

1915, the Solicitor examined President Woodrow Wilson's proposal to shrink the Mount Olympus National Monument, which President Theodore Roosevelt had designated in 1909.⁴⁴ Without addressing the core legal issue of whether the President had authority to change the monument status of lands designated by a prior President, the Solicitor expressed the opinion that lands removed from the monument would revert to national forest (rather than unreserved public domain) because they had previously been national forest lands.⁴⁵

In the end, President Wilson did downsize the Mount Olympus National Monument by more than 313,000 acres, nearly cutting it in half.⁴⁶ Despite an outcry from the conservation community, Wilson's decision went unchallenged in court.⁴⁷

In 1924, for the first time, the Solicitor squarely confronted the issue of whether a President has the authority to reduce the size of a national monument, concluding that the President lacked this authority. The Solicitor considered whether the President could reduce the size of the Gran Quivira⁴⁸ and Chaco Canyon National Monuments.⁴⁹ Relying on a 1921 Attorney General's opinion involving "public land reserved for lighthouse purposes," the Solicitor concluded that the President was not authorized to restore lands to the public domain that had been previously set aside as part of a national monument.⁵⁰ The Solicitor confirmed this position in a subsequent decision issued in 1932.⁵¹

⁴⁴ Proclamation No. 869, 35 Stat. 2247 (1909) (creating Mount Olympus National Monument); see also Squillace, *supra* note 40, at 562–63 (discussing the review of President Wilson's proposal).

⁴⁵ U.S. Dep't of the Interior, Office of the Solicitor, Solicitor's Opinion of April 20, 1915, at 4–6. The University of Colorado Law Library has established a permanent, online database that includes the four unpublished Solicitor's Opinions cited in this article. That database is available at <http://scholar.law.colorado.edu/research-data/4/>.

⁴⁶ Proclamation No. 1293, 39 Stat. 1726 (1915); Squillace, *supra* note 40, at 562.

⁴⁷ See Squillace, *supra* note 40, at 563–64.

⁴⁸ Proclamation No. 959, 36 Stat. 2503 (1909) (creating Gran Quivira National Monument).

⁴⁹ Proclamation No. 740, 35 Stat. 2119 (1907) (creating Chaco Canyon National Monument).

⁵⁰ U.S. Dep't of the Interior, Office of the Solicitor, Solicitor's Opinion of June 3, 1924, M-12501 (citing 32 Op. Att'y Gen. 438 (1921)). In language that anticipated the later 1938 opinion, this 1921 Attorney General's opinion concluded that "[t]he power to thus reserve public lands and appropriate them . . . does not necessarily include the power to either restore them to the general public domain or transfer them to another department." *Disposition of Abandoned Lighthouse Sites*, 32 Op. Att'y Gen. 488, 488–91 (1921) (quoting *Camp Hancock—Transfer to Dept. of Agriculture*, 28 Op. Att'y Gen. 143, 144 (1921)). The Solicitor's 1924 opinion on Gran Quivira and Chaco Canyon might be distinguished from the 1915

Subsequently, in 1935, the Interior Solicitor reversed the agency's position, but this time on somewhat narrow grounds.⁵² This opinion relied heavily on the implied authority of the President to make and modify withdrawals that the U.S. Supreme Court upheld in *United States v. Midwest Oil Co.*⁵³ The argument that *Midwest Oil* imbues the President with implied authority to modify or abolish national monuments is problematic, however, for at least three reasons. First, as described previously, Congress enjoys plenary authority over our public lands under the Constitution, and the President's authority to proclaim a national monument derives solely from the delegation of that power to the President under the Antiquities Act.⁵⁴ But the Antiquities Act grants the President only the power to reserve land, not to modify or revoke such reservations. Such actions, therefore, are beyond the scope of Congress' delegation. Second, the *Midwest Oil* decision relied heavily on the perception that Presidential action was necessary to protect the public interest by preventing public lands from exploitation for private gain. Construing the law to allow a President to open lands to private exploitation protects no such interest. Finally, and as noted previously, Congress expressly overruled *Midwest Oil* when it enacted FLPMA in 1976.⁵⁵ Thus, even if those earlier, pre-FLPMA monument modifications might arguably have been supported by implied presidential authority, that implied authority

opinion on Mount Olympus National Monument, on the grounds that the earlier opinion had specifically supported the modification of the monument because the lands would not be restored to the public domain, but would rather be reclassified as national forests. Solicitor's Opinion of April 20, 1915, *supra* note 45, at 6. The legal argument against the modification of monument proclamations, however, has never rested on whether the lands would be restored to the public domain or revert to another reservation or designation.

⁵¹ U.S. Dep't of the Interior, Office of the Solicitor, Solicitor's Opinion of May 16, 1932, M-27025 (opinion regarding Death Valley National Monument).

⁵² U.S. Dep't of the Interior, Office of the Solicitor, Solicitor's Opinion of January 30, 1935, M-27657 (upholding the validity of the reduction of Mount Olympus National Monument since no interdepartmental transfer). See also National Monuments, 60 Interior Dec. 9, 9-10 (July 21, 1947) (solicitor opinion reaffirming the 1935 opinion).

⁵³ U.S. Dep't of the Interior, Office of the Solicitor, Solicitor's Opinion of January 30, 1935, M-27657; *United States v. Midwest Oil Co.*, 236 U.S. 459, 483 (1915).

⁵⁴ See, *supra* Part I.

⁵⁵ FLPMA, § 704(a), 90 Stat. 2792 (1976). While the text of Section 704(a) specifically mentions the power of the President "to make withdrawals," given the clear intent of Congress in FLPMA to reduce executive withdrawal power, the section is best understood as also repealing any inherent Presidential power recognized in *Midwest Oil* to modify or revoke withdrawals as well.

is no longer available to justify the shrinking of national monuments following the passage of FLPMA.⁵⁶

Some critics of national monument designations have argued that a President can downsize a national monument by demonstrating that the area reserved does not represent the “smallest area compatible” with the protection of the resources and sites identified in the monument proclamation.⁵⁷ But allowing a President to second-guess the judgment of a predecessor as to the amount of land needed to protect the objects identified in a proclamation is fraught with peril because it essentially denies the first President the power that Congress granted to proclaim monuments. If that were the law, then nothing would stop a President from deciding that the objects identified by a prior President were themselves not worthy of protection. Congress clearly intended the one-way power to reserve lands as national monuments to avoid this danger. Moreover, the fact that national monuments often encompass large landscapes, which are themselves denoted as the objects warranting protection, is not a cause for concern because the courts, including the U.S. Supreme Court, have consistently upheld the use of the Antiquities Act to protect such landscapes as “objects of historic or scientific interest.”⁵⁸ Courts

⁵⁶ This repeal removes any presumption of inherent Presidential authority to withdraw public lands or modify past withdrawals. As noted above, such authority, if any, must derive from an express delegation from the Congress. In this way, the power of the President or any executive branch agency over public lands is unlike the inherent power of the President to issue, amend, or repeal executive orders or the inherent power of the Congress to promulgate, amend or repeal laws. It is arguably akin to the power of administrative agencies to issue, amend, or repeal rules but, unlike the Antiquities Act, each of these powers has been expressly delegated to agencies by the Administrative Procedure Act. See 5 U.S.C. § 551(5) (2012) (definition of “rulemaking”).

⁵⁷ See, e.g., John Yoo & Todd Gaziano, Am. Enter. Inst., *Presidential Authority to Revoke or Reduce National Monument Designations* 14–18 (2017), <https://perma.cc/PX7W-UD3E>. The Interior Solicitor’s 1935 opinion, and a subsequent one in 1947, addressed this issue in reviewing and supporting the validity of the decision by Woodrow Wilson to shrink the Mt. Olympus National Monument. Squillace, *supra* note 40, at 560–64. According to that opinion, both the Interior and Agriculture Departments thought the area was “larger than necessary.” U.S. Dep’t of the Interior, Office of the Solicitor, *Solicitor’s Opinion* of Jan. 30, 1935, M-27657 (<http://scholar.law.colorado.edu/research-data/4/>). However, there is no legal basis for concluding that the opinions of cabinet officials should overturn a prior presidential determination as to the scope and management requirements of a protected monument. Squillace, *supra* note 40, at 560–64.

⁵⁸ See *Cameron v. United States*, 252 U.S. 450, 455–56 (1920). The Court dismissed the plaintiff’s objection to the establishment of the 808,120 acre Grand Canyon National Monument with these words:

The Grand Canyon, as stated in [President Roosevelt’s] proclamation, “is an object of unusual scientific interest.” It is the greatest eroded canyon in the United States, if not

have upheld two prominent examples of landscape level monuments under these broad interpretations: the Grand Canyon,⁵⁹ designated less than two years after the Antiquities Act's passage; and the Giant Sequoia National Monument, created in 2000.⁶⁰

It is conceivable, of course, that a revised proclamation might be needed to correct a mistake or to clarify a legal description in the original proclamation, as occurred very early on when President Taft proclaimed the Navajo National Monument and subsequently issued a second proclamation clarifying what had been an extremely ambiguous legal description.⁶¹ But the clear restriction on modifying or revoking a national monument designation—cemented by FLPMA—indicates that a President cannot simply revisit a predecessor's decision about how much public land should be protected.

in the world, is over a mile in depth, has attracted wide attention among explorers and scientists, affords an unexampled field for geologic study, is regarded as one of the great natural wonders, and annually draws to its borders thousands of visitors.

Id. at 455–56. See also, *Tulare Cty. v. Bush*, 306 F.3d 1138, 1140–41 (D.C. Cir. 2002) (discussing Giant Sequoia National Monument). Additional Supreme Court cases that address Antiquities Act designations support this broad interpretation of what may constitute an “object of historic or scientific interest.” See *United States v. California*, 436 U.S. 32, 34 (1978) (Channel Islands); *Cappaert v. United States*, 426 U.S. 128, 131–32, 142 (1976) (Devil's Hole).

⁵⁹ *Cameron*, 252 U.S. at 455–56.

⁶⁰ *Tulare Cty.*, 306 F.3d at 1140–41.

⁶¹ Taft's original proclamation for the Navajo National Monument in Arizona protected:

[A]ll prehistoric cliff dwellings, pueblo and other ruins and relics of prehistoric peoples, situated upon the Navajo Indian Reservation, Arizona between the parallels of latitude thirty-six degrees thirty minutes North, and thirty-seven degrees North, and between longitude one hundred and ten degrees West and one hundred and ten degrees forty-five minutes West . . . together with forty acres of land upon which each ruin is located, in square form, the side lines running north and south and east and west, equidistant from the respective centers of said ruins.

Proclamation No. 873, 36 Stat. 2491, 2491–92 (1909). The map accompanying the proclamation states that Navajo National Monument is “[e]mbracing all cliff-dwelling and pueblo ruins between the parallel of latitude 36°30' North and 37 North and longitude 110° West and 110° 45' West. . . with 40 acres of land in square form around each of said ruins.” *Id.* at 493. Thus, the original proclamation was ambiguous. It plainly was not intended to include all of the lands within the latitude and longitude description but only 40 acres around the ruins in that area. The map specifically identified at least 7 sites as “ruins” and appeared to denote a handful of other sites that might have been intended for protection under the original proclamation, although the map is a little unclear on this point. The revised proclamation issued three years later, also by Taft, clarified the ambiguous references in the original proclamation. It included a survey done after the original proclamation and protects two, 160-acre tracts of land and one, 40 acre tract. Proclamation No. 1186, 37 Stat. 1733, 1733–34, 1738 (1912).

B. Removing protections that apply on national monuments would be an unlawful modification

A related issue is whether a President can modify a national monument proclamation by removing some or all of the protections applied to the monument area, such as limitations on livestock grazing, mineral leasing, or mining claims location. Plainly, these are types of “modifications.” As discussed above, Congress’s use of the phrase “modify and revoke” to describe prohibited actions demonstrates that the same legal principles apply here as would apply to an attempt to abolish a monument.⁶² More generally, if a President lacks the authority to abolish or downsize a monument, it would also suggest a lack of presidential authority to remove any restrictions imposed by a predecessor. Moreover, to the extent that a claim of presidential authority rests on an argument that the President can shrink a monument to conform to the “smallest area compatible” language of the Antiquities Act, that argument would be inapplicable to an effort to remove restrictive language from a predecessor’s national monument proclamation.⁶³

Aside from these legal arguments, construing the Antiquities Act as providing one-way Presidential designation authority is consistent with the fundamental goal of the statute. Faced with a concern that historical, archaeological, and natural or scenic resources could be damaged or lost, Congress purposefully devised a delegation to the President to act quickly to ensure the preservation of objects of historic and scientific interest on public lands before they are looted or compromised by incompatible land uses, such as the location of mining claims. Once the President has determined that these objects are worthy of protection, no future President should be able to undermine that choice. That is a decision that Congress lawfully reserved for itself under the terms of the Antiquities Act, a point that Congress reinforced in the text and legislative history of FLPMA.

⁶² See *supra* Section II.A.

⁶³ In *National Monuments*, *supra* note 52, at 10, the Solicitor acknowledged that the Mineral Leasing Act does not apply to national monuments. Nonetheless, he held that “in the event of actual or threatened drainage of oil or gas under lands within the Jackson Hole National Monument by wells on non-federally-owned lands, the authority to take the necessary protective action, including the issuance of oil and gas leases, would impliedly exist.” *Id.* at 10–11. To be clear, however, the Solicitor was not sanctioning surface occupancy of national monument lands but only the issuance of leases that would allow the federal government and the lessee to share in the oil and gas production that was being extracted from a well on non-federal lands. For further discussion of this issue, see *Squillace*, *supra* note 40, at 566–68.

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CONCLUSION

Our conclusion, based on analysis of the text of the Antiquities Act and other statutes, legislative history, and prior legal opinions, is that the President lacks the authority to abolish or downsize a monument, or otherwise weaken the protections afforded by a national monument proclamation declared by a predecessor. Moreover, while we believe this to be the correct reading of the law from the time of enactment of the Antiquities Act in 1906, the enactment of FLPMA in 1976 removes any doubt as to whether Congress intended to reserve for itself the power to revoke or modify national monument proclamations, because Congress stated so explicitly.

Presidents may retain some authority to clarify a proclamation that contains an ambiguous legal description or a mistake of fact.⁶⁴ Where expert opinions differ, however, courts should defer to the choices made by the President proclaiming the monument and the relevant objects designated for protection. Otherwise, a future President could undermine the one-way conservation authority afforded the President under the Antiquities Act and the congressional decision to reserve for itself the authority to abolish or modify national monuments.

The remarkable success of the Antiquities Act in preserving many of our nation's most iconic places is perhaps best captured by the fact that Congress has never repealed any significant monument designation.⁶⁵ Instead, in many instances, Congress has expanded national monuments and redesignated them as national parks.⁶⁶ For more than 100 years, Presidents from Teddy Roosevelt to Barack Obama have used the Antiquities Act to protect our historical, scientific, and cultural heritage, often at the very moment when these resources were at risk of exploitation. That is the enduring legacy of this extraordinary law. And it remains our best hope for preserving our public land resources well into the future.

⁶⁴ See *supra* note 61 and accompanying text.

⁶⁵ About a dozen monuments have been abolished by the Congress. None of these were larger than 10,000 acres, and no monument established by a president has been redesignated by Congress without redesignating the land as part of another national monument or other protected area since 1956. See Squillace, *supra* note 40, at 550, 585–610 (appendix). See also National Park Service, Archeology Program: Frequently Asked Questions (May 31, 2017), <https://perma.cc/BW3C-X52Z> (noting no parks as “abolished” since 1956 except for Misty Fjords, which was subsequently made part of Tongass National Park).


⁶⁶ See e.g., Proclamation No. 277, 40 Stat. 1175 (1919) (expanding size of Grand Canyon park).

Senator DUCKWORTH. And then the second is an article that ran in the Washington Post detailing that a uranium mining firm urged the Trump Administration to reverse land protections at Bears Ears.

The CHAIRMAN. We will include that as well.

Senator DUCKWORTH. Thank you.

[The information referred to follows:]

 The Washington Post

Health & Science

Uranium firm urged Trump officials to shrink Bears Ears National Monument

By Juliet Elperin December 8

A uranium company launched a concerted lobbying campaign to scale back Bears Ears National Monument, saying such action would give it easier access to the area's uranium deposits and help it operate a nearby processing mill, according to documents obtained by The Washington Post.

Interior Secretary Ryan Zinke and top Utah Republicans have said repeatedly that questions of mining or drilling played no role in President Trump's announcement Monday that he was cutting the site by more than 1.1 million acres, or 85 percent. Trump also signed a proclamation nearly halving the Grand Staircase-Escalante National Monument, which is also in southern Utah and has significant coal deposits.

"This is not about energy," Zinke told reporters Tuesday. "There is no mine within Bears Ears."

But the nation's sole uranium processing mill sits directly next to the boundaries that President Barack Obama designated a year ago when he established Bears Ears. The documents show that Energy Fuels Resources (USA) Inc., a subsidiary of a Canadian firm, urged the Trump administration to limit the monument to the smallest size needed to protect key objects and areas, such as archeological sites, to make it easier to access the radioactive ore.

In a May 25 letter to the Interior Department, Chief Operating Officer Mark Chalmers wrote that the 1.35 million-acre expanse Obama created "could affect existing and future mill operations." He later noted, "There are also many other known uranium and vanadium deposits located within the [original boundaries] that could provide valuable energy and mineral resources in the future."

Trump instructed Zinke in April to assess 27 monuments designated under the 1906 Antiquities Act, which gives presidents wide latitude to protect federal lands and waters under threat. Conservationists, tribal officials, ranching groups and other interests sought to influence the review's outcome, unsuccessfully in the case of the two Utah sites.

Gov. Gary R. Herbert (R-Utah) addressed the energy considerations in an interview Monday. “The only thing that smacks of energy is the uranium,” he said. “The uranium deposits are outside the monument now.”

Energy Fuels Resources did not just weigh in on national monuments through public-comment letters. It hired a team of lobbyists at Faegre Baker Daniels — led by Andrew Wheeler, who is awaiting Senate confirmation as the Environmental Protection Agency’s deputy secretary — to work on the matter and other federal policies affecting the company. It paid the firm \$30,000 between Jan. 1 and Sept. 30, according to federal lobbying records, for work on this and other priorities.

The company’s vice president of operations, William Paul Goranson, joined Wheeler and two other lobbyists, including former congresswoman Mary Bono (R-Calif.), to discuss Bears Ears in a July 17 meeting with two top Zinke advisers.

Goranson said Friday that the session with Downey Magallanes, who oversaw the monuments review and serves as Zinke’s deputy chief of staff for policy, and Vincent De Vito, his energy policy counselor, was focused on fairly narrow issues.

Company officials “were trying to get a sense of what was going on” with the review because some of their air and water quality monitoring stations and a road leading to the now-dormant Daneros mine all lay within the original monument, Goranson explained.

“The goal of the meeting . . . was not to go and advocate on the boundaries,” he said, adding that the lobbying for that was “on a separate track.” Still, the officials proposed small boundary adjustments to accommodate the monitoring stations as well as the mine, he acknowledged. And they emphasized that the company had cut its workforce by more than half since 2015 because of low uranium prices.

“They heard what we had to say about the job losses, etc.,” he said. Zinke’s deputies “were pretty positively disposed to” the idea of spurring future domestic uranium production.

The Interior Department did not respond to a request for comment Friday.

The price of uranium has recently hovered between \$20 and \$25 per pound. To justify mining activity, it needs to approach \$40 to \$50. Michael Heim, a securities research analyst at Noble Capital Markets, said Friday that the current amount “is not a sustainable price” for firms such as Energy Fuels Resources. Given today’s price, Heim said, “the idea of creating more areas to mine wouldn’t have much impact.”

But Goranson said he and other company officials are “confident” that the construction of nuclear plants in Asia and elsewhere, along with other factors, will eventually push prices higher and justify reopening the Daneros mine.

Greg Zimmerman, deputy director of the Center for Western Priorities, a conservation and advocacy group, said the Energy Fuels Resources effort shows the extent to which industry interests influenced the monuments review.

“You listen to the rhetoric about how this was all really about taking special interests out of the equation,” Zimmerman said. “They’re doing this on behalf of special interests. When you look in terms of public access to recreation areas, there’s not a hunter or angler or outdoor recreationist who wants to be out and around an uranium mine.”

The idea of uranium mining is particularly sensitive among members of the Navajo Nation, who have a reservation near Bears Ears and played a key role in pressing for its creation. More than 500 uranium mines have been left near or on their lands, and most of these designated Superfund sites have not been cleaned up. Contamination still affects drinking-water wells, springs and storage tanks.

Navajo Nation Council delegate Amber Kanazbah Crotty, who represents several communities near Bears Ears, said Friday that the nation opposes any additional uranium development. “We felt the full brunt of uranium contamination and lost a whole generation of men who were mining or milling uranium,” she said.

The Navajo Nation and other tribes are challenging Trump’s Bears Ears proclamation in federal court, and Navajo President Russell Begaye expressed confidence in an interview that the move will be overturned.

Yet “there is a definite door that’s been opened” with its signing, he said. “With this proclamation, it’s an open invitation for mining companies to come in and start mining uranium and other minerals in the area.”

Senator DUCKWORTH. I commend the State of Washington which appears to have found a pathway forward on how to manage the workload associated with infrastructure permitting requirements.

Mr. Brown, the Trump Administration has proposed draconian budget cuts across the Administration and has sought early retirements from our civil servants.

In your opinion, would this make federal permitting more or less burdensome for industry?

Mr. BROWN. I think the permitting process would be difficult with reduced funding for oversight of these projects.

If the federal projects, our partners that we work with, don't have the oversight ability to ensure proper environmental regulations then that would fall to the states. And the states' authority, for example, 401 certification, we would need to condition those permits and those licenses in order to ensure that our water quality standards and other permit regulations are met. So as we lose expertise on the federal level with our federal partners, the states would need to make up for that. I do think that losing funding in the Federal Government level would impact the permitting process greatly on both the federal and the state side.

Senator DUCKWORTH. So do you think the states will be able to afford to come up with that additional cost shift from the federal into the government? To the state governments, excuse me.

Mr. BROWN. No—there's pass-through funding for us to implement. Our delegated authority is often impacted, as well, so we have less resources. And we must prioritize our regulatory oversight as well.

And so, with the water power licensing fees that we have, although it doesn't fully fund the program, it does, sort of, move those projects to the front of the line because they do have somebody in place with the expertise to be there for early engagement and to begin the permitting process.

But funding at that level and working with industry to get those funding approved through state legislature is very difficult. We feel like we've been successful in working with our industry partners to maintain that fee.

Senator DUCKWORTH. Thank you.

So having a fully resourced Federal Government is essential to guarantee that state governments can fulfill their role in the permitting process, essentially is what you're saying?

Mr. BROWN. Yes.

Senator DUCKWORTH. Thank you.

Thank you, Mr. Brown.

On a related note, Ms. Perruso, your company has worked on two major energy infrastructure projects, a wind farm and a transmission project, over the past decade. Can you please share your overall experience working with our federal employees?

By the way, wind power has added 100,000 jobs in Illinois over the last 10 years, so I am a big fan.

Ms. PERRUSO. That's exciting. Thank you.

I don't think it's exaggerating to say over the last 10 years that we have worked very closely with federal employees and we've participated in literally, thousands of conference calls and meetings. And the projects would not be where they are today if it wasn't for

the many federal employees at every level, from the field offices, to the state offices, to DC, who've worked really hard on the environmental analysis.

Now, I'm not going to tell you that all the relationships always went well or that there weren't bumps in the road, but we were very fortunate in the end, to have many federal employees who really took a real interest in the projects and were committed and are committed to seeing the projects through.

That's why our recommendations today in my testimony really focus on improving the framework that the federal employees are working under. If they have consistent policies that they can carry out, coordinate and communicate, but also with the corresponding decision-making authority so it's not just coordination and communication without an ending and then accountability regarding schedule and budget. I think it's pretty universal that everybody performs better when there's a schedule and a budget.

I can tell you the perfect example is I wouldn't have gotten my written testimony submitted Friday if there hadn't been a deadline.

[Laughter.]

Senator DUCKWORTH. Thank you. Thank you.

Oftentimes, I need deadlines too.

Madam Chair, I'm out of time. You have been very generous. Thank you.

The CHAIRMAN. Thank you. Thank you, Senator Duckworth.

Senator Hoeven.

Senator HOEVEN. Thank you, Madam Chairman.

Thanks for holding the hearing.

Secretary Cason, I recently introduced legislation that reforms the BLM permitting process for permit to drills, APDs, for oil wells where the BLM owns no surface acres, but owns mineral acres under that area. We would like to be able to go ahead and permit if they own, without going through their BLM approval process, if they own less than 50 percent of the mineral acres, because we would go through the other approval processes and, in essence, a minority of the ownership with no surface acreage impact to BLM surface acres is holding up the majority owner on the minerals. So that is essentially how the legislation works.

We actually moved a version of it through here, I think it was last year, and it didn't get passed across the Floor but we are continuing to work it. Again, it is just about trying to have a common-sense way to expedite APDs.

So, I would like your reaction to that and whether or not you are willing to support that type of effort.

Mr. CASON. We're always happy to have any flexibility to move our processes along more efficiently than they are right now. So we'd be happy to work with you on the legislation and offer comments or suggestions on how we can make things better.

Senator HOEVEN. Yes, again, it goes back to common sense. In other words, if you have no surface acre impact, if you are a minority holder in the minerals, if it frees up time and resources for you to go take care of surface acres where you have issues—

Mr. CASON. Right.

Senator HOEVEN. —it seems to me you get more done with less people and it works all the way around, both in terms of the APDs,

but also your ability to manage your surface acres where you have them.

Mr. CASON. Right, uh-huh.

Senator HOEVEN. And it also generates revenue because you get revenue from those producing wells.

Mr. CASON. Right.

We'd be happy to work with you on the legislation and anything that moves the process along, we would be happy for.

Senator HOEVEN. Yes, so there's a little salesmanship here so somebody who maybe isn't for fossil fuels understands that there are actually benefits on both sides of the equation in terms of good BLM land management.

Mr. CASON. Well, we certainly have to set priorities all the time. There's not enough resources to go around and do everything that we would like to do.

So any way that we can prioritize our resources by making the job easier to do or more straightforward or more efficient is something that we'd like to try to do.

Senator HOEVEN. Yes, and along that same line, our coal miners—and we do lignite coal mining, which is strip mining—

Mr. CASON. Right.

Senator HOEVEN. —for your information—are still having trouble getting permits. It is taking too long. What happens then is they end up going around federal lands, around BLM lands, okay? So you just miss out on the revenues and so forth and it makes it more costly for them.

Mr. CASON. Right.

Senator HOEVEN. We really need a way to expedite that process.

My sense is it would be useful for you or the right person to come out to North Dakota and visit with our miners and see what they do and see their reclamation. I mean, you can't tell, I mean, once they reclaim that land.

Mr. CASON. Right.

Senator HOEVEN. So I would like your reaction to that.

Mr. CASON. Well, one of the things that we encountered at the beginning of the Administration was the—I'll call it the war on coal and everything related to coal. And the effect of the government's policies in the last Administration was to shut down a lot of our coal resources and our permitting capabilities.

So this President, Trump, has said the war on coal is over and we have had a Secretarial Order, an Executive Order, to basically get to that effect.

We are currently implementing changes to our coal program so that we can lease more coal. We have had a very large coal sale so far this year. So we are trying to make that resource available across the board.

We are, our Administration, is basically an all-of-the-above kind of energy and we are trying to actively embrace all the forms of energy, including coal, including oil and gas, including solar and wind. And the thought process is we're not going to try to pick winners and losers, that we'll have the marketplace actually do that. So our job is to make the resources available and then the market can sort out which one is the most effective.

Senator HOEVEN. Good.

Well, then I would like to work with you to follow up. I think coming out and seeing what we do is quite eye opening. I think people don't realize the quality of the work that Reclamation—

Mr. CASON. Okay.

Senator HOEVEN. We are number one in the country in Reclamation, number one.

Mr. CASON. Okay.

Senator HOEVEN. So it would be great to have you do that.

Mr. CASON. Okay.

Senator HOEVEN. Madam Chair, I beg indulgence for one more question recognizing I am over my time here.

But Director Pflieger, in regard to permitting improvement for federal infrastructure, can you tell me what concrete steps the Administration is taking or will be taking to expedite and improve infrastructure siting processes?

Ms. PFLEEGER. So there's two tools available.

There's FAST-41, the law, as well as the Executive Order 13807. And the, kind of, fundamental principles that we're currently using. And this is a 16-member Permitting Council. It's early coordination and collaboration, so bring every agency that has a permitting role in the project together at the start of the project. Once a quarter they're required to update what's called a Coordinated Project Plan. So they're having those conversations at the beginning and then regularly throughout the process. And they can address difficult issues. That's number one.

Number two is accountability. They're required to put a timeline on a public dashboard and that gives the project sponsors the certainty and the clarity they need as well as providing the public and any stakeholders with information on specific target dates for a permit.

And then there's also my office, the Office of the Executive Director, where a project sponsor can come and, whether it's informal and we'll work with agencies on a specific project, or there's a formal dispute resolution process. All of those things are being used to streamline the process.

Senator HOEVEN. Okay.

I would really encourage you to work with the states as much as you can, do a state-led approach to help you with that process. I think it would really be beneficial.

Thank you.

Thank you, Madam Chair.

The CHAIRMAN. Thank you, Senator Hoeven.

Mr. Cason, I would certainly encourage you to take Senator Hoeven up on his offer to visit North Dakota. I had an opportunity to go there several years ago and that was all that the people wanted to talk about was the situation with BLM and how on these areas you just had such an impediment to any level of development because things just took longer.

You mentioned this is all about common sense in terms of how these APDs were issued, but it was really eye opening for me to see and understand how you can have a level of good, solid, economic activity. You mentioned the Reclamation efforts and all that goes with that. But then you have the federal lands, an entirely

different scenario in terms of how the process proceeds. It was an important visit.

Mr. CASON. I'd be happy to. It sounds like a great trip.

The CHAIRMAN. Particularly, this time of year. Right, Senator Hoeven?

[Laughter.]

Senator HOEVEN. The high in DC today will be 48. The high in Bismarck, North Dakota, today will be 50.

The CHAIRMAN. There you go.

Mr. CASON. Yeah, it sounds perfect.

The CHAIRMAN. Make your reservations today.

[Laughter.]

Yes.

Senator HOEVEN. Exactly.

[Laughter.]

The CHAIRMAN. Let me ask one more question and this relates to NEPA.

It has been mentioned a little bit, and some of you in your testimony here, but it seems that we have, kind of, moved away from a NEPA process that allows for this interaction between the permit applicants and the agencies to ask the questions, to provide some clarity and to have that understanding.

What it seems we have moved to now is more of an arm's length transaction where you can't have the, "hey, we've got a question over here. Well, let me help you clear that up over there." That adds to time delays. That adds to greater uncertainty. We hear that move, or that direction, to more of an arm's length transaction rather than the ability to work some of these things out as you are moving through the process.

The other thing that I have heard and Senator Duckworth mentioned a little bit in her question to you, Ms. Perruso, about the federal employees that you work with, those that are part of the agencies.

One of the things that I hear is that you have a level of turnover within the agencies that if you are in a multi-year process, as Senator Risch has outlined or as Mr. Russell has indicated, that Hecla has gone through where you have projects that are taking years and years and years and you go back to the same agency and now you have a different person and, basically, you are retelling your story all over again.

So the question, and I will just throw it out there to you, Mr. Cason and Ms. Pfleeger, in terms of what you think we can do to get back to a more collaborative approach that can help answer some of the preliminary questions?

And then to those on the applicant side, Ms. Perruso, Mr. Russell, how bad is this situation with staff turnover and what that then does to elongating this permit process?

So let's start with you on the what can we be doing to reinstitute this collaborative approach?

Mr. CASON. The long-term length of a lot of these projects do lend themselves to encounter staff turnover, that's for sure.

One of the things that we're trying to do at Interior to combat that is we're going through a process right now of building a standardized NEPA compliance process and training so that all of our

NEPA practitioners basically end up with the same grounding of what's required under NEPA and the CEQ rules so that if you get a new face in the job that at least they're operating from the same set of standards that we're trying to imply. One of the things that we have found so far in our NEPA streamlining process is that each of our agencies end up doing NEPA just a little bit different. And so, we're trying to get past that and standardize it.

A second thing that we're trying to do is really examine the CEQ rules of the NEPA process and make sure that we're cutting out of the process any of the things that are extraneous and not required by the statute or the regulations. So that should help as well.

And then we're trying to build a broader cadre of NEPA specialists, who if we have a vacancy we have somebody that's on the back bench that can come in and fill in on the project. It probably won't do a lot for the specifics of an individual project because each of those tend to be different, but it can help a lot if you insert a new person that has the same background and training that they can take over the project, learn the specifics about the project much more quickly and create less confusion and disruption of the process.

The CHAIRMAN. Ms. Pfleeger, on the collaborative side, anything we can be doing more?

Ms. PFLEEGER. One thing I would say about the collaborative side, I've mentioned the coordinated project plans and how important they are. They require a plan and, again, this is at the start of a project and then with the quarterly update, a plan for public and tribal outreach. So that's built into the structure FAST-41.

To piggyback on what Jim was saying about Interior. Our best practices report just released last week addresses the very issue you just described about staff turnover and the need for training. That's one of the FAST, that's one of the best practices FAST-41 requires, that we focus on training and making sure that that project knowledge can move from one person to the next when there is turnover because we understand how important that is and as projects take time we want to conserve and use the knowledge already built up.

The CHAIRMAN. How about from the applicant side?

Ms. PERRUSO.

Ms. PERRUSO. We absolutely experienced a high turnover rate in the federal employees we were working with.

For example, during the 10 years our two projects have been moving forward, all of the BLM state directors in all four states, all of the district managers, all of the BLM project managers and then many of the resource specialists, have turned over at least once and sometimes more than once. And there's no doubt that that turnover led to a loss of momentum as new staff came in and tried to get up to speed on where the project was, what had been done, what needed to be done. And sometimes there was disagreement with what had been done.

This is where consistent policy and clear guidance would be very helpful and, as well as communication and coordination, as these staff turnovers take place.

The CHAIRMAN. Very interesting.

Mr. RUSSELL. Ms. Chairman, certainly the project manager is key. I've seen projects that have worked very, very well with good project managers that understand NEPA, understand what project management is and drive the process.

It has been a big issue for us at the Greens Creek situation. The Corps of Engineers went through two project managers and nothing happened for a year. At Rock Creek, 11 months was lost when one biologist left the U.S. Fish and Wildlife Service. Nothing happened. So those resources are very, very important.

The role of the applicant is also very, very important. I believe NEPA still allows for applicants to prepare environmental assessments. And early in my career applicants would provide, would prepare those. The agencies would review and approve them. We moved away from that primarily because of the fear of litigation, but that would be one way to get back to streamlining environmental assessments rather than EISs.

Also at Greens Creek we experienced that because of this hand, you know, arm's length relationship that the Forest Service was developing independently, alternatives to our proposal that were not technically or economically feasible.

So a lot of time and energy was spent developing those alternatives and when it finally came to preparing the final document it was only then that they reached out to us and said, can you do this? And the answer was no, it's not technically or economically feasible.

So getting the applicant more involved earlier in the process can address the points that you've raised on point that you get a more streamlined and efficient process without reducing any rigor in the analysis. It's just much more efficient.

The CHAIRMAN. Mr. Turpin, do you want to add anything to this? Mr. TURPIN. Sure.

I think the sentiments I've heard on, sort of, both sides of the table are things that we've experienced at the Commission.

We have relatively, in terms of project managers, low turnover, but that being said, you lose that key person and it does have an impact for the project. That's why for the larger, more complicated projects, we'll have, you know, deputy project managers and others to try to ensure that institutional knowledge is there and that we don't have those, sort of, hiccups.

I do think we've experienced much more turnover, or witnessed much more turnover in the other federal agencies, especially in the smaller regional offices where it may be that, you know, the sole piece of institutional—the sole vessel of institutional knowledge, once they leave that office, is starting over from scratch. And that has been a problem we've seen over and over.

The CHAIRMAN. Yes, that is a problem. We see it. Senator King.

Senator KING. Madam Chair, that was a really good question, and we have identified in the Armed Services Committee, one of the problems with the federal procurement process is turnover and the loss of a project manager following through, and it's one of the reasons the procurement process in the Defense Department takes so long.

But I think there's an additional point here, and that is it's often easy, politically, to talk about shrinking the government, and hiring freezes, and fewer people. That directly impacts the speed of your permitting process.

I mean, we are talking about changing regulation, but if you don't have the people to do the analysis and to do the required steps that it takes, and I think we need to understand that, that you can't on the one hand talk about a more efficient permitting process and on the other hand talk about firing people and shrinking the size of government, whether it's the EPA or the Department of the Interior or the Forest Service, whatever. There's an inconsistency there, and I think that point needs to be made.

The CHAIRMAN. Well, you have made it and I am reminded that oftentimes I will hear complaints from constituents or other folks that say, you need to reduce the size of that agency, until they want their permit approved. And then it's like, where are all the people in your agency?

Senator KING. Then they complain that nobody answers the phone.

The CHAIRMAN. That's it—yes, yes.

[Laughter.]

We know the problem and you know it, you are living it.

This has been very informative, very instructive this morning. This last exchange about the imperative to have the people in place, the knowledgeable folks in place, is a challenge for us. And I think we recognize that we can pass legislation whether it's FAST-41 or whatever it is. We can put in place processes that allow for streamlining and efficiencies but we still have to have the folks that actually make it all happen. So how we work to find that balance again is part of our challenge here.

But I thank you each for what you have contributed to the conversation this morning. As we look to ways that we can move the economy, it is very clear it is not a Republican idea or a Democrat idea. We saw with the Obama Administration. They said we need to do something about the regulatory permitting process. President Trump comes into office. We need to do more about the regulatory permitting process. Our challenge is to do more about the regulatory permitting process and actually see that translate on the ground.

As you point out, Senator King, none of us are wishing to shortcut environmental considerations that would put at risk our economy. We do expect to have stringent and good standards, but we also expect a level of certainty and predictability and one that doesn't stretch out a permitting process for, literally, decades where people have worked on a certain project for a generation. That is not the goal here.

So we have work to do, but we appreciate what you all have contributed to the conversation.

With that, we stand adjourned.

[Whereupon, at 12:09 p.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 11 2019

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

Dear Chairman Murkowski:

Enclosed are responses to the questions received by Mr. James Cason, Associate Deputy Secretary of the Interior, following his December 12, 2017, appearance before your Committee at the hearing regarding the permitting processes at the Department of the Interior and the Federal Energy Regulatory Commission for energy and resource infrastructure projects and opportunities to improve the efficiency, transparency, and accountability of federal decisions for such projects. We apologize for the delay in our response.

Thank you for the opportunity to provide this material to the Committee.

Sincerely,

Christopher P. Salotti
Legislative Counsel
Office of Congressional
and Legislative Affairs

Enclosure

cc: The Honorable Joe Manchin
Ranking Member

Questions from Chairman Murkowski

Question 1: The tools provided in FAST-41 and being implemented by the Federal Permitting Improvement Steering Council (FPISC) are important, but not all projects are eligible (either because of sector, size or other factors) and/or selected to participate. What types of projects benefit most from the FAST-41 framework, and how do efforts to improve sector specific processes and policies for all projects, whether or not eligible or selected to be “covered,” influence implementation of FAST-41 and permitting process more broadly?

Response: FAST-41 requires the Permitting Council to issue recommendations on eight best practices categories outlined in 42 U.S.C. § 4370m-1(c)(2)(B) for environmental reviews and authorizations common to covered projects, and for the Executive Director to assess agency progress in making improvements consistent with these best practices and compliance with performance schedules. As noted in the FY 2017 Report to Congress on the program, Department of the Interior (DOI) and the Federal Energy Regulatory Commission (FERC) had the highest number of projects covered under FAST-41 in FY 2017, with electricity transmission and interstate natural gas pipelines the most common project types under FAST-41 during that period. As noted in the FY 2017 Report, agencies have shown significant progress implementing recommended best practices and increasing transparency on the permitting dashboard.

Question 2: At what point in the project development process can large projects become “covered project,” what is the role of the agencies and FPISC in determining and ensuring consistency regarding the appropriate timing for a project to be awarded “covered project” status, and is there a difference for projects depending on whether they are subject to a pre-application process?

Response: The agencies and FPISC role is described in the United States Office of Management and Budget and Council on Environmental Quality guidance for FAST-41, issued January 13, 2017. According to the guidance, the reviewing agency may consider whether the proposed project is sufficiently defined in order to determine whether:

- The project is a covered project;
- The sponsor is ready to begin the NEPA phase of project development;
- There is sufficient sponsor leadership attention to the project to help prioritize tasks and assist in any issue resolution; and
- The project is technically and/or financially feasible or is still at an early concept phase.

A project must be sufficiently developed for the project sponsor to submit an Initiation Notice. This will include a description of the project with its general location, an indication of whether the cost will be greater or less than \$200 million, and a statement of their technical and financial capabilities, and Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project.

Questions from Sen. Wyden

Question 1: People in the west have talked for years about the economic consequences on rural families and communities when a new species is added to the Endangered Species List. In Oregon ranchers have worked collaboratively with community leaders, conservationists and a variety of stakeholders to keep the Greater Sage Grouse off of the endangered species list. While Interior has undertaken a review of the sage grouse plans, it seems this creates new opportunity for foreign mining companies and energy developers but puts traditional ranching and recreation activities that support rural communities at great risk. In support of the work of ranchers, farmers, environmentalists, recreationists, and other local stakeholders that spent years working collaboratively with the federal government on sage grouse plans, I have a few questions.

On July 12, 2017, I sent a letter with three colleagues seeking clarification on the Department's process for revisiting the 2015 sage-grouse land management plans. To date, we still have not received a response to that letter. Some of those questions remain relevant, and I would like to renew our request for a response.

- The sage grouse has been carefully studied, and it is important that conservation actions continue to be based on well-established data. How will the review team incorporate the best available science into the review process?
- How will the review team coordinate with the Forest Service and Natural Resources Conservation Service and all affected states?
- How will the review team consider the extensive input received from stakeholders?
- How and when will you make all of the findings and recommendations from your review available to Congress and to the public? Will there be a formal comment period on Interior's findings?

Response: The Department recognizes the significant investments states have made to protect Greater Sage-Grouse populations. The Department's response to your letter was sent on September 22, 2017.

Question 2: Further, as BLM reviews the more than 100,000 comments delivered on sage grouse asking that DOI protect the plans and the habitat, is Interior including the habitat protection requirements included in the existing plans when granting leases and permits in habitat?

Response: BLM Guidance published in December 2018 (IM 2018-026) clarifies that the BLM will apply appropriate stipulations and conditions of approval for protection of sage-grouse, in accordance with state plans, to any leases or permits issued in designated habitat.

Question 3: The Bureau of Land Management's National Technical Team, the Fish and Wildlife Service's Conservation Objectives Team, the U.S. Geological Survey's Summary

Report, and the Western Association of Fish and Wildlife Agencies all agree on the key elements of the finalized 2015 sage grouse plans.

With such strong support for the structure of the 2015 plans from the relevant federal science community, explain why major changes to the 2015 plans are being contemplated?

Response: In 2017, governors of seven of the 11 affected sage-grouse states asked the BLM to revisit existing plans for managing sage-grouse habitat and adapt them to better meet the needs of individual states. In response, the BLM proposed range-specific modifications developed in collaboration with governors and state wildlife agency professionals in the seven affected states, as well as other concerned organizations and individuals, largely through the Western Governors Association's Sage-Grouse Task Force. The goal was to better align BLM plans for managing habitat with state plans for conserving the species. The decisions also formalize coordination between the BLM and respective states in applying mitigation measures to approved actions. The decisions received bipartisan support from the governors who sought revisions to the plans that guide conservation of sagebrush steppe habitat on BLM-administered public lands in their respective states.

Question 4: In each step of the review process, it is critical that Interior engage the Bipartisan Sage Grouse Federal-State Recovery Task Force before proposing any changes to the 2015 plans.

Describe in detail Interior's discussions thus far with that task force. If discussions have not yet occurred, please outline your plans for dialog with the task force in the future.

Response: The plan changes were developed in collaboration with Governors, state wildlife managers, and other stakeholders, with the goal to improve management by more appropriately framing threats to the bird across the West and by allowing BLM to consider economic issues at a local scale.

Question 5: On November 11, 2017, the Associated Press reported that "Republican Gov. Matt Mead of Wyoming, Democratic Gov. John Hickenlooper of Colorado and Democratic Gov. Steve Bullock of Montana have expressed concern that altering existing plans could undermine efforts to prevent a (greater sage-grouse) listing."

What specific governors have you spoken with thus far regarding Interior's potential actions to revise the 2015 plans? Please describe specific ways in which Interior and the BLM are incorporating this feedback.

Response: The BLM worked in collaboration with governors and state wildlife agencies in the seven affected states, as well as other concerned organizations and individuals, largely through the Western Governors Association's Sage-Grouse Task Force.

Question 6: In September 2017, Senator Merkley and I wrote to the Secretary of Interior about the Sagebrush in Prisons project, a contract that allows prison inmates to grow sagebrush seed for habitat restoration. We have yet to receive a response to this letter. Fire

on rangeland habitat is one of the key risks for the bird, and yet the administration is withholding funds. I would like to know the process and timeline for ensuring that critical restoration work is occurring on the ground.

Response: The BLM transmitted a response to your letter on December 20, 2017.

Question 7: In November 2017, Senator Merkley and I wrote to the Secretary of Interior about its four decades long partnership with the Oregon Department of Agriculture to control noxious weeds on public lands and waterways. We have yet to receive a response to this letter. The Oregon Department of Agriculture uses strategies like targeted grazing and biological controls and attempts to get in front of invasive weeds that can have devastating effects on public lands and waterways, grazing allotments and adjoining private agriculture lands. If this long-time partnership with the Oregon Department of Agriculture is not a preferred strategy for this administration, I would like to know the strategy for protecting the land from invasive weeds.

Response: The BLM transmitted a response to your letter on January 5, 2018.

Question 8: I am hearing from stakeholders that routine contracts heretofore decided at the state BLM office level are now being reviewed at the Washington Office level, and the review process and decisions are extremely slow. This process seems contrary to the Administration's stated intent of moving decision-making closer to the on-the-ground work.

Can you explain why routine, but very important contracts for range restoration and weed eradication work are being delayed?

Response: The Department is committed to ensuring that practices detailing fiscal responsibility are followed by all our bureaus and offices, across the Department. Such a review provides transparency, reduces duplicative grants, and streamlines processes.

Question 9: Why has DOI been so reluctant and slow to respond to information requests from the public regarding reorganization and staff reassignments?

Response: The Department has responded to numerous questions about the proposed reorganization, including at several Congressional hearings. Information and updates related to the Department's reorganization efforts can be found at <https://www.doi.gov/employees/reorg>.

Question 10: Are DOI scientists free to attend conferences and talk about their work? Do they enjoy the freedoms expressed explicitly in the DOI scientific integrity policy?

Response: As the Department has indicated in response to similar questions, senior staff at the Department have been clear in their strong support of and respect for scientific integrity and the work that our scientists carry out at the Department of the Interior.

Question 11: Have there been any DOI scientific integrity complaints from or to DOI staff since this administration took over? How many? How were they resolved? Will you ensure transparency going forward?

Response: As the Department has indicated in response to similar questions, senior staff at the Department of the Interior have respect for scientific integrity and are strong supporters of the Department's scientists and the work that they carry out at the Department of the Interior. The Department's scientific integrity web page, found here: <https://www.doi.gov/scientificintegrity>, contains a searchable database of summaries of closed matters in which formal complaints alleging scientific misconduct or loss of scientific integrity were filed pursuant to the Department's Scientific and Scholarly Integrity Policy.

Question 12: In June 2016, the Indian Trust Asset Reform Act was signed into law. Several Indian tribes in my state have expressed interest in utilizing the Act's demonstration program (Title II) for forest management activity. When will the Department initiate the demonstration program, or at least initiate formal consultation with tribes about the program?

Response: The Department carried out consultation during 2018, and in October 2018 the Assistant Secretary - Indian Affairs, announced the establishment of the Demonstration Project in a letter to Tribal leaders. The BIA website contains additional information on the program here: <https://www.bia.gov/as-ia/raca/archived-regulatory-efforts/itara-demonstration-project>.

Question from Sen. Stabenow

Question: This summer, I introduced the Great Lakes Aquatic Connectivity and Infrastructure Program Act that establishes a grant program that would be led by the Fish and Wildlife Service and the Department of Transportation. Federal officials would work with their counterparts from Great Lakes states to select grants to help fund local projects that modernize dams and bridges that currently block fish movement. These projects would support robust Great Lakes fisheries, fund needed infrastructure improvements for local communities, and work to prevent invasive species from spreading to new areas of the Great Lakes.

What are your thoughts about this bill and the concept behind it?

Response: The Department and its bureaus continue to play an important role in the health of the Great Lakes ecosystem. Further review of the language, should it be introduced during this Congress, would be necessary before the Department could offer views on the bill.

Questions from Sen. Heinrich

Question 1: Last year I worked very closely with BLM to ensure the update of Onshore Order No. 3 preserved existing surface and downhole commingling approvals for oil and gas production. In addition, the updated Order 3 provided exemptions for certain future approval requests. Commingling is used primarily in the checkerboard areas of the San Juan basin in my state. Can you assure producers in New Mexico that BLM's existing commingling agreements and exemptions for future approval requests will not be impacted by additional changes in Onshore Order 3?

Response: Onshore Order No. 3 has been codified at 43 CFR 3173, published in the *Federal Register* on November 17, 2016. This rule (81 FR 81365) became effective on January 17, 2017. While the Department is currently reviewing 43 CFR 3173, the proposed rule is not intended to impact existing commingling agreements and exemptions for future approval requests. Any potential changes will be published in the *Federal Register*, when the public will have the opportunity to review and comment.

Question 2: In 2014, Congress made improvements to sec. 365 of the Energy Policy Act of 2005 to provide additional resources to seven of BLM's busiest field offices to hire and support sufficient staff to meet current demands. Subsection 365(e) requires BLM to report to Congress annually on the allocation of the additional funds among the seven Project offices and the accomplishments of each office. The BLM has yet to submit a report as required by law. What is the status of the first required report and when will it be submitted to Congress?

Response: The reports are in development and will be submitted to Congress once they are complete.

Questions from Sen. Hirono

Question 1: In your testimony you note how the Department is following suit with Executive Order 13807, which highlights the costs to American households resulting from the poor condition of America's infrastructure, by focusing on streamlining environmental reviews and permitting authorizations.

The Governmental Accountability Office published a report this fall indicating that climate change has cost the federal government \$350 billion.

Will the Department's time and page number limitations for environmental impact statements and environmental assessments obstruct a complete evaluation of impacts, such as those related to climate change, and result in increased costs to American taxpayers?

Response: The primary goal of the order is to streamline the Department's environmental reviews while continuing to meet or exceed the National Environmental Policy Act requirements for informed decision making and public participation in environmental impact statements and environmental assessments. The Department's own NEPA regulations at 43 C.F.R. 46.240 direct the bureaus to set time limits. The order does not set arbitrary limits. Instead, it establishes a process to secure a waiver for any EIS that will exceed either the time completion goal or page goal.

The Department has created a dedicated management team, established a standard and streamlined NEPA document clearance process, standardized internal procedures for bureaus working as cooperating agencies, and established an internal tracking database to monitor compliance and progress. And progress has been significant; since 2017, the average number of days from Notice of Intent to Record of Decision dropped over 79 percent, and the target completion time for Environmental Impact Statements has dropped from more than 2 years, to a time frame of between 1 and 2 years. This streamlined process helps lower energy costs, create jobs, and keep our economy strong.

Question 2: In your testimony you repeatedly refer to the initiatives undertaken by the Department of Interior to advance the President's goal of making the United States 'energy dominant' and how domestic energy production will spur local and regional economic dynamism and job creation.

Yet, just last week the Bureau of Land Management held an oil and gas lease sale for the largest number of tracts ever in the National Petroleum Reserve in Alaska and only received bids for less than one percent of the acreage offered.

How will the Department of Interior's initiatives change if future oil and gas lease sales draw similar interest?

Response: The U.S. energy outlook remains strong. FY 2018 included record breaking bids that shattered prior records in onshore oil and gas and offshore wind energy lease sales. For example,

the BLM's third-quarter 2018 oil and gas lease sale in New Mexico broke all previous records by grossing nearly \$1 billion in bonus bids for 142 parcels.

Question 3: I understand that renewable energy projects sometimes suffer from a longer permitting process due to the projects including the use of newer technology.

How many people within the Department of Interior are currently tasked with reviewing renewable energy-related infrastructure permitting? How does that compare to the number of people tasked with reviewing fossil fuel-related infrastructure permitting?

Response: Renewable energy projects are subject to a robust permitting process and compliance with the NEPA, as are oil, natural gas, and coal projects, and the size, scale, and complexity of the programs impact the number of FTEs assigned to each program.

Questions from Sen. Cortez Masto

Question 1: In your testimony, you reference three executive orders and one secretarial order which encourage energy production on federal lands, orders which pay particular attention to the oil and gas industry. You also allude to efforts at the Departmental level on mining. In each case, these orders and actions are focused upon a particular special interest or industry. However, last week, Secretary Zinke appeared on Fox & Friends where he argued that President Trump's rollbacks of environmental protections in Utah were aimed at taking land back from special interests.

Are the oil and gas industry or the uranium mining industry not considered special interests by the Department? What constitutes a special interest?

Response: The Department and its bureaus work to strike the right balance between development and conservation of America's resources to advance important national objectives. This includes ensuring targeted investments and actions are taken in order to advance domestic energy security, enhance public access to public lands, and strengthen our state and local economies.

Question 2: How is Secretary Zinke's effort to reorganize the Department conducive to the Department's parallel effort to streamline permitting processes? How does this not create confusion or duplication? Would you provide an update on where this reorganization effort stands?

Response: As the Department has indicated in response to similar questions, the reorganization will create mechanisms within the Department to streamline communications and inter-bureau decision-making at the local level. Organizing the Department's bureaus within common geographic areas will allow for more integrated and better coordinated decision-making across bureaus and help streamline operations.

Question 3: On August 31, Secretary Zinke issued Secretarial Order 3355 to streamline NEPA processes throughout the Department. One of the directives is to limit an Environmental Impact statement to "150 pages or 300 pages for unusually complex projects, excluding appendices." It also directs the leading agency to complete each Final EIS within 1 year from the issuance of a Notice of Intent to prepare an EIS. Timelines exceeding the one-year limit by more than three months must be approved by the Assistant Secretary with responsibility for that matter.

- Does the Department intend to limit the amount of factual information included to fit this requirement?
- Doesn't limiting the length of the EIS just move all the necessary information to the size-unlimited appendices?
- Was there a scientific rationale for how these sizes were chosen?
- Is there an expectation of what kind of project constitutes a regular project that could fit within a 150-page EIS, and one that would necessitate an extra 150 pages?

Response: The primary goal of the order is to streamline the Department's environmental reviews while continuing to meet or exceed the National Environmental Policy Act requirements for informed decision making and public participation in environmental impact statements and environmental assessments. The Department's own NEPA regulations at 43 C.F.R. 46.240 direct the bureaus to set time limits. The order does not set arbitrary limits. Instead, it establishes a process to secure a waiver for any EIS that will exceed either the time completion goal or page goal.

The Department has created a dedicated management team, established a standard and streamlined NEPA document clearance process, standardized internal procedures for bureaus working as cooperating agencies, and established an internal tracking database to monitor compliance and progress. And progress has been significant: since 2017, the average number of days from Notice of Intent to Record of Decision dropped over 79 percent, and the target completion time for Environmental Impact Statements has dropped from more than 2 years, to a time frame of between 1 and 2 years. This streamlined process helps lower energy costs, create jobs, and keep our economy strong.

Question 4: The House Natural Resources Committee recently held a hearing on environmental regulation reform where they heard from a 27-year veteran of CEQ who testified that two of the greatest reasons that cause delays in NEPA reviews deal with capacity within agencies – lack of staff with responsibility for NEPA implementation and lack of NEPA review training.

- What has the Department done to increase the level of NEPA training?
- Wouldn't this increase accuracy and project review timelines?
- If Secretary Zinke follows through with his plan to reduce the size of BLM by 4000 employees, what contingency plans are in place to ensure staff are properly trained in performing NEPA reviews?

Response: The Department has created a dedicated management team, established a standard and streamlined NEPA document clearance process, standardized internal procedures for bureaus working as cooperating agencies, and established an internal tracking database to monitor compliance and progress, with indications of significant progress.

Question 5: Secretary Zinke's report outlining policies and regulations it says should be repealed or reformed because they hinder domestic energy production recommends reviewing regulations that currently allow external parties to file protests with agency actions (pertaining to lease sales). It sounds like the Department is clearly saying it's against what it sees as unnecessary litigation.

In regards to Gold Butte National Monument, the Secretary has recommended cutting a portion of the boundaries to satisfy some local water access concerns that some legal experts believe this situation could be best resolved with assurances in a forthcoming management plan, leaving the boundaries intact, and sidestepping litigation. Understanding that the Department is averse to litigation, why wouldn't the Department go this easier route?

Response: Former Secretary Zinke evaluated comments and, in certain instances, visited monuments as he prepared his recommendations for the President, which were made public on December 5, 2017. Final action and authority on national monuments rests solely with the President.

Question 6: In regards to publishing Notices of Intent to the Federal Register, my understanding is that it is now mandated to go through the DC office, rather than through BLM state offices. I am curious what you and the Secretary feel on this matter and whether state offices should have that authority instead.

Response: The primary goal of the order is to streamline the Department's environmental reviews while continuing to meet or exceed the National Environmental Policy Act requirements for informed decision making and public participation in environmental impact statements and environmental assessments. The Department's own NEPA regulations at 43 C.F.R. 46.240 direct the bureaus to set time limits. The order does not set arbitrary limits. Instead, it establishes a process to secure a waiver for any EIS that will exceed either the time completion goal or page goal.

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Question 7: The BLM has sent a request to the U.S. Forest Service to determine whether 54,000 acres in the Ruby Mountains in Nevada are suitable for oil and gas leasing. This request is opposed by state-based environmentalists, hunters, anglers, and tribes. This area also serves as a critical habitat for the Lahontan cutthroat trout, which is Nevada's state fish. Can you tell me why the agency sent the request, and who originally submitted and supported the request?

Response: The U.S. Forest Service (FS) has approval authority for the surface use portion of Federal oil and gas operations. We understand that the FS recently made a decision to make 52,533 acres of Forest Service land within the Ruby Mountain Range unavailable for oil and gas development.

Question 8: Please provide me with an up to date list of all the energy related projects for which the Department/the Commission has received an application for a permit of any kind in the State of Nevada. I'm particularly interested in the status of all transmission or related facilities and projects that will increase the growth of a viable and competitive electricity market in the West that will benefit Nevada's consumers AND provide opportunities for Nevada's clean renewable energy to be exported.

Response: Information about energy related projects can be obtained through the BLM's ePlanning website, which contains a searchable web portal providing online review of BLM planning and implementation projects. The ePlanning search tool can be accessed at the following url: <https://eplanning.blm.gov>.

Question 9: The Administration's Climate Science Report released last month projects some very serious changes coming to the United States and particularly to the West due to man-made greenhouse gas emissions. These changes in weather patterns, drought cycles, the hydrological regime, sea level, wildlife habitats, etc. are going to have a significant impact on infrastructure and energy projects that have long-use periods.

How are these risks - to the users of these infrastructure components and to their public investors - being factored into the permitting processes? How are your agencies utilizing the Climate Change Report's findings?

Response: The Department's role is to follow the law in carrying out our responsibilities using the best science. We do evaluate the climate impacts of proposed actions. We also recognize that the science indicates there is uncertainty in projecting future climate conditions and USGS scientists have indicated that there is no "best" climate model, that each has its strengths and weaknesses. Secretary Order 3369, issued last September, is intended to ensure that the Department bases its decisions on the best available science and provides the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.

Question 10: The Obama Administration created the Interagency Rapid Response Team for Transmission (RRTT), which aimed to improve the overall quality and timeliness of electric transmission infrastructure permitting and review by the Federal government on both Federal and non-Federal lands. Interior and FERC were both participating agencies.

The current Administration's actions seem to be going to great lengths to rescind or rewrite existing regulations that are deemed to be over-burdensome, too costly, or duplicitous. However, the RRTT seemed to create a more efficient system within the existing requirements.

What is the status of the RRTT? Has it been eliminated? If so, how would the creation (and then elimination) of the RRTT, followed by the Trump Administration's Executive Orders to eliminate regulatory hurdles not actually be duplicitous and cause confusion for permit applicants?

Response: The Department is continuing to prioritize electricity reliability, particularly as it relates to corridors designated on Federal lands through Section 368 of the Energy Policy Act of 2005.

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Questions from Chairman Lisa Murkowski

Question 1: The tools provided in FAST-41 and being implemented by the Federal Permitting Improvement Steering Council (FPISC) are important, but not all projects are eligible (either because of sector, size or other factors) and/or selected to participate. What types of projects benefit most from the FAST-41 framework, and how do efforts to improve sector specific processes and policies for all projects, whether or not eligible or selected to be “covered,” influence implementation of FAST-41 and permitting process more broadly?

Covered projects under FAST-41 benefit from a new process designed to enhance coordination, transparency, predictability, and oversight of the Federal environmental reviews and permitting required prior to construction. Major complex infrastructure projects that require coordination among multiple Federal agencies would benefit the most from the increased coordination, transparency, and predictability that are provided by FAST-41. However, not all projects are eligible to apply to become a covered project under FAST-41 and therefore are unable to directly benefit from the permitting process improvements led by the Federal Permitting Improvement Steering Council (FPISC or the Permitting Council).

FAST-41 applies to the following sectors: conventional energy production, renewable energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, and manufacturing (additional sectors may be added by a majority vote of the Permitting Council). However, the savings clause in FAST-41 limits projects that could otherwise be eligible for FAST-41 with the following statement:

Pub. L. 114–94, div. A, title XI, §11503(b), Dec. 4, 2015, 129 Stat. 1692, provided that: Except as expressly provided in section 41003(f) [42 U.S.C. 4370m–2(f)] and subsection (o) of section 139 of title 23, United States Code, the requirements and other provisions of title 41 of this Act [probably means title XLI of div. D of Pub. L. 114–94, 42 U.S.C. 4370m et seq.] shall not apply to— (1) programs administered now and in the future by the Department of Transportation or its operating administrations under title 23, 46, or 49, United States Code, including direct loan and loan guarantee programs, or other Federal statutes or programs or

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projects administered by an agency pursuant to their authority under title 49, United States Code; or (2) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348).

Projects may be eligible to be covered under FAST-41 if they: (1) require authorization or environmental review by a Federal agency for an activity involving construction of infrastructure, (2) are subject to the National Environmental Policy Act of 1969 (NEPA), (3) are likely to require a total investment of more than \$200 million, and (4) do not qualify for an abbreviated authorization or environmental review process under any applicable law (“objective” standard). Projects may also be covered if they are subject to NEPA and, due to their size and complexity, the Permitting Council determines that the FAST-41 coordination process and oversight would be beneficial (“discretionary” standard).

Projects covered under FAST-41 directly benefit from increased accountability through high level oversight, formalized early consultation and enhanced interagency coordination through the development of a Coordinated Project Plan (CPP), increased transparency and predictability through the online database at <https://www.permits.performance.gov/>, enhanced legal protections, and a formal dispute resolution process. The dispute resolution process provides the FPISC Executive Director to mediate disputes, in consultation with appropriate agency Chief Environmental Review and Permitting Officers and project sponsors, related to the permitting timetable for covered projects. If a dispute remains unresolved 30 days after the date on which the dispute was submitted to the FPISC Executive Director, the Director of the Office of Management and Budget, in consultation with the Chairman of the Council on Environmental Quality shall facilitate a resolution by the end of the 60 day period beginning on the date of submission of the dispute.

However, projects not covered under FAST-41 indirectly benefit from FAST-41 in a number of ways. FAST-41 directs the Permitting Council to issues recommendations for best practices in eight categories at least once per year. The most recent document was published to the Permitting Dashboard in December 2017 (FY2018 Best Practice Report). In this document, the Permitting Council identifies, implements, and institutionalizes those best practices that streamline and improve the Federal permitting process by increasing transparency and accountability, and improving early coordination and synchronization of Federal environmental reviews and authorizations. Agency success stories are also provided in Appendix A, to provide examples of Agency best practice

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implementation that may assist other Agencies with their implementation of best practices.

(<https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/documentation/40856/fast-41fy-2018best-practices-report.pdf>)

While the major focus of the FY2018 Best Practices Report is on FAST-41 covered projects, Agencies may also be simultaneously involved with the environmental review and authorization of other infrastructure projects. FAST-41 seeks to pilot best practices to improve the permitting processes for eventual use in non-FAST-41 covered projects. The goal is for effective best practices to be institutionalized within and across Agencies, and appropriately applies to all infrastructure projects.

The Permitting Council's Office of the Executive Director issues an Annual Report to Congress in April of each year, in which Federal agencies are assessed on their progress in making improvements consistent with the Permitting Council's Best Practices report and on their compliance with permitting performance schedules. This helps ensure that implementation of identified best practices is having the desired effect of an improved permitting process, the institutionalization of which benefits both covered and non-covered projects under FAST-41.

The Permitting Council's Office of the Executive Director also works closely with the Executive Office of the President to identify lessons learned and issues of policy for further discussion on how to improve the permitting process beyond project management and procedural improvements.

Question 2: At what point in the project development process can large projects become "covered project," what is the role of the agencies and FPISC in determining and ensuring consistency regarding the appropriate timing for a project to be awarded "covered project" status, and is there a difference for projects depending on whether they are subject to a pre-application process?

Pursuant to 42 U.S.C. § 4370m(6)(A), a covered project must be subject to the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) (NEPA), be likely to require a total investment of \$200 million or more, and does not qualify for an abbreviated authorization or environmental review process under any applicable law. In

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order for a project to become a covered project, the project sponsor must submit a Notice of Initiation as required by 42 U.S.C. § 4370m-2(a). The facilitating agency for the proposed project will then make a determination as to whether the project qualifies as a FAST-41 Covered Project (project sponsors may appeal a determination that the project is not a covered project to the Executive Director). In order to satisfy the “subject to NEPA” provision in the FAST Act, a project must be sufficiently formed or planned. Council on Environmental Quality (CEQ)’s NEPA regulations state at 40 C.F.R. § 1508.23 that a “proposal exists at that stage in the development of an action when an agency subject to [NEPA] has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.” For example, preparation of an environmental impact statement on a proposal should be timed “so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.” *Id.*

Federal agencies should be prepared to discuss with a project sponsor of a potential covered project various considerations that may be taken into account when determining whether an Notice of Initiation should be submitted. For example, agencies may inform project sponsors that they may consider: (1) Whether the proposed project is sufficiently defined to provide the facilitating agency sufficient information to determine whether the project is a covered project; (2) Whether the sponsor is ready to begin the NEPA phase of project development – i.e., with respect to securing appropriate sponsor staff to interact with the lead agency, consulting services, and financial resources; (3) Whether there is sufficient sponsor leadership attention to the project to help prioritize tasks and assist in any issue resolution; (4) Whether the project is technically and/or financially feasible or is still at an early concept phase; and (5) The anticipated benefits of having projects covered under FAST-41.

As stated in the OMB/CEQ Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (FAST-41 Implementation Guidance), “[f]or many projects, the Initiation Notice is likely to be submitted, and the FAST-41 process may begin, before a complete application is filed.” FAST-41 Implementation Guidance, p. 45.

For agencies with a formal pre-application process, the FAST-41 Implementation Guidance document provides for the following alternative procedures to accommodate that pre-application process: “[S]ome agencies have a very specific statutory or regulatory review period during which the agency reviews the project to determine

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whether it is a legitimate project (e.g., NRC's 60-day regulatory review period). This review period is the agency's required procedure for determining whether a project is subject to NEPA... Therefore, in these limited circumstances, the 14-day FAST-41 period would be replaced by the agency's review period. At the end of the statutory or regulatory review period, the agency would determine whether the project was a covered project, and then the FAST-41 procedures (such as the 60-day CPP period) would apply." FAST-41 Implementation Guidance, p.45.

Question 3: Related to question 2, significant investments are made in order for a project to reach the point where it enters environmental compliance and permit application. What assurances can a project receive at the early stages of development that it can/will be selected to participate in the FAST-41 process?

The objective eligibility criteria for FAST-41 are clearly stated in the statute and, in most cases, the outcome of a FAST-41 Initiation Notice would be predictable. Where project sponsors or agencies may be uncertain about the applicability of FAST-41 to a proposed project, due to application of the discretionary eligibility criteria rather than the objective eligibility criteria or due to the early stage of development, the project sponsor and relevant agencies should begin discussions about the proposed project as early as practicable. *See* 42 U.S.C. 4370m(6) and FAST-41 Implementation Guidance at pp. 28-29

As noted in the previous question, Federal agencies should be prepared to discuss with a project sponsor of a potential covered project various considerations that may be taken into account when determining whether a Notice of Initiation should be submitted. For example, agencies may inform project sponsors that they may consider: (1) Whether the proposed project is sufficiently defined to provide the facilitating agency sufficient information to determine whether the project is a covered project; (2) Whether the sponsor is ready to begin the NEPA phase of project development – i.e., with respect to securing appropriate sponsor staff to interact with the lead agency, consulting services, and financial resources; (3) Whether there is sufficient sponsor leadership attention to the project to help prioritize tasks and assist in any issue resolution; (4) Whether the project is technically and/or financially feasible or is still at an early concept phase; and (5) The anticipated benefits of having projects covered under FAST-41.

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As stated in the OMB/CEQ Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (FAST-41 Implementation Guidance), “[f]or many projects, the Initiation Notice is likely to be submitted, and the FAST-41 process may begin, before a complete application is filed.” FAST-41 Implementation Guidance, p. 45.

Beyond early coordination between the project sponsor and agencies with regards to eligibility under FAST-41, the Permitting Council (and FAST-41) encourages early coordination more broadly. FAST-41, NEPA, and CEQ’s NEPA implementing regulations strongly encourage project sponsors to consult early with Federal and state agencies that will likely be involved with the review of the proposed project in addition to any tribal governments with interests that may be impacted. FAST-41 provides that “[t]he facilitating or lead agency, as applicable, shall provide an expeditious process for project sponsors to confer with each [FAST-41] cooperating and participating agency involved and, not later than 60 days after the date on which the project sponsor submits a [qualifying] request to have each such agency provide to the project sponsor information concerning— (1) the availability of information and tools, including pre-application toolkits, to facilitate early planning efforts; (2) key issues of concern to each agency and to the public; and (3) issues that must be addressed before an environmental review or authorization can be completed.” 42 U.S.C. § 4370m-2(d)

In other words, FAST-41 requires the availability of two types of early consultation opportunities: providing an “expeditious process” to confer, and providing certain information. The facilitating or lead agency must provide an “expeditious process for project sponsors to confer with each cooperating and participating agency.” 42 U.S.C. § 4370m-2(d). OMB and CEQ suggest that, at a minimum, each facilitating or lead agency publish a clear description of the expeditious process, and how an interested project sponsor can initiate early consultation.

In addition to the expeditious process, FAST-41 requires the agencies involved in the project to provide the above-listed information (i.e., tools, issues of concerns, and issues that must be addressed during reviews), if requested, not later than 60 days after the project sponsor requests it. FAST-41 Implementation Guidance, p.30.

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Question from Senator Joe Manchin III

Question: *The development of oil and gas pipelines in the United States has become increasingly politicized in recent years. I understand that permitting can be duplicative, uncertain and the cause of major delays – all potential killers for a multi-billion dollar project. I think there is a balance that can be struck to address permitting delays as well as landowner and community concerns. In the 114th Congress, this Committee took steps to streamline pipeline permitting processes. Unfortunately, the energy bill did not make it across the finish line. Last year, Diane Leopold of Dominion Energy appeared before this Committee and stated that “all we are asking for is fair and common-sense standards, and a reasonable schedule that is upheld.”*

How do you intend to pursue a more reasonable schedule?

FAST-41 builds on the successes and lessons learned from permitting streamlining and modernization initiatives that have previously been conducted by offering a full governance structure for the implementation of a suite of tools and processes designed to improve the permitting process. FAST-41 provides a systematic approach through the formalized tools and processes currently being implemented by the Permitting Council to enhance interagency coordination, transparency, and predictability during the permitting process. FAST-41 also provides, through the Permitting Council’s Office of the Executive Director (OED), oversight of the implementation of those tools and processes. This oversight role of the OED is critical to ensuring transparency and predictability in the permitting process, including schedules, for infrastructure projects.

The OED is actively working with Permitting Council Agencies to develop accurate and well-coordinated Coordinated Project Plans (CPPs), with emphasis on the permitting timetables. The OED is also looking ahead to identify intermediate and final completion dates at risk of being missed, working with Permitting Council Agencies and project sponsors to identify the issues involved and prevent delays in the process. When issues of substance are identified, the OED works with Permitting Council Agencies, OMB, and CEQ to facilitate a resolution.

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The OED also reviews the permitting timetables and CPPs to ensure best practices, as identified in the Permitting Council's Best Practices Reports (Fiscal Year 2017 and Fiscal Year 2018), are being implemented, including concurrent rather than sequential environmental reviews and authorizations. The OED issues an Annual Report to Congress in April of each year, in which Federal agencies are assessed on their progress in making improvements consistent with the Permitting Council's Best Practices report and on their compliance with permitting performance schedules.

FAST-41 requires the development of Recommended Performance Schedules, which are based on the average time taken to complete an environmental review or authorization, including intermediate and final completion dates, for each infrastructure sector. These performance schedules shall "reflect employment of the use of the most efficient applicable processes, including the alignment of Federal reviews of projects and reduction of permitting and project delivery time." 42 U.S.C. § 4370m-1(c)(1)(C)(ii)(I) Once these performance schedules are developed, FAST-41 states that "the final completion dates in any performance schedule for the completion of an environmental review or authorization under clause (i) shall not exceed the average time to complete an environmental review or authorization for a project within that category." 42 U.S.C. § 4370m-1(c)(1)(C)(ii)(II)(aa) Additionally, "[e]ach performance schedule shall specify that any decision by an agency on an environmental review or authorization must be issued not later than 180 days after the date on which all information needed to complete the review or authorization (including any hearing that an agency holds on the matter) is in the possession of the agency." 42 U.S.C. § 4370m-1(c)(1)(C)(ii)(II)(cc) Therefore, the development and implementation of the performance schedules will ensure covered projects experience a timely, efficient, and predictable permitting process.

The OED is also working closely with the Executive Office of the President on implementation of Executive Order 13807 "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure" (August 15, 2017) Many of the benefits experienced by covered projects under FAST-41 can be leveraged for other infrastructure projects to improve the permitting process. The Permitting Council is able to use the experience gained through implementation of FAST-41 to inform policy discussions to further improve the overall permitting process for infrastructure projects.

Inherent in the development of a reasonable environmental review and authorizations schedule for large and complex infrastructure projects that are subject to the National Environmental Policy Act, is the enhancement of early stakeholder engagement. As

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indicated in the question above, consideration of landowner and community concerns is a critical part of the permitting decision-making process, particularly for large, complex, and controversial projects. FAST-41 identifies early stakeholder engagement as the first category of best practices to be issued annually by the Permitting Council, and includes “fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project.” 42 U.S.C. § 4370m-1(c)(2)(B)(i)

In the “Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2018” (Permitting Council Best Practice Report FY 2018), the Permitting Council set forth the following objectives for the recommended best practices in this category, to be implemented over the course of Fiscal Year 2018.

Institutionalizing a formalized process for coordinated outreach efforts across Agencies, including early outreach and coordination with applicants and other stakeholders, will meet several objectives. It will foster early stakeholder engagement, thereby allowing Agencies to identify and address issues early in the permitting process. Early coordination and outreach identifies issues that need further study and that could delay permitting timetables if not identified early. Early coordination among Agencies allows for identification and possible minimization of bottlenecks in the process through mapping out the project’s environmental reviews and authorizations, which increases the likelihood of meeting the schedule in permitting timetables. Early coordination also identifies recommendations for improvement grounded in local understanding and knowledge. Lastly, it improves trust and communication between Agencies and stakeholders. The vision for effective stakeholder engagement in infrastructure permitting is that the process includes fully informed, meaningful discussions between all involved parties, substantive communication about the realities of the project’s potential impacts, and the means to address the interests of all potentially affected parties, to the extent possible.

These objectives will be met through implementation of the following best practices over the course of Fiscal Year 2018:

- Consolidate and organize information on permitting requirements and processes on existing departmental or Agency websites and, where appropriate, use social media platforms and other technologies to share information and to identify and engage interested stakeholders.

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- Implement the Coordinated Project Plan provisions in the FAST Act (42 U.S.C. § 4370m-2(c)(1)).
- Utilize pre-application processes (i.e., informal or formal coordination prior to application submittal) with project sponsors of FAST-41 covered projects. Permitting Council Best Practice Report FY 2018 at pp. 5-6.

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Questions from Senator Rob Portman

Question 1: Please provide examples of how the Federal Permitting Improvement Steering Council (Permitting Council) has been able to assist covered permitting projects, both in terms of saving time and money for projects as well as resolving conflicts between agencies.

To date, there have been a total of 37 covered projects under FAST-41, of which 13 have been deemed complete. Of those 13 completed projects, three are conventional energy projects, three are renewable energy projects, four are electricity transmission projects, and three are pipeline projects. The Permitting Council has had recent successes in both systematic improvements, such as increased Permitting Dashboard transparency, and project-specific permitting process improvements, including enhanced coordination and dispute resolution procedures. These improvements helped save one project six months and \$300 million in capital costs, as estimated by the project sponsor. As more projects enter and go through the FAST-41 process, the Permitting Council's Office of the Executive Director (OED) expects to have more examples of projects where these sorts of benefits are achieved.

The OED conducts project-specific agency and project sponsor coordination and implements the FAST-41 dispute resolution provisions to ensure successful implementation of permitting timetables for covered projects. Initial examples of project-specific issues identified and addressed through the implementation of FAST-41 include:

- As reported at the Permitting Council's September 2017 Council meeting, the OED coordinated closely with involved agencies, including FERC, to address a stalled Section 106 review under the National Historic Preservation Act. The resulting coordination among agencies allowed subsequent authorizations to move forward and, as relayed by the project sponsor, saved an estimated 6 months and \$300 million in capital costs to the project.
- Similarly, the OED facilitated coordination between the Advisory Council on Historic Preservation (ACHP), the Federal Energy Regulatory Commission (FERC), the project sponsor, and stakeholders to ensure successful development of a programmatic agreement to conclude the Section 106 review process on another covered project under FAST-41. OED anticipates conclusion to the Federal permitting process for this project soon.

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- Project sponsors have contacted the Executive Director for help with project specific issues—for instance, when an agency did not respond to their questions, when different staff within an agency provided contradictory responses, and when different agencies working together on a project provided conflicting information. Recently, a project sponsor was traveling among field, state, and headquarters offices to get a decision on an issue for four months, to no avail. In these situations when communication within and among agencies breaks down, the OED intervenes to facilitate and resolve a misunderstanding, disagreement, or dispute.
- The OED worked with an agency whose inefficient internal environmental review process for issuance of a Notice of Intent (NOI) (a formal announcement of an agency's intent to prepare an Environmental Impact Statement) did not comply with the agency's responsibilities under FAST-41 and was delaying the lead agency's issuance of the NOI. The corrected, more efficient review process between a field office and headquarters resulted in a 6-8 week shorter environmental review period.
- The OED continues to facilitate conflict resolution between agency headquarters and field offices to coordinate and deliver consistent information to project sponsors.
- Upon advice from the OED, multiple field offices within a single agency performed a pre-meeting collaboration and, for the first time for a covered project, met with the project sponsor with one voice. Ensuring coordinated decision making among district and field offices facilitated information sharing and enhanced predictability for project sponsors.
- The OED has convened meetings with agencies facing unusual circumstances outside of their control to identify and implement creative solutions to keep the permitting process on schedule while ensuring that those agencies' statutory responsibilities are not compromised.

The Permitting Council Executive Director remains the established point of contact, or "one-stop shop," for project sponsors and government agencies to request assistance in resolving an issue or initiating the formal dispute resolution process for issues affecting the timeline of covered projects under FAST-41. Executive Order 13807 further authorizes the Executive Director to, upon request of a project sponsor or Permitting Council member agency, work with the lead agency or any cooperating and participating agencies to facilitate the environmental review and authorization process for any infrastructure project, regardless of whether the project is a "covered project" under FAST-41.

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Question 2: Four new projects are now categorized as “covered” projects under FAST-41 and are posted on the Dashboard. Please describe the up-front coordination efforts between the Permitting Council and the agencies involved in permitting each of those projects.

The Permitting Council’s Office of the Executive Director (OED) is actively coordinating with agencies to ensure accurate and complete Coordinated Project Plans (CPPs) are provided not later than 60 days after the date on which the Executive Director makes a specific entry for a newly covered project on the Permitting Dashboard, and that they are updated on a quarterly basis. Projects for which the lead agency has not yet deemed the application complete may utilize the alternative procedures outlined in the Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects (FAST-41 Implementation Guidance) document, but the OED works with agencies to ensure the first CPP and associated timetable represent a good faith effort, and are as complete and accurate as possible, when a project application does not yet provide all the required information on which to base the CPP and permitting timetable.

Projects going through the FAST-41 process from the beginning are anticipated to receive the most benefit from the tools and processes offered by FAST-41. To that end, the OED is developing a revised CPP template based on lessons learned during 2017. This revised CPP template will make it easier for agencies to identify anticipated issues and develop agreed upon approaches to resolving those issues. This early and formalized coordination among agencies and stakeholders sets the stage for a timely and efficient permitting process. It also helps agencies align reviews that may be dependent on one or more authorizations, and to better understand how a delay for one agency’s review or authorization may have a cascading effect across other agencies’ reviews and authorizations that could result in significant delays to the entire permitting process.

The OED is also actively working with these agencies to implement best practices as prescribed in our “Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects” (December 2017), in order to guide the responsible agencies to ways that they are able to execute their authorizations and reviews in the most efficient and effective manner. The OED is leading the Permitting Council’s efforts in strengthening agencies’ culture of customer service for all stakeholders by enhancing coordination, transparency, and predictability in the permitting process for infrastructure.

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For two of the new covered projects under FAST-41, the States in which the proposed projects are located have expressed interest in the FAST-41 process. The OED is working with Permitting Council agencies and the project sponsor for one of those projects to draft a Federal-State MOU establishing the roles and responsibilities for the state and Federal agencies per FAST-41 and that identifies the CPP as the governing document for the project schedule. The OED is working with the agencies for both these projects to ensure states that are interested in opting into the FAST-41 process are able to do so in a way that meets the objectives of FAST-41.

Question 3: *What additional resources or authority would be helpful to the Permitting Council in advancing its mission at this point?*

Going forward, in addition to the reforms and activities mentioned above, the Permitting Council's Office of the Executive Director intends to be fully engaged with agencies and project sponsors to improve the process for permitting decision making. Our capacity and resources over the next year, including fully funding the FY 2018 President's Budget request of \$10 million for the Environmental Review Improvement Fund in the General Services Administration appropriation, will determine our ability to scale up and provide the promised benefits to covered projects, including enhancement of the Permitting Dashboard.

FAST-41 provides the authority and mechanism to issue fee regulations and the Permitting Council is working together to take advantage of this important tool provided by statute. The 20 percent limitation does not take into account the operations of the Office of the Executive Director, which does not conduct any environmental reviews or authorizations. *See* 42 U.S.C. § 4370m-8(c)(3).

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Questions from Senator Catherine Cortez Masto

Questions: *The Obama Administration created the Interagency Rapid Response Team for Transmission (RRTT), which aimed to improve the overall quality and timeliness of electric transmission infrastructure permitting and review by the Federal government on both Federal and non-Federal lands. Interior and FERC were both participating agencies.*

The current Administration's actions seem to be going to great lengths to rescind or rewrite existing regulations that are deemed to be over-burdensome, too costly, or duplicitous. However, the RRTT seemed to create a more efficient system within the existing requirements.

What is the status of the RRTT? Has it been eliminated? If so, how would the creation (and then elimination) of the RRTT, followed by the Trump Administration's Executive Orders to eliminate regulatory hurdles not actually be duplicitous and cause confusion for permit applicants?

In 2011, the Obama Administration formed the Rapid Response Team for Transmission (RRTT), building from a Memorandum of Understanding signed by nine Federal offices and Agencies in 2009 (2009 MOU) pursuant to Section 216(h) of the Federal Power Act. According to the statement from the Obama Administration at the time of the announcement of the RRTT, the RRTT "aimed to improve the overall quality and timeliness of electric transmission infrastructure permitting, review, and consultation by the Federal government on both Federal and non-Federal lands..." The participating RRTT offices and agencies were the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Energy, the Department of Interior, the Environmental Protection Agency, the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the White House Council on Environmental Quality, mirroring those in the 2009 MOU.

When announced, the RRTT identified seven pilot projects to focus on in order to identify improvements to the interagency permitting process. These projects were:

- Boardman to Hemingway

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- Cascade Crossing
- CapX 2020 Hampton to La Crosse
- Gateway West
- SunZia
- Susquehanna-Roseland
- Transwest Express

The RRTT met regularly to discuss project progress on these projects and other institutional permitting issues. The RRTT worked within the existing set of laws and regulations governing transmission permitting across all federal agencies. The RRTT itself was never a body that reviewed permit applications, but only ensured that leadership in each agency was engaged in interagency permitting matters. While not eliminated, the RRTT has not met in over a year. The creation of the Federal Permitting Improvement Steering Council (Permitting Council) as an independent council under FAST-41 has taken many of the lessons learned by the RRTT and expanded it to cover multiple sectors of infrastructure, including electric transmission.

The Executive Director of the Permitting Council is politically appointed and the Chair of the Permitting Council. FAST-41 provides the Executive Director with authority to provide a third-party perspective to the environmental review and authorization process for major infrastructure projects for all 14 Permitting Council Agencies. The Executive Director oversees the coordination among the Permitting Council Agencies to increase coordination, transparency, and predictability that are provided by FAST-41.

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Questions from Chairman Lisa Murkowski

Question 1: The tools provided in FAST-41 and being implemented by the Federal Permitting Improvement Steering Council (FPISC) are important, but not all projects are eligible (either because of sector, size or other factors) and/or selected to participate. What types of projects benefit most from the FAST-41 framework, and how do efforts to improve sector specific processes and policies for all projects, whether or not eligible or selected to be “covered,” influence implementation of FAST-41 and permitting process more broadly?

As discussed in my written testimony, the process established by FAST-41 mirrors the Commission's established transparent, collaborative procedures, including those associated with early coordination and consultation. The types of projects that can benefit most from these types of frameworks are ones that staff typically suggests undergo the Commission's pre-filing review process: complex projects involving numerous stakeholders which require multiple federal permits and tailored mitigation to address potential environmental impacts. FERC staff applies this process to such projects regardless of whether they are covered under FAST-41. The lessons learned through this process and the resulting environmental review can be informative for developing and adjusting approaches that can be used by all agencies subject to FAST-41. Since FAST-41 was enacted, Commission staff has attended all meetings of the Steering Council and of agency Chief Environmental Review Permitting Officers. Through participation in the various FAST-41 working groups and through assistance in the preparation of a number of FAST-41 related documents, staff has shared these lessons learned in encouraging cooperation and input from all stakeholders (federal, state, and local agencies; Indian Tribes; landowners; and the general public).

Question 2: At what point in the project development process can large projects become “covered project,” what is the role of the agencies and FPISC in determining and ensuring consistency regarding the appropriate timing for a project to be awarded “covered project” status, and is there a difference for projects depending on whether they are subject to a pre-application process?

Projects can become “covered” after both the filing of an application in accordance with the Commission's regulations and after the submittal of a FAST-41 Initiation Notice to both the Federal Permitting Improvement Steering Council (FPISC) Executive Director and the Commission. Commission staff, in consultation with the FPISC ED, will review the information provided in the request and determine whether the project meets the definition of a covered project as defined in 42 U.S.C. §4370m(6)(A). This approach ensures consistency in when a project is granted “covered” status.

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Projects that are still under development during the Commission's pre-filing review process are not yet eligible to be considered "covered." In almost all cases, the scope, facilities, or location of the project changes in the time between the initiation of the pre-filing review process and submission of a formal application. Projects at this stage remain uncertain and have not developed sufficient design information or data to be meaningfully evaluated. Accordingly, the milestones required by FAST-41 could not be established at this preliminary stage. The pace at which a project application is developed and the duration of the pre-filing review period is at the discretion of the project sponsor. Until the filing of the application, there is not sufficient information for the Commission and other agencies to forecast a schedule for environmental review and a Commission decision.

Questions from Senator Joe Manchin III

Questions: Hydropower makes up about 60% of West Virginia's renewable electricity production. The state's hydroelectric facilities are some of the oldest in the nation with units more than 100 years old. A 2004 study by the U.S. Department of Energy's Idaho National Laboratory found that the undeveloped hydropower potential in West Virginia is about 2,500 MW. We are encouraged by ongoing interest in developing more hydropower in West Virginia. I believe that these types of projects have a positive economic impact in the communities where they are developed. As you see it, what are some of the challenges to maintaining and upgrading older dams?

What is the biggest challenge to adding hydropower to existing dams? Is it financial or regulatory?

There are challenges to upgrading existing dams to include power production facilities. While the 2004 study by the U.S. Department of Energy identified undeveloped hydropower potential, many non-powered dams are not conducive to adding hydropower due to their remoteness, size, configuration, or condition. A dam may be in an area where construction would be difficult or far from existing substations making interconnections with the grid expensive. In addition, the size or configuration of a dam may not provide the needed head to make a project feasible or the project may be too costly to retrofit. In addition, many of the dams were built to aid mills or for mining and have issues with sediment buildup.

From staff's experience, difficulties in adding power to a non-powered dam are predominantly financial. Many projects do not proceed even after issuance of the Commission license due to an inability to secure financing for construction. Far more projects are investigated by proponents but never result in an application before the Commission. In FY 2012, the Commission received about 150

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notifications of parties looking into feasibility of projects at specific sites. That number has dropped to 95 in FY 2015 and 48 in FY 2017. The parties applying for these preliminary permits and other prospective developers have indicated the slow-down is due predominately to expiration of certain federal production tax credits and the lowering of electric rates due to the low cost of natural gas.

Questions from Senator Mazie Hirono

Questions: A lot of people are affected when your office approves a hydropower or natural gas project. How do you determine whether these projects are in the public interest? What is your office doing to increase public input into its decision-making process?

Does your office or the commission as a whole have internal measurements and review processes for measuring the openness to public engagement for each project it licenses, and if not, do you think that would help build public consensus about which hydropower or natural gas pipeline projects are truly in the public interest?

For interstate natural gas infrastructure, the Commission applies the standard set forth in the Natural Gas Act: whether a project is required by the public convenience and necessity. The threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next threshold is whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the construction of the new pipelines. If residual adverse effects on these groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. If the benefits outweigh the adverse effects on economic interests, the Commission conducts a thorough environmental analysis, to study a project's environmental impacts, examine alternatives, and develop appropriate mitigation measures. In light of this information, the Commission decides whether, and under what conditions, to authorize a project.

Under the Commission's statutory requirements for non-federal hydropower, the Commission gives equal consideration to all public interest considerations, including: power production; fish and wildlife protection; irrigation; flood

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control; water supply; recreation; and the preservation of environmental quality. The Commission can only grant the license after it determines that the license is best adapted to a comprehensive plan for improving or developing affected waterways(s).

For both hydropower and natural gas infrastructure projects, the Commission has developed processes that provide many opportunities for public input. Infrastructure applications and materials are required to be filed in the Commission's eLibrary, which is accessible by any member of the public. Commission staff reach out to the public in various ways on a project-by-project basis including through Federal Register notices, public scoping meeting notices, local newspaper notices, and through in-person meetings. Stakeholders are afforded numerous opportunities to provide the Commission with information, comments, and recommendations. The Commission considers all comments in making its determination on whether a project is in the public interest.

The scope of public outreach and engagement by both the applicant and Commission staff is developed and implemented on a project-by-project basis. Throughout the application and review process, staff monitors the project proponent to ensure they are engaged in appropriate public outreach. The goal is to ensure that the Commission is aware of the views of all stakeholders.

Questions from Senator Bill Cassidy

Nelson Energy, LLC is looking to develop hydroelectric projects in my state on Red River Locks and Dams 3, 4, & 5. The project has been issued licenses from FERC. Currently, Nelson Energy must pay fees to FERC although construction has not commenced. These fees – an estimated \$158,000 in 2017 – are very costly for a company like Nelson Energy and decrease the economic incentive to construct hydropower projects.

Question 1: What is FERC's reasoning for collecting fees during this time?

According to FERC records, Nelson Energy, LLC has not been assessed annual charges for any of the Red River Lock and Dam Projects. As stated in the Commissions Rulemaking "Commencement of Assessment of Annual Charges" (Docket No. RM15-18-000, Order No. 815) issued on October 15, 2015, the Commission will commence assessing annual charges on the date by which the

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licensee is required to commence construction. As a result, the Commission will begin issuing annual charges for the Red River Lock and Dam Projects as follows:

- *Red River Lock and Dam #3 (Docket No. P-12756): 4/14/2018;*
- *Red River Lock and Dam #4 (Docket No. P-12757): 2/17/19; and*
- *Red River Lock and Dam #5 (Docket No. P-12758): 3/8/19.*

Question 2: What work is FERC doing on a project that isn't yet constructed (or under construction) that justifies the imposition of such fees?

Under the requirements of the Federal Power Act and the Omnibus Budget Reconciliation Act of 1986, the Commission collects annual charges in order to reimburse the United States for the costs of administering the Federal Power Act. Commission staff performs extensive work on projects before they begin construction. This includes processing of the license application; reviewing environmental protection, public safety, and engineering and construction plans; and conducting dam safety and environmental inspections of the project.

Question 3: Specifically, what work has FERC done on the Nelson Energy project on the Red River in Louisiana since issuing licenses?

Commission staff must review a number of preconstruction documents, including project drawings; project financing plans; construction plans and specifications; public safety plans; the owner's dam safety program; an agreement that the licensee must enter into with the Corps of Engineers; a Freshwater Mussel Survey and Relocation Plan; a Zebra Mussel Monitoring and Control Plan; and a Cofferdam Fish Salvage Plan.

For the Red River Lock and Dam #3 project, Commission staff conducted a dam safety inspection in December 2014. Commission staff also processed a request for the extension of time to complete construction, reviewed and accepted the project Public Safety Plan, reviewed and approved the relocation of the project's recreation facilities, and reviewed and amended the project design changes including changes to the project's powerhouse, generating units, draft tube, switchyard location and transmission line route. For the Red River Lock and Dam #4 and Red River Lock and Dam # 5 Projects, Commission staff conducted a transition meeting to assist the licensee in complying with its license.

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Questions from Senator Rob Portman

At the beginning of this year, my staff had heard that the independent agencies like FERC and the Nuclear Regulatory Commission argued that because they are independent, they were not required to comply with all of the FAST-41 statutory requirements, such as disclosure of permitting timelines on the dashboard. On September 7, 2017, at a hearing before the Senate Permanent Subcommittee on Investigations, you testified that FERC would revisit this issue now that a quorum of commissioners are in place, and you said that staff might receive new instructions about this issue.

Question 1: Has FERC revisited this issue?

Since re-establishment of a quorum in August and the swearing in of Commissioner Glick and Chairman McIntyre in November and December, respectively, staff has briefed all five Commissioners on the agency's obligations under the FAST Act.

Question 2: Have staff received any new instructions regarding this issue? If so, what are they?

Under 18 CFR § 3c.2(b), the Secretary of the Commission has the exclusive authority for the public release of information regarding the timing of any Commission action. Staff has been instructed that, once the Commission has determined when it will likely be in possession of all information needed to issue a decision, the Office of the Secretary will issue a notice disclosing the Commission's intended order date. After this is done, Commission staff will update the Permitting Dashboard with this information.

Questions from Senator Catherine Cortez Masto

Question 1: Please provide me with an up to date list of all the energy related projects for which the Department/the Commission has received an application for a permit of any kind in the State of Nevada. I'm particularly interested in the status of all transmission or related facilities and projects that will increase the growth of a viable and competitive electricity market in the West that will benefit Nevada's consumers AND provide opportunities for Nevada's clean renewable energy to be exported.

As of January 12, 2018, there is only one application before the Commission for a non-federal hydropower facility in Nevada: the re-licensing of the Trout Creek Project (Docket No. P-848) by the Wells Rural Electric District. In addition, Paiute Pipeline Company has a proposal pending before the Commission in

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Docket No. CP17-471-000 to construct pipeline facilities on its system to provide additional natural gas transportation service for gas local distribution companies in the State of Nevada.

Question 2: The Administration's Climate Science Report released last month projects some very serious changes coming to the United States and particularly to the West due to man-made greenhouse gas emissions. These changes in weather patterns, drought cycles, the hydrological regime, sea level, wildlife habitats, etc. are going to have a significant impact on infrastructure and energy projects that have long-use periods.

How are these risks - to the users of these infrastructure components and to their public investors - being factored into the permitting processes? How are your agencies utilizing the Climate Change Report's findings?

For hydropower projects, staff uses a 30- to 60-year publicly-available water flow record when assessing project effects. This flow record reflects actual (not predicted or modeled) changes in hydrology that have occurred or are occurring within the river basin within which the project is located. This flow record, by its nature, reflects any fluctuations related to climate change. If a significant issue arises that was not anticipated after the project is in operation, hydropower licenses include standard reopener articles such that changes in project operation or project facilities can be considered. Regarding sea level rise, most Commission jurisdictional hydropower projects are located far enough upstream in a watershed that sea level rises would not be expected to impact the facility or its operation. For natural gas pipelines, sea level rise is not expected to significantly affect siting or operations given that these facilities are buried underground. Pipeline operators periodically inspect waterbody crossings during operation for signs of erosion and to perform remediation, as necessary. For aboveground facilities, such as liquefied natural gas terminals, staff reviews designs and frequently requests additional information from the applicant to ensure that sea level rise and storm surge are considered in the proposed project design.

Question 3: The Obama Administration created the Interagency Rapid Response Team for Transmission (RRTT), which aimed to improve the overall quality and timeliness of electric transmission infrastructure permitting and review by the Federal government on both Federal and non-Federal lands. Interior and FERC were both participating agencies.

The current Administration's actions seem to be going to great lengths to rescind or rewrite existing regulations that are deemed to be over-burdensome, too costly, or duplicitous. However, the RRTT seemed to create a more efficient system within the existing requirements.

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What is the status of the RRTT? Has it been eliminated? If so, how would the creation (and then elimination) of the RRTT, followed by the Trump Administration's Executive Orders to eliminate regulatory hurdles not actually be duplicitous and cause confusion for permit applicants?

The Commission had a limited role in the RRTT due to the narrow scope of this agency's siting authority for electric transmission facilities. Under section 216 of the Federal Power Act, the Commission has backstop transmission siting authority for projects located in DOE-designated National Interest Electric Transmission Corridors and where other specified criteria are met. Commission staff has been available to provide assistance as needed to the RRTT, but has not recently been contacted by that entity.

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Questions from Senator Catherine Cortez Masto

Question 1: I understand that TransWest’s Transmission project that crosses through Nevada has participated in the Western Area Power Administration – WAPA’s TIP program. After working with WAPA for almost 10 years, WAPA has not yet determined if they will be a final partner with TransWest to complete this project. Why is that?

Response Question 1: WAPA could not make the determination as to whether they will be a final partner until the environmental analysis on the TransWest Express Transmission Project (“TWE Project”) was complete. That process took nine years. TransWest submitted a right-of-way application to the Bureau of Land Management in December 2008. The BLM and WAPA acted as joint leads in preparing the Environmental Impact Statement and the Final EIS was published on May 1, 2015. The BLM issued its Record of Decision on December 13, 2016 and WAPA issued its Record of Decision on January 13, 2017. Since WAPA issued its ROD in January, TransWest has been discussing WAPA’s participation in the TWE Project.

Question 2:

What benefits does WAPA’s participation provide?

Response Question 2:

The Desert Southwest and Intermountain West are two of the only remaining regions of the country that do not have organized transmission markets. This presents a challenge for independent infrastructure developers that are not the traditional utility model where cost recovery can be guaranteed through a rate base. WAPA is the backbone of any coordination in this landscape as a primary owner and operator of interstate transmission. WAPA markets and delivers hydroelectric power and related services within 15 states that includes the Desert Southwest and Intermountain West regions. WAPA has an extensive transmission system and is experienced in building, owning, maintaining and operating transmission.

As a result, having WAPA as a vested partner in this project is an important validation for potential customers and other developers. Further, WAPA understands the region, the existing customers, and the operational challenges of delivering energy from the source to the customers hundreds of miles away. Public Private partnerships are essential for infrastructure developments and we would benefit greatly from Western’s experience, technical support, and its participation in the TWE Project.

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Question 3:

Can you explain the value added by having WAPA as a government partner?

Response Question 3:

See response to Question 2.

Question 4:

Do you know why WAPA is hesitant to following through with the partnership?

Response Question 4:

We will not speculate on why we have not yet been able to finalize our partnership with WAPA on the TWE Project.

However, WAPA's Record of Decision provides that:

"Selection of the Agency Preferred Alternative will help inform WAPA's Federal action(s) to consider any received or anticipated loan application permitted under its borrowing authority and/or exercise its options for participation in the Project. These considerations are contingent on the successful development of participation agreements as well as any and all documentation and commitments needed to satisfy customary financial underwriting standards."

Horst G. Greczmiel
12228 Tall Pines Ct
Fairfax, VA 22030

December 26, 2017

Senate Energy and Natural Resources Committee
304 Dirksen Senate Building
Washington, DC 20510

Subject: Senate Committee on Energy and Natural Resources "Current Agency Efforts and Further Needs to Improve the Efficiency and Accountability of Federal Permitting for Infrastructure Projects"

Chairman Murkowski, Ranking Member Cantwell, and distinguished Members of the Committee, I am Horst Greczmiel, a former public servant. My career focused on the National Environmental Policy Act (NEPA) and other environmental reviews and permits for almost thirty years.

My first experience with NEPA came at the end of my fourteen-plus year military career when, after receiving my LL.M. in Environmental Law from George Washington University, I was fortunate to be one of the first members of the US Army Environmental Law Division. There, I worked on environmental reviews and permits involving desert training operations, installation development and expansion, and base closure and realignment. After leaving active military service, I entered the Federal workforce as one of five "plank holders" that stood up the Coast Guard Environmental Law Division in 1992. At the Coast Guard, my work focused on environmental reviews and permits involving matters including the disposition of Governor's Island, and the operation of Coast Guard vessels along the Atlantic coast. While at USCG Headquarters, I served a detail to the Council on Environmental Quality (CEQ) during the President George H.W. Bush administration.

Several years later, in November 1999, I took on the responsibilities of Associate Director for National Environmental Policy Act Oversight at CEQ, a daunting job overseeing the Federal

government's implementation of NEPA. As Associate Director, I worked alongside and under the leadership of some of the most dedicated and talented political appointees from both parties.

At CEQ, in addition to issuing guidance and providing direction on implementing NEPA and the CEQ NEPA Regulations, I worked with Federal Agencies to establish or revise their agency-specific NEPA implementing procedures. Further, I joined them in working through the challenges they faced when implementing those procedures for all manner of Federal decisions (e.g., pipelines, transmission lines, bridges, water treatment facilities, military relocations, nuclear material storage, and land management policies and plans). My role as Associate Director provided numerous opportunities to work with proponents of energy and infrastructure development and the private sector companies and individuals seeking Federal reviews and permits (e.g., drilling, mining, and grazing permits or other approvals such as certifications or licenses). Another aspect of the job focused on working with Federal, Tribal, State, and local officials, including Mayors, County Commissioners, Governors, Tribal Councils, and local citizens that sought a greater voice in how the Federal environmental reviews and permits impacted their activities and lives, either as formal partners in the NEPA process or in providing comments on a NEPA review.

Throughout my time as Associate Director for NEPA at CEQ, I found that the overarching and common objective to improve the efficiency and timeliness of the NEPA process aligned with the goals of major Administration initiatives. Those initiatives included actions and recommendations from Vice President Quayle's Competitiveness Council, Vice President Gore's Reinventing Government Initiative, President George W. Bush's Executive Orders to expedite energy and transportation projects, and President Barak Obama's Executive Orders on infrastructure.

The common goals exemplified by the Executive level initiatives to improve the NEPA process were also reflected in Legislative initiatives to streamline NEPA. A most recent example is the Fixing America's Surface Transportation (FAST) Act signed into law on December 4, 2015 (Pub. L. 114-94). The FAST Act built on experience from previous transportation reauthorizations such as the Intermodal Surface Transportation Efficiency Act (ISTEA) (Pub. L. 102-240) and the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141). The transportation sector was not the only area where legislation sought to expedite federal decisions. Numerous other laws addressed various agencies or activities in different ways (e.g., the Energy Policy Act of 2005 (Pub. L. 109-58) and the REAL ID Act (Pub. L. 109-13)).

Another example of the effort to improve the NEPA process is provided in the CEQ NEPA Regulations. Although frequently criticized for their age, often overlooked is the value they add by focusing on efficiencies and timeliness by encouraging agencies to reduce paperwork and delay (40 C.F.R. sections 1500.4 and 1500.5). For example, the CEQ NEPA Regulations provide for tailored time limits (40 C.F.R. section 1501.8); scoping by using an early and open process for identifying those issues that merit detailed analysis (40 C.F.R. section 1501.7); integrating NEPA requirements with other review and consultation requirements (40 C.F.R. section 1502.25); and eliminating duplication with state and local procedures (40 C.F.R. section 1506.2).

Taken together, the FAST Act, the recent Executive Order 13807 entitled “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”, and the efficiencies embedded in the CEQ NEPA Regulations provide a solid foundation for improving NEPA and the broader Federal environmental review and permitting processes. This foundation supports legislation requiring agencies to implement improvements such as early coordination and dispute resolution, and integrated review and permitting requirements for all Federal activities and projects – not just energy or transportation projects or projects falling within a current definition of infrastructure. It is time to build on that foundation, rather than reinventing the wheel or creating one-off or sector specific changes. Few, if any, are well served when different or inconsistent processes are applied by different agencies or, even worse, when one Federal agency applies a different NEPA process when permitting or reviewing an energy development proposal, a mining proposal, a land or forest management plan, or a transportation proposal.

Further, the use of a public, transparent, dashboard that tracks agencies’ progress in coordinating and meeting major review and permitting milestones incentivizes moving forward expeditiously. A dashboard also has the potential to identify other factors that impact the efficiency, transparency, and accountability of federal decisions. By providing a fact based set of data on multiple projects, a public dashboard would allow for more fully informed discussions of what further changes should be considered and how those changes interact with the other factors at play in reaching a final decision. The overly simplistic and, I would argue, misleading reliance on simply cost, time, and examples of long or short process times that support a presenter’s subjective view of the value of the process are not helpful. Reliance should be placed upon the information a transparent dashboard yields and focusing upon identifying and developing more practices that improve the process without undermining the value of the reviews and permits under consideration.

As you consider Senate Bill 1460 and contemplate taking action to improve the efficiency and accountability of Federal decisions and expedite environmental reviews and permits, I urge you

to consider legislation that ensures that all agencies use a more uniform and consistent process for all environmental reviews and permits. Consider a legislative mandate that includes directing agencies to: use the public dashboard; implement coordinated project plans; develop procedures for early identification and elevation of disputes; and put into practice the efficiencies set out in CEQ NEPA Regulations.

Thank you for your time and consideration.



National Hydropower Association

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December 20, 2017

The Honorable Lisa Murkowski
Chairman
Energy and Natural Resources Committee
United States Senate
Dirksen Senate Office Building
Room 304
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
Energy and Natural Resources Committee
United States Senate
Dirksen Senate Office Building
Room 304
Washington, DC 20510

Re: Statement for the Record of the National Hydropower Association (NHA) on the December 12, 2017 hearing to examine the permitting processes at DOI and FERC for energy and resource infrastructure projects

Chairman Murkowski and Ranking Member Cantwell:

The National Hydropower Association (NHA) is pleased to have this opportunity to submit comments to the Committee on the need for improvements and reform of the federal hydropower licensing/permitting process. In addition to these comments, NHA incorporates by reference our testimony to the Committee earlier this year at the hearing on opportunities to improve American energy infrastructure.¹

NHA reiterates our strong support for policies that address the regulatory inefficiencies and improve the coordination in the overall hydropower project approval process. We call on Congress, as well as the Administration, to address this and other energy and market policy issues that limit investment in hydropower infrastructure. And, we believe this can all be done in ways that promote the hydropower resource while also protecting environmental values.

Hydropower has the longest, most complex development timeline (for existing project relicensing or new project approvals) of any of the renewable energy technologies, with some projects taking 10 years or longer from the start of the licensing process through construction to being placed-in-service.

NHA is appreciative of the work this Committee has conducted over the past several years to fully examine the problems experienced by the industry in licensing. An extensive record has been developed on these issues both in this Committee and in the House Energy and Commerce Committee as well as the House Natural Resources Committee. This year alone, project owners and developers from across the hydropower sector representing all parts of the

¹ https://www.energy.senate.gov/public/index.cfm/files/serve?file_id=E38D2A82-1B13-485F-8754-46C181EACB60, March 14, 2017.

country have shared their concerns and ongoing issues. NHA would like to highlight some of their experiences as discussed in their testimony below:

Testimony of Ramya Swaminathan, CEO of Rye Development, discussing project deployment on existing non-powered dams, submitted on behalf of NHA – “The timeline for a new hydropower development project to reach commercial operation is between 10 and 13 years, which is almost unmatched in the power generation space. Most of this time is taken by permitting. Federal permitting can account for 8 to 10 years (FERC licensing for 5 – 6 years and USACE permitting for 2 – 4 years) of that time, with the average construction period being between 1.5 and 3 years. Other renewable energy resources, and indeed fossil fuel generation, can effectively progress from inception to operation in less than half that time. It is possible to advance solar, wind, and even combined cycle plants from concept to being operational within 2 or 3 years.

This disparity of timelines to commercial operation presents a formidable challenge to new hydropower development. Private investors in the power generation space find the length and complexity of hydropower’s timeline difficult to manage. As a result, hydropower development becomes expensive due to the compounding of interest costs over long periods coupled with the unclear risk profile. When faced with these factors, many investors choose to invest in other forms of generation with far shorter timelines and clearer risk assessments.”²

Testimony of Herbie Johnson of Southern Company and President of NHA, discussing relicensing of existing hydropower projects, submitted on behalf of NHA – “In the coming years, there is a significant number of hydro projects with expiring licenses that will need to go through relicensing, but the rising cost and the continuing regulatory uncertainty of the relicensing process creates real doubt about the future of many projects.

NHA believes that more efficient regulation is necessary both to protect America’s existing hydropower assets and to create an opportunity to develop additional hydropower infrastructure both in the Southeast and across the nation. We believe that it is possible to achieve the same or even improved hydro licensing outcomes more quickly and predictably while protecting the important environmental and natural resources of our country. By reducing regulatory risk, cost and uncertainty, hydro developers will be encouraged, and indeed motivated, to invest in new projects, develop incremental capacity at existing dams, create new jobs, and increase the amount of clean, affordable and renewable hydropower in our country.”³

² <http://docs.house.gov/meetings/IF/IF03/20170315/105702/HHRG-115-IF03-Wstate-SwaminathanR-20170315-U1.pdf>. House Energy Subcommittee hearing on March 15, 2017.

³ https://naturalresources.house.gov/uploadedfiles/testimony_johnson.pdf. House Water, Power and Oceans Subcommittee hearing on May 3, 2017.

Testimony of Bob Gallo, CEO of Voith Hydro, on the positive economic impact licensing and permitting reform can have on U.S. manufacturing – “We hope the Committee will continue its strong work to streamline the licensing process, and look for ways to boost production on federally-owned dams. Expanding hydropower helps companies like Voith Hydro and those in the 2,500-company strong national hydropower supply chain that accounts for \$17 billion in economic output. More importantly, it also helps the American worker.

Voith Hydro is a perfect example. Though our workforce in the U.S. is already over 600 strong, our plant in York could accommodate a significant increase in work volume. And the good paying jobs that would be created are highly-skilled engineering and union manufacturing jobs that are the backbone of America.”⁴

Currently, this Committee has several pieces of bipartisan hydropower licensing legislation before it, including those provisions in S. 1460, the comprehensive energy bill, and other bills that have passed the House or Representatives, such as H.R. 3043.

NHA believes these bills represent moderate, common-sense approaches to addressing concerns with the licensing process as expressed above, while also ensuring stakeholder and public participation and the statutory authorities of federal and state resource agencies. The bills have garnered support from wide variety of hydropower, clean energy, utility and labor groups.⁵

Some examples of needed provisions are:

- Requiring greater inter-agency and stakeholder coordination;
- Early identification of issues and achieving resolution of conflicts;
- Setting and adhering to timely schedules, while also providing sufficient resources and time for decision-makers to complete their work; and
- Protecting and improving upon the important licensing improvements achieved in the Energy Policy Act of 2005 for trial-type hearings, alternative conditions and equal consideration.

We hope that the Committee can work expeditiously in the New Year to resolve the differences in the hydropower provisions between the Senate and House bills and pass final legislation as early as possible in 2018. We commit to working with the Committee and any willing stakeholders to achieve this goal.

⁴ https://naturalresources.house.gov/uploadedfiles/testimony_gallo.pdf. House Water, Power and Oceans Subcommittee hearing on May 3, 2017.

⁵ <http://anf5l2g5jkf16p6te3ljwwpk.wpengine.netdna-cdn.com/wp-content/uploads/2017/07/Joint-Letter-on-Hydropower-7-25-17.pdf> and <http://anf5l2g5jkf16p6te3ljwwpk.wpengine.netdna-cdn.com/wp-content/uploads/2017/11/11.7-Industry-Labor-Support-Letter-on-HR-3043.pdf>.

Thank you once again for your leadership. We look forward to working with you and your staff further on these issues.

Sincerely,

A handwritten signature in cursive script, reading "Linda Church Ciocci".

Linda Church Ciocci
Executive Director

