NATURAL RESOURCES COMMITTEE DEMOCRATS
RANKING MEMBER RAÚL M. GRIJALVA

FACT SHEET ON PROVISIONS IN BUDGET AGREEMENT TO GUT ENVIRONMENTAL LAWS & APPROVE MVP

Division C, Title III of newly released budget agreement bill text—misleadingly labeled Permitting Reform—includes several provisions to gut our bedrock environmental and public health protections, namely the National Environmental Policy Act (NEPA). Title III also mandates approval of the disastrous Mountain Valley Pipeline, which has already dangerously racked up hundreds of water quality violations.

THE BILL SLASHES KEY PROTECTIONS UNDER NEPA.

Section 321 Builder Act (p. 71) includes several provisions of House Republicans' extreme H.R. 1, the Polluters Over People Act, as well as other harmful provisions, including the following:

- ***Codifies numerous provisions from the widely-opposed Trump-era NEPA regulations***, which President Biden committed to review and revise on his first day in office, including the following:
    - Trump-era definition of "major federal action," which limits the types of projects and actions that trigger NEPA review.
    - Trump-era standard for categorical exclusions (CEs), a designation that allows projects to skirt detailed environmental review under NEPA. CEs are historically reserved for projects that—individually or cumulatively—do not have significant environmental effects. The Trump regulations removed the reference to cumulative effects and allowed CEs for projects that may cause significant effects if an agency determined they would not "normally" cause those effects.

  Together, these provisions diminish the depth of analysis required under NEPA and limit the types of projects subject to NEPA review.
- ***Allows project applicants to write their own environmental reviews*** despite the clear potential for conflicts of interest. This is particularly concerning in the case of private sector applicants who are legally responsible to shareholders rather than the American people at large.
- ***Creates new NEPA review exemptions*** by redefining the definition of "major federal action," so certain projects, like interstate pipelines, will be able to shortcut NEPA review.
- ***Sets arbitrary deadlines for environmental reviews***, including two years for environmental impact statements (EIS) and one year for environmental assessments (EA). These deadlines limit the agency's ability to perform thorough reviews in many cases.
- ***Sets arbitrary page limits for environmental reviews,*** which limits the amount of information agencies can report, effectively increasing litigation risk. Environmental reviews are limited to a single document that is only 75 pages or 150-300 pages for an EA or EIS, respectively.
- ***Supports litigation against federal agencies*** by allowing project developers to sue if environmental review deadlines are not met, while also failing to provide agencies the additional funding for staff needed to complete reviews. It also allows judges, instead of experts, to determine deadlines for reviews.
- ***Recklessly expands categorical exclusions (CEs)*** by allowing agencies to adopt CEs used by other agencies. CEs allow projects to skip detailed environmental review under NEPA, based on each individual agency's determination that the project will not have significant environmental impact, subject to the oversight of the White House Council on Environmental Quality (CEQ). Applying CEs inappropriately can

cause undue harm to the environment and public health. Whether CEQ will maintain their important role in determining CEs is unclear.

- ***Makes new burdensome, unnecessary reporting requirements*** by requiring agencies to report to Congress any missed deadlines for completing an environmental review. This will add additional paperwork and reporting requirements and further constrain agencies' capacity to issue permits, effectively slowing the permitting process.
- ***Mandates a lead federal agency*** that has the authority to establish deadlines for other agencies to complete any federal permits or approvals required for a project.
- ***Eliminates requirement to identify irreversible and irretrievable commitments of state, tribal or local resources involved in a proposed action.*** Instead, agencies would only have to identify *federal* resources that are affected. This change ignores the fact that NEPA references states, counties, municipalities, institutions, and individuals (42 U.S.C. § 4332 (F) & (G)) and NEPA's broad focus on assuring for all Americans a safe, healthful, productive and aesthetically and culturally pleasing surroundings, for both present and future generations (42 USC § 4331 (B)).

THE BILL DOES NOTHING MEANINGFUL FOR TRANSMISSION REFORM.

Section 322 Interregional Transfer Capability Determination Study (p. 93) merely authorizes a study on interregional transmission transfer capacity. The bill does nothing to accelerate transmission deployment or address top issues, including cost allocation, electricity transfer across regions, or FERC siting authority.

THE BILL EXPANDS RECKLESS FAST-41 PROCEDURES TO NEW PROJECT SECTORS.

Section 323 Permitting Streamlining for Energy Storage (p.95) expands the environmental review procedures from Title 41 of the FAST Act (FAST-41) to new project sectors. Originally, these environmental review procedures only applied to certain transportation sector projects of significant cost and complexity.

- ***FAST-41 drastically restricts public access to federal courts*** to challenge unlawful project permits by 1) reducing the statute of limitations period in which a person can file a claim in federal court from the typical six years to two years, and 2) imposing barriers to standing by requiring plaintiffs to have submitted comments identifying all possible environmental issues related to a legal claim at the outset of the review process or risk forfeiting those claims.
- ***FAST-41 arbitrarily limits public comment times*** during the environmental review process (60 days for draft environmental impact statements and 45 days for supplemental documents). Although these time periods are reasonable in some circumstances, these mandatory limits eliminate flexibility that federal agencies have to expand public comment periods when needed for especially complex and controversial projects that merit greater time for the public to review and comment on project proposals.

THE BILL MANDATES APPROVAL OF THE DISASTROUS MOUNTAIN VALLEY PIPELINE.

Section 324 Expediting completion of the Mountain Valley Pipeline (MVP; p.95) legislatively approves all permits necessary for completion of MVP and blocks judicial review of all permit approvals. Construction of the highly controversial MVP—a 303-mile gas pipeline extending from West Virginia to Virginia—has already racked up hundreds of water quality violations and been delayed by numerous legal challenges.