SECURE AMERICA'S ENERGY FUTURE

A ROADMAP FOR COMPREHENSIVE, DURABLE PERMITTING REFORM

Every facet of the energy supply chain is impacted by inefficiencies, delays, and roadblocks in the federal-permitting process. These pitfalls extend well beyond traditional energy: advanced manufacturing, data-center buildout, infrastructure development, electricity transmission, and emerging energy technologies are all caught in the same morass that is federal permitting.

America's energy future depends on federal permitting that is efficient, predictable, and fit-for-purpose across administrations, reviewing agencies, and American industries. The current system is anything but. True legislative reform requires (i) a wholesale review of the various outdated, delay-imbued processes and (ii) a complete modernization of the permitting system for energy and infrastructure development. A bipartisan, comprehensive, durable solution is the means to build again.

The American Exploration & Production Council (AXPC) represents America's leading independent producers of oil and natural gas. Collectively, we produce about half the country's oil and over half its natural gas. Our policy priorities below reflect a roadmap on permitting reform to secure America's energy future:

- **Reform NEPA and End Permitting Lawfare**
- **Establish Permit Predictability for Federal Lands**
- **Provide Certainty under the Clean Water Act**
- **Inject Common Sense into the Endangered Species Act**
- **Rationalize the Natural Gas Act**

REFORM NEPA AND END PERMITTING LAWFARE

Over fifty-five years ago, Congress enacted the National Environmental Policy Act (NEPA) as a procedural statute to assess the environmental impacts of major federal actions. Unlike later environmental laws, like the Clean Air Act and Clean Water Act, NEPA didn't create substantive environmental obligations. Its goal was to inform transparent agency decision-making in tandem with other substantive laws.

Today, NEPA has become something else completely. It's ill-equipped to regulate a modern energy economy, and it's been abused by third-party litigants whose goal is to delay and ultimately kill critical projects.

NEPA's statutory framework is broad and undefined, giving federal agencies wide discretion to determine the scope, depth, and content of environmental reviews. As a result, agencies have evaluated considerations far outside the project's scope and attempt to litigation-proof their reviews through wide-ranging, speculative, and duplicative analyses. The result: inconsistent processes with unpredictable results that increase costs, deter investment, spur delays, and with little to no additional environmental benefit.

Then there's the litigation. NEPA is by far the most litigated environmental law in the U.S. Code. Based on an analysis from the Breakthrough Institute, from 2013–2022, 423 federal-court rulings were issued for 210 energy projects.[1] Challenged projects spent a median of three years between agency approval and final decision, with many projects delayed far longer. But initial federal-agency approval was upheld about 70% of the time on appeal. And in a similar analysis, projects for oil and natural gas as well as renewables were equally impacted — with 37% of NEPA cases challenging the former and 33% of

[1] Breakthrough Institute, The Procedural Hangover: How NEPA Litigation Obstructs Critical Projects (2025), available at link.

NEPA cases challenging the latter.[2] NEPA litigation doesn't change the result; it delays already-approved, well-evaluated energy projects at the cost of project developers and end-users.

A recent Supreme Court case — *Seven County Infrastructure Coalition v. Eagle County* — gets us on the right track. The Court's unanimous opinion is a "course correction" for NEPA reviews and litigation challenges: reaffirming NEPA's procedural nature, limiting the scope of review to the proposed action's direct effects, and mandating that reviewing courts give substantial deference to the agency of record.[3]

The implementation of *Seven County* is a starting point to fix a broken process. Critically though, statutory reform is essential to follow through and modernize NEPA to foster — not obstruct — project development and implementation.

Policy solutions

Tighten the review process:

- **Prohibit speculative and subjective reviews:** Congress should expressly limit "significant environmental impacts" to those that are reasonably foreseeable and directly caused by the project, while reducing or eliminating requirements to analyze unpredictable cumulative and indirect impacts.
- **Narrow the scope and range of alternatives under consideration:** Congress should clarify that only technically and economically feasible alternatives within the reviewing agency's jurisdiction and consistent with the project's purpose should be analyzed.
- **Redefine the types of projects subject to review:** Congress should narrow the definition of "major federal action" so that projects lacking substantial federal control or responsibility are not subject to the same review process as large-scale federal projects.

Streamline agency reviews:

- **Expand the use of programmatic and tiered reviews:** Congress should reinforce that broad leasing- or planning-stage analyses be used to cover foreseeable developmental impacts, with subsequent project-level reviews being tiered to those analyses for future agency decisions.
- **Leverage functional equivalence to avoid duplicative reviews:** Congress should allow reviewing agencies to satisfy NEPA requirements by referencing other, substantively equivalent environmental reviews that have been completed for the same project by other federal and/or state agencies.

Enact judicial reforms:

- **Clarify standing:** Congress should limit litigation challenges to parties that can demonstrate concrete, direct, and personal harm — i.e., an actual injury to themselves or their property.
- **Establish a clear statute of limitations:** Congress should require NEPA challenges to be filed within 150 days of the final agency action.
- **Reinforce the scope of judicial review:** Following *Seven County*, Congress should make explicit that judicial review of NEPA is limited to whether the agency has met its procedural obligations — ensuring that analyses are complete, transparent, and within statutory bounds — and preclude courts from broadening NEPA's role or substituting their judgment for the agency's.

ESTABLISH PERMIT PREDICTABILITY FOR FEDERAL LANDS

[2] Breakthrough Institute, Understanding NEPA Litigation: A Systematic Review of Recent NEPA-Related Appellate Court Cases (2024), available at link.

[3] *Seven Co. Infrastructure Coalition v. Eagle Co.*, 605 U.S. __ (2025).

The modern American energy economy demands smart, responsible use of our natural resources. Any long-term strategy to unleash American energy must include a durable, predictable framework for the development of oil and natural gas interests on federal lands.

This is in part because of the significant revenue that can be generated for the Federal treasury and state and local economies. For example in FY 2023, federal onshore production yielded nearly $8.5 billion of total revenue, with over $4 billion disbursed to state and local governments.[4] In New Mexico, revenue from federal-land production constituted more than 35% of the state's total operating budget.

But just like NEPA, the permitting process for onshore, federal lands remains inefficient for both the project applicant and the reviewing agency. At BLM, the byproduct is a permitting logjam with routine Applications for Permits to Drill (APDs) taking anywhere from 139 to over 1,000 days. That's less investment, less production, and, as a result, less revenue for the Federal Government and states and localities.

Congress can fix that by streamlining agency processes and removing barriers that have no meaningful environmental benefit for energy projects on federal lands.

Policy solutions:

- **Remove federal permitting on state and private lands with limited federal interest:** Congress should establish that APDs aren't required if less than 50% of the minerals in a drilling or spacing unit are federally owned and/or when the Federal Government doesn't own or lease the directly-impacted surface estate.
- **Enforce CatEx already established in law:** Congress should direct that categorical exclusions (CatEx) — a class of actions that don't have a significant environment effect and thus don't require an EA or EIS — must be used when the statutorily-defined criteria are met and limit the circumstances when they can be avoided.
- **Implement a permit-by-rule system:** Congress should direct BLM to establish a permit-by-rule process for specified APDs — e.g., drilling within existing wellsites, using current best practices, and not altering a prior NEPA review — and authorize BLM to delegate reviews to third-parties for these low-impact projects.

Provide Certainty Under the CWA

State and third-parties have leveraged the application of the Clean Water Act (CWA) to delay or block projects unrelated to water quality. Vague statutory boundaries and inconsistent timelines have compounded the problem, adding years to project implementation and creating paralyzing unpredictability for project developers.

At the same time, nationwide permits (NWPs) — a critical tool to authorize routine, low-impact activities — are vulnerable to shifting policy decisions by changing administrations.

By clarifying the scope of and relationship between federal and state authorities and ensuring that NWPs remain consistent and available, Congress can establish durable certainty for energy projects subject to the CWA.

Policy solutions:

- **Remove delays from § 401:** Congress should clarify that certifications are required only when a federally-licensed activity could result in a discharge from a point-of-source into a "water of the United States" (WOTUS) and establish a reasonable standard for downstream considerations.

[4] Internal analysis derived from https://revenuedata.doi.gov/query-data.

- **Clarify NWPs under § 404(e):** Congress should require that all current NWPs be maintained and available for all covered activities,[5] establish a petition and rulemaking process for new NWPs, and set a minimum term of at least ten years for NWPs.

INJECT COMMON SENSE INTO THE ESA

Congress hasn't updated the Endangered Species Act (ESA) since 1988. Between then and now, its implementation has resulted in broad species listings, unclear habitat designations, inconsistent consultation requirements, and litigation-influenced decision-making. All of this has increased permitting delays and costs, while restricting land use without meaningful conservation benefits.

It's time for Congress to modernize the ESA and ensure that sound science and good sense govern the statute's application to energy projects.

Policy solutions:

- **Restrict the litigation abuses of mass third-party petitions:** Congress should address the ESA petition process to prevent sue-and-settle tactics used by third-parties that (i) seek mass listings to overwhelm the agency and secure mega settlements and (ii) drive unnecessary or poorly-supported listings.
- **Define "habitat" and set implementing standards:** Congress should adopt a clear definition of "habitat" — e.g., "the abiotic and biotic settings that currently or periodically contain the resources and conditions necessary to support one or more life processes of a species" — and establish an objective and judicially-reviewable standard for excluding areas from critical habitat when the benefits of exclusion outweigh inclusion.

RATIONALIZE THE NGA

The National Gas Act (NGA) governs approvals for the import and export of natural gas, including LNG. While FERC conducts a thorough environmental review of the construction of LNG export facilities, DOE separately determines whether the export of LNG to countries without free-trade agreements (non-FTA) is "consistent with the public interest."

This dual-review process is redundant, adds uncertainty to project investment and implementation, differs from other export approvals of oil and gas, and is subject to abuse with unfettered discretion.

Policy solutions:

- **Streamline the approval of LNG exports:** Congress should update § 3 of the NGA to either remove the public-interest determination for LNG exports to non-FTA countries or define the public-interest standard with clear review criteria and timelines.

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If we want to build again and meet the looming energy demand, Congress should enact a bipartisan, comprehensive, durable solution across the federal permitting system. This roadmap provides a framework that ensures efficiency and predictability for developers of energy and infrastructure projects and public stakeholders alike.

[5] Applicable to the fifty-nine NWPs identified in the Army Corps of Engineers' 2021 index.