

Stephen Schima - Earthjustice [00:10]

Alright, uh I think it's slowing down, so let's go ahead and get started. Um we put together an agenda And by we, I want to thank Claire because she really put it together. Uh Claire, did you share that already or did we drop it into the chat too?

Claire Dorner [00:30]

Um I did not share it. Sorry, I wasn't sure if an email was gonna go out I will type that up right now.

Stephen Schima - Earthjustice [00:35]

Oh, I've got it. I can

Claire Dorner [00:37]

okay, great.

Stephen Schima - Earthjustice [00:39]

Um, but want to talk first about just Intel overall timeline with stake to play as it is now jump into some of the initial bill analysis. I don't think we have time to go through every piece of this. It's a 400 page bill. I would really be interested in doing some maybe flying under the radar issue spotting um you know it feels pretty awful with regard to uh in water acts and epa and hpa and other laws that we could spend day talking about that but we really want to get into um you know some upcoming things that we need to be doing including tactics uh film meetings digital uh fact sheets, letters, briefings, things of that nature. So is there anything else people want to put onto an agenda?

Brett Hartl [01:29]

Yeah, Steve, this is Brad. Yeah.

Stephen Schima - Earthjustice [01:33]

Go ahead.

Brett Hartl [01:34]

Um I understand obviously this is a tricky issue for a lot of groups and that it is a long bill and people are digesting it. But I guess I think we have to also have a clear understanding of the front end on the on what this call will do and what information will be shared out um beyond sort of our our space because you know just to be totally candid If your organization is not opposing this bill, our tactics and information cannot get back to Dan Dudas and White. House and Heinrich and others. And I think we really have to have a pretty clear agreement by all parties that like this is a this is an organ this is a this is an effort to stop this bill not to make it better. They've already made clear my understanding of the the Senate process there won't be amendments. And trying to perfect a bill that's 400 plus pages that harms so many of our interests is um, you know, I just want to be really clear, like I think we have to be honest about what our intentions are. if we're part of this larger effort here and then if your organization is is not in the mindset of defeating the bill as the objective like we have we we need to we need to hash that out now

Stephen Schima - Earthjustice [02:58]

Yeah, no, thanks. Thanks, Brett. And I agree, and I also know that uh some organizations are Still reviewing this bill and haven't issued statements. Um Brett, do you have any suggestions on how to navigate the threshold question at this point?

Brett Hartl [03:18]

Well, I think I'd first ask at a minimum that there's an agreement of confidentiality. We're not going to do like a formal confid like a common interest agreement because obviously that's impossible and it's just a bill but I think I would say I get I get it that people are digesting it that's different than like if your organization is not opposing it I think you should step off. Like I think like if if you know that's where your organization is at, you shouldn't be on the call. If you're still figuring it out, that's fine. I get it. But like if you know that that this your organization is gonna come out as neutral or in some other role, I I think have to just ask that you you leave. I think most of us are opposing it, but I just, you know, just to be totally candid, like if we really want to engage in tactics, I don't want them getting back to Heinrich and White House.

Lydia tws [04:09]

Can can we um uh this makes sense to me. This is Lydia. Could can uh from TWS. Could we um could we just start with uh with the analysis part? Because you may have a bunch of people on this call can be that input. And need to hear examples.

Brett Hartl [04:26]

Yeah, yeah, for sure.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [04:27]

I just want I just I just I just didn't want to get entirely skipped because I didn't see it in the agenda. Like I think we can talk about analysis, but before we get to tactics, I just wanna like because if we're gonna share like our actual confidential tactics we really need to like know who we're talking to about them.

Stephen Schima - Earthjustice [04:53]

Sorry, I was on mute. Uh for those of you that are on the call, if you just make sure you're you're muted if you're not going to be speaking.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [05:02]

And tactics are last in Ariel's suggestion. Maybe we save that for last. I'm open to suggestions. This is obviously tough. I think most of us are really uh apoplectic about a lot of the provisions in this bill, but uh to Brett's point, we do have to have some kind of of um confidential confidentiality and assurances uh in terms of moving forward. Um yeah

Mahyar - Sierra Club [05:29]

and just to jump in this is Mahirous here. I think so we brought this call together initially for folks to be able to convene and talk about this like generally the substance and uh initial analysis of where folks are knowing that like many I'm raising my hand I I'm still trying to go through the 400-page bill as I know others are. And to there have been good points raised that like if you are on this call, you are agreeing that the conversations that we are having on this call call today are staying on this call unless you sort of want to share the substance of what we discuss in terms of the content back to your organization But I think like for the purposes of we have like 90 people on this call we can get to tactics towards the end, but like my general sense is that we're probably going to have to. have a subset of this call actually digging in on some of those tactics. I do not believe we're going to be able to have a like productive conversation on tactics, knowing that now we have only 50 minutes left on the call and we're we need to dig in on on how folks like dig in on the different pieces that folks want to elevate as like key concerns. And then again, like I also want to make space for folks on this call who want to talk about the thing, like who want to raise some of the pieces that they actually like as well. And that's not saying that anyone is supporting the bill that is just trying to have a broad analysis of what is in for the good and mostly the bad. Is that a fair is that fair for the time we have today? Thank you. Okay.

Stephen Schima - Earthjustice [07:17]

Thank you, Maya. Alright. Are we good? I might turn it back over to Maya just to give a quick overview of where we are in terms of state of play. And what happened yesterday and where things are going forward, so everybody's on the same page.

Mahyar - Sierra Club [07:31]

Happy to. And I will be super quick because I know folks, uh a lot of you probably already know what's going on, but again, there's 89 People on this call, so maybe you don't because it has been very confusing. And quite frankly, the process is confusing because of how they have set this up. And so to be very clear and just to get everyone on the same page right yesterday folks finally saw the introduction and the bill text release of the bipartisan permitting reform agreement made by Senators Whitehouse, Heinrich, Lee, and Capito. They had a press conference in the afternoon. They released the bill text over 400 pages. And it is now. So I know folks have been hearing a lot of sort of there was a bit of disagreement in the beginning of the day yesterday around some of the offshore wind pieces that had not yet been squared away. I'd welcome others who haven't told a share around sort of what went into them deciding to actually come to an agreement to release the text. It is my understanding a lot of the pressure to get the text out was from Republicans and the White House. Not saying that Dems shouldn't or have should or shouldn't have agreed to that. We know the Republicans wanted to get something out on affordability and push this out before everyone recessed. So it's out. Let's dig in in a moment around what is in. But for process and next steps, there are a few sort of outstanding pieces here, right? So we saw last night Senator Thune file cloture, which essentially means to like kick off the first procedural step to move this bill forward. They used another bill that will essentially be the shell for what this permitting text will be put into. And they had then it did look like they had come to an agreement. to once they come back and I believe as of uh last night it was like 5 30 p. m on Monday November 9th so that is literally the Monday after the election election when folks come back they are going to vote on invoking cloture on the motion to proceed and so that vote when they come back will be a 60 vote threshold That they will need in order to begin consideration of the bill. The other quick last things I'll say is so that essentially means at this point , we have also heard, and I see folks putting in this in the chat. And they indicated during the press conference as well. It sounds like when they decide to move forward in November, there will be a manager's amendment that is going to be put in for consideration of the permitting bill. Now does that mean that between now and when folks come back, there's going to be some type of amendment process? I don't know. That is generally what we've been told But at this point, it is the last thing I will say is that separate from the folks who were at that press conference and maybe a few others, most Senate and House offices Have been kept in the dark in terms of what is in this bill and have been kept in the dark in terms of negotiations and the ability to actually like be a part of the process. So you can expect maybe how Senate offices are feeling about that lack of transparency, to say the least. And then the very last thing I'll say, and this is a huge credit to CJA and others who I know had talked with uh Representative Huffman, but we are already starting to see sort of trickling of statements coming out from the house side with Mr. Huffman saying, you know, let's kick this to next year. But then the new Dems, unsurprisingly, right. uh saying that they're also reviewing and generally um are eager to be a part of this ongoing sort of process around permitting. So at this point, so I'll I'll stop there by essentially saying Both House and Senate are out. They plan on voting on this Monday, November 9th. So we've got about a month to figure out what we're gonna do. Happy to answer questions and turn it back to you, Steve.

Stephen Schima - Earthjustice [11:45]

Thanks, Mayard. Does anybody have anything they want to add or any questions about that summary of where we're at? All right. Hearing nothing, uh, thanks again to Mayar. And just emphasizing, yeah, we only have four to five weeks. Uh on this, so it's not a lot of time. Alright. I want to jump into the

substance. I know a lot of people haven't had time to read this. There's a lot in it to digest and relied to. There is a lot of expertise on this call. Um, I don't think it makes sense to walk through every provision, obviously, but would like to do highlights of some of the major issues that we're seeing. Um, and more importantly, also see. if anything's flying under the radar. That is going to be something there's, you know, on the second read you're finding more things on the third read. it's the same so um i'm just gonna kick it off on the nipa side of things because it's near and dear to my heart and this is rip PNEP, for the most part. I mean it's really truly awful uh with regard to uh environmental review, public input. There is none. um and accountability under the law. I'll just say, you know, the the major items in this space. And it's popping up throughout the bill, so there's a section on EPA, but um There is a extraordinary extraordinary narrowing of the application of the statute. They redefine major federal action so that does not apply to a pretty broad range of projects. At first read it looks like it includes certain as natural gas projects, transmission, WordA. Um, there's a lot of carve outs and that alone is worrying. But in addition to that, um, you know, despite assurances that we heard before this bill was released that there was be some kind of language around getting public comment required. There is a requirement for 45 days of public comment, but that is only on the notice of intent, which is kind of meaningless. There is no affirmative obligation for the agencies to publish draft environmental review documents or provide comment on those. That is something this administration has uh revoked by revoking the CEQ regulations and we're seeing more and more projects go through without any kind of meaningful public comment. The judicial review provisions are pretty staggering. You know There's elimination of injunctions, there's remained without vac vacator , changes to standing, the statute of limitations is reduced to 150 days. Um, you know, it's it's really bad with that regard. And then alternatives, I think it's just worth flagging that alternatives need to meet the goals of the project's fund. And when you look at who the project sponsors are of some of the projects that we don't like, that is extraordinarily problematic. Those are just quick highlights or low lights. But I'll pause there to see if there's anything else people want to lift up or flag that may be flying on the radar or need the space. Um and Eric, thank you, on the uh natural gas pipelines. Uh

Alyssa (NWF) [14:57]

Stephen, this is Alyssa Samuel, National Wally Federation. Um just wanted to highlight because it it it does I loop in, but it's somewhat unrelated as well. Um, Project Certainty under Title IV, the 1401B1, I urge it. Anybody? Who deals particularly with federal projects to take a look at that? Basically it's once project is authorized and there's a rod, there are no changes whatsoever, period, to anything. Ever at any time ever. So it's it's really bad. And I also read that to um and it may already have been eliminated. I'm not sure. any need to prepare supplemental EIS is gone. Pretty much no opportunity for 404 C's. It's just sweeping on both permits and federally authorized permits. projects, including of course anything that moved forward under the Trump administration. So just wanted to highlight that as one since it's all the way at the bottom at the

Lydia tws [15:52]

towards the end that it might have fallen under the radar.

Stephen Schima - Earthjustice [15:55]

Yeah, thank you and thanks for flagging that. And the permitting certainty provisions merit uh specific attention and maybe we'll talk a little bit more about that. about that. Um but I see hands are up. I just because of how it's appearing on my screen is it Liz and then error. Okay, good.

Alyssa (NWF) [16:11]

I've been focusing a lot on the judicial review stuff. I'll add in that on that but I mean just it's shockingly bad. Um yeah the thing that strikes me is that it's two completely different tracks for project sponsors

and everybody else. Like there's a million little ways that it stacks the deck so that project sponsors win and everyone else loses. Um and the other thing I was gonna highlight and maybe ask is I'm not clear on what still triggers NEPA. Like between the exemptions for virtually all energy. uh the exception for grants like that's highways I guess don't have any but like what does uh forest management play Like I

Stephen Schima - Earthjustice [16:59]

think it's pretty

Alyssa (NWF) [17:00]

nervous.

Stephen Schima - Earthjustice [17:02]

Yeah

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [17:07]

I can't answer those questions except I feel very similar to Liz in in the context of how Quite shocking, this is and how much further it goes than any previous iteration of the bill of permitting bills. I will note that much of this does echo language that was in the really bad speed act that basically Westerman's logic about Nipah that guts it.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:21:19]

One thing I'd note and relative to the prior comment about certainty, but then I think we should think about the judicial review provisions in conjunction with those certainty provisions, because essentially what this bill does is it hamstring our ability to go after projects, and then it hamstring the ability of any future president. to go after projects. And the problem with this is that this is a narrative framing component that I think we need to be really careful about because proponents of the bill are arguing that this empowers a future progressive administration to unleash clean energy and innovation. Really what it does is it just abdicates the responsibility of the federal government to set a direction for energy policy and then cedes that authority to the market because we won't be able to challenge projects and a future administration will not be able to challenge anything that is in fact. Permitted during the pendency of the Trump administration, which is going to create an incentive for all these data centers and fossil fuel companies to rush through a process, hoard leases, permits and authorizations, and then basically tell a future administration to go fly a kite. And then, meanwhile, many of the regulatory tools that a new president would have, not just via NEPA, but ESA, Clean Water Act, National Historic Preservation Act. Those authorities for a new administration to tilt the scales in favor of renewables have gone away. And so I think a framing component for this has to be this isn't about empowering a future administration. This is about empowering tech, energy and finance. to do what they want, damn whatever a future president in 2029 wants to do to actually transition from fossil fuels to renewables. So there's a legal component there on the judicial review and certainty provisions, but a really critical narrative component that we need to push back on.

Stephen Schima - Earthjustice [12:22:59]

100% agree. Anybody have any responses or thoughts? Response to... If not... I'll turn it over to Claire. Oh, sorry, go ahead.

Jerry Otero [12:23:09]

Is that what you just said there? I'm sorry, this is Jerry from the Trust. Is that what you've noted there? Do you have that in writing? Is that available too? Because I think you made some really great points there.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:23:20]

Is anybody transcribing this right now? Um, you know, I'll put that down in the notes. So, I did some of that on social media over the last day or so, and I've been just kind of noodling around with it, but I will put that in the Rapid Response notes.

Stephen Schima - Earthjustice [12:23:34]

Thanks, Eric, and...

Mahyar - Sierra Club [12:23:34]

That would be great. And Kip, that would be great. Sorry, can I just jump in by just saying, and I, I see a lot of really great chatter in the chat. I want to just be mindful of folks who may not be reading the chat, like Bart, I saw you flag some things if you want to get off mute and jump in Jeremy as well, not to jump stack, but just.

Stephen Schima - Earthjustice [12:23:36]

Oh, go ahead.

Mahyar - Sierra Club [12:23:50]

Just, like, if possible, so that we... so that folks who maybe might be listening on their phone or... or we can... everyone can just see what's happening.

Stephen Schima - Earthjustice [12:23:58]

And one other housekeeping note, if folks could just include their last name in their Zoom profile and possible affiliation, that would be really helpful. OK, I'm going to turn it over to Claire.

Claire Dörner [12:24:12]

Yeah, this is just a call out to people to share also, I hesitate to call them like positive provisions, but like the provisions that we can imagine Democrats would like or maybe go for because that's critical for our strategy here too. And so, um, if people see some of these provisions that we are, um, that we think are harder to defend against, please do bring those up as well, especially the lesser-known ones. That might be appealing to some stakeholders.

Stephen Schima - Earthjustice [12:24:46]

Thanks, Claire. And I think it's Ashley, then B.

Ashley C. Nunes (she/her), CBD [12:24:52]

Um, okay, if we just stick with NEPA before we get to all the other bad shit, um... Steven, I'd like to add to some of what you said. Uh, I spent so much time with this yesterday. Um, something else that I'm noticing, if people are not familiar with the SPEED Act, part of that that is here, um, is that it really, like, changes standing. It... puts a very like onerous, restrictive conditions on on who can bring claims. So that's worth noting there. It also explicitly gives deference. to the agency. Um, it is hard to imagine, after an environmental review has been done, and an outcome has been determined. With that kind of... codified language, how anything could change. And then there's also this. I if others have thoughts on this like, please weigh in. But there seems to be a lot about like lead agency, and like, who's who's running the show? And it's like mapping out. You know, if there are potential possible. multiple lead agencies, like how the one will be decided. And then there are provisions that like. let non-federal entities become a lead agency or coordinating agency, and that applies to other jurisdictions. They can recommend who that is. They can nominate themselves. And so this is like part of that slippery slope of shifting towards industry because you could literally have the state of Utah say we should be a co-lead agency on this big thing that's going to affect public lands within our state. Um, and then part of the

SPEED Act that's here is... is that if there is a statutorily, functionally equivalent type of environmental review, the lead agency. could decide that that's a substitute for Federal NEPA review. So. There's a huge. shift of federal oversight that is going to other entities, potentially. in the benefits industry.

Stephen Schima - Earthjustice [12:27:21]

Thanks, Ashley. And just to underscore one of the last points there that I meant to flag, too, is the functional equivalence language that's in the bill with regard to NEPA. It's much broader than anything we've seen. This is going to be a subject of Supreme Court case next week that's being argued, partially.

Ashley C. Nunes (she/her), CBD [12:27:21]

I hope that helps.

Stephen Schima - Earthjustice [12:27:37]

subject of that argument. But, um, yeah, just plus one everything Ashley just said. Bart, and just to be mindful of time, sorry, Bart, before you go, I want to spend another, like, you know, 10-15 minutes. I want to make sure we have time at the end to... close things out and talk a little bit about what's next steps. Mark, go ahead.

Bart Johnsen-Harris | Trust for Public Land [12:27:57]

I'll be super fast. I posted in the chat. I honestly don't know how big of a deal this is, but just flagging for everyone's awareness that one of the types of energy projects they're looking to speed up is hazardous fuel reduction and forest restoration projects as defined by. HFRA, so, um, this definitely has implications for timber on top of other things, um, which I would not necessarily, uh, categorize myself as energy projects, but here we are.

Stephen Schima - Earthjustice [12:28:31]

Yeah, that's a great flag. Uh, Jeremy?

Jeremy Symons [12:28:37]

Yeah, um... very helpful input, um, or understanding. I appreciate it, and would love to see more in writing as you guys figure it out. I think... I mean, the reality is, with White House and Heinrich supporting this. Like if this is a debate about NEPA, or if this is a debate even about Ezra Klein. in abundance, like, we don't... like, there aren't the votes to stop that deal from moving forward. I think... You know, again, this is... My my focus is on sort of like like. What's in here that's, like, the scariest and the scariest to me, ironically, which is the piece the Democrats fought to put in for the wind companies, because clean energy is the permanent stuff. Like, I think it's the prospect of enormous abuse by this administration over the next two years. Beyond the bounds of what these guys are thinking about, what anybody's talking about, that... You know, is is something that we really need to lean into, and I think it brings in data centers. I mean, he could be issuing permits to Elon Musk to build a coal plant, you know, and and build a data center in the Grand Canyon, like, and make it permanent, and no one can do anything. So the stripping of power from Democrats, the the weakness that Huffington leaned into. But particularly that permanence piece, even though these other pieces are really important. I think it's just to me, and it's not even... I mean, it is. It is the truly frightening prospect out of this is how much long term. long-term damage they're gonna do. So I'm gonna keep writing about that. I love additional input on that, or other things that are too important to leave out. Just thought.

Stephen Schima - Earthjustice [12:30:23]

Yeah, no, thanks, Jeremy. And that's something I was going to flag too. And illustrating the consequences of the language is going to be key. And I think the example of data centers on public

lands, data centers in Yosemite or the Grand Canyon, some coal-fired data center, what does that look like with these NEPA provisions? uh, judicial review provisions with the certainty provisions. There's gonna be no public input, there's gonna be no accountability, and it's gonna be locked in. Um, I think leaning into that stuff's gonna be really important. But, uh, I hate to say it, but that's enough NEPA. Let's turn over to the Clean Water Act. Um, does anybody want to volunteer and give just, like, a high-level overview of some of the Clean Water Act language? Anne.

Ann - ELPC [12:31:02]

Is JW on? Because he led in drafting the letter that's circulating, but... I mean, I can try, but I'm not really by far the expert. The one thing I will just say is that we had met with Dan, a bunch of clean water groups, and he had said, we are not going to codify the Trump 401 rule because Democrats won't go for it. And they've done that, in many ways, plus. So, we are... we do plan. I think we do need to go back to Dan and say. You told us one thing and you completely did the other. But that's not a breach of confidence on this call. I'm just saying that I feel like I need to go back to him and give him a piece of my mind. But, you know, one of the major changes that it does is really just undermine Section 401 of the Clean Water Act, which is already threatened by this administration's final rule, which I frankly, and I probably said this the other day, I think is being held up so that we can't compare the final rule to this bill, because it was finished with review, and it was supposed to be out. We also had the very narrow WOTUS rule, so... clean water is already under threat, you put this on top of that, it's very harmful. It really narrows what states can... Protect in terms of their own waters to discharges along a project, but not the project as a whole for linear infrastructure, which is very damaging. It codifies some nationwide permits in ways that's very damaging in terms of expanding out the kind of damage projects can have. Um, I know JW put it into the outline, so I think a lot of it is already there, and people can go edit that. Um... But... clean water is very popular. People really want clean water, and it's an affordability issue, and it's a flooding issue, so I think that if people are looking for things that we can bring to offices to say this is undercutting your states and clean water, that that might be something that some offices, at least in Democratic offices, might... see as really going... having gone too far. Um... But, you know, I'll stop there.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:33:15]

If I could jump in on the Clean Water Act side, too, with 401, one of the provisions that we were taking a look in is the language is confusing. It's almost it's deceptive as I take a look at it, because what it says is states and tribes can continue to put conditions on a federal license or permit.

Ann - ELPC [12:33:33]

Mm, yeah.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:33:33]

but have to meet a clear and convincing evidentiary standard, that is alone very problematic and a steep legal burden for a state or tribe to comply with. But then there's a provision down below that says any condition imposed must be consistent with the federal license or permit.

Ann - ELPC [12:33:42]

Yeah.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:33:51]

which means they can't do anything that's not in the federal license or permit, and so they can't actually ask any condition that isn't redundant with what the federal license or permit already has in it. In other words, 401 is irrelevant, because the very purpose of 401.

Ann - ELPC [12:34:04]

Yep. Yes.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:34:09]

is to allow States and tribes to protect their water resources in their State from Federal license and permits by adding additional conditions. And so the language is very, in my opinion, is very deceptively written or poorly written, and either way will be exploited by industry to basically tell States and tribes, go fly a kite. You can't impose any condition that wasn't put in place by the Federal agency.

Ann - ELPC [12:34:35]

Yep, yeah, and...

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:34:36]

I'd also uplift the water component as a key narrative argument for us, and we know that folks like Representative Stansbury in New Mexico, they may not clash directly with Senator Heinrich, but they will lift up those water components.

Ann - ELPC [12:34:52]

Yeah. And again, like, you know, JW did put from CBD to put the clean water points that we had been batting back and forth yesterday into the outline, and so I think people can look at those and add, you know, I think every time somebody looks at this, you're gonna see something else, or the way sections interact with each other, which isn't apparent on a first read, so... I do hope people do use that outline and make sure that. You know, all the best thinking gets into one place because it's hard to parse this.

Stephen Schima - Earthjustice [12:35:22]

It really is. There's a lot to unpack, and it's trying to connect the dots across all these sections.

Ann - ELPC [12:35:26]

Yes.

Stephen Schima - Earthjustice [12:35:29]

Partially a challenge. Does anybody have anything else to add, or they want to lift up on the Clean Water Act? If not...

Ann - ELPC [12:35:36]

And please do sign the letter that JW is circulating on that. I mean, I think, you know, there's an overall letter, but then, you know. Getting people on the issues they most care about or members that might care about clean water. I think these separate letters are good.

Stephen Schima - Earthjustice [12:35:53]

Absolutely.

Melissa Samet [12:35:53]

Steven. Oh, sorry. Yeah, I would just say the one the one thing that I noticed, and and I didn't look at this very carefully yet.

Stephen Schima - Earthjustice [12:35:54]

Go ahead. No, please.

Melissa Samet [12:36:01]

what you can actually consider under a Clean Water Act permit, the impacts seem to be limited strictly to water quality. Even under a 404? So I'd... So to the extent that there were any wetlands left that are being protected, I think that kind of just throws it away. But somebody who has an NWF will be looking at that in more detail, but y'all might want to take a careful look at that as you're considering what the impacts are. Um, and it does away with 404C for those of you who've ever, um, worked in that field. It's just... it's just gonna be gone, so... Thanks.

Stephen Schima - Earthjustice [12:36:40]

Those are... I hate to call them good flags, but thanks for flagging that.

Mahyar - Sierra Club [12:36:43]

Sorry, just to jump in on that. 404 is the veto authority, right?

Melissa Samet [12:36:49]

Yes, that's right. Apologies for that Yep.

Mahyar - Sierra Club [12:36:50]

Okay. No, no, thank you. Just wanted to clarify. Great.

Melissa Samet [12:36:53]

Yep.

Stephen Schima - Earthjustice [12:36:58]

All right. Well. Maybe it's time to turn to Ashley. You've last thought on Clean Water Act.

Ashley C. Nunes (she/her), CBD [12:37:06]

No, a different issue may be related. I can wait.

Stephen Schima - Earthjustice [12:37:11]

OK. I want to make sure we have time for NHPA and ESA. We'll just go to ESA really quick. Does somebody want to give an overview of that?

Chris Westfall (Defenders of Wildlife) [12:37:22]

And often if that would be helpful. Um, so the ESA sections in Title III, uh, one of the major sections of it is that it allows for state assumption of. Fish and Wildlife Service consultations, so not NOAA nymphs, um, but anything that Fish and Wildlife Service, uh. would have jurisdiction over. The... any state can assume that process, um, and... which would create a wild federalism. Issue where the... whatever federal acting agency would be asking the state of Alaska, the state of West Virginia, for permission to go do. Whatever they might want to do that implicates the ESA, whether that's drilling for oil and gas or building a data center or doing whatever, um, all of those would be, the state would have authority to give the okay on how much. incidental take is allowable for that project, um, how much mitigation is required, the whole process under Section 7, which is the heart of the ESA, would be left up to the states. Um, and unlike the current state models for Clean Water Act and Clean Air Act, there's no oversight authority, or no meaningful oversight authority for the feds to step in and say, no, we... that... that wasn't sufficient. Review and and we're going to intervene. Now, that does mean that also means for those projects, the states are going to be vulnerable to lawsuits if they don't follow the ESA, which will create obvious inefficiencies, and you're going to be hit. You're gonna have up to 50 bureaucracies across the country, um, that... that'll be handling ESA consultations and interacting with federal agencies. Um, it also condenses those, uh, ESA consultation timelines, which ESA consultations are already fast. Formal consultations on the median consultation takes two months. The median informal

consultation, which is the bulk of. consultations takes two weeks. So you're, you're shortening these timelines, pretty much just saying work faster Fish and Wildlife Service with your less staff, while you're already meeting, meeting these timelines, the vast majority of the time. it also changes the definition of best available science. Um, it matches something similar to what the Westerman ESA Amendments Act, uh, that... Lots of people on this call helped to defeat in the house. So it's not only throwing away that political win, but would would bake in a definition that is both unnecessary and not scientific. And then... There's also an outright exemption from Section 7A2 for certain projects under MAP 21 that are able to get categorical exclusions under NEPA. If you're able to get a CE, you would be fully exempted from NEPA. ESA Section 782. And then there are also obvious judicial review problems that come throughout the bill. I don't know that we need to dive into that. But they also implicate the ESA. And you know, that 150 day statute of limitations, same with the expedited review, you're creating rocket dockets for the ESA, which. Um, and for a lot of other statutes, I'm focused on the ESA, but y'all know, um, if you, if you make a rocket docket, my, my wife works at a law firm where she represents lots of clients with lots of, uh, with resources that our organizations don't have. Um, not for industry like this, but, um, industry is not going to have a problem training a hundred lawyers to go throw at a case that's on a rocket docket. I don't know if you're Oregon. Defenders of Wildlife sure doesn't have a hundred attorneys that we can throw at anything. We don't have a hundred attorneys. So it's a pretty ridiculous situation. I'm sure there's other stuff that I missed, so please correct, add to it.

Stephen Schima - Earthjustice [12:41:46]

No, thanks, Chris. That's really helpful. Does anybody have anything else they want to lift up or add in that space?

Brett Hartl [12:41:54]

I was only half listening, but did you talk about the best available science, Chris?

Chris Westfall (Defenders of Wildlife) [12:41:59]

I did, but Brett, if you wanna chime in and supplement, please do.

Brett Hartl [12:42:03]

Okay, I would just say, I think, actually, that's the worst part, because it impacts both listing and consultation and everything else, and I just want to put a plug of, like. Just so you all know, they're codifying a definition of best available science based on Judge Rao and Judge Katsas's opinion in the DC Circuit. Neither Heinrich or Whitehouse voted for Rao or Katsas. In fact, no Democrat voted for any of those two judges because they were such ideological extremists. So they're codifying the most sort of like — they're actually codifying the principle of climate denialism into the ESA. Because Industry has always known that the best tactic to avoid being regulated is to doubt science. That's what we're doing here with that provision. So I'm pretty sure White House and Heinrich and their staffers don't know that that's actually true, but it is. And that's like, it's like a death blow to the ESA. So I think that's actually the worst part. I don't love anything else in there either, but I just want to really put a fine point on that.

Chris Westfall (Defenders of Wildlife) [12:43:08]

That's a good, fair, very fair point, Brett. And I'll also just add from the political lens that that language, at least the vast majority of that language was in the Westerman ESA bill that that they couldn't get passed on the house. So Hoffman's yelling about it as he should be. And we should too, that they're throwing away that political win, one of the few that our community has had by including that definition in this bill.

Stephen Schima - Earthjustice [12:43:38]

Thanks, Chris. Same things. Brett, anybody else have anything on that? Otherwise, I know we only have about 17 minutes left, but I do want to make sure — Maya, are you —.

Mahyar - Sierra Club [12:43:48]

Just saying that I see Ashley doing a quick around mining, just so we could sort of round out with mining. And then Stephen, we'll turn to you to move us to next tactics. And I saw Eric jump in about a idea of a briefing, which is a great one. So let's move there after this.

Stephen Schima - Earthjustice [12:44:02]

Yes, I want to talk briefings for sure. And mining, definitely. I just want to also give space to the NHPA changes, which are truly awful. Does anybody — can anybody give a quick summary of that? If not — oh, go ahead, please, Aaron.

Aaron Mintzes, Earthworks [12:44:20]

Of the beginning or the ending? Now, let's do the NHPA first, then we'll do mining.

Stephen Schima - Earthjustice [12:44:26]

Okay, sounds good. Go ahead. You want to kick off with an HPA?

Aaron Mintzes, Earthworks [12:44:30]

No, someone else knows that better than I do, not me.

Stephen Schima - Earthjustice [12:44:34]

Alright, um... If nobody else can give a summary.

Mahyar - Sierra Club [12:44:40]

Maybe if we don't have someone here who can speak to that, maybe we can just flag that folks may have seen that the National Association of Tribal Historic Preservation Offices came out with a statement yesterday opposing.

Stephen Schima - Earthjustice [12:44:43]

Yeah.

Mahyar - Sierra Club [12:44:53]

the bill because of the NHPA. And I'm sure other reasons as well, but just to elevate that so if folks didn't see.

Stephen Schima - Earthjustice [12:45:01]

Rightfully so, and it's a blistering statement, and I think people should pay attention to this. The... these provisions are really bad, the injunction language applies to an HPA as well, and um... You know, I think it's... they're trying to essentially codify what the Trump administration was gonna do through rulemaking, which was... extraordinarily awful. Okay, let's turn to mining, Aaron or Ashley, if you want to jump in on that.

Ashley C. Nunes (she/her), CBD [12:45:31]

Okay, you fix anything I get wrong. Um...

Aaron Mintzes, Earthworks [12:45:31]

Go ahead, Ashley.

Ashley C. Nunes (she/her), CBD [12:45:35]

This package, just like the Manchin-Barrasso package from last Congress, includes the Mining Regulatory Clarity Act. This bill is so big bad that I hate for this to fall through the cracks. But the hard rock mining industry is the top source of toxic pollution in the country. And the 1872 mining law is

archaic. And somehow this bill would allow mining companies to use an indefinite amount of public lands. based on their own plans that they make for their own economic efficiency, um, to do not just the typical waste dumping that's already allowed in the law, but also for any operational infrastructure that they want. Roads. pipelines, all of the above. So, this is a huge giveaway of public lands to a toxic industry that deserves more oversight, not less. Aaron, anything else?

Aaron Mintzes, Earthworks [12:46:34]

Oh, the 404C thing has been noted before and the NEPA stuff too. But I can't leave because we've been craving for something good, right, friends? Incredibly, this version is better. better on funding for hard rock abandoned mine lands by increasing the mill sites claim maintenance fee, but also weirdly for the first time. Revenues from mining on so-called acquired lands, which would be like the Boundary Waters, would go to the Clean Up the Hard Rock Abandoned Mine Land Fund. So that is the one good thing I spotted in this bill so far. We have a dedicated revenue source for cleaning up abandoned hard rock mines. And Ashley's right, I still dislike everything else about this bill, so it's the same... otherwise, it's the same thing.

Ashley C. Nunes (she/her), CBD [12:47:29]

Right. We don't think it's a good trade. That's not how this should go.

Stephen Schima - Earthjustice [12:47:35]

What you're saying, it's not all bad. Anybody else have anything else on mining. I I don't think we need to talk about the transmission pieces right now. But unless anybody has any objection to that. I would love to move towards, uh, talking about next steps, and I'm... have not been keeping track of the chat, but Eric, did you mention something about briefing?

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:48:01]

Yeah. And just on the transmission side, I mean, I think one argument we make, and I don't know exactly what the politics are. I know that Republicans are are not good on transmission, and but I think one political argument we need to make is that we would welcome a standalone transmission and grid modernization bill. And if they can do that and then link that to a political argument that let's remember that the Inflation Reduction Act was passed with an alliance of centrist and left progressive groups, not the center and right. And so if we're able to kill this bill. Then I think that gives us good leverage to make the argument that this emerging alliance between the center and right all around tech finance and energy capital is not a good path forward, and that we need to rethink the political math underlying all of this movement. Um, in terms of my ideas, I was thinking, too. basically legal technical webinars, like when I hear Chris talk about this, you know, I feel my blood pressure going up. Like, a lot of these technical details, reporters are just not picking up on, and congressional staffers, as we know, do not have the domain expertise that we have in this group. So I think some kind of legal technical briefing. for both Hill staff with domain experts like somebody on Esa, somebody on Clean Water Act, somebody on NHPA. Someone on this certainty judicial review language like, however, we craft that. Do something legal technical for Congressional staffers, so that we're giving them. arguments to push back on this deal, especially if they've been kept in the dark thus far. Like, I know from contact with certain house offices over the last several days, they have absolutely no idea, and when I start talking about the contours, you know, like, literally, they're like, yikes. Um, so that. but then coupled with a briefing to reporters to start educating reporters, in particular reporters on the ground, not the national DC reporters who just care about when votes are going to happen and what are the dynamics between Republicans and Democrats.

Stephen Schima - Earthjustice [12:50:01]

Yeah, I couldn't agree more, Eric. And especially for reporters, it would be great to be able to regionalize some of the impacts of this and allow them to ask questions of some of the experts in the domains, as you were mentioning. And we need to be doing it as quickly as possible for the Hill. I would just add doing something for partners also may be helpful, I think, for mobilizing everywhere. Maya, you have your hand up.

Mahyar - Sierra Club [12:50:26]

Yeah, I'm thinking about this in threefold. So, one is, yes, we should... we should put something together for partners, for, like, the general public to understand, like, what is going on here. So, that's... that's one. Two is... so, folks obviously saw the really strong statement from Representative Huffman last night, and so I would sort of wonder if, as we're. considering sort of Hill briefings, if we may want to partner with him and his office and HNRC on a like staff briefing specifically with them around all the sort of pieces that fit particularly under HNRC's jurisdiction, which is a whole host of issues. I think we could go even broader. I mean, I think if we. if we looped both NEPA and HPA, Clean Water Act, ESA, just as a place to start, and certainty. Um, uh, so we can consider that with them, and then I think we also may consider, um. Either together or separately, a briefing for Senate staff that we also, I think, at this point, could maybe reach out to Senator Markey's office and see if they'd be willing to partner with us there. So my general sense is, like, we should do these briefings. It may be better. to partner with a Hill office to do them so that we can like ensure they're also helping us with turnout to get staff there. And then I saw something around in person or virtual. My only caution around in person right now is that like they're out and well, before we all had to pay attention to this, there's a really important election coming up in November. So I know a lot of folks are busy with trying to sort of manage that. So. I sort of wonder if we may focus on virtual, just so we can try to get a wide swath of folks. And I know there was already a great briefing put on this week that a number of you were already on. So it actually would be great, maybe before we close, to hear, like. were there any sort of questions? What were sort of the vibes of folks, like staff, who joined that briefing? I know that was right when the bill had had come out, but, um, just because there's already been a briefing this week, it might be good to, like, use that as a starting point.

Stephen Schima - Earthjustice [12:52:29]

Yeah, that's a great point. And I would love to get a readout. That was a well-timed briefing. Brent, do you want to go? And then maybe we can get a readout on yesterday.

Brett Hartl [12:52:39]

I just want to flag the, I know this is fairly obvious, but as much as I like the idea, time is against us. Cameron Yee, CA, like putting those things together takes weeks often, like, you know, just. Every day, Heinrich and Whitehouse are picking up the phone, calling members directly. I can guarantee you that's happening now. They don't have to run for re-election. They've got a month of free time. That's all they're doing. I think if we can pull them off, great. But we should not put our eggs in that basket. We should try to do as many one on one or small group or big group meetings with as many offices as we can as quickly as we can. It's just maybe there'll be time when the house comes back to do a briefing if it gets the house, which we don't want it to do. But just like from a practical logistics, we've got five and a half weeks. Um, so, you know... I just don't think we can pull it off, to be honest.

Stephen Schima - Earthjustice [12:53:45]

Pull off a briefing, is that what you're saying?

Brett Hartl [12:53:46]

A briefing in that time, like... like, it would take us weeks to get... like, can we muster that fast? Like, that's... that's...

Lydia tws [12:53:51]

You could do a brief... you could do a briefing Monday.

Stephen Schima - Earthjustice [12:53:51]

Yeah.

Brett Hartl [12:53:53]

I mean, I can.

Ann - ELPC [12:53:54]

Yeah, that's right.

Mahyar - Sierra Club [12:53:54]

So yeah, I just want to be, and I want to make sure I see Mar and Arianna on stack, so I want to turn it to them. But I think put your name in the chat if you want to be a part of a briefing. I think we can move very quickly. I'm happy to start an email thread with folks so we can, I mean, I hear you, Brett, and we have to brief staff on what's happening. So I think we can do that while we also talk about other tactics as well.

Stephen Schima - Earthjustice [12:53:54]

Yeah.

Brett Hartl [12:53:56]

But...

Stephen Schima - Earthjustice [12:54:15]

And just to Brett's point, and then I'll turn it over. Yeah, I don't think — this is a yes and situation. Nobody paused what they're doing. And don't wait for a full analysis to be done. I think we know enough of what's in this bill to be reaching out to offices and expressing concerns. you know, schedule meetings now. I mean, it's an all-of-the-above strategy. I do think, you know, pound for pound, we could get a lot done with a briefing, and I don't feel like it's gonna be that hard to organize, especially if we have some friends on the Hill to facilitate that. But point well taken, people should be doing things. No. Was it Mar and then Hannah?

Mar Zepeda S | CJA [12:54:57]

Yeah, hi, um... I thank you guys for rolling all the information here. I'm trying to do analysis on the very clear disparate impacts. That are noted in the bill, but... Um, so I'll... anyway, I just wanted to ask if anyone here either knows somebody that can assist with that, and then... On the, uh... the conversation that we were having earlier on the call, I think... clearly, the bill... uh, we've... we spent the last 45 minutes talking about how bad the bill is, so I think... Getting an understanding of where folks are now before we actually talk about tactics, it's going to be very helpful. And I yeah, I'll drop it there.

Stephen Schima - Earthjustice [12:56:00]

Thanks. And sorry, cut out for a second on my end at the end there, Mara. What were you asking we could talk about? Or maybe I misheard it.

Ariana Kretz (CJA) [12:56:12]

I think she was saying like where people stand on the bill.

Stephen Schima - Earthjustice [12:56:15]

Oh. Sure. One. We have a lot of people on the call. I don't know the most efficient way to... and go through that, but I know people have been hopefully dropping their statements in. I think we...

Ann - ELPC [12:56:32]

Is there a place where people are collecting statements? Like, do we want to have a centralized setup for reporters so that they can see them all in one place?

Claire Dorner [12:56:41]

One place that tactics and fact sheets are being tracked is in the Rapid Response Doc. There is now a tab that has tactics, and I started compiling some of the letters and the statements circulating if people want to add there.

Ann - ELPC [12:56:54]

Yeah.

Stephen Schima - Earthjustice [12:56:56]

Thanks, Claire. Yeah. Please be dropping those in. Anybody else have any suggestions on how we could best —. Do that assessment. Tara, were you coming off?

Tara Thornton, ESC [12:57:10]

I was just going to see if there was a — can Claire share the link to that Rapid Response doc?

Stephen Schima - Earthjustice [12:57:20]

Great. Thanks, Claire.

Mahyar - Sierra Club [12:57:20]

I just put it in the chat. It's in the chat for everyone.

Stephen Schima - Earthjustice [12:57:28]

Anyone else have any thoughts or suggestions?

Ariana Kretz (CJA) [12:57:33]

Um, I can talk about how our briefing went yesterday really quickly. It was good. Um, there's about 50 people there. Um... It was right before the bill was released, like literally the hour before. It was kind of quiet, but that could have been because we had problems with the chat at the beginning. I think questions around. Eric, you may remember better than me, but like kind of a question around what kind of what was it? Environmental analysis or greenhouse gas emission analysis.

Erik Schlenker-Goodrich, West. Envtl. Law Ctr. [12:58:08]

Yeah. So we we made. We made the point that this bill should not be judged just based on a net emissions analysis, and that that sweeps aside ecological and community values. So there was an ask about what that. look like? So that would be a good thing for folks to ponder as they're engaging in offices. Like, we'd like to see... and what we... and then, so as an example, we said we'd love an assessment to... we'd love an assessment to see what this means for public lands. You know, how many data centers would this open the doors to? How much additional fossil fuel development would this open the door to? How would this impact habitat quality on public land? So focusing on that public land side of the equation and the infrastructure that would be built on public lands. But that's that's just one domain, you know. You could see it also with imperiled species or environmental justice. I don't know what those analyses look like at that level. But I think that's something that we could push.

Ariana Kretz (CJA) [12:59:00]

Okay. And I'll, um... the webinar was recorded, so an email will go out to the registrants today with. The recording and a bunch of resources, so...

Stephen Schima - Earthjustice [12:59:16]

Huge thanks for pulling that together. It sounds like it went really well. Just one question about the GHG emissions. Eric, I know you'd mentioned previously that you might be working with a modeler if any modeling comes out.

Erik Schlenker-Goodrich, West. Env'tl. Law Ctr. [12:59:30]

Yeah, and I have to, Marilyn, I think is on there, so we should reach out to Pete, and I have a link to, thank you, Steven, for sharing that with me, to something that RFF had put together on this front.

Stephen Schima - Earthjustice [12:59:41]

Okay, great. Mayar, do you want to have the last word?

Mahyar - Sierra Club [12:59:45]

Yeah, just to... because I know we are at time. So, one, we're gonna save the chat. So, folks, so... because there's been a lot of great content in here for... for us to make sure we can use it for our next steps. So, as a few next steps, right? We will, after this call. on the permitting NEPA coalition listserv, which many of you should be on, we can also share it across the CDP list as well, um, is the Rapid Response Doc, so that folks have it and can use it as a guiding place. You already indicated if you want to join a smaller thread to talk about briefing. So you know who you are and I will be in touch with you all on next steps there. I also did see an ask around a space for organizing grassroots tactics. So is there anyone who would like to volunteer to help with starting an email thread? We can also... Like, if there's someone who wants to raise their hand, or a couple people who want to raise their hand, we can indicate that when we send notes around. So that folks can be in touch with you and we can set up some small group next steps.

Jennifer Mamola [13:00:50]

Good.

Mahyar - Sierra Club [13:00:51]

Bless you. But yeah, it sounds like we have grassroots tactics and we have briefing. And those are like the two subgroups that we need to move forward right now. And so we've got one on briefing, but, um, is there anyone who can... who want... would like to raise their hand on grassroots tactics? Or if folks want to deliberate, we can also discuss, um... Over email. Okay. Thank you, Eric. And no worries.

Stephen Schima - Earthjustice [13:01:22]

All right.

Mahyar - Sierra Club [13:01:23]

Okay.

Stephen Schima - Earthjustice [13:01:23]

Thank you, Marjor. All right, everybody, we're at the top of the hour. this has been really helpful for me, I hope it is for others. Um, lot to do, so please, please use the email list and stay in touch. Uh, we got some do-outs from this, but uh, more very soon. And... let's get going. Thanks.