November 2, 2026

OPEN LETTER TO THE UNITED STATES CONGRESS

Re: Opposition to S. 5653, the Bipartisan American Affordability and Jobs Act of 2026

Dear Members of Congress:

We, the undersigned Tribal Nations, Indigenous-led organizations, environmental and conservation organizations, and allied groups, write to express our strong opposition to S. 5653, the Bipartisan American Affordability and Jobs Act of 2026 ("BAAJA"). This legislation proposes sweeping changes to cornerstone environmental and historic preservation laws that would weaken protections for lands, waters, wildlife, historic sites, sacred places, and communities across the United States.

The National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Clean Water Act (CWA), and Endangered Species Act (ESA) emerged from growing recognition of the lasting environmental, public health, and cultural harms caused by decades of unchecked development and industrial pollution. Together, these laws require federal agencies to evaluate environmental consequences, protect water and wildlife, consult with Tribal Nations, and provide opportunities for public participation. They also help communities hold agencies accountable when they violate the law.

S. 5653 would narrow these protections while restricting the ability of courts to provide meaningful relief when violations occur. The consequences extend far beyond permitting decisions, affecting ecosystems, water, preservation of cultural heritage, the exercise of Tribal sovereignty, and the ability of present and future generations to live in a healthy environment. We should not have to sacrifice protections to build a power grid, transmission lines, wind farms, or other clean energy projects. S. 5653 trades these foundational protections for speed in permitting and calls it efficiency and modernization.

Weakening Environmental Review, Public Participation, and Limiting Judicial Review

NEPA, often described as the "Magna Carta" of environmental law, is a landmark statute that fundamentally shifted how we balance conservation with development. It requires federal agencies to examine the environmental impacts of major federal actions and consider reasonable alternatives before making decisions. This process informs agencies and the public about potential harms and provides opportunities for public participation and objections while there is still time to avoid or reduce harm. NEPA has served as a blueprint for environmental review laws around the world, even as its protections have been repeatedly undermined here at home.

S. 5653 would narrow the definition of "major federal action" while expanding exclusions from environmental review including for transmission and pipeline repairs or modifications within existing right-of-ways, infrastructure repairs that do not increase capacity by more than 20%, routine administrative actions under $10 million, and certain U.S. Army Corps of Engineers projects with a federal share under $50 million. It would also place greater emphasis on project sponsors' objectives when determining which alternatives warrant evaluation. These changes could exclude environmentally consequential projects from federal review or limit consideration of their impacts.

Section 1110 of S. 5653 would substantially restrict judicial review of NEPA violations, shortening the generally applicable six-year limitations period to 150 days after an authorization becomes public. Plaintiffs would also face heightened requirements to submit substantive comments that are *"sufficiently detailed to put the applicable Federal agency on notice of the particular issue on which the party seeks judicial review."* Plaintiffs would also be required to allege *"an actual or imminent injury in fact amounting to direct harm."* Any potential litigation from plaintiffs not meeting these requirements would be barred. The bill would shift original jurisdiction from federal district courts to federal courts of appeals, and require courts to afford substantial deference to agencies concerning the scope and contents of environmental documents.

Most significantly, Section 1110 would restrict judicial remedies when a court finds that an agency violated NEPA. Rather than allowing courts to vacate unlawful approvals or issue injunctions based on NEPA violations, the legislation limits relief to remanding the authorization to the agency for correction within 180 days, while expressly allowing the authorization to remain in effect and the underlying project to proceed. Although the bill permits preliminary injunctions under limited circumstances involving violations of other federal laws, NEPA violations alone would not provide that relief. The extensive litigation surrounding the Dakota Access Pipeline and Line 5 illustrates the consequences of allowing major oil infrastructure to remain in operation while disputes over environmental review and federal authorizations continue. Although these cases involve different legal claims and procedural histories, they demonstrate why meaningful judicial remedies matter when infrastructure poses potential risks to water, ecosystems, and affected communities. Under BAAJA, even a successful legal challenge could leave construction proceeding while an agency corrects an unlawful decision, potentially allowing irreversible environmental damage in the meantime. Excluding more projects from environmental review reduces incentives for agencies and project applicants to identify and address environmental risks. Affected communities may be left with little to no recourse to address the consequences of decisions they had little opportunity to challenge.

Threatening Historic Places, Sacred Sites, and Tribal Sovereignty

Section 106 of the NHPA requires federal agencies to consider the effects of federal undertakings on historic properties, including sacred sites, burial grounds, and cultural landscapes. Agencies must identify potentially affected historic properties, cultural or sacred sites (including burial grounds), assess adverse effects, and consult with Tribal Nations, State and Tribal Historic Preservation Officers (SHPOs and THPOs), and other consulting parties including Alaska Native Corporations, Native Hawaiian Organizations, and historical societies, about measures to avoid, minimize, or mitigate harm. Although Section 106 does not guarantee preservation, it provides an important avenue to identify and address threats to irreplaceable historical and cultural resources.

Title III of S. 5653, particularly Section 2301, would fundamentally restructure the scope of Section 106 review. The legislation would narrow the scope of covered undertakings, excluding projects whose only federal involvement is financial assistance, requiring substantial federal control and limiting consideration of certain adverse effects. The legislation would narrow consideration of visual, atmospheric, audible or cumulative effects, even where changes to a landscape's setting, character or ceremonial use may be central to its cultural significance. It would also allow a federal official, exercising sole discretion, to determine that other considerations outweigh historic preservation and proceed without measures to avoid, minimize, or mitigate identified adverse effects. These provisions are particularly consequential for sacred places to Tribes and historic sites whose significance extends beyond a project's physical footprint.

The provisions of S. 5653 are a direct affront to the government-to-government relationship with Tribes, the federal trust responsibility, and Tribal consultation and would actively undermine Tribal sovereignty, self-determination and traditional knowledge. For the first time, this legislation sets forth a statutory definition of what constitutes a place of traditional religious or cultural importance to a Tribal Nation. Currently, properties of traditional, religious, and cultural importance to an Indian Tribe or Native Hawaiian organization may be eligible for inclusion on the National Register of Historic Places, and agencies must consult any Tribe that attaches such significance to these properties. The bill would require such places to include only those that are tied to "an identifiable geographic location or feature at which an event of continuing religious or cultural significance to a living community occurred." This definition would impose a federal statutory test on Indigenous sacred places, effectively empowering federal agencies to determine which places warrant protection based on legislative criteria rather than the cultural knowledge, traditions, and relationships of Indigenous Peoples themselves. Sacred mountains, rivers, springs, burial grounds, and cultural landscapes that hold profound religious and cultural significance could fall outside this narrow definition if their significance cannot be tied to a particular event. The federal government cannot define what constitutes a sacred place for Indigenous Peoples.

The absence of an express savings clause also raises questions about how the new definition would affect places already recognized for their historic, religious or cultural significance. Sacred landscapes such as Mauna Kea, Haleakalā, Chaco Canyon, Dził Nchaa Sí'an (Mount Graham), Bear Butte (Mato Paha) among countless others, illustrate why cultural significance cannot be reduced to a single event or geographic feature. The bill creates uncertainty about the continued treatment of existing designations and could narrow protections for places that do not satisfy its new statutory definition. Section 2302 also proposes grants for databases documenting culturally significant properties, raising concerns about the confidentiality and control of sensitive cultural knowledge and information

The legislation also fundamentally changes how Tribal consultation occurs. Existing law requires federal agencies to consult with Tribal Nations that attach religious and cultural significance to historic properties potentially affected by federal undertakings. Under this legislation, consultation would become discretionary at critical stages of establishing the area of potential effects and identifying historic properties, while agencies would have greater authority to independently determine adverse effects. Tribal Nations would face a 30-day deadline to respond to agency findings and failure to respond within that period could allow agencies to proceed without reconsidering earlier determinations. These changes severely limit the ability of Tribal Nations to contribute their knowledge and meaningfully participate in decisions affecting their ancestral lands, sacred places, and cultural resources.

The legislation would also impose new federal oversight and potential intervention in Tribal Historic Preservation Offices. Under Section 2301, Tribal preservation programs would be subject to periodic federal evaluations at least every two years by the Secretary of the Interior, including compliance with consultation deadlines. Programs found deficient could face suspension of funding and agreements, and the Secretary of the Interior would ultimately be required to "assume all or part of the functions of the Tribal Historic Preservation Officer" if deficiencies remain unresolved. These provisions raise substantial concerns for Tribal sovereignty, particularly where preservation offices already operate with limited resources and must coordinate consultation with Tribal governments, elders, and cultural practitioners. As Cultural Heritage Partners, Native American Rights Fund, the Association on American Indian Affairs, National Historic Preservation Officers Association have noted, "this gives the federal government a tool to displace Tribal preservation officers."

Taken as a whole, the provisions of Title III are an affront to the sovereignty of Tribal Nations and the cultural knowledge held and safeguarded by knowledge keepers and Tribal Historic Preservation Officers.

The very notion that what is sacred can be defined by legislation is absurd. Fast-tracking processes such as NHPA Section 106 consultation may serve corporate interests, but it does not serve Tribal Nations or the American people.

Reducing Protections for Clean Water, Wildlife, and Ecosystems

The Clean Water Act and Endangered Species Act provide important safeguards for rivers, lakes, wetlands, aquatic ecosystems, wildlife, and threatened and endangered species. These laws establish responsibilities for federal agencies and provide states and eligible Tribal Nations with important roles in protecting natural resources. These protections remain particularly important for communities that disproportionately bear the environmental and public health costs of unfettered development, as anthropogenic climate disruption, industrial pollution, and habitat loss place growing pressures on ecosystems.

Sections 1202 and 1203 of S. 5653 would narrow the scope of water quality certification and limit the authority of states and Tribal Nations under Section 401 of the CWA. Currently, states and eligible Tribal Nations may review federally licensed or permitted activities that may result in discharges into waters of the United States and certify whether those activities will comply with water quality requirements. BAAJA would narrow the scope of certification review, require states and Tribal Nations to substantiate potential water quality impacts, and limit conditions to those deemed necessary and least burdensome to the project applicant. A state or eligible Tribal Nation could identify a serious threat to drinking water, fisheries, or aquatic ecosystems yet face greater legal obstacles to requiring the project applicant to prevent that harm. Section 401 is an important means by which states and tribes protect their waters; restricting that authority shifts greater burdens onto frontline communities.

Section 1204 would also amend Section 404 of the CWA, which governs permits for discharges of dredged or fill material into jurisdictional waters, including wetlands. The bill would extend the maximum duration of nationwide permits from five to ten years, allowing categories of activities involving dredging or filling waters, including pipeline crossings, road construction, and other infrastructure development, to proceed under general permits without the same frequency of permit reconsideration. Ten years is a significant period of time for watersheds already experiencing pollution, drought, flooding, habitat loss and other environmental changes. BAAJA would also limit ESA and NHPA consultation requirements on such permits and restrict the EPA's authority under Section 404(c) to prohibit or restrict disposal sites where discharges would cause unacceptable harm to clean water, fisheries, wildlife or recreational areas. The combined effect could be longer periods of authorization for activities affecting wetlands and waterways with fewer opportunities to reconsider their cumulative impacts or prevent damage to aquatic habitats and downstream water quality.

Finally, S. 5653 would also alter Section 7 of the Endangered Species Act, which requires federal agencies to consult with federal wildlife experts before authorizing activities that may affect threatened or endangered species or their critical habitats. The bill would allow states to assume certain consultation responsibilities currently performed by the U.S. Fish and Wildlife Service and National Marine Fisheries Service, while creating exemptions for specified infrastructure activities. This could leave decisions affecting endangered species and critical habitats to state agencies that may lack the expertise, funding, or independence necessary to evaluate complex ecological impacts. For species already threatened by habitat fragmentation, pollution, and climate disruption, inadequate consultation can mean projects will proceed without identifying risks or requiring means to minimize harm. Once a critical habitat is destroyed or a species is driven towards extinction, permitting review alone cannot remedy those losses.

Permitting Reform Must Not Come at the Expense of Communities and the Environment
Meaningful environmental review and consultation can identify conflicts before construction begins, improve project design and prevent irreversible harm. Weakening environmental oversight, overhauling bedrock environmental and conservation laws, and restricting judicial accountability do not resolve underlying causes of permitting delays, including inadequate agency capacity, incomplete project applications, poor planning, and failures to engage affected communities early. Nor should accelerated infrastructure development, including clean energy projects, come at the expense of ecological limits or the long-term sustainability of the lands, waters, oceans, and ecosystems upon which communities depend.

The provisions discussed here represent only some of the concerns raised by S. 5653, but they reveal the broader consequences of the legislation. Communities are already confronting contaminated water, industrial pollution, habitat destruction, and the environmental and public health costs of infrastructure development that are too often externalized onto frontline communities. The legislation would impose additional barriers to preventing these harms and holding federal agencies accountable. The success of federal permitting and environmental policy cannot be measured solely in time saved for project applicants and federal agencies; it must also be measured by whether waters, sacred places, ecosystems, and communities remain protected.

We urge Congress to reject S. 5653 and preserve the environmental and historic preservation protections that generations of communities have fought to secure.

Sincerely,

Water Protector Legal Collective

The Undersigned Organizations:
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