November 4, 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:
198 methods
350 Eugene
350PDX
A House Unbuilt
Af3irm-Hawai‘i
Alabama Rivers Alliance
Allegheny CleanWays
Allegheny-Blue Ridge Alliance
Amazon Watch
American Indian Law Alliance
American River Outfitters Association
American Whitewater
Amigos Bravos
Animal Wonders KC
Appalachian Citizens' Law Center, Inc.
Association on American Indian Affairs
Bark

Bayou City Waterkeeper
Bitterbrush Broadband - Central/Eastern Chapter, Great Old Broads for Wilderness
Black Hills Clean Water Alliance
Black-Sampit Riverkeeper
Blue Mountains Biodiversity Project
Buffalo Nations Grasslands Alliance
California Sportfishing Protection Alliance
California Trout
Californians for Western Wilderness
CalWild
Cape Fear River Watch
Cascadia Climate Action Now
Catawba Riverkeeper Foundation
Center for Biological Diversity
Charles River Conservancy
Charles River Watershed Association
Chattooga Conservancy
Chesapeake Bay Foundation
Cheyenne River Sioux Tribe
Chippewa Cree Tribe
Chippewa Cree Tribe of the Rocky Boy's Reservation
Civil Liberties Defense Center
Clark Fork Coalition
Clean Water Action
Climate + Energy Project
Climate Defense Project
Coastal Conservation League
Coastal Prairie Conservancy
Conemaugh Valley Conservancy
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
Connecticut River Conservancy
Conservation Law Foundation
Conservatives for Responsible Stewardship
Cook Inletkeeper
CRAN Education Fund
Cubina Consulting
Dan River Basin Association
Decolonizing Wealth Project
Delaware River Greenway Partnership
Earth Ethics, Inc.

Earth Neighborhood Productions
Earthworks
Eastern Cherokee Southern Iroquois & United Tribes
Ecuadorian Rivers Institute
Edisto Natchez-Kusso Tribe of SC
Empowering Pacific Islander Communities (EPIC)
Endangered Habitats League
Endangered Species Coalition
Environmental Law & Policy Center
Farming Falmouth, Inc.
Farmington River Watershed Association
Firefighters United for Safety, Ethics, & Ecology (FUSEE)
Flandreau Santee Sioux Tribe
Florida Springs Council
Flow Water Advocates
Friends of Bell Smith Springs
Friends of Holly Hill Farm, Inc
Friends of the Big Sioux River
Friends of the Earth - US
Friends of the Mariana Trench
Friends of the Reedy River
Friends of the River
Gila Resources Information Project
Great Basin Resource Watch
Great Egg Harbor Watershed Association
Great Old Broads for Wilderness
Great Plains Tribal Water Alliance
Greater Mattapan Neighborhood Council
Green Snohomish
GreenFaith
GreenLatinos
Haw River Assembly
Hawaiian Community Assets
Hawkmoth
Healthy Ocean Coalition
Honor the Earth
Hoosier Environmental Council
Idaho Rivers United
Indiana Wildlife Federation
Indigenous Environmental Network
Instituto de Geografía de la Paz/GeoPaz

International Indian Treaty Council
International Tribunal of Conscience of Peoples in Movement
Iowa Natural Heritage Foundation
John Muir Project
Justicia Digna
Kamāwaelualani
Kentucky Conservation Committee
Kentucky Resources Council
Kentucky Waterways Alliance
Kettle Range Conservation Group
Latino Farmers & Ranchers, International, Inc.
Legacy Forest Defense Coalition
Livelihoods Knowledge Exchange Network
Local First Arizona
Lower Eastern Cherokee Nation SC
Maine Unitarian Universalist State Advocacy Network
Mass Parks for All
Massachusetts Association of Conservation Commissions
Massachusetts Rivers Alliance
Mazorca Colectiva
Michigan Hydro Relicensing Coalition
Midwest Tribal Energy Resources Association
Milwaukee Riverkeeper
Missisquoi River Basin Association
Mono Lake Kootzaduka'a Tribe
Mono Lake Kutzadika Indian Community Cultural Preservation Association
Mount Shasta Bioregional Ecology Center
Mountain Watershed Association
MountainTrue
Musconetcong Watershed Association
Mystic River Watershed Association
National Lawyers Guild - International Committee
National Lawyers Guild - Task Force on the Americas
Native American Institute
Native Hoop
Native Organizers Alliance Action Fund
Nature Adventures LLC
NDN Collective
New Energy Economy
New Jersey Conservation Foundation
Next 100 Coalition

OARS
Ocean Conservation Research
Ohio River Foundation
Ohio Wetlands Association
Oil Change International
One Mississippi
Oregon Shores Conservation Coalition
Oregon Wild
Our Common Wealth 670
Outdoor Promise
Oxbow, Inc.
PAIA Lower Eastern Cherokee Nation
Palomino Books and Music
Park Institute of America
Park Watershed
Partnership for Policy Integrity
Partnership for the National Trails System
Passaic River Coalition
People of Red Mountain
Physicians for Social Responsibility Pennsylvania
Plastic Pollution Coalition
Prutehi Guåhan
Public Rail Now
Pueblo Action Alliance
Quartz Valley Indian Reservation
Red Oaks Forest School
Refugia South
Reno-Sparks Indian Colony
RISE Earth Initiative
River Heritage Conservancy
River Network
Riverkeeper
Rivers Without Borders
Rogue Climate
Rootsong Ecology
Rosebud Sioux Tribe
Sagan Kotturan Chamoru
Saluda River Trout Unlimited
Save California Salmon
Save Our Saluda
Save Our Wild Salmon Coalition

Sierra Club of Hawai‘i
Sky Island Alliance
Snake River Fund
South Carolina Indian Affairs Commission
South Carolina Native Plant Society
South Yuba River Citizens League
Southern Environmental Law Center
Southern Hill Nisenan Band
Southwest Native Cultures
Spokane Riverkeeper
St. Johns Riverkeeper
Taunton River Watershed Alliance
Tennessee Citizens for Wilderness Planning
The Alliance for Appalachia
The Alliance for Diplomacy and Justice
The Foothill Conservancy
The Lands Council
The Last Plastic Straw
The Norcross Wildlife Foundation
The Ocean Project
The Piedmont Environmental Council
The Pueblo of San Felipe
The Wei LLC
The Whidbey Institute
Three Rivers Waterkeeper
Tó Nizhóní Áni
Tonatierra Community Development Institute
Umpqua Watersheds
United Confederation of Taino People
Universal Access to Clean Water for Tribal Communities
Upper Merced River Watershed Council
Upper Snake River Tribes Foundation
UpstreamPgh
Voices of the Land
Waccamaw Indian People
Washington County Watershed Alliance
Waterspirit
Waypoint Adventure
West Michigan Environmental Action Council
West Virginia Council of Churches
Western Environmental Law Center

Western Shoshone Defense Project
Western Watersheds Project
White Clay Watershed Association
Wild Cohasset Inc
WildEarth Guardians
Wilderness Watch
Williams Community Forest Project
Winnemem Wintu Tribe
Witness at the Border
WV Rivers Coalition