

Permitting Reform Bill Attacks 4 Pillars of Environmental Protection (Short Version)

On September 30, 2026, several senators from both major parties rolled out a 417-page piece of legislation that if passed would change the national landscape of environmental protection. The bill contains **major rollbacks of protections in the Clean Water Act, the Endangered Species Act, the Federal Power Act, and the National Environmental Policy Act.**

The bill is entitled the “[Bipartisan American Affordability and Jobs Act of 2026](#).”

Its purported overarching purpose is to expedite construction of major energy infrastructure, in particular pipelines and electric transmission.

One of the present major bottlenecks for the construction and new energy projects is the current federal administration’s executive rescission and defunding of planned renewable energy projects. This bill would **partially solve this real but temporary problem by preventing some rescission of energy projects by the executive branch.** In exchange, this bill would **permanently unravel a suite of foundational environmental laws.**

It is difficult to understand the urgency of passing this bill, or the logic of passing it at all, considering how much of it responds to what may well be short-term policy decisions.

Here are some, not all, of the worst elements of the bill. For citations and more analysis, see <https://calsport.org/permitting-reform-bill-attacks-4-pillars-of-environmental-protection/>.

Chokes Section 401 of Clean Water Act

Section 401 of Clean Water Act allows states to deny federal permits or licenses that don’t comply with state laws regarding water quality. Alternatively, states can issue “water quality certifications” that place mandatory conditions in federal permits or licenses to assure compliance with state laws regarding water quality. This statute affects hydropower licensing, construction of pipelines, and electrical transmission, among others.

The bill would add subsections to Clean Water Act section 401 that **restrict the states’ scope of review and limit reasons for denial.** The bill would **add a burden of proof for the states** that only “clear and convincing evidence” is cause for denial or the rationale for a condition in a certification. It would allow a federal agency or a court to override a state’s conditions by finding those conditions not to be “consistent” with a federal decision.

Carves Holes in the Endangered Species Act

Under existing law, Section 7 of the Endangered Species Act (ESA) requires proponents of a discretionary federal action to consult with the responsible federal agency (usually, the U.S. Fish and Wildlife Service or the National Marine Fisheries Service) to avoid harm to species listed as threatened or endangered under the act. Section 7(a) requires the consultation. Section 7(b) requires the “opinion of the secretary”; i.e., a “biological opinion.” Section 7(c) requires the proponent to prepare a “biological assessment” as the basis for the consultation and the opinion.

The bill would allow states to assume the role of ESA consulting agencies under section 7(a) formerly reserved for the U.S. Fish and Wildlife Service under the Department of the Interior. It would also allow an applicant for a permit or license to **choose the regulator** with whom it wants to consult. Thus, a license or permit **applicant gets to choose where it will get the better deal:** from the federal government, or from the state where a project is proposed.

Weakens a Key Safeguard in the Federal Power Act that protects national forests and lands managed by the Bureau of Land Management

The bill limits the authority of the Department of Agriculture's Forest Service and the Department of the Interior's Bureau of Land Management under the Federal Power Act in licensing hydropower projects. Section 4(e) of the Federal Power Act allows the Forest Service and BLM place mandatory conditions in hydropower licenses to protect "reservations" that they manage, generally national forests and BLM-owned land. FERC must accept these conditions and include them in hydropower licenses.

Current language in Section 4(e) states that hydropower licenses "shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation." The bill would add language at the end of that sentence, limiting what the Forest Service or BLM could deem necessary by adding "and are reasonably related to the effects of the project."

The added language **would make an entity other than the Forest Service or BLM the decider of what is "reasonably related to the effects of the project."** It could be a judge in a courtroom. **It could even be FERC**, which would overturn the **mandatory** nature of 4(e) conditions in licensing. The legislation itself is confusing because it doesn't say who decides.

Undercuts the National Environmental Policy Act by limiting court review and remedy

The National Environmental Policy Act, widely known as "NEPA," requires disclosure of the environmental effects of an action by a federal agency. It also requires analysis of alternatives to the action (often called "the heart of NEPA"). Since NEPA's creation in 1972, a judge can require a federal agency to reconsider its decision on a federal action if a court finds that the agency's NEPA analysis of the action is inadequate.

The bill would **limit what alternatives an agency must analyze**, would **limit what any person or entity could challenge in court**, and would **limit what could happen if a judge found a NEPA analysis to be legally inadequate**.

The bill requires filing of a lawsuit challenging a NEPA document **within 150 days** after a federal authorization supported by the document is made public. Under current law, parties have 6 years to file suit. A party can litigate only alleging (or has an individual member alleging) **an actual or imminent injury in fact amounting to a direct harm**. Current law is less strict. The bill would also allow a federally approved action to proceed even after a finding that the associated NEPA document was legally inadequate. This **change severely reduces the importance of environmental review under NEPA**.