March 27, 2023

Re: Vote Recommendation on H.R. 1, the "Lower Energy Costs Act"

Dear Representative,

On behalf of our millions of members and supporters, the undersigned organizations write to express our strong opposition and to urge you to vote **NO** on H.R. 1, the so-called "Lower Energy Costs Act," which the House will take up this week.

This legislation would exacerbate the climate crisis, perpetuate environmental injustices, and undermine U.S. economic and national security by prolonging reliance on risky and volatile energy sources. Its sweeping changes to the National Environmental Policy Act (NEPA), the Mineral Leasing Act, the Mining Law of 1872, and the Clean Water Act prioritize polluter profits over public health and exhibit an astonishing disregard for government accountability and the voices and welfare of communities impacted by federal decisions.

Division A

Division A would encourage new fossil fuel production and infrastructure, despite the scientific consensus that there is no room for investment in new fossil fuel production if we are to keep the world on a 1.5°C compatible pathway. It would also undermine bedrock environmental laws, including NEPA, by short-circuiting permitting processes and limiting public input. NEPA is a critical environmental law and an important tool for frontline and environmental justice communities to influence federal infrastructure projects that will impact them the most.

Division A's most egregious provisions:

- Repeal the Methane Emissions Reduction Program created by the Inflation Reduction Act (IRA). This critical program supports efforts to reduce methane emissions from the oil and gas sector, improve methane monitoring, fund environmental restoration, and help communities reduce the health impacts of pollution.

- Undercut public transparency and input from communities by arbitrarily limiting the time for environmental reviews. The bill alters the approval process for gas pipelines by requiring all other federal and state agencies to defer to FERC.

- Strip away the federal government's responsibility to examine the full impacts of LNG expansion on US energy markets, the environment, and local communities. It would make it easier to approve LNG exports by removing the first three sections of the Natural Gas Act, which require a public interest determination for LNG exports to non-FTA countries and by mandating that FERC deem gas exports in the public interest. LNG exports negatively impact Americans by exacerbating climate change, raising domestic energy prices, and perpetuating environmental injustices, and these factors need to be taken into account when deciding whether to approve

additional LNG export terminals.

- Authorize the Environmental Protection Agency (EPA) to waive the Clean Air Act (CAA) and Solid Waste Disposal Act (SWDA) requirements for waste produced by certain energy facilities. Exempting energy waste potentially including everything from fracking wastewater to mine processing facilities and tailing sites to nuclear facilities from these laws threatens the health of people in frontline communities, as well as our air and water. The waste from energy production are some of the most threatening products and sites, and often they exist for hundreds of years, even in perpetuity, which is part of the reason why the Superfund program is overwhelmed.

- Undermine the Toxic Substances Control Act by short circuiting the review and approval process for new chemicals used in the energy sector, whether that is for fracking, petrochemicals, mining or dozens of other products. This rushed and weak assessment, which would lead to default approvals, would result in the blind rubber-stamping of chemicals for use in energy that have deleterious impacts on human health and the environment. Virtually any chemical that plays a role in the production, refining, distribution, and use of energy could be designated as "critical" by the Department of Energy.

- Allow the EPA Administrator to circumvent the scientific process of approving or denying flexible air permitting at the agency. Doing so could potentially allow the EPA Administrator to increase air pollution from so-called "critical energy resource facilities," subsequently harming environmental and public health. A broad spectrum of facilities that emit toxic air pollution could evade scrutiny for health impacts, including processing and refining products of oil, gas, coal, minerals, and fertilizers.

- Modify the organization of the Department of Energy, taking the authority on many issues and processes that are vital for the protection of communities, air, lands, and water away from those who have the expertise in understanding the potential impacts of extraction and production, whether that is the Department of Interior (DOI) or Environmental Protection Agency (EPA). In doing so it makes the only metric for consideration economic, which would mean that communities, lands, and waters would be sacrificed.

This Division also contains a provision purporting to support domestic supplies of "critical minerals," but in reality creates a new legislated term–"critical energy resources"–which the majority has defined to mean virtually anything related to the energy sector, whether that is oil and gas, coal, petrochemicals or nuclear production, mineral processing, and refining.

Other notably problematic provisions in the remainder of Division A would:

- Prohibit the President from issuing a moratorium on fracking unless authorized by Congress. Fracking releases massive amounts of methane, a potent greenhouse gas that has more than 80 times the power of carbon dioxide over a 20-year period, driving approximately one quarter of the warming our planet has experienced to date. Fracking also harms local communities and ecosystems by releasing air pollutants and contaminating water sources.

- Exempt certain energy facilities from requirements to secure an interim permit before operating, instead allowing the facilities to operate before securing such a permit. The result could be the release of harmful pollutants into our air and water, threatening the environment and health of people in frontline communities. The facilities that could receive a permit without an accurate assessment of their impact include everything from radioactive waste to petrochemicals to fertilizer to mining waste, all extremely toxic industries.

- Express disapproval of President Biden revoking the Presidential Permit for Keystone XL pipeline. If built, Keystone XL would have carried 830,000 barrels per day of the dirtiest oil on the planet, threatening our climate, farmland, critical water resources, and wildlife habitat along the pipeline's path.

- Express the sense of Congress that the federal government should not restrict the export of crude oil or other petroleum products. Increased oil drilling and exports have enormous climate repercussions and pollute communities and ecosystems. They also open U.S. consumers to the whipsaw effects of geopolitical tensions and conflicts, creating energy instability and often driving significant increases in energy prices. The federal government must ensure that these exports do not compromise US climate and environmental justice goals or undermine our global climate leadership.

Division B

Title I would take us in the wrong direction on onshore and offshore oil and gas leasing. It would lock in decades' worth of fossil fuel infrastructure, preclude protections for millions more acres of public lands, split estates, and offshore waters, and handcuff the Biden Administration's ability to address the climate crisis through thoughtful management of our shared public resources. Like many recent proposals from the present House majority, it attempts to further prop up the federal fossil fuel program despite rising (and record) production, and industry's existing access to tens of millions of acres of our shared public spaces and thousands of approved and unused permits to drill on federal lands and in offshore waters.

To start, Title I:

- Mandates leasing onshore and offshore, eviscerating long-standing precedent that defers leasing decisions to the President and the Secretary of the Interior.

- Rushes oil and gas drilling permits through the environmental review process with zero regard for community input, effects on endangered species, or emissions consequences.

- Exempts as many permitting decisions from the federal review process as possible.

- Severely restricts the President's authority to protect specific lands with natural, cultural, or scientific significance.

- Repeals the hard-fought common-sense reforms to the outdated oil and gas leasing program that were enacted in the Inflation Reduction Act to ensure that industry pays a fairer share when reaping—and profiting from—shared, public resources.

Title II, which incorporates the BUILDER Act, would eviscerate NEPA and fundamentally gut the review of environmental, health, and economic impacts of decisions by over 80 agencies in the federal government. If passed, local community voices would be silenced, the public would be essentially unable to hold the federal government accountable, and polluting industries would be allowed to steer a review process designed to be in the public, not private, interest.

The ways this bill would radically undermine informed government decision-making and accountability are too numerous to detail here, but a few merit particular attention:

- Dramatically Narrows Application of NEPA and Limits the Scope of Reviews – The bill would radically limit the application of NEPA by redefining the threshold consideration of what is a "major federal action" for the purposes of NEPA. Further, the bill excludes oil and gas gathering lines, federal loans, projects not occurring on federal lands, loan guarantees, and other forms of financial assistance from NEPA, which could potentially allow projects such as offshore oil and gas development, coal fired generating facilities, LNG projects, nuclear facilities, roads, bridges, highways, and concentrated animal feeding operations to evade any review or public scrutiny. For reviews that do occur, it relieves agencies of any responsibility to undertake any new research necessary for informed decision making and potentially prevents the consideration of upstream and downstream impacts of decisions, thus codifying climate denial into federal decisions.

- Essentially Eliminates Judicial Review – In addition to reducing the statute of limitations to a mere 120 days, the bill would bar legal challenges to categorical exclusions as well as many environmental assessments. For the few remaining projects subject to judicial review, injunctive relief would be prohibited, thus ensuring that projects move forward regardless of how egregiously deficient a review or harmful the impacts of a project on a community or the environment.

- Allows Inherent Conflicts of Interests In Review – The bill would allow project sponsors to prepare their own environmental reviews, thus eliminating objective analyses about the environmental and related social and economic effects of federal actions and institutionalizing bias in the review process. This potentially undermines the entire purpose of NEPA to have federal agencies make informed, unbiased decisions in the public interest.

- Prioritizes Project Sponsors Over the Public Interest – The legislation not only would impose arbitrary timelines on reviews but would also prohibit an agency from extending the time if needed to do essential scientific work or to accommodate public comment, unless the project sponsor agrees. Further, the bill would severely narrow what has long been considered the "heart" of the NEPA process, by prioritizing consideration of alternatives that meet the project sponsor goals.

Finally, Title III would exacerbate deficiencies in the existing 151-year-old mining law, result in an unnecessary increase in mining on federal public lands, and put at risk irreplaceable protected lands, special places, endangered and sensitive wildlife, tribal sacred sites, and culturally significant sites.

Current mining law has allowed for the pollution of America's environment and waterways, placing additional unjust burdens on communities who have already borne the brunt of our nation's toxic mining legacy. The GAO estimates America is littered with hundreds of thousands of abandoned mines while the Environmental Protection Agency (EPA) estimates hardrock mines have polluted 40% of the headwaters of western U.S. watersheds and will cost taxpayers more than $50 billion to clean up. Under current law, taxpayers are potentially liable for billions more in cleanup costs at currently operating mines because the legal requirements for mining companies to remediate lands and waters remain inadequate. This legislation does nothing to address the legacy of abandoned mines or promote remediation of American lands and waters.

Of particular concern, this Title upends more than a century of practice by validating mining claims under the Mining Law of 1872 before the claimant has proven a mineral discovery. Currently, mining claims do not become valid just because the claimant says so: mining rights fully vest only after the miner discovers valuable minerals. Yet, under Section 20307, a claimant would no longer need to actually prove they discovered valuable minerals. Instead, any person could "claim" mining rights on unwithdrawn public lands merely by grounding a stake, paying a fee, and filing some paperwork. This Section would effectively lock out most other uses of public lands, prioritizing mining instead regardless of whether those lands had any value for mineral development.

Title III also continues the current majority's constant attempts to unnecessarily prop up the domestic uranium industry. Under Section 20308, the U.S. Geological Survey is once again directed to reevaluate its list of critical minerals. However, under this bill, "fuel minerals" are now defined to specifically exclude uranium, making it an automatic candidate for consideration despite its dominant use as a fuel mineral.

Division C

Division C (as well as Section 10008(e) of Division A) would weaken state and tribal authority under Section 401 of the Clean Water Act, one of the law's most important provisions empowering states. Native, rural, and socioeconomically disadvantaged communities have been fighting to stem the marginalization accompanying resource extraction for decades and Section 401 enables those communities to work through states and tribes to protect their waters.

States and authorized tribes depend on the Clean Water Act Section 401 certification process to ensure that projects requiring federal licenses and permits will not harm the waters within their borders—projects like dams, river alterations, wetland fills, and interstate pipelines. If this bill is enacted, state and tribal experts would lose a key oversight tool for activities that can threaten state and tribal investments in pollution control programs, fish recovery programs, temperature control mechanisms, minimum-flow requirements, and other essential activities.

The bill seeks to limit states' longstanding authority under Section 401 to broadly consider the impact of a project or activity on water quality. It would significantly curb Section 401's express authority enabling states to make certification decisions based on requirements of state law, which would severely hamstring states' and tribes' ability to comply with laws they have adopted to maintain and improve the condition of their water bodies. As tribes often do not receive the required government-to-government consultation, they depend on Section 401 certification to ensure their waters remain protected. Rollbacks in this proposed legislation would severely restrict the usage of this tool, leaving tribes without one of the few tools they have to ensure their waters are healthy enough to support tribal rights and traditions.

Conclusion

H.R. 1 would encourage new fossil fuel production and infrastructure, locking us into increased extraction, high and volatile energy prices, and even greater profits for fossil fuel companies. It would undermine bedrock environmental laws through its short-circuiting of government accountability, meaningful public input, and review. It would put the interests of industry ahead of the public. **We urge all Members to vote NO on H.R. 1**, and to instead prioritize efforts to meet the challenge of the climate crisis, secure our clean energy future, and protect public health, community voices, public lands, waters, and oceans.

Sincerely,

350.org
Accountable.US
Alaska Clean Water Advocacy
Alaska Community Action on Toxics
Animal Welfare Institute
Azul
Bold Alliance
C.A.N. Coalition Against Nukes
Center for Biological Diversity
Center for Oil and Gas Organizing
Change the Chamber
Clean, Healthy, Educated, Safe & Sustainable Community,Inc.
Climate Action Campaign
Climate Hawks Vote
Concerned Citizens of Cook County (Georgia)
Conservation Colorado
Conservation Lands Foundation
Cook Inletkeeper
Dayenu: A Jewish Call to Climate Action
Defenders of Wildlife
Earthjustice
Earthworks
Endangered Species Coalition
Environment America
Environmental Investigation Agency
Environmental Law & Policy Center
Environmental Protection Information Center - EPIC
Environmental Working Group

Fenceline Watch
For a Better Bayou
Friends of the Earth
Friends of the Kalmiopsis
Grand Canyon Trust
Green New Deal Network
GreenLatinos
Greenpeace
HG Conservation Solutions
Hip Hop Caucus
Hispanic Access Foundation
Honor the Earth
Humanity
Indigenous Environmental Network
Interfaith Power & Light
John Muir Project
Kalmiopsis Audubon Society
League of Conservation Voters
Los Padres ForestWatch
Lynn Canal Conservation
Malach Consulting
Micah Six Eighth Mission
Mining Impact Coalition of Wisconsin
Montana Wildlife Federation
Natural Resources Defense Council
Nevada Wildlife Federation
NEW MEXICO SPORTSMEN
North American Climate, Conservation and Environment(NACCE)
Northern Alaska Environmental Center
Nuclear Information and Resource Service
Oceana
Ocean Conservation Research
Ocean Defense Initiative
Operation HomeCare, Inc.
Oregon Wild
Oxfam
PACAN
Project Eleven Hundred
Property Rights and Pipeline Center
Public Citizen
Public Citizen, Inc.
Rachel Carson Council
Rio Grande Indivisible, NM
Rocky Mountain Wild
Safe Energy Rights Group
Save the Eau Claire River
Seven Circles Foundation
Sierra Club
Soda Mountain Wilderness Council
Southern Environmental Law Center
Southern Utah Wilderness Alliance

Standing Trees
Stop The Oil Profiteering
Surfrider Foundation
Tapeats
The Wilderness Society
Trustees for Alaska
Tucson Audubon Society
Turtle Island Restoration Network
U.S. PIRG
Voices for Progress
Waterkeeper Alliance
WE ACT for Environmental Justice
Western Environmental Law Center
Western Organization of Resource Councils
Western Watersheds Project
Winter Wildlands Alliance
Zero Hour

Please note that the organizations listed may not have positions on every topic included in this letter.