SUMMARY

While we appreciate the transmission provisions in the legislation, the Energy and Permitting Reform Act of 2024, led by Chair Manchin and Ranking Member Barrasso continues to promote a dangerous pro-fossil fuel agenda thereby moving our nation's energy policy in the wrong direction.

This legislation contains provisions that could improve the resiliency of our electricity grids with improved and expanded transmission and should help the transition to clean energy. However, we strongly oppose pairing these provisions with big fossil fuel handouts that harm communities and undermine emissions reductions of added transmission. This legislation continues to benefit the fossil fuel industry by drastically shortening the statute of limitations for judicial review of projects, increasing required fossil fuel lease sales, extending drilling permits, giving wide latitude to polluting mining companies' operation on public lands, and codifying the rubber stamping of LNG export projects while barring any ability to challenge those approvals in court.

The bill's harmful provisions:

- **Cuts the window communities have to challenge projects in court from 6 years down to 5 months**, an incredibly short timeline, particularly for communities of low wealth or those that are unaware of projects' permits being finalized. Even well-resourced communities might find it challenging to bring thorough suits to halt potentially harmful projects, and might react by reflexively suing in order to preserve their rights to judicial review.
- **Guts the current DOE re-evaluation of how it analyzes whether LNG exports are in the public interest and unleashes massive climate emissions from at least the 5 LNG export projects**, including the massive CP2 project. This could lead to up to 616 million metric tons of CO_2e annually, equivalent to 165 coal-fired power plants or the emissions benefits from up to 50 major clean electricity transmission projects (each carrying 3,000 MW of clean renewable electricity).[1] Jams DOE with only 90 days to make a public interest determination on the export of LNG to non-free trade agreement countries, otherwise the project is automatically approved. This is not nearly enough time for DOE to supplement FERC's final EIS for projects, which is necessary for the additional analysis to fulfill DOE's statutory role.
- **Locks in oil and gas development** by adding at least two offshore oil and gas leases over the next 5 years on top of the three planned, allows oil and gas companies to drive the process for what public lands are offered for lease onshore, and deepens the recent tethering of fossil fuel leasing with that of clean renewable energy on public lands and waters. It also blocks DOI for adding new stipulations to leases, critical for the endangered Rice's whales, and jams them on reviewing bids and ensuring leases are fiscally and environmentally sound.
- **Undermines the National Environmental Policy Act.** It punches a big loophole in NEPA and other statutes for oil and gas drilling on up to 57 million acres of public lands. It exempts geothermal exploration projects on public lands, which often include extensive fracking, from NEPA environmental review and public input. It multiplies categorical exclusions (CEs) across land management agencies without public process or impacts analyses, despite agencies having already fast track authority on CEs.
- **Hands public lands to polluting mining companies** by giving them as many mill sites as they deem necessary, allowing them to dump toxic mine waste on even more public lands, and even removing the requirement for them to show evidence of minerals for a claim to be made. This further prioritizes mining on our public lands and, as an unintended consequence, locks out other uses like renewable energy development, recreation, and conservation.
- **Forces DOI to initiate coal leases** within 90 days of receiving a request to do so, undermining Interior's recent decision to end new coal leasing in the Powder River Basin in Wyoming and Montana, and

[1] Symons Public Affairs, "Status of U.S. LNG Export Permits and Associated Greenhouse Gas Emissions," p. 23. For example, the TransWest Express Transmission Project is a 3,000 MW, high-voltage interregional transmission line that will deliver renewable energy from Wyoming to southern Nevada. According to BLM's EIS (p. 5-22), the TransWest Express transmission line could reduce GHG emissions by 12.2 million tons (CO2e) annually, resulting in a savings of approximately 16,000 GWh of power production from fossil fuels on an annual basis. In comparison, the lifecycle GHG emissions of CP2 would be 231 million tons (CO2e) annually – 18 times as high. The emissions of all five LNG projects in this analysis would be 616 million tons annually, 50 times as high

requires expedited decision and pricing.[2] By resuming lease sales in the Powder River Basin, approximately 6 billion tons of low-grade, highly polluting coal will become eligible for sale, failing to account for environmental health impacts, human health impacts, and market signals.

MORE DETAILED ANALYSIS

The Manchin-Barrasso bill would reduce the statute of limitations for judicial review of agency decisions to 150 days or shorter.

The current statute of limitations for judicial review is six years after federal agency action.[3] The Administrative Procedure Act (APA) applies to all civil actions against the United States, which includes judicial review of federal agency actions such as permitting decisions. The Fixing America's Surface Transportation Act of 2015 reduced the statute of limitations for projects using the "FAST-41" procedure to two years.[4] For covered projects, "FAST-41" provides the opportunity for coordinated multi-agency review through the Federal Permitting Improvement Steering Council. The Infrastructure Investment and Jobs Act (IIJA) reduced the statute of limitations on transportation projects to 2 years, provided they went through the required environmental review and permitting process.[5] By reducing the statute of limitations to an unprecedented length, the Energy and Permitting Reform Act of 2024 severely limits the ability for meaningful community engagement and public participation.

The bill repeals the liquefied natural gas (LNG) pause, expedites approval timelines and severely limits DOE's ability to make informed public interest determinations.

On January 26, the Biden Administration announced a temporary pause on approvals of LNG export authorizations. Under the *Natural Gas* Act, the Department of Energy (DOE) has a responsibility to make LNG export determinations in the U.S. public interest.[6] In their current state, DOE public interest determination methods are informed by outdated and incorrect Trump-era reports.[7] The Biden Administration pause on LNG export license approvals provides DOE an opportunity to develop an approval process that accounts for the real-life effects of LNG exports on the public.

The Manchin-Barrasso bill not only repeals the pause on authorizations of LNG export approvals but takes it a step further. The bill brings about three concerns with LNG export approvals. The first is that under this bill, DOE will be required to use outdated studies. DOE has publicly stated that these studies are outdated and do not consider all necessary factors to determine public interest.

The second area of concern is that the bill gives the Secretary of Energy 90 days to either approve or deny export applications. Specifically, the 90 day clock for new export applications is initiated at the submission of the final FERC NEPA review. For reexport applications, the 90 day clock begins when the draft NEPA review is submitted. If an application for an extension is submitted, DOE has 90 days from the date of the application submission.

Typically, DOE uses the FERC review process as a record when they begin their review process in order to ensure they have a complete understanding of the various complexities of an export application environmental review. If the FERC review process were to fail to be completed prior to the 90 day clock, DOE would have no record to work from and would be analyzing a moving target. The 90 day clock does not provide DOE with an appropriate amount of time to make informed decisions on what is in the public interest.

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[2] In 2022, a federal judge found that resource management plans used in the Powder River Basin failed to take into account environmental and human health impacts from burning coal. When the Biden Administration announced the end of lease sales, they cited the 2022 decision and recognized that the market has shifted away from coal as an electricity source. *See* Melissa Hornbein & Bustin Ogdin, *Federal court cites human health, climate costs in rejecting massive Wyoming, Montana coal mining plan*, Earthjustice (August 2022), and Perry Wheeler & Shannon Anderson, *Biden Administration to End Coal Leasing in Powder River Basin*, Earthjustice (May 2024).

[3] 28 U.S. Code § 2401.

[4] 42 U.S. Code § 4370m–6.

[5] 23 U.S. Code § 139.

[6] 15 U.S.C § 717(a).

[7] Morgan Johnson & Jasmine Jennings, *DOE Puts People First: LNG Exports Paused Pending Review,* Natural Resources Defense Council (Jan. 31, 2024), https://www.nrdc.org/bio/morgan-johnson/doe-puts-people-first-lng-exports-paused-pending-review.

The third area of concern is that if DOE is unable to meet the unreasonable timeline for approval, the application is automatically considered approved and deemed in the public interest. This would allow a potential Trump Administration DOE to simply wait out the 90 day clock without making any decisions. Because no decision would have been made and the application would be "deemed approved" the ground for judicial review would be severely limited.

The LNG provisions of the Manchin-Barrasso bill would quickly generate new greenhouse gas emissions equivalent to 165 coal-fired power plants, with more to come.
The Manchin-Barrasso bill, if enacted, would require the Department of Energy to make decisions within 90 days of enactment on a number of pending permits. These projects include the controversial CP2 LNG project, Commonwealth LNG, Port Arthur Phase 2, Magnolia, and Lake Charles LNG.[8] Combined, these projects would add an additional 10.5 billion cubic feet per day of new capacity. The lifecycle emissions from these facilities would be 616 million metric tons of CO2e annually, which is equivalent to 165 coal-fired power plants.[9]

The Energy and Permitting Reform Act of 2024 increases and expedites the process for onshore oil and gas, coal, and offshore oil and gas lease sales.
The Mineral Leasing Act requires that the Bureau of Land Management (BLM) holds lease sales for onshore oil and gas at least quarterly if there are eligible lands available.[10] When a lease sale is conducted, approved plans are required to be complete. The bill would allow for onshore oil and gas lease sales to be conducted for approved plans, even if amendments to the plan are still being considered.

Under the Mineral Leasing Act, current coal lease sales are based on market demand and other factors, leaving sales up to the discretion of the Bureau of Land Management.[11] The Manchin-Barrasso bill sets specific deadlines for the Secretary of Interior to act on coal lease sales on federal lands. The Secretary would have 90-days to begin consultations and reviews upon receiving qualified applications; 90-days after completing an environmental impact assessment of statement to issue a decision of finding of no significant impact; and then within 30-days of decision, the Secretary is required to determine a fair market value and complete the sale.

The Outer Continental Shelf Lands Act (OCSLA) currently requires the Secretary of the Interior to prepare and maintain an oil and gas leasing program that indicates a schedule of proposed leases. There is no specific statutory requirement for the frequency of individual lease sales within these plans, but once a plan is proposed it must be followed.[12] The bill would require that one offshore oil and gas lease sale occurs each year from 2025 to 2029. Additionally, the Secretary would have 90-days to issue a lease after receiving a qualified application. Overall, the bill increases lease sales and expedites the process for consideration of applications.

The bill unnecessarily extends drilling permits.
Under the Mineral Leasing Act, drilling permits are valid for 2 years.[13] The Manchin-Barrasso bill extends the validity of permits to 4 years, allowing oil and gas companies to continue to sit on permits.

The bill exempts parcels of land from the environmental review process.
Approximately 57 million acres of the Bureau of Land Management land portfolio is considered split estate, a situation in which one party owns the land surface rights and another party owns the mineral rights below.[14] Under the Manchin-Barrasso bill, a parcel where the surface is not federally owned and less than 50% of the minerals below the surface are federally owned would be exempt from the federal drilling process. This would thus exempt the parcel from environmental review under the National Environmental Policy Act and would subject these parcels to state drilling permit requirements.

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[8] Assessing the Climate Impacts of the Manchin-Barrasso Bill's LNG Title.
[9] "Status of U.S. LNG Export Permits and Associated Greenhouse Gas Emissions."
[10] 30 U.S.C. § 226(b)(1)(A).
[11] 30 U.S.C. § 201.
[12] 43 U.S.C. § 1344.
[13] 30 U.S.C. § 226.
[14] DOI