

June 15, 2020

The Honorable Nita Lowey
Chairwoman
Committee on Appropriations
U.S. House of Representatives
The Capitol H-307
Washington, DC 20515

The Honorable Betty McCollum
Chairwoman
Subcommittee on Interior, Environment and
Related Agencies
U.S. House of Representatives
2007 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Lowey and Chairwoman McCollum,

On behalf of our organizations and our millions of members and supporters, we write to express our vehement opposition to President Trump's June 4 executive order¹ directing all federal agencies to waive compliance with some of our nation's bedrock environmental laws—like the Endangered Species Act and the National Environmental Policy Act—to expedite infrastructure and other projects. This reckless order requires every agency to claim emergency authority to approve as many infrastructure projects as possible within 30 days, regardless of potential harm to people or the environment. Given the incredible potential for abuse that this executive order would sanction, we urge you to take immediate action by including language in the Fiscal Year 2021 Interior, Environment, and Related Agencies appropriations bill that would rein in this unbridled power, increase public understanding of forthcoming projects planned pursuant to the order, and ensure that agencies are held accountable for any harm resulting from a project approved under this order.

The power of federal agencies to use their emergency authorities is narrow and limited to situations where a real and concrete, short-term emergency makes it genuinely impossible to fully comply with the law, such as natural disasters. Both the Endangered Species Act and the National Environmental Policy Act (NEPA) include provisions that authorize streamlining in the face of emergencies. Neither law, however, would classify an economic downturn as an “emergency.” Rather, the NEPA regulations limit the use of its emergency provision to those actions “necessary to control the immediate impacts of the emergency...”² and the Endangered Species Act in “situations involving acts of God, disasters, casualties, national defense or security emergencies, etc.”³ The Act's Consultation Handbook further explains that an emergency “includes response activities that must be taken to prevent imminent loss of human life or property.”⁴

For example, the U.S. Fish and Wildlife Service approved an emergency project under the Endangered Species Act in March when the Federal Emergency Management Agency requested

¹ *EO on Accelerating the Nation's Economic Recovery From the Covid-19 Emergency by Expediting Infrastructure Investments and Other Activities* (hereinafter, “EO”), (June 4, 2020) available at: <https://www.whitehouse.gov/presidential-actions/eo-accelerating-nations-economic-recovery-covid-19-emergency-expediting-infrastructureinvestments-activities/>

² 40 CFR § 1506.11

³ 50 CFR § 402.05

⁴ U.S. Fish & Wildlife Serv. and Nat'l Marine Fisheries Serv., *Endangered Species Consultation Handbook* at § 8-1 (Mar. 1998).

permission to quickly build field hospitals to treat COVID-19 patients. In that case, the use of emergency authority to expedite consultations under the Act was proper because the Service needed to respond quickly to an actual public health emergency that would prevent the loss of life.

By contrast, Trump's executive order directs federal agencies to invoke these narrow emergency regulations as a justification to wholly circumvent the Endangered Species Act's prohibition on harming endangered or threatened species and to bypass NEPA's environmental review and public input provisions, in order to facilitate *routine* economic activity and rush through projects that have no connection to the underlying emergency. These crucial protections are meant to guard against this exact type of administrative overreach. Instead, the executive order gives corporate polluters an unprecedented opportunity to ram through controversial projects and gives agencies permission to rubber-stamp any project with no transparency and accountability by treating them as "emergencies," even if that project causes massive harm to people and frontline communities or even causes a species to go extinct.

Furthermore, the executive order mandates that agencies complete and submit a series of summary reports to various entities within the executive branch, detailing projects that have been expedited pursuant to the order.⁵ Shockingly, Congress has been cut out of the list of report recipients. It is crucial for Congress to receive these reports directly, and for the general public to have access to them in real time.

President Trump's June 4 executive order cynically exploits the COVID-19 pandemic and sets a dangerous precedent that any president can short-circuit the requirements of the law, gut public awareness of agency action, and waive environmental review of projects whenever the economy is not doing well. Given the profound impacts that this executive order will have on our natural heritage, we urge you to include language in the FY2021 Interior-Environment appropriations bill that would:

1. Prohibit emergency approvals unless information regarding the approval is provided to the Committee at least 10 days in advance;
2. Withhold funds to agencies that do not cooperate with the 10-day requirement;
3. Mandate that all reports created pursuant to the order be submitted to the Committee within the same timelines provided in the order; and
4. Deem any project approved without meeting these requirements to be void.

We hope that you reflect on the concerns we've raised and consider our request as you continue to work on the FY21 appropriations bills.

Sincerely,

Center for Biological Diversity

⁵ See, e.g., EO at Sec. 3(b)-(c); Sec. 4 (b)-(c); Sec. 5 (c)-(d); Sec. 6 (a)(ii), (c); Sec. 7 (a)(ii), (c); Sec. 8 (a)(ii), (c); Sec. 9(a)(iii), (c).