

HOW THE MANCHIN-BARRASSO ENERGY PERMITTING REFORM ACT WILL IMPACT EXISTING ENVIRONMENTAL LAW

BACKGROUND

Senators Joe Manchin (I-WV) and John Barrasso (R-WY) introduced the Energy Permitting Reform Act of 2024 in July. The bill has six titles that change environmental law, impacting judicial review, onshore and offshore oil and gas leasing, hardrock mining, electric transmission and reliability, and liquified natural gas exports. Our analysis concludes that the bill provides needed authorities to speed up transmission for clean energy projects. Some of the authorities outlined in the bill are already available to FERC, even absent this bill. More importantly, the bill language does NOT guarantee its FERC authorities will be implemented to maximize clean energy as opposed to fossil fuels. On the other hand, the bill mandates the acceleration of fossil fuel and mining productions with no safeguards for the harms this acceleration will create.

According to Earthjustice's legal analysis, the bill will:

LIMIT JUDICIAL REVIEW BY:

- Shortening the time communities have to challenge new energy, mining, and forestry projects from six years to 150 days (a mere five months) (section 101). Many frontline communities, tribal nations, and concerned citizens often do not even learn that a federal approval has been granted within a five-month period, as federal agencies are not always required to notify the public that such approval has occurred. This will prevent communities from voicing their concerns about dangerous projects, deter project sponsors from conducting upfront community engagement, and likely result in MORE litigation as communities seek to utilize litigation as an engagement tool absent other opportunities.
- Requiring courts to prioritize cases concerning the review of an agency permitting decision for an energy or mineral projects, moving these cases up in the court docket (section 101). Federal Courts have discretion and authority to expedite a case in the interest of justice as needed. Requiring this would overburden the court system and delay other critical matters before our federal courts. Matters from plaintiffs seeking redress on issues across the spectrum, from workplace discrimination to voting rights to civil rights, constitutional rights, and environmental protection, already face significant delays in achieving justice. These cases, irrespective of their significance or gravity of justice, would be delayed, allowing matters involving permitting decisions to skip the line.

EXPAND OIL & GAS LEASING BY:

- Requiring the government to make public land available for oil and gas development before they can approve new renewable projects (sections 201-203).
- Extending the life of oil & gas permits from three to four years (section 202).
- Requiring the government to rely on decades-old plans when they issue new offshore oil and gas leases. This would limit their ability to include protections that are based on the

latest science (section 201(b) (1)).

- Tying our expansion of the clean energy industry to the expansion of fossil fuels while removing the ability of federal agencies to use the latest science and research to make well-informed decisions on the federal leasing program.

OPEN MORE PUBLIC LANDS TO MINE TAILINGS AND OTHER OPERATIONS BY:

- Allowing mining companies to claim as many mill sites as they say are "reasonably necessary," essentially giving them a right to dump waste on hundreds of thousands of acres of public land. Companies could also operate on public lands outside their claim without a permit when building mining-related infrastructure like roads, pipelines, and other infrastructure.
- Potentially handing the mining industry unprecedented discretion to claim large swaths of public lands and hold them for personal use—without a valid mineral claim—despite the need for other uses like recreation, cultural preservation, conservation, or clean energy production.

FACILITATE EXPANDED TRANSMISSION INFRASTRUCTURE BY:

- Expanding FERC's authority to permit new transmission lines and support planning for interregional transmission lines (Sections 401-402).
- Removing a major bottleneck to bringing renewable energy projects online.

ACCELERATE LNG EXPORTS BY:

- Setting a 90-day timeline for DOE to review proposed LNG projects. The project is automatically approved if DOE does not complete the review (Section 601).
- Requiring DOE to base LNG permitting decisions on economic and environmental impact analyses that are flawed and outdated according to DOE (Section 602).
- Removing the discretion of the Department of Energy to approve LNG export projects by forcing them to adhere to strict, yet arbitrary timelines.

Conclusion

The bill provides necessary updates that provide much-needed authorities for transmission development that could bring more renewable energy projects online; however, the bill does not guarantee that these provisions will be used effectively for clean energy development. They are paired with harmful measures that guarantee increased fossil fuel development and fundamentally limit the government's capacity to protect people and the environment from industry-related activities. The changes to environmental law and agency discretion under this bill will alter how decisions are made concerning energy, mineral development, and logging on our public lands—and not for the better. For this reason, the positive transmission provisions do not outweigh the damaging changes to leasing and mining operations on our public lands.