

American Bird Conservancy \* Appalachian Trail Conservancy \* Center for Biological Diversity  
Defenders of Wildlife \* Earthjustice \* Endangered Species Coalition  
Environmental Protection Information Center \* GreenLatinos \* Klamath Forest Alliance  
Los Padres ForestWatch \* The Lands Council \* Southern Environmental Law Center  
Western Environmental Law Center \* Western Organization of Resource Councils  
Western Watersheds Project \* Wilderness Workshop

September 18, 2019

The Honorable Alan Lowenthal, Chairman  
House Natural Resources Subcommittee on Energy and Mineral Resources  
1324 Longworth House Office Building  
U.S. House of Representatives  
Washington, D.C., 20515

The Honorable Paul Gosar, Ranking Member  
House Natural Resources Subcommittee on Energy and Mineral Resources  
1324 Longworth House Office Building  
U.S. House of Representatives  
Washington, D.C., 20515

*Re: The "Enhancing Geothermal Production on Federal Lands Act" (H.R. 4026)*

Dear Chairman Lowenthal and Ranking Member Gosar:

We are writing to express our strong opposition to the federal permitting provisions of the "Enhancing Geothermal Production on Federal Lands Act" (H.R. 4026). On behalf of the undersigned organizations and our millions of members and supporters, please accept these comments for the hearing's official record. While we are strong supporters of increased renewable energy development as the United States seeks to transition to a zero-carbon economy, we believe such development should occur responsibly, transparently, and with meaningful public involvement.

As currently drafted, Section 2 of the bill exempts proposals for geothermal exploration test projects from the National Environmental Policy Act (NEPA). Specifically, the bill states that, unless extraordinary circumstances exist, geothermal exploration test projects "shall be categorically excluded from the requirements for an environmental assessment or an environmental impact statement" under NEPA.

The White House Council on Environmental Quality's (CEQ) regulations clearly define categorical exclusions (CEs) to be categories of actions that agencies have determined do not individually or cumulatively have significant impacts on the environment.<sup>1</sup> Critically, when agencies establish CEs, they are required to gather, evaluate, and disclose the information

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<sup>1</sup> 40 C.F.R. 1508.4.

supporting the creation of the CE.<sup>2</sup> H.R. 4026 provides no such disclosure or basis in fact to justify this exemption in Section 2 of the legislation.

When mandated through legislation or otherwise improperly developed, as is the case with H.R. 4026, decisions on how public lands and resources are managed risk evading public review and avoiding meaningful public input. This is why CEQ issued guidance on the topic and explicitly warned that: “If used inappropriately, categorical exclusions can thwart NEPA’s environmental stewardship goals, by compromising the quality and transparency of agency environmental review and decision-making, as well as compromising the opportunity for meaningful public participation and review.”<sup>3</sup> For these reasons the proposed exemption risks undermining the fundamental purposes of NEPA: to ensure that all potential impacts of a project are fully known and disclosed and to provide the public and all affected stakeholders an opportunity to provide input on decisions affecting their communities.

The National Environmental Policy Act plays a critical role in ensuring that geothermal projects on public lands are sited and carried out in a transparent, collaborative, and responsible manner. By involving the public and state, local, and tribal governments, NEPA ensures that all stakeholders are engaged in decisions affecting the health, economy, and environment of their local communities.

H.R. 4026 undermines this public input and sound environmental review guaranteed under the National Environmental Policy Act, risking unwise and irresponsible development on public lands.

Sincerely,

American Bird Conservancy  
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<sup>2</sup> “Guidance: Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act.” *White House Council on Environmental Quality*. 23 November 2010. Available at:

[https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA\\_CE\\_Guidance\\_Nov232010.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf)

<sup>3</sup> 75 Fed. Reg. 75628, Final Guidance on “Establishing and Applying Categorical Exclusions Under the National Environmental Policy Act.” *White House Council on Environmental Quality*. Available at:

[https://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-CatEx\\_guidance.pdf](https://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CatEx_guidance.pdf).