October 30, 2026

The Honorable Shelly Moore Capito
Chairwoman
Committee on Environment & Public Works
United States Senate
Washington, D.C. 20510

The Honorable Sheldon Whitehouse
Ranking Member
Committee on Environment & Public Works
United States Senate
Washington, D.C. 20510

The Honorable Mike Lee
Chairman
Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510

The Honorable Martin Heinrich
Ranking Member
Committee on Energy & Natural Resources
United States Senate
Washington, D.C. 20510

Dear Chairs Capito and Lee and Ranking Members Whitehouse and Heinrich:

Thank you for your leadership in releasing a draft permitting reform bill, the *Bipartisan American Affordability and Jobs Act of 2026* (S. 5653). As Governors, we share your goals of reducing energy costs, creating jobs, strengthening grid reliability, and accelerating critical infrastructure and clean energy development. We believe these objectives can be achieved while preserving state authority, protecting natural and cultural resources, and upholding the principles of cooperative federalism.

While certain provisions of the legislation offer opportunities to advance these shared goals, we have substantial concerns about the proposed changes to Section 401 of the Clean Water Act (CWA), Section 106 of the National Historic Preservation Act (NHPA), environmental review under the National Environmental Policy Act (NEPA), and consultation requirements under the Endangered Species Act (ESA). These changes risk undermining state authority, weakening key environmental protections, and creating implementation challenges that ultimately impede rather than expedite project delivery.

Our nation's longstanding framework of cooperative federalism recognizes the essential role states play in safeguarding the natural, cultural, and economic resources within their borders. Section 401 of the CWA preserves states' authority to rigorously evaluate the water quality impacts of federally permitted projects, including potential effects on drinking water, groundwater, agriculture, and aquatic ecosystems. Section 106 of the NHPA likewise ensures that state and tribal historic preservation officers have a meaningful role in identifying and protecting historic and cultural resources during federal project planning. NEPA is an important government accountability tool that incorporates the expertise of states and state agencies in the environmental review of federal agency actions. Consultation under Section 7 of the ESA similarly depends on the species data, technical expertise, and on-the-ground knowledge that state natural resource agencies and tribes uniquely provide.

These processes rely on state-specific knowledge and technical expertise to identify potential impacts, protect public health and environmental resources, and resolve concerns early in project planning. Weakening these authorities risks creating uncertainty, exacerbating existing inequities, and ultimately could undermine the very efficiencies the legislation seeks to achieve.

We also have significant concerns about the feasibility of the bill's proposed permitting and consultation deadlines, particularly given the additional administrative burdens and heightened standards placed on states under Section 401 of the CWA. We encourage further consultation with states and tribes to ensure that deadlines established under the CWA, NHPA, and ESA are achievable without compromising the quality or integrity of required reviews.

Federal capacity is a critical part of this equation. Since January 2025, federal agencies have lost thousands of experienced staff through firings, retirements, and voluntary resignations, limiting the federal government's ability to complete permitting, technical reviews, and consultations on time. We encourage Congress to ensure federal agencies have the resources and staff to complete reviews on time and to reevaluate provisions that withhold funding from states, such as State Historic Preservation Offices, that fall out of compliance.

We support efforts to make permitting processes more predictable, transparent, and efficient. However, durable reform must recognize the essential role of states and tribes as partners in federal decision-making, rather than treating their participation as an obstacle to project delivery. We respectfully urge you to address these concerns as the *Bipartisan American Affordability and Jobs Act of 2026* advances.

Thank you for your consideration and your continued leadership on this important issue.

Sincerely,

Governor Bob Ferguson
State of Washington

Governor Michelle Lujan Grisham
State of New Mexico

Governor Tina Kotek
State of Oregon