



HEADQUARTERS
120 Shelton McMurphey Blvd.
Suite 340
Eugene, OR 97401
(541) 485-2471
info@westernlaw.org

OFFICES
Oregon
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WESTERN ENVIRONMENTAL LAW CENTER

August 19, 2024

The Honorable Martin Heinrich
United States Senate
Washington, D.C. 20510

Dear Senator Heinrich:

We appreciate your longstanding climate and conservation leadership on behalf of the country and New Mexico, a legacy that goes back to your considerable work to defend methane safeguards in Congress and our shared fight to protect the Valle Vidal in the mid-2000s. It is in this context that we write to respectfully express serious concern with your support for the Energy Permitting Reform Act of 2024 (“EPRA”). We urge you to reconsider your position.

There is a need and opportunity to deploy new and innovative policies that accelerate our energy transition and expand the vision and ambition of U.S. climate action. EPRA, however, misses the mark. It is premised on a troubling “all of the above” approach to energy policy that would further entrench our country’s dependence on fossil fuels and impose additional burdens on public lands, water and wildlife, and communities that have a long and fraught history with U.S. energy policy.

Our specific concerns follow.

I. EPRA WOULD SPARK CONFUSION AND UNCERTAINTY REGARDING INTERIOR’S MULTIPLE USE PLANNING AND MANAGEMENT FRAMEWORK.

Section 201(a) of EPRA would problematically shift power over federal oil and gas lease sales from the federal government to oil and gas companies. It directs the Department of the Interior to “offer for lease at least 50% of the acreage actually nominated [by oil and gas companies] for oil and gas leasing, or at least two million acres (whichever is lesser)” as a condition, per the Inflation Reduction Act (“IRA”), of Interior’s authority to approve rights-of-way for wind or solar development.

The IRA’s conditioning of renewables rights-of-way on new oil and gas leasing was ill-advised from the start. But the IRA at least preserved Interior’s authority to determine what specific lease parcels should be sold. Section 201(a) would deprive Interior of that authority and hand it over to fossil fuel interests. This would undermine the public’s opportunity to shape Interior’s determination of what lease parcels should or should not be sold and Interior’s authority to protect the public interest.

Section 201(b) crosses the line even further by providing leases “shall be subject to the terms of the approved Resource Management Plan” (“RMP”). This provision sounds innocuous. It is not.

We anticipate fossil fuel interests would argue that Section 201(b) freezes Interior’s authority to condition leases offered for sale as of the date of the RMP’s approval. This interpretation, however strained, could find traction in certain federal courts given the Supreme Court’s willingness to overturn longstanding doctrine providing that federal courts defer to agency legal interpretations within their area of expertise.¹ This would compromise otherwise settled understandings of Interior’s authority to protect non-mineral public lands uses from fossil fuel impacts and Interior’s three-phased legal framework governing oil and gas. We expect this would spawn additional litigation as BLM attempts to reconcile EPRA with competing provisions of the Federal Land Policy and Management Act, National Environmental Policy, and other laws, as well as those laws’ implementing rules.

RMPs are also often wildly outdated and fail to account for changed circumstances and conditions, in particular climate change but also evolving water, wildlife, and other resource dynamics. In New Mexico the Carlsbad RMP dates to 1997 and the Farmington RMP dates to 2003.² Neither RMP considers the implications of climate change to public lands, a remarkable fact given the intensifying impacts of a warming climate to the land, air, and water of New Mexico. Efforts to revise these plans—stretched across multiple administrations—have stalled (Carlsbad) or collapsed (Farmington). RMPs, as generalized plans governing vast acreage, are also tiered to site-specific, implementation level decisions and environmental reviews. RMPs provide an overarching approach to oil and gas, while lease-stage reviews account for site-specific dynamics and impacts, including by adding new terms specific to a particular lease. Section 201(b), if interpreted to freeze Interior’s authority to condition a lease to the RMP’s terms, would deprive Interior of the authority to ameliorate site-specific harm, especially harm neither contemplated nor mitigated by wildly outdated RMPs.

Viewing Section 201 as a whole, we conclude that EPRA would inject substantial confusion and uncertainty into the federal onshore public lands oil and gas program. In summary, it would:

- Shift power from Interior and the public to fossil fuel interests.
- Provoke litigation and inflaming public lands resource conflicts regarding oil and gas.
- Risk freezing in place oil and gas lease terms provided by wildly outdated RMPs.
- Deprive Interior of lease-stage authority to ensure the orderly and efficient management of oil and gas and to impose terms to avoid or minimize site-specific resource impacts.
- Compromise Interior’s authority to manage for other public lands uses, including conservation, at the landscape and site-specific scale, given the fact that conservation resources and uses are not confined to or within artificial oil and gas lease boundaries.

II. EPRA CONFLICTS WITH NET ZERO DECARBONIZATION PATHWAYS AND UNDERMINES AN ORDERLY TRANSITION FROM FOSSIL FUELS AT THE EXPENSE OF FEDERAL PUBLIC LANDS AND RESOURCES.

EPRA would take us backward, not forward, in our fight against the climate crisis. As the

¹ *Loper Bright Enterprises v. Gina Raimondo and Relentless Inc. v. Dept. of Commerce*, 603 U. S. ____ (2024).

² U.S. Bureau of Land Management, *New Mexico Planning and NEPA* (Last visited Aug. 16, 2024).

International Energy Agency (“IEA”) teaches, “[t]he path to net zero emissions [by 2050] is narrow.”³ To achieve net zero emissions, the IEA emphasizes that this “narrow” path demanded that the world have stopped approving new oil and gas fields beginning in 2021. Alas, we did not.

“[G]overnments are planning on producing around 110% more fossil fuels in 2030 than would be consistent with limiting warming to 1.5° C, and 69% more than would be consistent with limiting warming to 2.0° C.”⁴ This production gap—i.e., “the difference between governments’ planned fossil fuel production and production levels consistent with limiting global warming to 1.5° C or 2.0° C”—provides a stark warning that the vision and ambition of U.S. climate action remains far too limited.⁵ The U.S., specifically, is expected to increase both oil and gas production, creating “a real risk that current production plans are undermining the energy transition by exacerbating ‘carbon lock-in’ and entrenching fossil fuel dependence.”⁶

We emphasize that U.S. efforts to mitigate fossil fuel production emissions, including methane, “while important, are also deeply insufficient” and that “reducing fossil fuel production itself is also needed to limit warming to 1.5° C.”⁷ To limit warming to 1.5° C, “there is strong consensus that global coal, oil, and gas production decline rapidly and substantially between now and mid-century,” with “an almost total phase-out of coal and deep reductions in oil and gas *production* in this period.”⁸

EPRA would make the “narrow” path to net zero emissions—and our ability, per the Paris Climate Agreement, to constrain warming to well below 2.0° C—more difficult, if not impossible to traverse. This is a function of our concerns with Section 201, discussed above, as well as EPRA’s other fossil fuel concessions, including for coal leasing (Section 204), offshore oil and gas leasing (Section 301), and liquefied natural gas exports (Section 601). It is also a function of Interior’s steady approval of new, large-scale domestic U.S. oil and gas projects such as the \$8 billion Willow Project on the North Slope of Alaska’s Brook Range, nearly 12,000 new drilling permits, and the \$7 trillion in annual direct and indirect subsidies provided to the fossil fuel industry.⁹

This should put to rest weak logic: that action to reduce the *demand for fossil fuels* is, absent action to address the *supply of fossil fuels*, sufficient. It is not. The optimal and sensible policy pathway is straightforward: a synchronized partnership between demand-side *and* supply-side climate action. This is a function of “leakage”—a situation where efforts to reduce emissions in one place or sector are offset by increased emissions in another place or sector—which affects the efficacy of *both* demand- and supply-side approaches, if in varying degrees. Put simply, “leakage can be avoided if

³ International Energy Agency, [Net Zero by 2050: A Roadmap for the Global Energy Sector](#) at 20-22 (2021).

⁴ U.N. Environment Programme *et al.*, [Phasing Down or Phasing Up: Top Fossil Fuel Producers Plan Even More Extraction Despite Promises](#), Production Gap Report at 4 (2023) (hereinafter “Production Gap Report 2023”).

⁵ *Id.*

⁶ *Id.* at 21.

⁷ *Id.* at 5.

⁸ *Id.* at 20-21 (emphasis added). Importantly, “[t]hese reductions ... are also contingent on the success of other mitigation strategies, including [CO2 direct removal] and fossil-[carbon capture and sequestration] deployment” such that “even deeper fossil fuel reductions would be required if these methods fail to deliver at scale.” *Id.* at 21.

⁹ International Monetary Fund, [Fossil Fuel Subsidies Surged to Record \\$7 Trillion: Scaling back subsidies would reduce air pollution, generate revenue, and make a major contribution to slowing climate change](#) (2022).

supply- and demand-side policies are implemented *in tandem and with equal ambition...*¹⁰

While the U.S. took historic climate action in 2022 with passage of the IRA, [which we celebrated](#), that legislation was also a devil’s bargain centered on demand-side action that made myriad supply-side concessions to fossil fuel companies. These concessions included a legislative demand that federal agencies approve a major fossil fuel project, the Mountain Valley Pipeline, as well as policy changes that whittled away at bedrock environmental laws. EPRA would worsen these concessions.

The directionality of congressional energy policy is thus clear: Routine concessions to fossil fuel companies, including a categorical refusal to consider supply-side policies to wind down domestic fossil fuel production, coupled with “permitting reform” that prioritizes the interests of energy developers, sweeping aside the public’s broader range of interests. Such directionality brings to mind the U.N. Environment Programme’s warning that:

The current misalignment of climate ambitions and fossil fuel production plans undermines efforts to reduce fossil fuel use and emissions by sending mixed signals about countries’ intentions and priorities and by locking in new fossil fuel production infrastructure that will make the energy transition more costly, difficult, and disruptive.¹¹

We thus urge you to reconsider your support for EPRA, actively reject future fossil fuel concessions, and proactively align U.S. climate policy with U.S. climate commitments—commitments that require supply-side policy to wind down fossil fuel production in tandem with demand-side incentivization and an investment in sustainable state and local economic diversification.

III. SUPREME COURT JURISPRUDENCE RISKS EXACERBATING EPRA’S ADVERSE IMPACTS TO THE CLIMATE AND U.S. ENERGY TRANSITION.

Congress does not pass laws in a vacuum. Different political branches, in the exercise of their powers, often take wildly divergent and conflicting actions. Even within a particular branch, different actors advance their agendas in ways that upset coherent policymaking.¹² Moreover, public and private stakeholders actively work across all three branches of government to shape—and sometimes block—the actions of other branches.

In this context, we are deeply concerned with the Supreme Court of the United States’ rulings that engineer far-right outcomes, usurp power from the legislative and executive branches, and present a serious threat to the strength and viability of U.S. climate and conservation action. In just the past

¹⁰ Prest, B., Resources for the Future, [Partners, Not Rivals: The Power of Parallel Supply-Side and Demand-Side Policy](#) (2022) at 2 (emphasis added).

¹¹ Production Gap Report 2023 at 7-8.

¹² For example, Senator Manchin and Senator Barrasso, notwithstanding their rhetoric that EPRA is a carefully balanced bill, introduced a Congressional Review Act [resolution](#) to overturn the Council on Environmental Quality’s National Environmental Policy Act implementing rules. These rules repair damage caused by the Trump administration and, [according to the White House](#), seek to “improve the efficiency and effectiveness of permitting processes,” building on the Inflation Reduction Act’s \$1 billion to expedite federal permitting. Senator Manchin’s and Senator Barrasso’s weaponization of the Congressional Review Act speak to their willingness to employ extreme legislative tactics to advance agendas wildly incongruous with climate and conservation action.

three terms, the Supreme Court of the United States has, amongst other things:

- Engineered into existence the “major questions doctrine,” a tool that is negatively reshaping and reinterpreting bedrock environmental and administrative laws in the image of far-right political ideology¹³;
- Elevated property interests over the country’s national interest in clean water, a decision that exposes 95% of New Mexico’s rivers and streams and 88% of the state’s wetlands to the risk of losing water quality protections¹⁴; and
- Overturned 40-year-old precedent providing that courts should defer to expert agency implementation of law, undermining public rulemaking processes and agency scientific and technical experts.¹⁵

We ignore these rulings at our peril. Fossil fuel interests are actively advancing legal challenges to block and whittle away at the Biden administration’s climate, public lands, and environmental policy ambition. Even modest achievements, such as Interior’s promulgation of rules reforming oil and gas fiscal policies (royalties, lease rents, etc.), revising antiquated methane waste policies, and clarifying that conservation is in fact a multiple use of public lands on an equal footing with extractive uses, are now under attack.¹⁶ These cases—which we expect to percolate up to the courts of appeals and, perhaps, to the Supreme Court itself—would, if they prevail, further entrench fossil fuels more deeply on our public lands and compromise our “narrow” path to net zero emissions as a mechanism to constrain warming to well below 2.0° C.

When we reflect on the Supreme Court’s actions and the directionality of Congress’ legislation, most recently EPRA, we are alarmed. We thus urge you to reconsider your support for EPRA and refocus congressional efforts on supply- and demand-side policies “in tandem and with equal ambition” that disarm the entrenched power and influence of fossil fuels and achieve U.S. climate commitments.¹⁷

IV. EPRA IS DIFFICULT TO MODEL, MISALIGNED WITH U.S. CLIMATE COMMITMENTS, AND DOES NOT ADDRESS THE FULL RANGE OF PUBLIC LANDS AND OTHER VALUES IMPLICATED BY THE ENERGY TRANSITION.

We are not aware of a conclusive estimate of the EPRA’s net greenhouse (“GHG”) emissions costs and benefits, though we are aware of initial estimates that the bill would trigger a net reduction in greenhouse gas emissions, including your July 31, 2024, statement before the Senate Energy and

¹³ *West Virginia v. Env’tl. Prot. Agency*, 597 U.S. 697 (2022).

¹⁴ *Sackett v. Env’tl. Prot. Agency*, 598 U.S. 651 (2023).

¹⁵ *Loper Bright Enterprises v. Gina Raimondo and Relentless Inc. v. Dept. of Commerce*, 603 U. S. ____ (2024).

¹⁶ Challenge to Interior oil and gas reform rule: *Western Energy Alliance et al. v. Haaland et al.*, 1:24-cv-100, Doc. 1 (D. Wyo. May 15, 2024) (challenge to Interior oil and gas reform rule). Challenges to Interior Public Lands Rule: *Alaska v. Haaland*, 3:24-cv-00161-SLG, Doc. 1 (D. Alaska July 24, 2024); *North Dakota v. U.S. Dep’t of Interior*, 1:24-cv-00124-DMT-CRH, Doc. 1 (D.N.D. June 21, 2024); *Utah v. Haaland*, 2:24-cv-00438-DAO, Doc. 1 (D. Utah June 18, 2024); and *Am. Farm Bureau Fed’n v. U.S. Dep’t of the Interior*, 1:24-cv-00136-ABJ, Doc. 1 (D. Wyo. July 12, 2024).

¹⁷ Prest, B., Resources for the Future, *Partners, Not Rivals: The Power of Parallel Supply-Side and Demand-Side Policy* (2022) (emphasis added).

Natural Resources Committee explaining your vote in support of EPRA. We have four key points regarding the prospect that warrant caution regarding assessments that, on balance, EPRA would result in a net reduction in greenhouse gas emissions. Each point builds on our above-stated concerns regarding Section 201 and EPRA's other fossil fuel provisions.

A. Care Should be Taken in Overstating EPRA's Emissions Costs and Benefits Given the Bill's Qualitative Provisions, Lack of Emissions Guardrails and Objectives, and Political Uncertainties.

EPRA's GHG emissions impacts are very difficult to model with accuracy or precision. Caution is therefore warranted regarding the magnitude of its presumed net benefit. EPRA's provisions are largely qualitative, designed to shape the behavior of federal agencies, and not bound by guardrails or standards ensuring any specific net reduction in emissions or, even, a net reduction in emissions period. Models are, of course useful, but they are driven by assumptions that may or may not prove true or even accurate in the real world, especially regarding the complex behavior of multiple federal agencies over different administrations and across a wide range of decision-making processes and given newfound uncertainties arising from the Supreme Court's recent jurisprudence. The energy transition will prove long and complex. Models, in short, are not predictions, and, to us, are here of limited utility to judge EPRA's merits given the legislation's unbounded, qualitative nature and the myriad political and legal uncertainties that abound this election year and in the foreseeable future.

B. EPRA's Merits Should be Judged by Whether it Puts the U.S. on the "Narrow Path" to Net Zero Emissions by 2050 and Limits Warming to "Well Below" 2.0°C, Not Whether It Results in Net GHG Emissions Reductions.

Even stipulating that EPRA's transmission reforms would lead to a net reduction in emissions, this should not be the yardstick to measure the bill's merits. The question is not simply whether we are reducing emissions, but whether we are reducing emissions at a magnitude sufficient to constrain warming to "well below" 2.0°C. A near term reduction in emissions is of dubious value when it simultaneously contributes to the perpetuation of long-term emissions from the fossil-fuel industry. Put another way, near-term reductions relative to the status quo may lock in long-term emissions from new or sustained fossil fuel production that compromise U.S. climate commitments.

This is an acute risk. The Intergovernmental Panel on Climate Change, in 2023, concluded with "high confidence" that there is a "substantial 'emissions gap'" such that it is "*likely* that warming will exceed 1.5° C during the 21st century" and, absent heightened ambition, "[m]odelled pathways that are consistent with [nationally determined commitments]" will, with "medium confidence," breach 2.0°C and lead to "median global warming of 2.8 [2.1 to 3.4] °C by 2100." At this juncture, we fail to see how EPRA is aligned with U.S. climate commitments and the IPCC, IEA, and U.N. Environment Programme's conclusions that, to meet those commitments, we must stop approving new fossil fuel projects, reduce fossil fuel production emissions, and ultimately wind down fossil fuel production.

C. EPRA Risks Negative Downstream Effects on State-Level Climate and Energy Policymaking.

EPRA is premised on the logic that demand-side climate policy will induce renewable energy development sufficient to (at some uncertain point) overwhelm supply-side fossil fuel production. We are deeply skeptical of this logic given the IEA and U.N. Environment Programme's findings

regarding the need to directly address the production—i.e., the supply—of fossil fuels.

Moreover, this logic discounts the deep entrenchment of fossil fuel power—power evident in the IRA’s and EPRA’s prospective bundle of fossil fuel concessions—and the implications of such entrenchment to downstream, state-level policymaking. Such state-level policymaking is essential to our collective ability to maximize the IRA’s promise, minimize the perils of the IRA’s fossil fuel concessions, and achieve U.S. climate commitments.

This dynamic is evident in New Mexico. After a promising start that led to passage of the Energy Transition Act in 2019 and Sustainable Economy Task Force Act in 2021, as well as the promulgation of nationally leading methane rules in 2022, Governor Lujan Grisham and other state political leaders, many of them Democrats who receive campaign contributions from oil and gas interests,¹⁸ have promoted legislation that would promote fossil gas hydrogen, provide new subsidies for oil and gas companies, and subsidize and commodify the treatment of toxic wastewater produced during oil and gas production by diverting severance tax revenue away from the state’s permanent funds. While good laws have passed—such as last year’s passage of the \$75 million Match Fund Act to take advantage of federal funding, fossil fuel interests have dominated the legislature.

The entrenchment of fossil fuel interests has undermined New Mexico political leadership’s appetite to enact robust and equitable climate policy, provide state regulators with adequate resources to fully enforce state laws, and modernize the state’s antiquated 1935 Oil and Gas Act.¹⁹ Problematically, we expect the governor and legislators to bring many of these ideas back in the coming 2025 60-day legislative session, once again risking and at least delaying the consideration and passage of forward-looking climate and energy policy necessary to meet New Mexico GHG reduction targets—targets we are, at the moment, failing to achieve.²⁰

In part, the desire to use state capacity and resources to support fossil fuels is a function of the fact that ~35% of the state’s budget is provided by oil and gas production taxes and revenue.²¹ The state is rightly worried about the state’s long-term fiscal stability and resilience, even as the solution is not to double down on fossil fuels but to actively transition the state away from its dependence on boom-bust fossil fuel economics and revenue to a diversified, equitable, and resilient economy. Regardless, these dynamics have conspired to bog down state policymaking in highly contentious fights over policies that would further prop up and perpetuate the state’s dependence on fossil fuels.

Additionally, financial interests have exploited various federal programs ostensibly designed to reduce emissions as a mechanism, instead, to mine public funding and perpetuate fossil fuel energy. For example, after a nearly decade-long fight to retire the coal-fired San Juan Generation Station,

¹⁸ See Redfern, J., *Fossil Fuel Money Flows to New Mexico Democrats*, Capital & Main (Nov. 4, 2022); Childress, M., *Oil and Gas Give Big to New Mexico Lawmakers in 2023*, Source New Mexico (Jan. 29, 2024); Redfern, J., *Oil and Gas Donations Shifting Away from Republicans in New Mexico*, Source New Mexico (Feb. 19, 2024).

¹⁹ See, e.g., Hedden, A., *Oilfield Lawmakers Claim Success In Killing Bills Aimed at Energy Pollution in New Mexico*, USA Today (March 22, 2023); Olalde, M., *How America’s “Most Powerful Lobby” is Stifling Efforts to Reform Oil Well Cleanup in State After State*, ProPublica (June 24, 2024).

²⁰ Environmental Defense Fund, *New Analysis: New Mexico Falling Far Short of Climate Goals, Leaders Must Pass Bold New Policy to Close Gap* (September 11, 2023).

²¹ New Mexico Legislative Finance Committee, *Oil and Gas Revenue to the State of New Mexico* at Slide 12 (June 11, 2024).

Enchant Energy attempted to keep the power plant alive by turning it into a carbon capture and sequestration facility. Unable to lure private investment for the \$1.6 billion project even with federal 45Q tax credits, Enchant sought and received low-interest Department of Energy Loans and brought legal challenges to keep the coal-fired power plant in operation. The project, a boondoggle from the start, ultimately collapsed, but only after wasting time and public funding and providing false hope to the community that suppressed long-needed action to diversify San Juan county's economy away from fossil fuels. It's particularly remarkable given the City of Farmington, which partnered with Enchant, incurred \$3 million in legal fees—a high attorney bill for a New Mexico community.

Simply put, U.S. decarbonization remains a hotly contested space, with literally billions of dollars flowing to a myriad of projects, many of which, like the Enchant project, are fossil fuel boondoggles that waste precious time and public resources. We deeply worry that EPRA, lacking any emissions guardrails or standards, would have serious and adverse downstream policymaking consequences and result in new or greenwashed fossil fuel projects with high greenhouse gas emissions.

We find it problematic that Congress' policymaking focus is contingent on providing fossil fuels with ever more concessions and weakening bedrock environmental laws to favor developers over the public interest, not directly addressing the fossil fuel industry's stranglehold on our politics and economy. To speed decarbonization, we must employ supply-side climate policies that wind down fossil fuel production in tandem with demand-side policy, not further entrench such fossil fuels.

D. EPRA Affects a Range of Resources and Values, Not Just Energy and Greenhouse Gas Emissions, that Have Not Been Accounted For.

EPRA, as a permitting bill that embraces both clean and dirty energy, affects far more than U.S. greenhouse gas emissions. EPRA will, for example, provide oil and gas companies with the power to select public lands for new oil and gas leasing. This would risk a range of adverse impacts to public lands, human health, clean air and water, and wildlife. EPRA also sets a goal for Interior and the Department of Agriculture (which houses the U.S. Forest Service, manager of our national forests and grasslands) to develop 50 megawatts of renewable energy on federal public lands by 2030. While public lands may prove necessary and appropriate for renewable energy and transmission, these uses can also cause adverse impacts. Coupled with the existing industrial footprint of fossil fuels on public lands, the intensifying impacts of a warming climate such as aridification and wildfire, and the biodiversity crisis, the cumulative burden on our public lands is massive and only intensifying.

New Mexico is already shouldering a very high burden from our country's dependence on oil and gas. Just under 60,000 oil and gas wells are in operation, with industry holding a stockpile of more than 13,000 permits for additional wells.²² Of that total, more than 31,000 active wells are on federal public lands, with industry holding 10,760 permits for additional wells.²³

As you well know, public lands are beloved across the western U.S., with New Mexico's people and communities deeply rooted in the land. The 2024 Conservation in the West poll confirms this love. The poll found that 70% of westerners across eight states (Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming) want their Congressional representative to protect public

²² New Mexico Oil Conservation Division, [Well Statistics as of August 13, 2024](#).

²³ *Id.*

lands, not produce more domestic oil and gas.²⁴ This includes 52% of Republicans, 72% of Independents, and 89% of Democrats. EPRA’s mandate those public lands bear even more of the significant and unfair burden of the federal government’s “all of the above” approach to energy policy risks hemorrhaging support for U.S. climate action and the energy transition. It is for this reason, in part at least, that more than 360 climate and environmental groups are opposed to EPRA.²⁵

These dynamics warrant *reducing, not increasing*, the burden on public lands caused by fossil fuels. This would build the health and resilience of public lands and provide opportunity to leverage the capacity of our public lands to harness and transmit power from the West’s abundant wind and sun.

V. **EPRA REFLECTS MISPLACED, SHORT-SIGHTED HOSTILITY WITH BEDROCK ENVIRONMENTAL LAWS AND PUBLIC PARTICIPATION**

The “permitting reform” debate in Congress underpinning EPRA is animated by hostility to bedrock environmental laws and the public’s right to participate in energy development decisions. This hostility is shaped by a confluence of factors, including an alignment between clean energy and fossil fuel developers under the rubric of an “all of the above” approach to energy policy and various think tanks and pundits advocating for an “abundance” agenda centered on building out U.S. renewable energy, housing, and other infrastructure.

There is much to like with the abundance agenda. But “abundance” should be defined as *inclusive* of, clean air and water, protected public lands, and wildlife that has room to roam free and wild, not just renewable energy, housing, and other infrastructure, as important as such infrastructure is to a thriving future. It should also be defined as *exclusive* of overdependence on fossil fuels. The climate crisis presents not only a technocratic challenge regarding energy infrastructure, but an opportunity to forge a sense of shared belonging and rebalance our relationship with each other and the world around us. Public lands are a part of these efforts. EPRA flouts this sensible notion, recalling Rhiana Gunn-Wright’s warning, issued in the wake of the IRA’s passage, that climate debates are now frustratingly marked by ideas “that define the climate crisis as a matter of energy policy, separate from concerns about the environment and unconnected to efforts to build a more just society.”²⁶

Insofar as reducing GHG emissions is essential to managing the climate crisis, other values must not be disregarded or subordinated. The climate benefits of any particular action are spread thinly across the globe, while the adverse impacts of new oil and gas leasing are felt acutely in specific geographies and communities. Arguments regarding “net benefits” thus echo morally dubious and debunked “trickle down” economic arguments. Perhaps just as importantly, agencies and project developers can boost trust and confidence in climate action and the energy transition if they take the public’s place-based values seriously, *before* decisions are made and projects gather steam.²⁷

We are of course acutely cognizant of the urgency demanded by the climate crisis. But the energy

²⁴ Colorado College, [2024 Conservation in the West Poll](#).

²⁵ <https://earthjustice.org/press/2024/360-climate-environmental-organizations-urge-senate-to-reject-dirty-permitting-deal>.

²⁶ Rhiana Gunn Wright, [Our Green Transition May Leave Black People Behind](#), Hammer & Hope (2023).

²⁷ Susskind L., *et al.*, [Sources of opposition to renewable energy projects in the United States](#), Energy Policy, Vol. 165, 2022112922 (2022).

transition will prove long and complex—a marathon, *not* a sprint. Problematically, EPRA, in making myriad political concessions to fossil fuel interests, reflexively and ill-advisedly sprints forward, risking missteps that make the marathon we face all that much harder to run at a steady, measured pace. EPRA is also divisive, worsening splits between clean energy interests and climate, public lands, and conservation advocates. While urgency is warranted, we should not advance policy that myopically invites fossil fuel interests to secure counterproductive concessions that set back decarbonization efforts. Such concessions create a severe dissonance with the public that undermines the political and moral legitimacy of U.S. climate action and the energy transition.

VI. CONCLUSION.

We welcome the opportunity to discuss our concerns with you at your convenience. We would also appreciate the opportunity to open a conversation with you to discuss the contours of a forward-looking progressive permitting reform policy agenda that:

- Maximizes the promise of renewables-based U.S. climate and infrastructure investment;
- Minimizes the perils of false solutions that compromise science-based decarbonization objectives and further entrench the power and profits of the fossil fuels industry; and
- Promotes an abundance agenda comprised of clean air and water, protected public lands, wildlife that has room to roam free and wild, and, of course, renewable energy.

We look forward to further conversation.

Sincerely,



Erik Schlenker-Goodrich
Executive Director
Western Environmental Law Center
Taos, New Mexico