

**FAST-41 AND THE FEDERAL PERMITTING  
IMPROVEMENT STEERING COUNCIL: PROGRESS TO  
DATE AND NEXT STEPS**

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**ROUNDTABLE**

BEFORE THE

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS  
OF THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
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**ROUNDTABLE ON FAST-41 AND THE  
FEDERAL PERMITTING IMPROVEMENT  
STEERING COUNCIL: PROGRESS TO DATE  
AND NEXT STEPS**

**WEDNESDAY, JUNE 27, 2018**

U.S. SENATE,  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,  
OF THE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:34 p.m., in room 106, Dirksen Senate Office Building, Hon. Rob Portman presiding. Present: Senators Portman, McCaskill, Peters, and Harris.

**OPENING STATEMENT OF SENATOR PORTMAN<sup>1</sup>**

Senator PORTMAN. All right, we are going to get going.

Senator McCaskill I know has three things going on at once, as do all of us, and yet we have something really important to talk about today so we are delighted you are here. We may have other colleagues who come in and out. Everybody is busy today. It is kind of crazy. I guess I need to do this.

[Pounds gavel.]

I just love doing that.

First of all, you know why we are here. We are here to talk about Federal permitting, and this is, I think, a great story, what we have accomplished so far with very little resources, too little in my view, and with a permanent executive director. I think the Obama Administration was slow to get it started. I think the Trump Administration has not been aggressive enough in permitting a permitting reform executive director to be permanent. I think Congress has not provided adequate funding. But notwithstanding all that, we have made real progress and we are going to continue to do so.

This issue affects everything. It affects the roads we drive, the bridges we cross, the airports we use, the infrastructure projects, including environmental projects, which we will hear about today, that are important, and the electricity that we use. It is all about infrastructure.

Right now the system, as we have heard from our constituents constantly, takes too long. It is complicated, sometimes very bureaucratic. Those delays have real costs. They have costs in terms

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<sup>1</sup>The prepared statement of Senator Portman appears in the Appendix on page 33.

of money, in terms of jobs, in terms of safety, in terms of the ability for the private sector to invest as well as the public sector, and often it is a matching investment. It is an opportunity to say as we improve infrastructure and maybe do something exciting later this year on legislation, let us be sure that the permitting part of this is fixed. That way the Federal dollar will go even further toward doing what everybody wants to do, I hope, to create more jobs and more economic activity through better infrastructure.

Five years ago, actually, probably 7 years ago, Senator McCaskill and I started in on this project, and about 2½ years ago we passed legislation. That was in 2015, and it is called Fixing America's Surface Transportation (FAST-41), because it was part of the FAST Act, Title 41. FAST-41 tries to streamline the permitting process and it focuses on the largest infrastructure projects. We call them covered projects. For those listening today, when we talk about covered projects, those are ones that, under FAST-41, are included.

We also created the Federal Permitting Improvement Steering Council (FPISC). We will hear a lot about the Council today, bringing all the permitting agencies together at the start of covered projects to coordinate and streamline the permitting process. I think we will hear some good things today about that, but also the need, again, for more resources.

The law has a number of common-sense measures, encourages agencies to do their reviews concurrently rather than sequentially. That always seemed like a no-brainer to us. Let us not finish one of maybe a couple dozen regulatory reviews and then have to go to the next and the next. Let us try to do them together.

It also requires one agency to be the lead agency. Common sense, this provides for some accountability, so that there is some responsibility built into the system. It also requires agencies to post a timeline on a public online dashboard so that project sponsors and the public can keep track of where they are in the permitting process, another common-sense measure that is making a big difference in my view, with these covered projects.

When we first came up with this idea, and I think Senator McCaskill would agree with this, we had hoped it would save money, both by project sponsors and government, and save time. Based on the testimony we are going to hear today, I think it is safe to say that much of what we had hoped for has happened. Expectations have been met in the sense that there have been some significant savings in time and money. Over the past year and a half, the Council informs me that they have saved projects \$1 billion in avoided costs. That is a pretty good start, \$1 billion. We will hear more about that through your testimony. And we have done this without a permanent executive director and with a bare minimum of funding.

I do want to take a moment to offer Acting Executive Director Angie Colamaria, who is with us here today at the panel, former Acting Executive Director and current Deputy Director Janet Pfleeger, who is here, and your whole team, our sincere thanks. You pulled together groups. I have had a chance to speak with the Council and seen your work first-hand.

We need a permanent executive director. I hope that will happen soon. We will also continue to advocate for funding for the Council

that is adequate to be able to have enough infrastructure within the Council to get infrastructure moving.

Based on our experience of the past 2½ years, and listening to you all and talking to outside stakeholders, Senator McCaskill and I have now introduced follow-on legislation. It is called S. 3017. It is the Federal Permitting Reform and Jobs Act. The whole idea is to improve FAST-41 and learn the lessons, what worked, what did not work, and how we can make it work better.

Most critically to me, the bill would remove the 7-year sunset in FAST-41. We know enough about it now to know that we should not be sunseting this in 7 years. We should keep it going. It would also allow more projects to apply to be covered. I think that is important, including some areas like transportation and energy. You definitely want to be covered.

It would set a 2-year goal for each project's permitting process. By the way, if agencies determine they will need longer to permit a project they can explain why and what they are going to do to mitigate those delays. I think that 2-year goal is really important. The bill will allow the Permitting Council to consult on non-covered projects as well, to take your expertise and be able to use it for non-covered projects, if asked, and to help resolve conflicts.

These are modest, smart, common-sense reforms that will build on the success we are already seeing. We are looking forward to hearing from each of the roundtable participants today about FAST-41's performance so far, what you think has worked, what has not worked, and where we can improve the permitting process going forward.

With that I would turn to my former Ranking Member on the Subcommittee and co-author, Senator McCaskill.

#### **OPENING STATEMENT OF SENATOR McCASKILL**

Senator McCASKILL. Thank you, Senator Portman. We have been working on this for a long time but things do not happen around here quickly. Good ideas have a way of latching on, and this is a good idea. This is an idea that is going to make a difference in terms of saving taxpayers money. It is going to make a difference in terms of being able to get infrastructure in place in a way that saves local jurisdictions money and saves money for the companies that are willing to invest in some of these infrastructure projects. It is a win-win all the way around.

I am disappointed, along with my colleague, that we do not have a permanent executive director. I am disappointed, since we have already saved \$1 billion, that the President's budget only allocated \$1 million for the Council when we know the requirements to do it right would take about \$10 million. That is a small amount. If they have managed to already save \$1 billion, the potential is huge in terms of the amount of money that could be saved if this works the way it is supposed to work.

I think my friend from Ohio will be more persuasive with this Administration than I will be. But we have played tag team before, we have handed the baton back and forth, and that is what it means to work in a bipartisan way. I am hopeful that we can continue to do that and get our new bill through, which will make improvements. But most importantly, make this work as robustly as

it has the potential to work, in terms of saving money and putting some common sense into the public sector that would match the desires of the private sector when they are more driven by a bottom line.

Thank you and I will look forward to our conversations and the information that we get here today.

Senator PORTMAN. Excellent. Senator Peters, who was just here, had to leave, may come back, and other Senators may come and go and we are going to be informal here so allow them to interject when they come in.

We are going to hear from our participants now. Let me introduce them briefly.

Alexander Herrgott currently serves as the Associate Director for Infrastructure on the Council on Environmental Quality (CEQ). Angela Colamaria, I already mentioned, currently serves as Acting Executive Director of the Federal Permitting Improvement Council. Joe Johnson is the Executive Director of Federal Regulatory Process Review and Analysis for Environment, Technology, and Regulatory Affairs—fit that on a business card—at the U.S. Chamber of Commerce. Christy Goldfuss is the Senior Vice President for Energy and Environment Policy at the Center for American Progress. Sean McGarvey is the President of North America's Building Trades Union.

Our former colleague, Senator Landrieu, is here. She currently serves as Senior Policy Advisor at Van Ness Feldman. I understand that Megan Terrell, Legal Advisor to Louisiana Governor John Bel Edwards on Coastal Activities, Environment, and Natural Resources is also on hand. Thank you for being here, Megan, to answer questions about the project.

Finally, last but not least, we have Jolene Thompson, who is the Executive Vice President of Member Services and External Affairs for the American Municipal Power (AMP), Inc., which is the sponsor of the R.C. Byrd hydropower project in Ohio. Actually, it was American Municipal Power that first came to me, probably 8 years ago, about this permitting problem, and the difficulty of getting private investment, because the capital is not that patient. Investors were going somewhere else because their permitting was taking so long. We look forward to hearing how things are going and what you think about it.

Mr. Herrgott, we will hear from you first. We are going to try to keep these to 5 minutes on the timer.

**TESTIMONY OF ALEXANDER HERRGOTT,<sup>1</sup> ASSOCIATE DIRECTOR FOR INFRASTRUCTURE, COUNCIL ON ENVIRONMENTAL QUALITY**

Mr. HERRGOTT. Before I begin, if you will permit me a small sentimental moment. In 2015, when I was senior staff for Senator Inhofe negotiating the FAST Act, my father, unfortunately, passed away, and I rushed back to Arizona. Two days later Senator Boxer called me and said, "Would you please come back to the Hill" because the bill had been hung up on our streamlining negotiations. Right outside this room, Senator Boxer gave me a hug, as we

<sup>1</sup> The prepared statement of Mr. Herrgott appears in the Appendix on page 35.



walked back in with Senate staff, and she said, “Get back to work.” I think that spirit of bipartisanship is something that Senator McCaskill and you, Senator Portman, have exemplified is something that we need to remember when we are talking about FAST-41 and the streamlining initiatives that the President has engaged in, because once we inject facts into this debate we can make pragmatic successes together.

Thank you for having this hearing because I think it is an opportunity for us to show the world how we can actually turn a light on a process that previously has been somewhat of a black box.

Senator Portman, Ranking Member McCaskill, thank you for the invitation to discuss the Federal permitting process for major infrastructure projects. I am looking forward to having a meaningful dialogue on the topic today as we work toward a shared goal of reducing permitting delays, providing the American people the modernized infrastructure they deserve.

As you know, a major cause of delay in the permitting process for major infrastructure projects is that there are too many decisionmakers without effective cross-agency coordination or communication. Multiple Federal agencies oversee dozens of Federal statutes that project sponsors must navigate before beginning construction. Over time, this has created a redundant and often inconsistent Federal permitting process with no single framework and no varying times.

We can do better. By looking at the chart behind me, you can see that you need a Ph.D. or you need to hire a consultant to navigate the 29 statutes and 5 Executive Orders (EO) that dictate a process just to build a highway project. For example, a highway project could use as many as 10 different Federal agencies involved in 16 different permitting decisions, in addition to the State, local, and tribal permitting schedules.

The result is a Federal permitting process that often takes too long, increases costs, and creates uncertainty. The Administration is actively trying to fix this problem by addressing the challenges while maintaining environmental protections.

With process enhancements and common-sense, harmonized approaches among the Federal agencies, infrastructure projects will move through the environmental permitting process more efficiently. Federal agency coordination is imperative to long-term process reforms throughout the agencies.

That is why, last August, President Trump signed Executive Order 13807, implementing a policy we have referred to as “One Federal Decision.” Under this policy, Federal agencies will administer the National Environmental Policy Act (NEPA) procedures so that a single Environmental Impact Statement (EIS) and a single Record of Decision (ROD) and that for all applicable permitting decisions it will conduct it concurrently with the NEPA process. One Federal Decision also provides that Federal agencies will seek to complete the environmental review process within an average of 2 years.

In April, President Trump announced that 11 Federal agencies and the Permitting Council signed a Memorandum of Understanding (MOU) where agencies agreed to an unprecedented level of coordination and communication in conducting their environ-

mental reviews. Under this MOU, CEQ, in coordination with other White House components, has convened a Federal agency working group to develop the framework under which the Permitting Council and other agencies will implement this Executive Order. The agencies are working together to identify the appropriate level of analysis needed to conduct the necessary environmental reviews, synchronize the public engagement, and complete the other procedural steps to ensure that all necessary decisions are made within the timelines established by the Executive Order.

Since the agencies signed the MOU, CEQ and agency leadership have been coordinating extensively on agency streamlining efforts to identify and implement policy process and regulatory changes.

Some significant steps have already been taken. For example, the Federal Highway Administration signed an agreement with the Fish and Wildlife Service (FWS), the U.S. Army Corps of Engineers (USACE), the Environmental Protection Agency (EPA), the Coast Guard, and the National Oceanic and Atmospheric Administration (NOAA), coordinating agencies' processes and committing to working together to achieve the goals of the Executive Order, something that seemed so simple but something that previously had been so complicated.

Additionally, the Secretary of Interior issued a Secretarial Order and additional guidance that advanced the department's NEPA streamlining efforts within the Executive Order.

Next, the Army Corps of Engineers issued a Section 408 policy change adopting other agencies' NEPA documents and issued a policy to improve coordination and risk management among the Federal family. This is not rocket science.

Many agencies are expanding the use of time-saving, programmatic consultation, improving internal clearance processes along with increasing agency capacity for staffing projects.

Moving forward, agencies will be issuing directives and conducting training with all levels of organizations, from headquarters down to the field offices, which we all know is some of the most important activity, to ensure that timetables and plans to implement One Federal Decision are done nationwide. And the Office of Management and Budget (OMB) and CEQ, in collaboration with agencies, are implementing a performance accountability system to ensure agencies meet the permitting timetables.

While CEQ is focused on the development of a better process for all infrastructure project permitting, the Permitting Council is focused on overcoming obstacles on a project-by-project basis. Ms. Colamaria will expand further on the implementation of FAST-41 and the Permitting Council's role in streamlining the Federal permitting process.

As a result of One Federal Decision, and the work of the Permitting Council, Federal environmental review and permitting processes will be streamlined, more transparent, and, most importantly, more predictable. Our goal is to give the American people the process they deserve and not the process they have.

We are looking forward to continuing to work together with you on advancing One Federal Decision. Thank you again for the invitation, and I look forward to the discussion.

Senator PORTMAN. Thank you, Mr. Herrgott.

We will now hear from Ms. Colamaria.

**TESTIMONY OF ANGELA COLAMARIA,<sup>1</sup> ACTING EXECUTIVE DIRECTOR, FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL**

Ms. COLAMARIA. Thank you. Senator Portman, Senator McCaskill, thank you for this opportunity to speak to you today about our progress in improving the Federal permitting process for infrastructure projects.

Throughout my career, I have participated in the Federal permitting process from various perspectives. As an attorney, I represented project sponsors who were trying to build new projects. I worked within a permitting agency where I oversaw the NEPA review for infrastructure projects. I am currently leading a working group tasked with improving the Federal permitting process across all agencies. And after FAST-41 was passed in December 2015, I helped lead the Administration's efforts to set up the Council and the new governance system and to provide guidance to agencies as we started to implement FAST-41.

FAST-41 codifies many of the best practices that experts identify as essential to creating the sea change needed to overall process improvements for the Federal permitting process. This is all to say I believe in the principles of FAST-41 and it is my priority to ensure it is a success.

Today I want to describe some of the project-specific successes we have been able to achieve so far, using the tools provided by FAST-41. We have accomplished this in three main ways: breaking down silos through enhanced coordination, ensuring efficiency in the permitting process, and providing oversight and issue resolution. As Senator Portman mentioned, these efforts already have resulted in saving FAST-41 projects over \$1 billion in costs through avoided permitting process delays.

I would first like to point to our efforts to break down silos across government to create a more standardized, predictable permitting process. The enhanced interagency coordination that supports our ability to identify and resolve potential impediments to the permitting process are led by deputy secretary-level Council members as well as agency chief environmental review and permitting officers (CERPOs).

My office has established regular in-person meetings to bring these CERPOs together and appropriate staff for in-depth conversations on specific FAST-41 projects. These meetings allow interagency discussion and identification of potential delays so that they can be resolved early in the process.

To my second point, ensuring efficiency in the permitting process, my office ensures agencies work together to ensure each FAST-41 project has a permitting schedule that is optimized. For example, my office serves as a communication bridge to connect personnel at all levels of the government with staff and subject matter expertise, both within an agency and then across agencies, to identify and resolve project issues.

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<sup>1</sup> The prepared statement of Ms. Colamaria appears in the Appendix on page 38.

My third point on oversight and issue resolution, my office uses FAST-41 tools, including the Coordinated Project Plans (CPPs), the publicly available permitting dashboard, agency representatives, and that is both at the working group level, the CERPO level, and the Council level, and the provisions limiting modifications to permitting timetables, all to ensure that each FAST-41 project receives the most efficient and effective permitting process possible.

I would like to share just three examples of our work this year in keeping projects on schedule and on track. The first success story is our effort to facilitate cooperation among agencies involved in the Nexus Gas Transmission Line, to ensure an efficient and timely 106 review under the National Historic Preservation Act. The resulting coordination among agencies allowed subsequent authorizations to move forward and saved an estimated 6 months and \$300 million in capital costs to the project.

The second success story results from my office's oversight role leading to the successful drafting and implementation of a Programmatic Agreement for the 106 review for two FAST-41 projects. Our actions supported the Advisory Council on Historic Preservation in facilitating issue resolution with three different Federal agencies and the States that were involved in that project. For one of those projects, the Atlantic Coast Pipeline, the completion of the Programmatic Agreement allowed other Federal permitting actions to proceed forward, which then allowed the project sponsor to use that year's tree-clearing window for construction. That avoided a 1-year delay for that project.

The final success story is an example of an effective Federal-State coordination in the Mid-Barataria Sediment Diversion (MBSD) Project. I will not say a lot about that because I know we have distinguished speakers that are going to talk about that some more. But the project created the first FAST-41 MOU, which established clear roles and responsibilities for not just the Federal agencies but also the State agencies involved in that project. To address complex issues related to NEPA implementation, our office worked with CEQ to provide subject matter expertise to the agencies to help them identify the next steps for that project. These actions resulted in a reduction in the current permitting schedule by nearly 2 years for this project.

In summary, I look forward to building on the \$1 billion in avoided permitting delays as we work to fully implement the potential of FAST-41, while maintaining important environmental protections.

Thank you.

Senator PORTMAN. Great. Thank you. Dr. Johnson.

**TESTIMONY OF JOSEPH JOHNSON, PH.D.,<sup>1</sup> EXECUTIVE DIRECTOR, FEDERAL REGULATORY PROCESS REVIEW AND ANALYSIS, ENVIRONMENT, TECHNOLOGY, AND REGULATORY AFFAIRS, U.S. CHAMBER OF COMMERCE**

Mr. JOHNSON. Thank you. Good afternoon, Senator Portman, Ranking Member McCaskill. The U.S. Chamber of Commerce has been involved in permit streamlining for a long time. The Chamber greatly appreciates this Committee's interest in Federal permit streamlining and the work the Committee did in the 114th Congress that led to passage of Title 41 in the Fixing America's Surface Transportation Act.

My statement today details the Chamber's strong support for the Federal permit streamlining provisions in FAST-41, our members' experience with it since passage, and our continued support for next steps to improve the permitting process in S. 3017, the Federal Permitting Reform and Jobs Act.

FAST-41 actually did a lot. It established the multi-agency Federal Permitting Improvement Steering Council and it established a process that includes designation of lead agency, timetables for projects, coordination between agencies, dispute resolution mechanisms, and judicial review reforms.

One example of the benefits of FAST-41 is the transparency and certainty generated by the permitting timetable. Simply put, our members find this feature indispensable. Knowing an expected schedule for all the steps in the permitting process from the beginning allows project sponsors to better coordinate and manage scheduling of contractors, suppliers, and resource needs.

Simply by reducing the uncertainty of permitting through the timetable, coupled with the other provisions to keep this process on track, our members who work on covered projects, including those all along the supply chain, not only project sponsors, are better able to manage resources, reduce down time and waste, and manage workflows to get more done, hire more employees, and help grow the economy.

With the Council recently reporting that 97 percent of covered projects had timetables in their 2017 annual report, we are near full implementation on covered projects across all agencies. This is a significant step forward.

Not surprisingly, Chamber members are also highly supportive of speeding up the permitting process. The Council recently reported that they were able to reduce the permitting timetable on the Mid-Barataria project by 22 months. I am not the expert here on that project. I will not go into details but this is a significant step. It is only one case study but it is a positive indication that the FAST-41 process works and that we should expect to see more benefits from reductions in permitting timetables in the near future. It has only been 2½ years since implementation began and we are already beginning to see massive payoffs in terms of projects scheduling reductions.

An important next step is further improving the permitting process and increasing the number of covered projects. To that end, the Chamber strongly supports S. 3017, the Federal Permitting Reform

<sup>1</sup>The prepared statement of Mr. Johnson appears in the Appendix on page 42.

and Jobs Act. The bill does four crucial things—eliminating the 7-year sunset in FAST-41, by far the most important. This will ensure that FAST-41 continues into the future and serves as the foundation for additional future permitting reforms.

Two, it expands the statutory definition of covered projects. By removing exclusions in FAST-41, more transportation infrastructure projects will become eligible. This is crucial for modernizing America's infrastructure moving forward.

Three, it sets a 2-year goal for permitting covered projects, by requiring agencies to submit a plan that adheres to this timetable. An expected 2-year permitting schedule is a powerful incentive to increase investment in covered projects. The Chamber firmly believes there is no good reason why any Federal permit should ever take longer than 2 years to obtain.

And four, it expands the Council's consulting authority by codifying provisions of EO 13807, which grants the Council enhanced consultation authority and expands the Council's dispute resolution authority, allowing for it to better coordinate agency actions and keep the process on schedule to further reduce project timetables.

In conclusion, the Chamber applauds the work that has been done to implement FAST-41 so successfully and expediently, and strongly supports passage of S. 3017. Early successes have shown that the FAST-41 process works. Enhancing the system with the common-sense improvements in S. 3017 will allow a broader range of projects to take advantage of improvements in the permitting process and ensure that this process continues to be refined without the clock running out on FAST-41.

In January 2018, the Chamber laid out a four-point plan to modernize American's infrastructure, of which enhancing the usage rate and effectiveness of FAST-41 is one of the four key components.

We look forward to working with this Committee to ensure that we have the necessary tools to modernize America's infrastructure moving forward. Thank you.

Senator PORTMAN. Thank you, Dr. Johnson. Ms. Goldfuss.

**TESTIMONY OF CHRISTY GOLDFUSS,<sup>1</sup> SENIOR VICE PRESIDENT, ENERGY AND ENVIRONMENT POLICY, CENTER FOR AMERICAN PROGRESS**

Ms. GOLDFUSS. Thank you. Thank you for having me today, Senators Portman and McCaskill.

What we are talking about today, as you two know very well, is not and should not be politically divisive. Both Republicans and Democrats have sought to improve the process by which the government permits major infrastructure projects. As Managing Director at the Council on Environmental Quality under President Obama, I worked closely with my colleagues at OMB and the National Economic Council (NEC), at the time, to implement the FAST Act by standing up the Permitting Council, writing its inaugural guidance, and staffing it with talented people, some who are in this room still, who knew how to move the levers of government to overcome barriers.

<sup>1</sup> The prepared statement of Ms. Goldfuss appears in the Appendix on page 47.

Prior to being at CEQ, I was Deputy Director at the National Park Service (NPS), which gave me a front-row seat to a lot of the interagency conflicts and disputes that can lead to the delays. Both at the White House and at NPS, I saw first-hand the need to coordinate agencies, establish milestones, and create transparency so that environmental review can be improved where necessary and, quite honestly, not blamed for the burdens of a complicated network of public and private requirements. That is why I supported the creation of FPISC and all the other permitting reforms when some of my other colleagues did not.

Through the Title 41 and FAST Act and other recent actions, Congress has done a lot to give the Federal Government the tools to modernize the way it does business. However, those tested measures only work if the government uses them and builds trust with industry to demonstrate that this model can work in the complex government structure. Unfortunately, the Administration has pushed Congress to expand its authority rather than effectively exercising all the tools you have already given them. As a result, I have reservations and concerns about amending the Act without more proof points from the implementation of existing authorities.

The Administration and others point to the permitting process as the main cause of project delays. Existing data show, however, that delays are more often the result of a lack of funding. Recognizing the need for further study and causes of project delays, the Congress gave the U.S. Department of Transportation (DOT) the permitting dashboard, which is still very much a work in progress, with incomplete data and limited mapping capabilities. It has significant potential but we are not there yet.

While we were pleased to see an acting director announced, the FPISC executive director position is still vacant. A political appointee is particularly important in this role to demonstrate to departments and agencies the level of priority and commitment from the White House. The same is true for project sponsors who may question the legitimacy of FPISC without political leadership. This person would have broad authority to advance the group's mission and move large projects forward.

Most importantly, though, the FAST Act allowed FPISC to establish a fee structure for project proponents. The FPISC has not yet implemented this initiative, which would help facilitate faster reviews at the expense of project sponsors, in this case private developers. These additional funds will improve the process and perhaps allow for other funds to be invested in the dashboard or other important measures. The Administration has failed to use the basic tools of governing that have been proven to improve permitting times.

When the Committee, or if the Committee chooses to advance other legislation to enact more permitting reforms, I would like to offer a few recommendations.

First, the FAST Act, the Water Resources Reform and Development Act (WRRDA), and the Moving Ahead for Progress in the 21st Century Act (MAP-21) all contained permitting reforms and changes to environmental review that need to be harmonized to make clear which authorities apply to which projects.

Next, given the slow implementation pace, it would be prudent to keep a sunset date for provisions of FAST-41 that have not yet been implemented, such as advancing a preferred alternative or judicial review.

Last, I strongly recommend against any consideration of legislated deadlines. Little can be gained by forcing under-resourced agencies to develop the projects faster. This will only lead to more court battles and additional stops and starts in permitting timelines as agencies rush reviews and communities are cut out of the process. Instead, thorough implementation of FAST-41 and other permitting reforms will net excellent data for the Committee to truly diagnose any additional problems in process and procedure.

In conclusion, I thank you again for inviting me to speak to you about this top priority issue for all of us, which is addressing the needs of the Nation's crumbling infrastructure while protecting the air, water, and wildlife on which we all depend. Thank you.

Senator PORTMAN. Thank you, Ms. Goldfuss. Mr. McGarvey.

**TESTIMONY OF SEAN MCGARVEY,<sup>1</sup> PRESIDENT, NORTH  
AMERICA'S BUILDING TRADES UNION**

Mr. MCGARVEY. Good afternoon, Senator Portman, Senator McCaskill. Thank you both for your leadership on this issue and for convening this Roundtable to discuss permitting reform. As President of North America's Building Trades Union (NABTU) and on behalf of the three million construction workers in North America that I proudly represent, thank you for allowing me to join this distinguished panel to discuss an issue that directly impacts the building and construction trades men and women across the Nation.

Before we begin I would like to take a very brief moment to make a few comments.

America's labor leaders and businesses agree: the permitting process for major U.S. infrastructure projects must continually be modernized to ensure efficiency, safety, accountability, and transparency. These projects employ hundreds of thousands of building trades members, and the sooner projects can break ground, the sooner our members can get to work applying their crafts and providing for their families.

The general problem with the permitting process is this: project owners in the public and private sectors often confront an overly complex, slow, and inconsistent Federal permitting process. Gaining approval for a new bridge or factory typically involves negotiating a maze of review by multiple Federal agencies with overlapping jurisdictions and no real deadlines. Usually, no single Federal entity is responsible for managing the process. Even after a project has cleared extensive review and a permit is granted, lawsuits and judicial intervention can stymie effective approval for years, or even worse, halt a half-completed construction project in its tracks. This problem still needs more attention.

Senators, your bipartisan work and leadership on the Federal Permitting Improvement Act, which we were proud to support through several sessions of Congress, demonstrated a steadfast

<sup>1</sup> The prepared statement of Mr. McGarvey appears in the Appendix on page 51.



commitment to cutting red tape in order to get much needed infrastructure projects moving forward. NABTU, and the entire building trades community, was tremendously grateful that these efforts were finally enacted and resulted in Title 41 of the FAST Act. Already, Title 41 has started to streamline the Federal permitting process, providing new hope for construction workers, project owners, and industry leaders across the country that our system can be transparent and efficient.

The reforms instituted in FAST-41 were designed to take steps to rectify the problem. We believe the creation of the Federal Permitting Improvement Steering Council was a long-overdue step in the right direction. We are confident that the new procedures set forth in FAST-41 to standardize interagency coordination and consultation will ultimately lead us toward the better coordination among agencies and deadline-setting that has been lacking in the permitting process and frustrating construction owners, contractors, and workers for years.

As an organization that relies upon standards, we welcome this. Furthermore, by tightening litigation timeframes surrounding some permitting decisions, major infrastructure projects may 1 day no longer be subject to the seemingly never-ending cycle of lawsuits project opponents advocate. The new process is working, not only to the benefit of the construction industry but also to the Nation at large.

However, as with any program or agency, there is always room for improvement and innovation. I commend you on your continued efforts to address this critical work in improving the permitting process with your introduction of S. 3017, the Federal Permitting Reform and Jobs Act.

I must also acknowledge the Trump Administration's efforts to help alleviate some of the logjams in the permitting system as a whole. We have supported the thoughtful steps they have taken to reform the system while maintaining the underlying regulations that protect the health and safety of our members on the jobsite and the environmental and human impacts of projects on communities across the country.

I know there has been much confusion on the issue of permitting reform versus regulatory reform, and it is important to note that while permitting and regulations are intertwined, they are still exclusive of one another. We can reform the permitting process without sacrificing the integrity of the underlying regulations, and we have testified before the Senate on this point. I will be very clear: North America's Building Trades Union supports responsible regulations that protect the environment, public health, and worker safety. We believe these regulations are critical to responsible infrastructure development that lasts for decades and allows for future generations to use these invaluable assets.

What we are opposed to is the lack of certainty and transparency in the process and the unnecessary delay and redundancy in the permitting process. These unnecessary barriers, coupled with the constant stream of endless lawsuits that project opponents rely upon because they cannot defeat a project on the merits of the project itself, leads to a loss of investment and job opportunities. When projects are tied up in the courts our members are not work-

ing, they are not putting food on the table, and they are not providing for their families.

North America's Building Trades Union strongly supported the FAST-41 reforms because they lead us toward a path of standardization and finality in the permitting process. That pathway has created a floor on which future streamlining efforts can build upon. But more must be done, and we are committed to advancing practical, bipartisan solutions to further improve this process. We welcome collaboration from all interested parties who are serious about advancing this issue. Thank you.

Senator PORTMAN. Thank you, Mr. McGarvey.

And now a co-sponsor of FAST-41, former Senator Mary Landrieu.

**TESTIMONY OF THE HONORABLE MARY L. LANDRIEU, SENIOR POLICY ADVISOR, VAN NESS FELDMAN, LLP; ACCOMPANIED BY MEGAN K. TERRELL, LEGAL ADVISOR, COASTAL ACTIVITIES, ENVIRONMENT & NATURAL RESOURCES OFFICE OF THE GOVERNOR OF LOUISIANA**

Senator LANDRIEU. Thank you, Senator Portman and Senator McCaskill. It is wonderful to be here with you again, working on some very important legislation and thoughts. I want to commend you both for your steadfast commitment to this issue and working closely together to build a bipartisan solution, which many of the colleagues, or those testifying today have mentioned, because without bipartisan support, what we are suggesting may not move forward.

Both of you are so wise to understand that you could talk all day about infrastructure and the need to provide more infrastructure for our Nation, but if this process is not fixed or focused or made better, it would really be not worth speaking about, because there is such a gap between what our aspirations are and what is actually possible in processing these many projects.

I am here representing Van Ness Feldman, an entity that represents many clients, but today I was asked to speak in my role representing the Louisiana Coastal Protection and Restoration Authority (CPRA). It is a \$1.3 billion project, which is one of the largest on the dashboard. It has actually been mentioned in the testimony of those before me. Unlike other projects that are struggling to find the funding, Senator McCaskill and Senator Portman, we have our funding. We have the plan to restore our wetlands. It is one of the largest wetlands restoration projects underway in the Nation. The funding will come from a variety of sources. There is some Natural Resource Damage Assessment (NRDA) funding that must be approved but it is basically designated. We are not one of the projects that Christy might have mentioned, that are waiting for funding, so there is no reason to speed us up because we do not have the money.

We actually have the money, and we have the scientific plan. We have a master plan for restoring Louisiana's coast that, Senator McCaskill, you and Senator Portman are somewhat familiar with because you have been very helpful. That was passed unanimously by our legislature. That, amazingly, through Republican and Demo-

cratic Governors has been supported. That is uniformly supported by our environmental community.

We have our scientific plan, we have our political blessing, if you will, but we are struggling to get our permits.

When we first started this project, Senator McCaskill, representing this client, the Corps of Engineers told us, in a calm voice, that it would take us 10 years—10—to get our permit. Now this is after you passed the FAST Act. And so we would respond to them, “Have you read about the FAST Act?” “Oh, yes. We have read about it but we really do not, you know, have to, like, pay a lot of attention to it.” I said, “Well, I think you might want to pay attention to it, because it says that you have got to go fast, and 10 years is not fast.”

Then they thought they were doing us a big favor by coming back about a year later. Megan will tell you the details—and said, “Oh, we have figured this out. We have figured out how to take it down to 6 years.” We said, “Six years is still too long.”

We have lost 1,800 square miles of coastline since 1932. We lose a football field of land every hour. Louisiana is in a race against time to restore our wetlands, so while I most certainly respect all of the projects that are on FAST-41—building highways, building airports, to our trade unions—this is really important. These are not just any jobs. These are well-paying jobs that keep a lot of people employed. But our project is a coastal restoration project with its own money. Its sole purpose is restoring the environment, whole-scale restoring of the environment, building this marsh. And they are saying to us, “You have to wait 10 years.” “You have to wait six.”

I was proud, in representing our client, to lead an effort, and the team is here, to work the first MOU, Senator McCaskill and Senator Portman, under your law. Using your law as the guideline, we worked the first MOU to bring clarity, transparency, a 2-year aspirational goal—and I understand you may not want to put 2 years in the law but it sure sounds good to people trying to build projects. It sounds better than 10. Now whether you put it in the law or not, but a 2-year goal for these projects, transparency, etc., is so helpful.

I am going to turn in the rest of my statement for the record<sup>1</sup> and turn it over to Megan. But the MOU that we established, I am turning in as a part of the record.<sup>2</sup> Hopefully it can serve as a template. I generally support the goals of the enhancements to the FAST Act, and do believe, as Senator McCaskill said, that having—and both of you—a permanent director, a budget, a staff to give some strength to what you all are trying to do.

But thank you for continuing your focus on this, because the work is not done, and there are billions and billions of dollars of projects that could be built. Many have their own funding. Many have their own capital that need not 10 years or 6 years, but need more reasonable timelines.

Thank you so much and I will turn it over to Megan Terrell.

<sup>1</sup> The prepared statement of Senator Landrieu appears in the Appendix on page 56.

<sup>2</sup> The MOU referenced by Senator Landrieu appears in the Appendix on page 93.

Senator PORTMAN. Well, thank you, Senator Landrieu, and, Ms. Terrell, would you like to speak now or be available to answer questions, because Senator Landrieu, even though she is no longer a Senator, has learned how to use all of her time.

Senator LANDRIEU. Oh, I am sorry. Was I supposed to save my time? I did not know.

Senator PORTMAN. No. We are going to have Megan there for questions.

Senator LANDRIEU. OK. Do the questions.

Ms. TERRELL. No, that is fine. I am happy to answer any project-specific questions.

Senator PORTMAN. That is great. We are going to have some for you.

Ms. TERRELL. Great.

Senator Portman. Ms. Thompson.

**TESTIMONY OF JOLENE S. THOMPSON,<sup>1</sup> EXECUTIVE VICE PRESIDENT, MEMBER SERVICES AND EXTERNAL AFFAIRS, AMERICAN MUNICIPAL POWER, INC.**

Ms. THOMPSON. Thank you, Chairman Portman and Senator McCaskill. I am pleased to have the opportunity to participate in this Roundtable and discuss our experience with the FAST-41 process.

AMP is a nonprofit, wholesale power supplier and services provider for 135 municipal electric systems across nine States, including Ohio, which is where we are based. We have a diverse generation portfolio that includes fossil resources and renewable resources.

We have a unique experience with permitting and infrastructure processes as we recently completed the largest development of new run-of-the-river hydropower generation in the United States. We built four projects at the same time, along the Ohio River, at existing Army Corps dams. These represent more than 300 megawatts of new emissions-free, long-life generation and a \$2.6 billion investment.

I want to express our sincere appreciate to Senator Portman for his support of our projects as well as his leadership in pursuing balanced permitting reform. As he indicated, this process started with our telling him the tales of woe that we went through in all of our permitting processes with the four projects that we were doing.

Last fall, our CEO testified before this group about the importance of reasonable and cost-effective permitting processes. He talked about the project that we still have remaining—the R.C. Byrd project, which would be a 48-megawatt facility located in Ohio at an existing Army Corps dam. The Byrd project is one of the 34 projects in the initial FAST-41 inventory.

We understand the need to balance environmental protection with development. However, the distinct Federal Energy Regulatory Commission (FERC) licensing and then Army Corp and resource agency permitting processes for hydropower are especially arduous, often duplicative, and typically take more than a decade.

<sup>1</sup> The prepared statement of Ms. Thompson appears in the Appendix on page 59.

Licensing for the Byrd project began in April 2007, obviously pre-dating the effort on FAST-41. We received our license a decade later, in August 2017. We believe if the FAST-41 process had existed earlier this would have moved much more quickly. Today our economic commitment to the Byrd project exceeds \$4 million with permitting remaining.

To tie this into the FAST-41 process, let us back up to July 2014, when FERC issued its draft environmental assessment for the Byrd project. A stalemate developed with AMP and FERC on one hand, and the Army Corps and Fish and Wildlife on the other, regarding a disagreement about the timing of the modeling study, a study which would cost up to \$2 million.

We were asked to complete the full study prior to receiving the FERC license. We agreed to perform the study post-license but were unwilling to do so pre-license as that would have placed the study cost at risk if the project did not move forward. We spent much of 2016 gathering additional information in an attempt to address this issue with the resource agencies.

Concurrent with this stalemate, our experience with the FAST-41 process began in September 2016. We had conference calls with the Permitting Council staff to discuss the hydropower approval process and the challenges we were facing with our project. In June 2017, FERC and Fish and Wildlife finally reached concurrence on the issue at hand, and Fish and Wildlife issued their biological opinion. This broke the logjam and FERC subsequently issued the license a few months later. We attribute this movement to the visibility that the Byrd project received as a result of being included in the FAST-41 inventory.

We are now at a juncture where we are experiencing a Catch-22 involving the staging of the conditions contained in the FERC license with other requirements and deadlines. One condition in the license requires us to reach an agreement with the Army Corps to coordinate plans for construction site access. Importantly, other separate license obligations are contingent upon completion of this agreement. For instance, we cannot begin certain modeling prior to completion of the agreement because we are not permitted to begin the core drilling absent the agreement. Without the core drilling, powerhouse locations cannot be determined. Without powerhouse locations, certain studies would be premature.

We drafted the agreement and sent it to the Army Corps for their review in October 2017. They sent their proposed changes back this month and we are reviewing those. The fact that the FERC license conditions do not marry up to the Army Corps agreement results in a schedule that can be illogical, at best.

My point in describing this post-licensing situation is to highlight the importance for hydropower projects of continuing the Permitting Council process post-licensing into the permitting phase.

From our experience, FAST-41 has been successful in improving the transparency of the Federal environmental review and authorization process for covered projects. Concurrent reviews, lead agencies, firm deadlines, and a top-down approach are very important steps in improvements to the permitting process.

The permitting dashboard can identify delays caused by intra- and inter-agency disputes, which can help facilitate resolutions.

However, State agencies are not currently participants and they do play a critical role in the approval process for many projects.

We recommend providing the appropriate resource commitments for the Steering Council and broadening the scope of the Council process to ensure that there is an ability for full resolution of disputes that can exist between State and Federal agencies, as well as between developers and agencies.

Thank you for providing us with the opportunity to appear before you today and for your work on this important topic. We appreciate the R.C. Byrd project having been included in the initial inventory and we view the FAST-41 process as an important tool in balanced permitting reform and infrastructure development.

Senator PORTMAN. Thank you so much. Ms. Thompson, the testimony this afternoon has been very helpful because it gives us a lot to chew on, a lot to talk about, and I look forward to getting into questions.

I am going to ask Senator McCaskill if she is interested in going first. She is the Ranking Member of the full Committee and I know she has to get to another commitment shortly, so I want to have her have the chance to ask questions and we will get into a little dialogue here.

By the way, this is not a hearing in the sense that if you have something important to say, speak up. I promise not to wield the gavel too much, and let us have a dialogue. Senator McCaskill.

Senator MCCASKILL. Let me start with FERC. The AMP hydro-power project is a perfect example of how frustrating it is when FERC and the Army Corps do not talk to each other and require duplicative information. The whole point was to get agencies to work together.

I understand that FERC has resisted in participating in the development of the initial timeline, saying that they are an independent agency. Can you address this, Ms. Colamaria, and is there something we can do in the new legislation that would—other than a two-by-four—that would convince FERC that whether it is the Army Corps or FERC, they all need to play nicely within this law. Can you speak to that? Is this accurate, that FERC is pretending as if they do not have to participate?

Ms. COLAMARIA. I would just say, both with FERC and the Nuclear Regulatory Commission (NRC), the two independent agencies we have on the Council, they are actively participating in the implementation of FAST-41 now. They participate regularly in the working group and, as you know, FERC has many of our current FAST-41 projects on the dashboard. They are the lead agency.

There are statutory limitations to some of the things that they can and cannot do, ex parte communications, for example, which we are working with FERC environmental staff, licensing staff, and their General Counsel (GC) to think of creative ways to move forward so that they can still continue their coordinating roles with the agencies and use all the FAST-41 tools while still maintaining their independent agency status.

Senator MCCASKILL. Well, I think it would be helpful for us if there is language—

Senator PORTMAN. Yes.

Senator McCASKILL [continuing]. That would clear this up and that would be more directive and not discretionary. If you could share that with us I think what we need to do is make sure we draw this legislation as cleanly and tightly as possible. Because it does not do us any good, if we get everybody working except one.

Ms. COLAMARIA. Right.

Senator McCASKILL. I mean, it is like you, Mary, and the Army Corps.

Ms. COLAMARIA. Exactly.

Senator McCASKILL. Everybody is working well but if the Army Corps thinks that somehow they are outside of this, then the whole thing falls apart.

Senator LANDRIEU. Senator, I would like to just jump in and add to what has been said. Our office is actually an expert on FERC. It is not work that I do personally but I am very proud that Van Ness Feldman has one of the largest FERC practices. If you do not mind, I would like to submit that question, if the record stays open, and we could provide probably several—

Senator McCASKILL. That would be great.

Senator LANDRIEU [continuing]. Ideas to the Committee, if you would accept it, and we could provide it within, what, 48 hours or a few days?

Senator PORTMAN. Yes. That would be great. We had a hearing on the Energy and Natural Resources Committee last week where we had the FERC Chairman—actually, we had all the commissioners there, which is, if not the first time it has ever happened, it is unusual—and I asked him this very question, as you probably know. I talked to him about the Council, asked him why they were not posting on the dashboard. And I asked him to get back to us on it because he was not aware of the issue.

But the point is, to Senator McCaskill's question specifically, are the Nuclear Regulatory Commission and FERC actually posting on your dashboards, or not? Are they posting their information and their deadlines?

Ms. COLAMARIA. They are posting some of their milestones, but they still do believe they have some limitations on the way that it is posted, and so that is an example of—

Senator PORTMAN. And they said those are legal limitations, right?

Ms. COLAMARIA. What was that?

Senator PORTMAN. They say those are legal limitations.

Ms. COLAMARIA. Correct.

Senator PORTMAN. Even statutory limitations? OK. We should take a look at that.

Senator McCASKILL. We can fix that.

Senator PORTMAN. Yes.

Senator McCASKILL. We can write that law. We can change that legal problem.

Senator LANDRIEU. Amen.

Senator McCASKILL. I know we have some disagreements about whether or not we do the sunset or do not do the sunset. I have to go to another hearing, because I am Ranking Member and it has to do with all the stress and conflict we have around the border right now, and I need to go down there to that. But I want to ask

you Sean—it is so important in this era that we listen to workers and that we pay attention to the workers. I want to make sure from the perspective of your membership, if there is anything that we need to put in the legislation that would be helpful.

I know getting these jobs ready to go faster, making them so that your folks can get to work in a more quick and efficient way matters, but if there is anything else I sure would like to have your input as it relates to our improvements to FAST-41.

Mr. MCGARVEY. Well, I appreciate that, Senator. And, we are not only interested in expediting the permitting timeframe to more quickly deploy men and women that we represent onto those projects, but also we are running about 140 apprenticeship residence centers across the United States, one in Columbus, Ohio; Cleveland; one in St. Louis; Kansas City, where we are taking communities that have not had a lot of opportunity in their lifetime—communities of color, women, veterans—and using these infrastructure projects as their entryway into apprenticeship and on to the middle class, once they learn the skills sets. The more quickly we can go, the more people we can help.

On top of that, over the next 10 years, we are going to move about \$70 billion of our pension money out of other investments into alternatives in infrastructure and commercial real estate. So, like the Hair Club for Men, we are not just a client; we are an owner. When we are investing our dollars, it is important to us too.

Senator MCCASKILL. I am not going to say anything about the Hair Club for Men. [Laughter.]

You gave me an opening there that a Mack truck could drive through, Sean, but I am not going to say anything.

Mr. MCGARVEY. You are correct. But there is a second opportunity for us, not only to get good help invested in the Nation's infrastructure, also to get good returns for our pension funds that need them, but to create the jobs. With all the uncertainty and unpredictability, in the years that I have been working now at the C-suite level, with people who are investing hundreds of billions of dollars in gas and oil, petrochem, public and private other types of infrastructure, this predictability is the whole thing when it comes to the financing. The banks on Wall Street and others that are putting up a lot of this money, they cannot be in a position where they do not know when they are going to start to get the return on investment (ROI) on the investment, and as pension fund investors we are the same way.

Again, if we could ever get to that magic 2-year where we knew, from start to finish, in 2 years we were going to know whether we were going or not, that would change the whole ballgame, I think. And not sun setting the bills. The other thing.

Senator MCCASKILL. Let us go to that, because this is in the predictability place, and this will be my last question. You raised concerns about removing the sunset, Ms. Goldfuss. I just think that this predictability, if people think it might go away, then all of a sudden all of the speed that they had gained they think could dissolve, and not that our government is not totally predictable and stable and functioning smoothly. I am not being partisan there. We have the same problem. I mean, this is a door that swings both ways.



Do you see that removing the sunset has some advantages as it relates to predictability?

Ms. GOLDFUSS. Yes, and just to clarify, I think for the portions of the law that we know are working—so the dashboard and the Council and the pieces that we see are demonstrating success—putting the sunset in place makes perfect sense. But we have not had the law long enough for specifically the judicial review pieces.

The only recommendation I would make there is look at—is there a point in time that Congress could come back to some of the untested provisions of the law and see whether or not they are working. The sunset gives you that opening to maybe extend it several years and come back and look at the judicial review, or some other version of that, where you would check in.

Senator McCASKILL. So your objection to removing the sunset is about the untested parts dealing with the judicial review that we really have not—

Ms. GOLDFUSS. Right. We have not determined whether or not they work. Correct.

Senator McCASKILL. That makes sense. Thank you all very much. Thank you.

Senator PORTMAN. Thanks, Senator McCaskill. We are joined by Senator Harris, and feel free to jump in at any time you would like. Senator McCaskill went first because she has to head down to another committee hearing.

But again, there is so much to talk about here, and I thought, Mr. McGarvey, you pretty well summarized where we are in terms of the problem. The problem is we all want more infrastructure and we need it badly, and relative to other developed countries, we have a real gap in our infrastructure, across the board. Certainly that includes energy projects, as we heard about and environmental restoration projects, but also roads and bridges, ports, and things that directly affect the economic development of our country.

So this helps a little bit. We have seen the billion dollars in savings already. It is awesome. The question is, what can we do to make it work better? I wanted to ask a couple of questions.

First, to Ms. Colamaria, I know that you are in sort of an awkward position because we are talking about your Council and how it could work better, and you would be the last one to ask for more money for yourself, I am sure. Maybe not. But looking at what you have been able to do with \$4 million over this period of time, saving about \$1 billion, what could you do with \$10 million? What could you do with \$15 million? What would you do if you could get a higher appropriation?

Ms. COLAMARIA. Before I answer that I just want to clarify something that Senator McCaskill said. Our budget through appropriations this year was \$1 million, but that was significantly lower than what was requested by the President's Fiscal Year budget. We did request \$10 million and we were given \$1 million. This year we requested \$6.07 million and that is currently in both the House and Senate appropriations bills.

As you alluded to, we are kind of skating by on a skeleton budget right now, but we have been able to accomplish some significant successes. But I do think that to fully realize the potential of FAST-41, to create that sea change across all agencies, we really

are going to need the full budget in order to really spend the time on each project that we do, shepherding each project through the process, having the one-stop-shop service for project sponsors, and then also just creating all the tools that the agencies will need in order to make their internal process and their intra-agency processes more efficient as well, including the GIS tools, making the dashboard more of a tool as opposed to a reporting function, that type of thing.

Senator PORTMAN. Let me just be specific. You talked about \$6 million, roughly, in the budgets this year. Neither of those bills have been voted on yet but we are hoping that those bills and others will come to the floor. Would that be adequate for what you are currently experiencing—the number of projects on the dashboard, the amount of staff you need, the amount of tools you need, money you need to have the tools to help these agencies and departments? Mr. Herrgott, jump in here too, because I know you are very involved with this.

Mr. HERRGOTT. She is doing a great job.

Ms. COLAMARIA. I think given the current project workload, that is an adequate amount, given the fact that we are also planning on issuing fee regulations to further enhance our budget and to help both in terms of the operating costs for the Office of the Executive Director, as well as the cost to the agencies, for implementing FAST-41.

Mr. HERRGOTT. I would just like to point out it is important to focus on making sure that the Permitting Council is adequately funded, but as you know from your experience in performance management at OMB, the problem that we are dealing with is fierce. We have a legacy, paper-based system that was developed before the Internet, in a way in which we have 59 statutes and up to 14 agencies that oftentimes do not have a central repository for data. It is not just enough to create a dashboard and then to appoint a permanent executive director to make the systemic cultural changes within agencies.

Just the way they talk to each other—and this is not a Republican or Democrat issue. This really is a process redesign. And to comments about One Federal Decision or the Permitting Council somehow eroding environmental protections or pushing too far—that would be an inaccurate assessment, because what we are really doing is taking a hard look at how agencies get to a decision. Not to a yes but to a decision, using the best available data. Although folks have talked about resources within the agencies, the important thing here is we do not have a central repository for data on where the resource constraints are.

Part of the accountability system that is tied to FAST-41, and to One Federal Decision, is for the first time ever to ask agencies where the resources actually are, where they are being used, so we can pinpoint and target where the resources are. Throwing money at the agencies is not the problem. What we need to figure out is where they actually are.

So that is why, on April 9th of this year, we had 11 Federal agencies and the Permitting Council sign the MOU, including FERC, which binds them to do things that are consistent with the spirit of FAST-41. I would argue that they both work hand-in-

hand. You need FAST-41 as a project-by-project tool to adjudicate project disputes and to change the way we do business. But you also need One Federal Decision across all Federal agencies, the entire Federal family, to do things a little bit differently, and you need them to work together or else we cannot achieve the coordinated project plan and the timelines that are in FAST-41.

Yes, it is important that we address the adequate funding, but we also need the MOU, which is being implemented now, to take root, so that it can further support the FAST-41 successes.

Senator LANDRIEU. Senator Portman, could Megan just say 30 second on this, because it is so important.

Senator PORTMAN. Absolutely. I was going to get down to your project next. I am really impressed that so many people know how to pronounce Mid-Barataria too. Everybody on the panel has said that word one time today, except you.

Senator LANDRIEU. They know this project. They have heard a lot about this project.

Senator PORTMAN. Probably America's biggest environmental restoration project right now. Right?

Senator LANDRIEU. Yes, it is. Go ahead, Megan.

Senator PORTMAN. What is your sense? How is it working?

Ms. TERRELL. I think the process right now has worked really well. The MOU that we entered into with the United States and the Federal cooperating agencies and the Corps as the lead agency I think was really the trigger to really speed things up for our project. It is one of the Coastal Protection and Restoration Authority's five cornerstone projects in the State of Louisiana, and right now is going through the permitting process. As Senator Landrieu mentioned, it started off as a 10-year process, and then after the project got put on the dashboard in January 2017, the new Coordinator Project Plan was issued with about a 6-year project timeline.

Shortly thereafter, there were several months of negotiations, but in early January of this year we entered into that milestone MOU, and that has really been the impetus to see the changes. We being the State of Louisiana, I think one of the key pieces that helped us, as part of the MOU, was allowing the State, as a project sponsor, to have more participation in the process. Where that led to was the State working directly with the Corps but also the other Federal cooperating agencies. We had a whole framework development team, multiple calls, where we sat down and really talked about this is the timeframe within which the modeling is going to take place, this is the timeframe that we can accomplish and working through each stage of the EIS process.

Through that, that is where we were really able to create the efficiencies. It was through increased coordination and increased communication between the State, the Federal cooperating agencies, and the lead agency. The agencies also dedicated necessary staff and resources to the project that may not have been there before.

One of the other extremely helpful things was to have executive staff in the room. We have Colonel Clancy, who is the commander and District Engineer of the New Orleans District and who was directly involved in the process, checking in and that ensures that

his staff and his personnel are focused on the project, but also ensures that it remains a priority. That has been extremely helpful.

Senator PORTMAN. Do you feel like the Corps feels accountability for the performance of the other agencies?

Ms. TERRELL. They do.

Senator PORTMAN. That is the idea, to have one agency in charge.

Ms. TERRELL. The lead agency in charge definitely helps. We have monthly meetings and the Corps is constantly keeping not only CPRA as the project sponsor but also the other cooperating agencies on task, and asking where we are in the timeline, and are we going to meet our milestone goals. I think that has been extremely helpful.

I think having that goal of a 2-year permitting timeline has also been extremely helpful. I am acting as sort of a project manager for the environmental and permitting for this project, but I started off my career as an attorney, still am. But we all know, as an attorney, if you have a brief deadline, for example, you are going to make sure you do the prep work and make sure you get that filed on time. That is why I really think having a 2-year timeframe and a goal in mind helps keep people focus on the job at hand. It helps with early identification of issues that may result in delay down the road, and then you can enter into these dispute resolution processes, which we have, as part of our MOU, and that has been extremely helpful.

Senator LANDRIEU. But that MOU would not have been possible without Alex and without the Federal push coming down to tell them, "You must work together," and maybe we need stronger. But your team up here, Senator Portman, was terrific, because they would not be listening if it was not be coming from the top.

Senator PORTMAN. By the way, the 2-year goal is that it is a goal. As I said earlier, if agencies cannot meet that goal for some reason, they have to explain why, and how they are going to try to meet it. That is what we are doing here. To the point earlier from Ms. Goldfuss, which I get, sometimes there are going to be situations that are out of the control of the agency. Something happens. But having that goal, as Mr. McGarvey said, is so critical.

I want to give Senator Harris a chance to jump in here, if she is interested, and I appreciate you coming.

#### **OPENING STATEMENT OF SENATOR HARRIS**

Senator HARRIS. I appreciate you. Thank you.

Ms. Colamaria, you are probably familiar with what happened back in October in California. PG&E, electric transmission lines, there was failure and it resulted in the death of 18 people and 12 wildfires. At least Cal Fire estimates that the causal connection included the 12 wildfires that we experienced, that devastated communities.

Tell me how FAST-41 is addressing, in particular, the safety concerns that we have around electrical transmission wiring. Certainly the efficiency and speed is important, but also safety. Can you talk to me a little bit about that?

Ms. COLAMARIA. Well, I can get back to you on any specifics, if there are any of our projects that are specifically dealing with that issue. I do not know off the top of my head if there are.

FAST-41, the purpose of it is to improve the Federal permitting process for environmental reviews and authorizations. Those are typically more environmentally related authorizations, but there are some that also bring in safety concerns as well. The purpose is to ensure all the agencies that have some role in that project are coordinating and are talking and are identifying potential issues, possibly a safety issue that would come up later on in the process, identifying it earlier on so you can address it throughout the process, and making sure that all of those potential dangers are identified so they can be addressed as the project approval, or not approval, goes forward.

Senator HARRIS. OK. If you could follow up with me that would be great. Thank you.

Senator PORTMAN. How many projects are on the dashboard right now?

Ms. COLAMARIA. There are 38 projects right now on the dashboard. Sixteen have completed their Federal environmental reviews and authorizations. Seventeen are in progress. One is planned. Additionally, two projects are paused at this time, due to project sponsor financial concerns, and two projects were canceled by the project sponsor, due to economic considerations, and then the need to determine the need for the project.

Senator PORTMAN. How many have applied to be covered?

Ms. COLAMARIA. We have had six new projects to apply to become covered projects under FAST-41. Five of them were determined to be covered projects. One was rejected because it was not one of the covered sectors under FAST-41.

Senator PORTMAN. OK. Have you looked at our new legislation on the additional coverages on some specific areas?

Ms. COLAMARIA. I am aware of the legislation. As you know, because the Administration has not taken a position on the bill, I cannot comment on any specific legislation. But I will say a lot of the issues addressed in the bill are issues we have seen come up during implementation.

Senator PORTMAN. We will just take Mr. McGarvey's word for it. He thinks it is good, to cover more, right, more covered projects. There are just some silly, I think, carve-outs that do not make sense, in terms of what is covered and what is not covered. There is not a big expansion because most things were covered.

On the issue of you and your people being able to help give advice or consultation to non-covered projects, have you looked at that part of the legislation? I am not trying to put you on the spot here. That is a part of the bill that came out of some of the concerns that we heard from your folks.

Ms. COLAMARIA. I am aware that it is in the bill. I will say, though, in the 13807 Executive Order we do cover that issue and it does allow, under the Executive Order, the executive director to help out on projects that are not FAST-41 covered projects.

Senator PORTMAN. OK. Good.

Ms. COLAMARIA. We are supportive of that, obviously.

Senator PORTMAN. Yes. Good.

Senator LANDRIEU. Can I jump in to add to that?

Senator PORTMAN. Yes, please.

Senator LANDRIEU. On behalf of our client, we would support a broadening of the coverage, but as long as it does not dilute the focus on the large projects that are on the dashboard. So, of course, we would love to try to expedite as many projects across the country, Senator, as we can, but there are really significant projects that are on this dashboard. We have \$1 million and no executive director, as we sit here today. So there are some really important steps that a permanent executive director, a good, solid budget, and continued coordination and transparency would be extremely helpful.

Senator PORTMAN. Yes.

Ms. COLAMARIA. Can I respond to that, just quickly?

Senator PORTMAN. Of course.

Ms. COLAMARIA. I think that you might have noticed that I qualified my \$6.07 million number as sufficient for the current set of projects, but, yes, if we do expand, and we are starting to increase our marketing and letting more project sponsors know about the benefits of FAST-41. As we do start to significantly expand the number of covered projects we would need more money, exactly for that reason. We do not want to dilute the services we are providing.

Senator PORTMAN. We wanted to start off with some projects like Mid-Barataria that would be successful, and thanks to your hard work, all of you, it is moving along. I would still like to shorten the time, as Mr. Terrell said. But, as we have successes and build on that foundation, obviously the idea is to give you the opportunity to take on more, and I was interested to see how many projects have applied. I would like to see more, but we need the resources to make it work. And to both of you, Mr. Herrgott and to you, Ms. Colamaria, I think the executive director of permanence would be really helpful for everybody. I am not going to put you on the spot to ask you why we do not have one yet, but I have asked others, including some of the senior officials in the Administration, and they all indicate that they are moving toward that. So I would hope that that is true.

Mr. Johnson, you have not had a chance to speak up much since your good testimony, but what do you think the top priorities are going forward, and what should we be doing? I know you said you strongly support the new legislation. What should our emphasis be in that and what is the most important thing going forward?

Mr. JOHNSON. Absolutely. We have already talked about a lot of the most important things. I think one thing to keep in mind is the entire permitting process, with all the interagency coordination that is required, is a complicated problem to solve. We are only roughly 2½ years into implementation of the Steering Council and getting FAST-41 underway. They have made remarkable progress in that time. But we are just beginning to see the payoff from that, in terms of measurables, metrics that we can actually use to look at the success of the project.

I think one of the things that would help, moving forward, is to increase the number and diversity of projects, to make sure that we get a better data set, more information in terms of how useful

this is, and make sure that we have a lot of coverage in how we can explain what this does to the process, and to show what this does to the process.

Furthermore, I think it is absolutely critical that we remove the sunset provision to ensure that we can do that in a timely way and we can do that in a way that continues forward. Seven years is just too short to make sure that we get this fully implemented, that we have success stories, and that we could show that this process really works.

And then, like I said, to build on top of it, to continue the process forward. I think Alex was talking about the complexity of the system and the problems that we have with paperwork and inconsistencies across agencies. These are problems that can be solved without any kind of substantive change in the statutes that require environmental review, or that require environmental review for permitting. We can actually not change the way we do anything but still improve and speed up the process, make it more transparent and better, simply by fixing the bureaucratic overhang that happens because of all of the inefficiencies in the system.

The more we can do that and the more projects we can do that on, I think the better we will be in the long run and the better the position of the country will be, in terms of all of the things we have talked about—creating jobs, growing the economy, having more projects, and attracting more investment to these projects.

Mr. HERRGOTT. One point on the judicial review section. It is worth pointing out that in MAP-21 and the FAST Act that those judicial reform remedies, that reduction in time, is already applicable to Section 139 of Title 23 and DOT projects. It is already internally consistent with other parts of the code. Data does exist that it does deliver projects faster, in a way in which projects otherwise would not go from red to green without those judicial reform sections. It would be an inaccurate assessment to say that the judicial reform sections in your bill are any different than other treatment that we have seen in something, that have been bipartisan bills that have passed through Congress.

Senator PORTMAN. That is a good point. By the way, more data and the ability to use the data, so it is not just having big data but to be able to put the analytics behind it so it makes sense, will help put the performance measures. Ms. Goldfuss, I think it also helps with some of your concerns, frankly, because the inefficiencies of the process do not lead to a better result.

Ms. GOLDFUSS. I completely agree, and I think the tension of adding more projects versus having a bunch of proof points to show that this works is some of what Senator Landrieu pointed out. This is a new-ish process for government. Unfortunately, we would all like the timeline to go faster. The success that you have was with a shift in Administration, which we know also takes time as new people come in and learn what is happening.

So I think—

Senator PORTMAN. By the way, can I interject there for just a moment? Thank you for your work at the end of the Obama Administration getting the Council going. I did not mean to be—

Ms. GOLDFUSS. No.

Senator PORTMAN [continuing]. Ungrateful there, because I know there was lots of back-and-forth. The director and I were, as you know, in constant communication for a while there.

Ms. GOLDFUSS. Constant.

Senator PORTMAN. You did get it set up and going, and our job is to push, push, push.

Ms. GOLDFUSS. And show that it works. Barataria is a wonderful project but we need more of that. We need to show that this is what we learned, and have that data to see what is really holding it up.

Senator PORTMAN. I did not mean to interrupt you. Keep going, if you can remember your line of—

Ms. GOLDFUSS. I just wanted to agree with Alex on that point about the data. We may not agree on everything but having data from the system, really the inefficiencies in the bureaucracy are overwhelming. PDFs, for example, in some places, people just refusing to return phone calls or emails. FPISC really has put a big, bright light on the fact that people have to work together, and forcing that and showing that it can work on projects and still have strong environmental outcomes will mean that it will benefit more projects in the long run.

Senator PORTMAN. Excellent. Anything else to add from the group? Ms. Thompson, you said you had a 10-year, as I heard you talking about the numbers, a 10-year permit in process, still, on your last hydropower plant. Is that right?

Ms. THOMPSON. For the license for the project currently in the inventory it took 10 years to get the license. The license is the permission to start permitting, which will be another probably 4 to 5 years, at least. A part of that being the amount of studies that you have to do for a hydro project because you are affecting a Corps dam. So there has to be a number of structural studies and those sorts of things.

I wanted to echo what I heard—I have heard the words “cultural change” come up a couple of times and I just want to talk about how important that is. You are really trying to move some very entrenched bureaucracies, and ways of doing things that are not things that necessarily need to be changed in the statute. But this process can help encourage collaboration and shine a light on it.

There are some things that just do not make sense in some of these processes and I think if that becomes apparent to the Permitting Council and there are other folks that are arbiters of the situation, that it could make some serious progress forward on certain things. Particularly you have some differences between the FERC and Corps, when we are dealing with our projects. Some things the Corps does are completely duplicitous of what we have already done in the FERC process. For instance, studies that after 5 years they will no longer accept a study. Once you have done the study and the licensing process, it is going to be expired, but it has already been done, but you redo the study, it is more cost for the developer. It is just more time and more delays.

So cultural change, having the arbiter of someone looking at this and saying it does not make sense, is critically important.

Senator PORTMAN. That is why I think it is so important that the Council be permitted to consult on non-covered projects, because I



think the effect of the Council is actually far more than \$1 billion. I think it actually has changed the culture in some agencies and departments that do not have covered projects. I think that could happen even more if you all had the flexibility, and it sounds like you do under Executive Order already. But under statute to be encouraged to consult so that the cultural changes take place, not just with regard to a couple dozen covered projects but with regard to the agencies and departments, in general. That is kind of your job, to be the person who is trying to change a mindset and focus on results, jobs, and economic development.

I think that is a really important point, and I am glad to hear you think there is some cultural shift going on in some of these agencies you are working with already, but it sounds like you could see a little more of it.

Ms. THOMPSON. Yes, it could be a lot. There could be a lot more.

Senator PORTMAN. Yes.

Senator LANDRIEU. There is a lot of room to avoid duplication.

Senator, one other idea I will throw out, and I can follow up with the staff on this. But it occurred to me, sitting here, with the jurisdiction of Homeland Security, that the Committee is responsible for rebuilding cities, counties, and portions of States that are destroyed by disasters. Of course, I led a lot of that effort when I was here. It occurs to me that a special grouping of projects would be infrastructure projects that must be rebuilt quickly after a storm. I am not sure there is any special HOV lane for that. We should think about that.

Because, remember, these projects, for instance the bridge over Lake Pontchartrain, that I-10 collapsed, it had already been permitted once. It was a fine bridge. It just was overwhelmed by the force. Why would you have to wait to go through X number of years to rebuild it?

Projects like that could go on a fast track if it could quickly be determined that that bridge was, in fact, safe. It needs to be built to a higher standard, but if it is being built in the same footprint as the old bridge, why do you have to do a whole NEPA, because it is on the same footprint? Now if you are moving the bridge a mile away, over land that was never examined, then maybe so. But I have always argued, if you are building back on relatively the same footprint, why do you even need NEPA? You need a safety check. You need safety to make sure that the bridge you are building is stronger.

We should think about that, a special category. It would be so helpful to mayors and Governors that are struggling right now in Houston to rebuild, and with all the problems, they do not need that. We should think about that. I do not know if you all have talked about that.

Mr. HERRGOTT. We have talked about that extensively, and at its core what we were trying to do is realign everyone's definition of success, and it is building the project. And unfortunately, the very talented people that work within the agencies, we have failed them. We have not set them up for success because we have not given them a process to address what is behind me.

[Points to chart.]

That is systemic. We can work within existing statutes, and along with the Permitting Council, which is institutionalizing best practices which helped us to the logical outgrowth, which is One Federal Decision, to change the way in which agencies talk to each other, at the front of the process. To bring stakeholders in, not just for the opt-in projects of the Permitting Council, which is extremely important and it has changed the way in which we do business. For example, one example, we have the Department of Commerce National Marine Fisheries Service who will do an analysis on the Twin Span Bridge on salmon, because they are an ocean-faring fish. But yet the Fish and Wildlife Service is doing analysis on trout because they are river fish and under the jurisdiction of the Department of Interior.

When we talk about resources, it is essential that we collaborate and coordinate to ensure that we harmonize those processes, because I do not know how to explain to a taxpayer in Nebraska that we wasted an additional \$600,000 on two different biological opinions for something that easily could be done simultaneously and concurrently. That is what is essential, and that is the lessons learned from the Permitting Council, which we have taken to extend onto the rest of the Federal family. And I think the collaborative nature and the one-two punch are essentially what is going to help us really demonstrate what your vision was.

Senator PORTMAN. As you probably know, the Administration is proposing a reorganization of government right now, which every Administration does, and usually it does not fare very well up here because of the jurisdictional problems with our committees. One of the reorganization policies maybe comes from you guys, which is about fish, and it is about trying to have one agency be responsible for both the salmon and the trout, to use your example. That would reduce some of the duplication and some of the confusion that people have. I think it is important.

By the way, you did help, when you were here, I think, on highway projects with regard to rebuilds, not having to go through such a laborious process. Correct? But it is a good point. It needs to be broadened beyond just that. I do not think it includes bridges, as an example. Highway projects and bridges. You may have done more than you thought while you were here.

Senator LANDRIEU. Thank goodness I did something.

Senator PORTMAN. Yes, you did a lot.

Senator LANDRIEU. At least I did one thing when I was here.

Senator PORTMAN. This has been very helpful, and needless to say we want to continue to hear from you. Some of you are going to send some things for the record of this particular meeting, and we will be sure and get those. But, in general, please keep working with us. We have, I would say, a nonpartisan approach to this, and in some regard we talked about it. It took us several years to just get this thing into legislation. Now, it has taken us a few years to get it up and going. I think there is an opportunity, with this additional legislation, which I view as common sense, really very modest changes. And I understand, Ms. Goldfuss, your concern about part of it with regard to the sunset not applying to every part of the new bill.

But it is really important that we take the lessons we have learned and use it to make this even more streamlined, to use one of your favorite words. So continue to work with us please, our team. We want to move this forward with regard to new legislation, and we want to be sure you get your appropriations this year. We are going to weigh in on that on a bipartisan basis, and talk about the savings, and talk about the incredible return on investment this is for the taxpayer.

Finally, there are 15 days that the record will be open, so this gives you not 2 years, but 15 days. To Ms. Terrell's point that lawyers have to get their briefs in, your briefs need to be in within 15 days, for the record. We really want to hear from you and continue to work with you.

Thank you for being here today. Thanks for your service.

Mr. MCGARVEY. I cannot share with Senator McCaskill, but I had a full head of hair when this process started. [Laughter.]

[Whereupon, at 4 p.m., the Committee was adjourned.]



## A P P E N D I X

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STATEMENT OF CHAIRMAN ROB PORTMAN  
PERMITTING ROUNDTABLE  
*FAST-41 and the Federal Permitting Improvement Steering Council:  
Progress to Date and Next Steps*  
JUNE 27, 2018

We are here today to talk about a topic critical for our nation's future and for jobs and our economy. It's a topic that does not get a lot of day-to-day attention in the press, but it affects all of our daily lives including roads, bridges, electricity, and environmental restoration. I'm talking about the process infrastructure project sponsors have to follow to get federal permits approved for their projects.

The federal infrastructure permitting process is incredibly long. It's complicated, arcane, and bureaucratic. And the delays in the process have real costs: in time, money, jobs, and safety.

Two and a half years ago, Sen. McCaskill and I set out to try to improve that process with the Federal Permitting Improvement Act of 2015. That bill was enacted as Title 41 of the Fixing America's Surface Transportation Act, or the FAST Act, so it is now known as FAST-41.

FAST-41 helps streamline the permitting process for some of the largest infrastructure projects—which in the law are called “covered projects.”

FAST-41 created the Federal Permitting Improvement Steering Council. The Council, headed by an Executive Director and comprised of representatives from 17 government agencies, brings all the permitting agencies together at the start of covered projects to coordinate and streamline the permitting process.

The law encourages agencies to do their reviews concurrently, rather than sequentially, and to build off of each other's work. It requires one agency to be the lead agency on each project to ensure the others get their work done. And it requires the agencies to post a timeline on a

public, online dashboard and to regularly update that timeline so project sponsors and the public can keep track of where they are in the permitting process.

We'll hear some good news today from the Permitting Council and some project sponsors about how FAST-41 is working, and how it has begun to save time and reduce the cost of covered projects. But we know there is more work to be done.

The President still needs to appoint a permanent Executive Director. I'm disappointed that has not happened yet and expressed that view to the administration.

Finally, Senator McCaskill and I have introduced a new bill, S. 3017, the Federal Permitting Reform and Jobs Act, to improve FAST-41. Most critically, that bill would remove the seven-year sunset on FAST-41.

It also would allow more projects to apply to be covered, and it would set a two-year goal for each project's permitting process. If agencies realize they will need longer to permit a project, they can explain why and what they will do to mitigate delays.

And the bill will allow the Permitting Council to consult on non-covered projects to share its expertise and help resolve conflicts.

These are modest, smart reforms that build on the successes we're already seeing. I'm looking forward to hearing from each of our roundtable participants today about FAST-41's successes and where we can work to improve the permitting process going forward.

STATEMENT OF  
ALEXANDER HERRGOTT  
ASSOCIATE DIRECTOR FOR INFRASTRUCTURE  
COUNCIL ON ENVIRONMENTAL QUALITY

June 27, 2018

Senator Portman, Ranking Member McCaskill, and Members of the Committee, thank you for the invitation to this roundtable discussion on the federal permitting process for major infrastructure projects. We appreciate the opportunity to have a meaningful dialogue on this topic as we work toward a shared goal of reducing permitting delays and providing the American people the modernized infrastructure they undoubtedly need.

As many of you know, a major cause of delay has been too many decision makers without effective cross agency communication and coordination. Multiple federal agencies oversee potentially dozens of federal statutes that project sponsors must navigate before beginning construction on a major infrastructure project. Over time, this has created a redundant and often inconsistent federal permitting process. Too often, these processes do not share a single framework or time frame. For example, a highway project could have as many as 10 different federal agencies involved in 16 different permitting decisions, in addition to the state, local, and tribal agencies with separate permitting and approval processes.

The result is a federal permitting process that often takes too long, increases costs, and creates uncertainty. We are actively working to address these challenges while ensuring environmental protection. With process enhancements and a common-sense, harmonized approach among federal agencies, infrastructure projects will move through the environmental review permitting process more efficiently. Federal agency coordination is imperative to long-term process reforms throughout these agencies.

**Executive Order 13807**

On August 15, 2017, President Trump signed Executive Order 13807 implementing a policy of “One Federal Decision.” Under One Federal Decision, federal agencies will administer the National Environmental Policy Act (NEPA) so that a single Environmental Impact Statement (EIS) and a single Record of Decision (ROD) are prepared for all reviewing agencies, and all applicable permitting decision processes will be conducted concurrently with the NEPA process to ensure that the necessary permitting decisions can be made within 90 days of the ROD. One Federal Decision also provides that federal agencies will seek to complete the environmental review process within an average of 2 years of the publication of a Notice of Intent to prepare an EIS.

One Federal Decision builds on the statutory authorities provided in the Fixing America’s Surface Transportation Act (FAST Act) to streamline permitting and provides a framework to

further improve efficient coordination between federal agencies. The FAST-41 process, established in Title 41 of the FAST Act, provides a range of tools for large and complex infrastructure projects to navigate the federal environmental review and authorization process. In brief, FAST-41 established project-specific procedures that may be applicable or available to agencies and project sponsors in meeting permitting and review obligations. One Federal Decision broadly impacts how agencies conduct and coordinate environmental reviews while preserving each agency's statutory authority, independence, and ability to comply with NEPA and related statutes, like FAST-41.

#### **Memorandum of Understanding**

On April 9, 2018, President Trump announced that 11 federal agencies and the Federal Permitting Improvement Steering Council (FPISC) signed a One Federal Decision Memorandum of Understanding (MOU). These agencies include: Department of the Interior (Interior), Department of Agriculture (USDA), Department of Housing and Urban Development, Department of Commerce, Department of Transportation, Department of Energy (DOE), United States Army Corps of Engineers, Department of Homeland Security, Environmental Protection Agency (EPA), Federal Energy Regulatory Commission (FERC), and the Advisory Council on Historic Preservation. Under the MOU, these agencies committed to following the President's One Federal Decision framework. In doing so, the agencies agreed to implement an unprecedented level of coordination and collaboration in conducting their environmental reviews of major infrastructure projects.

The Council on Environmental Quality (CEQ), in coordination with other components of the White House, has convened a federal interagency working group to develop the framework under which agencies will implement One Federal Decision. This framework establishes the standard operating procedures for how agencies will process environmental reviews from beginning to end. The agencies will work together to identify the appropriate level of analysis needed to conduct the necessary environmental reviews, synchronize the public engagement, and complete other procedural steps to ensure that all necessary decisions can be made within the timelines established by Executive Order 13807.

#### **Agency Action**

To date, agencies have been taking steps to advance One Federal Decision principles, starting first with regular interagency working group meetings and collaboration between agencies and CEQ to improve interagency coordination and the quality of environmental analysis. Since the agencies signed the MOU, CEQ and agency leadership have engaged in numerous meetings on agency streamlining efforts to identify and implement policy, process, and regulatory changes that include:

- The Federal Highway Administration signed an agreement with the United States Fish and Wildlife Service, the Army Corps of Engineers, EPA, United States Coast Guard, and National Oceanic and Atmospheric Administration (NOAA), committing to working together to achieve the goals of Executive Order 13807. These agencies collaboratively developed a chart coordinating each agency's processes;



- Interior issued Secretarial Order 3355 and additional guidance that advance the department's NEPA-streamlining efforts within Executive Order 13807;
- The Army Corps of Engineers issued Section 408 policy changes adopting other agencies' NEPA documents and issued a policy memorandum operationalizing "risk-informed decision making" to improve coordination and risk management across disciplines;
- USDA, FERC, DOE, and EPA are improving internal clearance processes along with increasing agency capacity for projects with dedicated staff assignments;
- USDA, the Army Corps of Engineers, NOAA Fisheries and the United States Fish and Wildlife Service are expanding the use of time-saving programmatic consultation processes; and
- Agencies will be issuing directives and conducting training at all levels of their organizations, from headquarters to field offices, on timetables and plans to implement the One Federal Decision policy nationwide.

#### **Agency Accountability**

The Office of Management and Budget is developing a performance accountability system and appropriate performance metrics to ensure that agencies are implementing One Federal Decision, including the adherence to lead federal agency permitting timetables. The Administration plans to consider agency performance during budget formulation, and agency delays from the permitting timetable may be quantified. Key agency personnel also will have accountability and performance criteria added to their performance plans to measure their effectiveness in processing project permits.

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Through improved agency coordination, increased transparency and accountability and timely decision making, we can improve our infrastructure permitting process and get projects completed and to the market faster for the benefit of the American people.

While CEQ is focused on the development of a better process for all infrastructure project permitting, the Federal Permitting Improvement Steering Council is focused on overcoming obstacles on a project-by-project basis. My colleague, Angela Colamaria, the acting Executive Director of the Permitting Council, will expand further on the implementation of FAST-41 and FPISC's role in streamlining the federal permitting process.

Thank you again for the opportunity to participate in today's discussion.

**STATEMENT OF**  
**ANGELA COLAMARIA**  
**ACTING EXECUTIVE DIRECTOR FOR THE FEDERAL PERMITTING**  
**IMPROVEMENT STEERING COUNCIL (PERMITTING COUNCIL)**  
**BEFORE THE**  
**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**  
**UNITED STATES SENATE**

**June 27, 2018**

Senator Portman, Ranking Member McCaskill, and Members of the Committee, thank you for the invitation to this roundtable discussion on the federal permitting process for infrastructure projects. The Permitting Council continues to make significant progress in improving transparency, predictability, and accountability in the form of avoided delays in the permitting process. We are accomplishing this by using the tools provided by the Fixing America's Surface Transportation Act (Pub. L. No. 114-94) (FAST-41). I am grateful for the opportunity to take part in this critical discussion on how we can improve the efficiency and timeliness of the permitting process. I am also pleased to be able to describe some of the project specific successes we have had to date. In fact, the Permitting Council has succeeded in saving FAST-41 projects over \$1 billion in costs that would have otherwise resulted from avoidable permitting process delays. This \$1 billion estimate is the result of avoided cost estimates provided by the project sponsors for those projects as well as associated public court filings that estimate costs due to potential delays.

**FAST-41 Background**

FAST-41 is a voluntary program for eligible large, complex infrastructure projects that provides oversight, strengthens cooperation and communication among regulatory agencies, enhances transparency, and emphasizes concurrent processing of environmental reviews and authorizations. FAST-41 does not modify any underlying federal statutes, regulations or mandatory reviews.

Of the 38 FAST-41 projects currently on the publicly available Permitting Dashboard, 16 have completed the Federal permitting process. Anyone can use the Dashboard to view a project's schedule and the status of all the environmental reviews and authorizations required for a FAST-41 project. The information on the Dashboard is required to be reviewed and updated quarterly, at a minimum.

The Permitting Council uses the Dashboard, in concert with the coordinated project plans (CPPs) developed for each FAST-41 project, to keep FAST-41 projects on track and on schedule by: (1) breaking down silos across Federal permitting agencies through enhanced coordination, (2) ensuring efficiency in the permitting process, and (3) providing oversight and issue resolution.

### **Breaking Down Silos through Enhanced Coordination**

The Permitting Council creates a more standardized, predictable permitting process through enhanced project-specific coordination that ensures multi-agency collaboration for FAST-41 projects. The Permitting Council agencies have appointed both Council members (Deputy-Secretary or equivalent) and Agency Chief Environmental Review and Permitting Officers (Agency CERPOs) to act as agency leaders to identify and resolve potential impediments to the permitting process for FAST-41 projects.

Since January 2018, my office has scheduled eight in-person meetings with the designated Agency CERPOs to discuss projects. My office provided focus areas for discussion based on apparent gaps or concerns about the CPPs and schedules, as well as any other issues that appeared to be unresolved that could result in avoidable delays. Lead agencies coordinated with the Agency CERPOs for the cooperating and participating agencies to ensure the appropriate agency representatives would be in attendance and would be prepared to participate in in-depth project discussion.

### **Efficiency in the Permitting Process**

The Permitting Council ensures projects progress through the permitting process in an efficient manner while working to identify opportunities to improve internal procedures. My office serves as a communication bridge to connect personnel at all levels of government with staff and subject matter expertise within or across agencies to make the appropriate connections needed to resolve issues. By collaboratively working with the agencies to identify opportunities for permitting process improvement, the Permitting Council is able to ensure each project's permitting schedule has been optimized. Similarly, by identifying resources across agencies to assist with resolving complicated policy questions on a FAST-41 project, the Permitting Council is able to ensure such complex issues are elevated to the appropriate staff while ensuring work continues in the field office further preventing confusion and unnecessary delays.

### **Oversight and Issue Resolution**

Through our oversight, the Permitting Council brings agencies together to ensure FAST-41 projects receive the most efficient and effective permitting process possible. We accomplish this by using the tools provided by FAST-41, including the CPPs, Dashboard, Permitting Council representatives (working group, agency CERPOs, and Council members), and the provisions surrounding any modifications to the permitting schedule. For example, modifications to the permitting schedule of more than 30 days must be approved by my office to prevent undue delays and ensure a realistic and concurred-upon schedule has been developed, upon which all parties will act moving forward. To date, modifications have been requested for 11 projects – my office coordinated with project sponsors and Federal agencies to facilitate communication and resolution of the challenges responsible for those schedule modifications.

My office, the Office of the Executive Director, reduces permitting delays for FAST-41 projects by providing the oversight needed to ensure transparency, accountability, predictability, and concurrent processing throughout the permitting process. Some examples of my office's role in keeping FAST-41 projects on track and on schedule through FAST-41 oversight and issue resolution are provided below.

- My office facilitated cooperation among agencies involved in the Nexus Gas Transmission Line to ensure an efficient and timely Section 106 review under the National Historic Preservation Act (Section 106 NHPA). My office worked with the lead agency (Federal Energy Regulatory Commission (FERC)), the Advisory Council on Historic Preservation (ACHP), and other Permitting Council member agencies to determine what information still needed to be provided by the applicant to support FERC's completion of the review. My office and Permitting Council member agencies cooperated with the project sponsor to facilitate delivery of that information and an expedited conclusion to the review, allowing subsequent authorizations to move forward and, according to the project sponsor, saving an estimated 6 months and \$300 million in capital costs to the project.
- My office's oversight role and involvement led to the successful drafting and implementation of a Programmatic Agreement for Section 106 NHPA for two FAST-41 projects, and supported ACHP in playing a key role in reaching agreement on appropriate resolution of key issues with FERC, the U.S. Forest Service (USFS), the National Park Service (NPS) and the states that were involved. For one of these projects, Atlantic Coast Pipeline, the completion of the Programmatic Agreement allowed other Federal permitting actions to move forward. This in turn allowed the permitting process to be completed in time to utilize that year's tree clearing window for construction activities, preventing a delay of one year.
- The Mid-Barataria Sediment Diversion project was the first project to apply to the FAST-41 process, and is a key example of the successful implementation of Federal-State coordination on a FAST-41 project by creating and implementing the first FAST-41 memorandum of understanding (MOU). This MOU established roles and responsibilities for both Federal and State agencies, including their specific permitting responsibilities. In addition, my office identified complex questions related to National Environmental Policy Act (NEPA) implementation not yet resolved by the agencies, and worked with the Council on Environmental Quality (CEQ) to provide subject matter expertise to the agencies to assist them in determining their next steps. These actions resulted in a reduction in the current permitting schedule by nearly two years.

#### **Permitting Council Policy**

The Permitting Council is using the lessons learned through the work done on FAST-41 projects to inform and identify permitting process efficiencies and improvements for all infrastructure projects. The Permitting Council includes CEQ and Office of Management and Budget (OMB), and the Permitting Council continues to work closely with them on implementation of Executive Order 13807 and the One Federal Decision Memorandum of Understanding, which foster an unprecedented level of coordination and collaboration in conducting environmental reviews and authorizations of major infrastructure projects.

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Through improved agency coordination, increased transparency and accountability and timely decision making, we can ensure FAST-41 projects progress through the permitting process in a more predictable way.

I look forward to continuing to work with you to set the stage for success in year two of FAST-41 implementation (since publication of the CEQ and OMB FAST-41 Implementation Guidance document on January 13, 2017). As I stated earlier, we've saved FAST-41 projects over \$1 billion due to avoided permitting delays, according to estimates provided by project sponsors for their projects and associated court filings that estimate costs due to potential delays. Through the promotion of accurate and comprehensive permitting schedules, we will continue to enhance interagency coordination for these unique and complex infrastructure projects.

Thank you again for the opportunity to participate in today's discussion.



BEFORE THE U.S. SENATE COMMITTEE ON HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS

Roundtable on "FAST-41 and the Federal Permitting Improvement Steering Council: Progress  
and Next Steps

Statement of Joseph Johnson, Executive Director

June 27, 2018

Good morning, Senator Portman, Ranking Member McCaskill, and distinguished members of the Senate Committee on Homeland Security and Governmental Affairs. My name is Joe Johnson and I am the Executive Director at the U.S. Chamber of Commerce working on regulatory reform issues. The Chamber greatly appreciates the Committee's interest in the vital issue of federal permit streamlining and for the work the Committee did during the 114th Congress that lead to passage of very clear, well-structured legislation that was incorporated as Title 41 of the Fixing America's Surface Transportation Act (FAST-41).

My statement details the Chamber's strong support for the federal permit streamlining provisions in FAST-41, our members' experience with its implementation since passage, and for the next steps to further improve the permitting process you have included in S. 3017, the "Federal Permitting Reform and Jobs Act."

FAST-41 had strong leadership from its original co-sponsors, Senators Portman and McCaskill and Chairman Johnson, and bipartisan support demonstrated by the prior administration's immediate implementation of the statute. In light of Congress's and the current administration's commitment to modernizing America's infrastructure by maximizing the use of limited resources, FAST-41 is an important tool to construct the necessary permitting reforms to allow infrastructure projects of all types to move forward expeditiously while still protecting health and the environment. As the Chamber has repeatedly stated, it should never take more than two years to complete all federal permits needed for an infrastructure project.

**Background**

The 114<sup>th</sup> Congress passed the "Federal Permitting Improvement Act" as Title 41 of the FAST Act, which was signed into law on December 4, 2015 by President Obama.

FAST-41 established the multi-agency Federal Permitting Improvement Steering Council ("FPISC"), and established a process that involves designation of a lead agency; schedules for

projects; coordination between agencies and states when applicable; dispute resolution mechanisms; and judicial review.

The permit streamlining provisions of FAST-41 bring greater efficiency, transparency, and accountability to the federal permitting review process. Some of the key provisions of FAST-41 include:

- Establishing a permitting timetable, including intermediate and final completion dates for covered projects, i.e. those over \$200 million or subject to multiple agency environmental review requirements so they will benefit from enhanced coordination;
- Designating a Lead Agency to coordinate responsibilities among multiple agencies involved in project reviews to ensure that “the trains run on time;”
- Providing for concurrent reviews by agencies, rather than sequential reviews;
- Allowing state-level environmental reviews to be used where the state has done a competent job, thereby avoiding needless duplication of state work by federal reviewers;
- Requiring that agencies involve themselves in the process early and comment early, avoiding eleventh-hour objections that can restart the entire review timetable;
- Establishing a reasonable process for determining the scope of project alternatives, so that the environmental review does not devolve into an endless quest to evaluate infeasible alternatives;
- Creating a searchable, online “dashboard” to track the status of projects during the environmental review and permitting process;
- Reducing the statute of limitations to challenge a project review from six years to two years; and
- Requiring courts, when addressing requests for injunctions to stop covered projects, to consider the potential negative impacts on job creation if the injunction is granted.

Since the FPISC was established, the Council has been hard at work implementing the permit streamlining provisions of FAST-41. In 2017 the FPISC, the Office of Management and Budget (OMB), and the Council on Environmental Quality (CEQ) jointly issued guidance for federal agencies on how to carry out their duties under FAST-41.<sup>1</sup> The FPISC also issued recommendations to agencies on permit timetables and best practices for agencies to improve their permitting process to meet the requirements of FAST-41.<sup>2</sup>

#### **FAST-41 implementation highlights**

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<sup>1</sup> See

<https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/Official%20Signed%20FAST-41%20Guidance%20M-17-14%202017-01-13.pdf>.

<sup>2</sup> See

<https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/FPISC%20Best%20Practices-%20FINAL%2001182017%283%29.pdf> and <https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/FPISC%20Performance%20Schedules-%20FINAL-%2001182017-final.pdf>.

The rollout of FAST-41 has been a success and an important step in improving the federal permitting process. Nevertheless, a few aspects deserve special recognition. The FPISC 2017 Annual Report to Congress highlights the impressive progress the Council has made in getting the structure of FAST-41 implemented across the participating federal agencies. During 2017, agencies showed significant improvement in fully complying with the FAST-41 Implementation Guidance that was issued in January. Agencies went from 55% compliance in Quarter 2 of 2017 to 92% by Quarter 4.<sup>3</sup> It is important to keep in mind that the reforms of FAST-41 are a significant change from the status quo for federal agencies, and therefore that implementation of the framework is a substantial task that will take time. Under this lens, the expeditious manner in which the FPISC, OMB, and CEQ developed and put in place this guidance should be commended.

Members of the U.S. Chamber of Commerce have been supportive of FAST-41 and have also shown support and appreciation for the progress in implementing the framework thus far. A great example of the benefits that FAST-41 brings to the permitting process is the transparency generated by the permit timetable, as implemented according to the best practices guidance. Our members have remarked on how beneficial they find the transparency delivered by the dashboard and project timetable. Knowing an expected schedule for various steps in the permitting process at the beginning is a significant step forward that pays off over the entire life of the project by allowing project sponsors to better coordinate and manage scheduling of contractors, suppliers, and resource needs.

Additionally, many more Chamber members serve as contractors, subcontractors, and suppliers in infrastructure development than as project sponsors or co-sponsors. While they may not be dealing directly with the permit process, they also benefit from the transparency and certainty that a permitting timetable delivers. Simply by reducing the uncertainty of permitting through the timetable, coupled with a Lead Agency and the FPISC coordinating and keeping the process on track, our members who work on covered projects are better able to manage resources, reduce down time and waste, and ultimately, manage workflows better to get more done, hire more employees, and help grow the economy. These are not results that we can easily summarize and boil down to a couple simple metrics, but ultimately they are what matters and the reason why the Chamber and the business community so strongly support permit streamlining.

After releasing best practices guidelines in early 2017 to establish benchmarks for agency performance in creating and managing project permitting timetables, the FPISC reported in its 2017 Annual Report to Congress that covered agency performance had improved dramatically in 2017 and that by the end of the fiscal year, 97% of covered projects had timetables.<sup>4</sup> This is a significant achievement in a short period of time, and based on the support that the business community has voiced for this step alone, it is important.

<sup>3</sup> Federal Permitting Improvement Steering Council – Office of the Executive Director, ANNUAL REPORT TO CONGRESS FOR FISCAL YEAR 2017, p. 1 (April 13, 2018) available at: <https://www.permits.performance.gov/sites/permits.performance.gov/files/docs/documentation/42296/fast-41-annual-report-congress-fy-2017.pdf>.

<sup>4</sup> *Id.*



Not surprisingly, Chamber members are also highly supportive of the prospect of speeding up the permitting process, further limiting uncertainty, and reducing potential delays by shortening the statute of limitations on project review challenges to two years. At present, there are few concrete examples of how these features of FAST-41 have paid dividends in speeding up covered projects, largely because there simply has not been sufficient time since the framework was implemented. However, firms that routinely operate in the industries with covered projects are optimistic that over time FAST-41 will produce a significant reduction in permitting schedules. The interplay of concurrent permit reviews, designating a Lead Agency to maintain timetable adherence, empowering the FPISC to coordinate, and limiting the time to raise judicial challenges to project reviews have the potential to drastically reduce the time it takes to get permits and lower uncertainty as to whether permits will ultimately be approved.

The FPISC recently announced an early success story in streamlining the permit process with FAST-41. The Council announced that they were able to reduce the permitting timetable for the Mid-Barataria Sediment Diversion Project in Louisiana by 22 months. While at present this is only an isolated case study of fully leveraging the permit streamlining process of FAST-41, it is a positive indication that the system works and that we should expect to see the benefits from increased reductions in permitting timetables in the near future.

The early success stories from FAST-41 show that the permit streamlining framework delivers the benefits for which it was designed. An important next step is increasing the number of covered projects to distribute the benefits more widely. As the early implementation results have shown, the process will become better over time as it is refined and becomes more routine for agency permitting staff. There is reason to believe that the process will get better and deliver even greater benefits. Improving the process further and expanding the scope of eligible projects will serve to compound those benefits, help grow the economy, and allow businesses to create more jobs.

#### **Next steps to improve the permitting process**

Despite the success of FAST-41 thus far, there remain ways to improve and modernize the federal permitting process. The Chamber strongly supports S. 3017, the “Federal Permitting Reform and Jobs Act,” for the steps it takes to enhance and improve upon the permit streamlining provisions of FAST-41. The key provisions of the bill include:

- Elimination of the seven-year sunset in FAST-41: The sunset creates a perception that FAST-41 is a test case and therefore reduces the incentive for project sponsors to invest the time and effort needed to begin using the process. Eliminating the sunset is likely to encourage more project sponsors to use the process moving forward. Removing the sunset also ensures that the FAST-41 process, a process that works and is improving, can continue and serve as the foundation for additional permitting reforms.

- Expansion of the statutory definition of covered projects: The bill expands the definition of covered projects by removing exclusions in the FAST-41 statutory language. The expansion will open up FAST-41 to a broader range of infrastructure projects, including some important transportation infrastructure projects. While permit streamlining is but one step in modernizing U.S. infrastructure, it is a crucial step. Expanding the range of projects eligible for FAST-41 leverages the existing framework to quickly and efficiently improve infrastructure permitting and help make needed infrastructure expansion and modernization a reality.
- Setting of a two-year goal for permitting covered projects: The bill sets a goal of getting covered projects permitted in two years by requiring agencies to submit a plan for permitting that adheres to this timetable. If agencies cannot meet that goal they must submit reasons as to why it is not possible. The Chamber believes that there is no good reason for why any federal permit should take longer than two years to obtain. Two years is a reasonable time period that would bring the U.S. into parity with our global economic competitors, like Germany, Canada, and Australia.
- Expansion of FPISC's consulting authority by codifying provisions of E.O. 13,807: The bill codifies provisions of E.O. 13,807, which grant the FPISC enhanced consultation authority. This authority allows the FPISC to act as a facilitator to help coordinate agency actions and expands the council's dispute resolution authority.

Once again, the Chamber strongly supports S. 3017 and believes that codifying in statute these key improvements to the permitting process will bring substantial long-term benefits to the U.S. economy.

### **Conclusion**

The Chamber believes that while FAST-41 is still new and work remains in fully implementing it, the benefits are already clear and demonstrate that FAST-41 is the best foundation for permitting reform. Our members are supportive of the process and optimistic that further improvements and refinements in implementation will deliver impressive results with respect to shortening the time it takes to get a permit and adding certainty and transparency to the process.

Looking forward, the improvements in S. 3017 will further enhance the permitting process and are needed in the near term to ensure that future permitting reforms are built on the framework developed under FAST-41. Early successes have shown that the FAST-41 system works. Enhancing the system with the commonsense improvements in S. 3017 will allow a broader range of projects to take advantage of the increased efficiency and transparency in the permitting process and ensure that these advantages continue to be refined and perfected without the clock running out on FAST-41.

In January 2018, the Chamber laid out a four point plan to modernize America's infrastructure ([www.letsrebuildamerica.com](http://www.letsrebuildamerica.com)). Point three includes permitting reform, of which enhancing the usage and effectiveness of FAST-41 is a key component.

We look forward to working with this Committee to ensure we have the necessary tools to modernize America's infrastructure.

**Statement of Christy Goldfuss**  
**Senior Vice President for Energy and Environment Policy, Center for American Progress**  
**Roundtable examining the federal permitting process for major infrastructure projects,**  
**Senate Committee on Homeland Security and Governmental Affairs**  
**June 27, 2018**

**Introduction**

Thank you, Senators Portman and McCaskill, for inviting me to participate in this important discussion about the federal permitting process for major infrastructure projects. What we are talking about today should not be political or divisive. Both Republicans and Democrats have sought to improve the process by which the Federal Government works to permit major infrastructure projects while ensuring that community input is included, and clean air, clean water, and wildlife are protected.

As Managing Director of the Council on Environment Quality (CEQ) under President Obama, I worked closely with my colleagues at OMB and NEC at the time to implement the Fixing America's Surface Transportation (FAST) Act by standing up the Federal Permitting Improvement Steering Council (FPISC), writing its inaugural guidance, and staffing it with talented people that knew how to move the levers of government to overcome barriers and achieve greater efficiency in the environmental review process. As you know, CEQ is responsible for administering the National Environmental Policy Act (NEPA), which allows federal decision-makers to understand the impacts of their actions ahead of time. I supported the creation of FPISC and other permitting reforms because I saw first hand the need to coordinate agencies, establish milestones, and create transparency so that environmental review can be improved where necessary, and not blamed for the burdens of a complicated network of public and private requirements.

Through Title 41 of the FAST Act and other recent actions, Congress has given the Federal Government the tools to modernize the way it does business. In corporations, it has been well documented that highlighting best practices, measuring progress, and tracking metrics leads to better outcomes. However, those tested measures only work if the government uses them and builds trust with industry to demonstrate that this model will work in the complex government structure. Unfortunately, the Trump administration has pushed Congress to expand its authority rather than effectively exercising what it already has.

As a result, I have reservations and concerns about amending the FAST Act to expand the authority of the Federal Government without more proof points from implementation of the existing authorities. At its core, FAST-41 was written to modernize the permitting process, which includes responding to data that show where the problems may exist. The administration has failed to aggressively implement those authorities to give you the data you need to address the infrastructure needs of the country. If Congress does move forward with amending the FAST Act, however, I have several recommendations on how to make those changes additive to other recent steps that Congress has taken and ensure that the permitting process continues to protect communities and the air, water, and wildlife on which they depend.

**Congress enacted permitting reforms**

Prior to working at CEQ, I was the Deputy Director for the National Park Service (NPS) which gave me a front row seat to interagency conflicts and disputes. Without direct oversight from the Secretary of the Interior's office, there was little incentive to work through differences and hold agencies accountable to making progress. The statutes that each of the agencies were tasked with administering inevitably were at odds on occasion, so it took focus and accountability to find solutions that worked under the law. To give you a simple example, the Bureau of Land Management's multiple use and sustained yield mission at times would conflict with the conservation and preservation responsibilities of the National Park Service, and those types of competing responsibilities exist across the government. Therefore, it was clear that it would be helpful to have an entity that would support the experts in these agencies with the guidance, oversight, and political support necessary to work through conflicts in a timely manner.

Congress took action to address these permitting challenges three times over the past six years—passing the Fixing America's Surface Transportation (FAST) Act in 2015, the Water Resources Reform and Development Act (WRRDA) in 2014, and the Moving Ahead for Progress in the 21st Century Act (MAP-21) in 2012. The FAST Act, WRRDA, and MAP-21 contained some of the most significant legislative rollbacks of NEPA and the environmental review process in history. The three laws, however, also included bipartisan provisions to clarify several permitting requirements and provide the federal government with many new tools to expedite review processes without sacrificing environmental considerations and community input.

Federal agencies often coordinate their review processes so that experts on a range of environmental impacts or infrastructure types can weigh in on projects' potential outcomes. The FAST Act also provided project sponsors with a path to help them identify potential environmental impacts as well as agencies with jurisdiction over affected natural, cultural, and historic resources. Thanks to MAP-21 and the FAST Act, agencies with jurisdiction now have improved early coordination procedures; clarified roles and responsibilities; and dispute resolution practices. Projects must follow a single government-wide project schedule and can carry planning-level decisions forward into the NEPA process.

In 2015, two new offices were established to focus on permitting—the Infrastructure Permitting Improvement Center (IPIC) at the Department of Transportation (DOT) and the Federal Permitting Improvement Steering Council (FPISC) with an executive director appointed by the President. The FPISC was viewed as essential to bringing agencies together to surface interagency disputes and share best practices. At the time it was established, the connection to the POTUS and the Executive Office of the President (EOP) was viewed as integral to the success of the executive director who would need to build relationships with deputy secretaries and staff across at least 13 departments and agencies, while also having credibility with project sponsors. From issuing Executive Order 13766 in the early days of the Trump administration which confused implementation of permitting reforms to failing to appoint an executive director, the Trump administration has not demonstrated acumen in implementing the authorities it currently has to expedite permitting.

#### **Struggles with implementation of permitting reforms**

The Trump administration and others point to the permitting process as the main cause for project delays. Existing data show that delays are more often the result of a lack of funding. Recognizing the need to further study the causes of project delays, the U.S. Congress directed DOT to establish a public-facing online tracking system of projects in the permitting process. Project sponsors and the public

should be able to use the tracking system—known as the Federal Infrastructure Permitting Dashboard to expedite projects and understand the true causes of any delays. The Permitting Dashboard is still very much a work in progress, with incomplete data and limited mapping capabilities, but it has significant, untapped potential. The IPIC, too, is only just getting started. In its Annual Report to Congress, the IPIC notes that its “accomplishments this past year have laid the foundation for the time and resource efficiencies that DOT expects will soon be realized in the environmental review and permitting of infrastructure projects.” Like many of the other provisions Congress provided, the Permitting Dashboard and the IPIC have not had sufficient time to demonstrate success in expediting project delivery.

President Trump has also failed to appoint people to key positions that could help accelerate project delivery. The Federal Highway Administration, which processes approximately 10 percent of the federal government’s environmental impact statements in any given year, is still without an administrator. While we were pleased to see an Acting Director announced, the FPISC executive director position is still vacant. As mentioned above, a political appointee is particularly important in this role to demonstrate to departments and agencies the level of priority and commitment from the White House. The same is true for project sponsors who may question the legitimacy of the FPISC without political leadership. This person would have broad authority to advance the group’s mission and move large projects forward.

The FAST Act allowed FPISC to establish a “fee structure for project proponents to reimburse the United States for reasonable costs incurred in conducting environmental reviews and authorizations” for certain projects. The FPISC has not yet implemented this initiative, which would help facilitate faster reviews at the expense of project sponsors—in this case, private developers. By failing to utilize these existing tools, the Trump administration is not advancing the established goals within the agreed-upon frameworks of MAP-21, the FAST Act, and WRRDA.

Lastly, as with any new authority and tool, there needs to be an extensive and rigorous training component for subject matter experts across the government on how the new authorities impact their work. The Annual Report to Congress for FY2017 from the FPISC shows that each agency has at least one updated online training tool, and while that is a start, it will hardly be enough to change behavior across the government. When the executive director of the FPISC is appointed, he or she should prioritize developing a strong community of practice across the government so that case studies, training tools, and data needs can be shared regularly by practitioners.

#### **Amending the FAST Act to improve the federal permitting process**

As stated above, I have reservations about giving new authorities to untested and unproven government entities without greater data and proof points around implementation. However, if the Senate Homeland Security and Governmental Affairs Committee (HSGAC) chooses to advance legislation to enact more permitting reforms, I respectfully offer several recommendations for your consideration. First, the FAST Act, WRRDA, and MAP-21 all contained permitting reforms and changes to environmental review that need to be harmonized to make clear which authorities apply to which projects. If transportation and water projects qualify to be covered projects under the FAST Act, the same judicial review and guidelines must apply to them as other covered projects.

Next, given that the Trump administration has not kept pace with Congress’ appetite to implement infrastructure permitting reforms, it would be prudent to keep a sunset date for provisions of FAST-41 that have yet to be implemented, such as for advancing a preferred alternative or judicial review. This

will allow for appropriate oversight of untested authorities, while demonstrating strong support for the FPISC and the Dashboard by eliminating their sunset date.

Lastly, I strongly recommend against any consideration of legislated deadlines. Congress has laid out a clear path for the administration to address the challenges of permitting infrastructure projects, but it requires the administration to do the hard work of governing by addressing challenges and developing solutions that work under the law. Little can be gained by forcing under-resourced agencies to develop projects faster without the strong backbone of a fully functioning FPISC. This will only lead to more court battles and additional stops and starts in permitting timelines as agencies rush reviews and communities are cut out of the process. Instead, the thorough implementation of FAST-41 and the other permitting reforms will net excellent data for the Committee to truly diagnose any additional problems in process and procedure.

#### **Conclusion**

In conclusion, Congress has acted repeatedly in recent years to address the challenges associated with permitting major infrastructure projects. However, the Trump administration has delayed progress in achieving the stated goals of FAST-41, WRDA, and MAP-21 by not properly resourcing the newly established entities, by not staffing the key positions across the government, and by not investing in the technology and data necessary to truly modernize this highly complex process. I thank you again for inviting me to speak to you about a top priority issue for all of us, which is addressing the needs of the nation's crumbling infrastructure while protecting the air, water, and wildlife on which we all depend.

North America's Building Trades Unions

Statement of Sean McGarvey  
President, North America's Building Trades Unions

Before the  
Committee on Homeland Security and Government Affairs  
United States Senate

Roundtable on  
FAST-41 and the Federal Permitting Improvement Steering Council: Progress and  
Next Steps

June 27, 2018

Good afternoon. Senator Portman, Senator McCaskill, thank you both for your leadership on this issue and for convening this roundtable to discuss permitting reform. As president of North America's Building Trades Unions, and on behalf of the three million construction workers in North America that I proudly represent, thank you for allowing me to join this distinguished panel to discuss an issue that directly impacts building and construction trades men and women across the nation. Before we begin, I would like to take a very brief moment to make a few comments.

America's labor leaders and businesses agree: the permitting process for major U.S. infrastructure projects must continually be modernized to ensure efficiency, safety, accountability, and transparency. These projects employ hundreds of thousands of building trades members, and the sooner projects can break ground, the sooner our members can get to work applying their crafts and providing for their families.

The general problem with the permitting process is this: project owners in public and private sectors often confront an overly complex, slow and inconsistent federal permitting process. Gaining approval for a new bridge or factory typically involves negotiating a maze of review by multiple federal agencies with overlapping jurisdictions and no real deadlines. Usually, no single federal entity is responsible for managing the process. Even after a project has cleared extensive review and a permit is granted, lawsuits and judicial intervention can stymie effective approval for years – or, worse, halt a half-completed construction project in its tracks. This problem still needs more attention.



Senators, your bipartisan work and leadership on the Federal Permitting Improvement Act, which we were proud to support through several sessions of Congress, demonstrated a steadfast commitment to cutting red tape in order to get much needed infrastructure projects moving forward. NABTU, and the entire building trades community, was tremendously grateful that these efforts were finally enacted and resulted in Title 41 of the FAST Act (FAST-41). Already, Title 41 has started streamlining the federal permitting process, providing new hope for construction workers project owners and industry leaders across the country that our system can be transparent and efficient.

The reforms instituted in FAST-41 were designed to take steps to rectify the problem. We believe the creation of the Federal Permitting Improvement Council was a long-overdue step in the right direction. We are confident that the new procedures set forth in FAST-41 to standardize interagency coordination and consultation will ultimately lead us toward the better coordination among agencies and deadline setting that has been lacking in the permitting process and frustrating construction owners, contractors, and workers for years. As an organization that relies upon standards, we welcome this. Furthermore, by tightening litigation timeframes surrounding some permitting decisions, major infrastructure projects may one day no longer be subject to the seemingly never-ending cycle of lawsuits project opponents advocate. This new process is working not only to the benefit of the construction industry, but also to the nation at large.

However, as with any program or agency, there is always room for improvement and innovation. I commend you on your continued efforts to address this critical work in improving the permitting process with your introduction of S. 3017, the Federal Permitting Reform and Jobs Act. I must

also acknowledge the Trump Administration's efforts to help alleviate some of the logjams in the permitting system as a whole. We have supported the thoughtful steps they've taken to reform the system while maintaining the underlying regulations that protect the health and safety of our members on the jobsite and the environmental and human impacts of projects on communities across the country.

I know there has been much confusion on the issue of permitting reform versus regulatory reform, and it is important to note that while permitting and regulations are intertwined, they are still exclusive of one another. We can reform the permitting process without sacrificing the integrity of the underlying regulations. We have testified before the Senate on this point, and I want to be very clear: North America's Building Trades Unions support responsible regulations that protect the environment, public health and worker safety.

We believe these regulations are critical to responsible infrastructure development that lasts for decades and allows for future generations to use these invaluable assets. What we are opposed to is the lack of certainty and transparency in the process and the unnecessary delay and redundancy in the permitting process. These unnecessary barriers coupled with the constant stream of endless lawsuits that project opponents rely upon because they cannot defeat a project on the merits of the project itself leads to a loss of investment and job opportunities. When projects are tied up in the courts, our members are not working, they are not putting food on the table, and they are not providing for their families.

North America's Building Trades Unions strongly supported the FAST-41 reforms because they lead us toward a path of standardization and finality in the permitting process. That pathway has created a floor on which future streamlining efforts can build upon. But more must be done, and we are committed to advancing practical, bipartisan solutions to further improve this process. We welcome collaboration from all interested parties who are serious about advancing this issue.

With that, I look forward to this discussion.

**OPENING STATEMENT  
SENATOR MARY LANDRIEU**

**WEDNESDAY, JUNE 27<sup>TH</sup>  
FAST-Act Roundtable  
Senate Homeland Security and Governmental Affairs Committee  
2:30 PM  
106 Dirksen Senate Office Building**

Senator Portman, Senator McCaskill, Chairman Johnson and Members of the Committee, thank you for allowing me to participate in this roundtable discussion today. As some of you may know, I am a Senior Policy Advisor to the Washington, D.C. based law firm, Van Ness Feldman. I appear on behalf of our client, the Louisiana Coastal Protection and Restoration Authority (CPRA). I am accompanied by Megan Terrell, lead in-house counsel for CPRA on the federal permitting of the Mid-Barataria Sediment Diversion Project. Mr. Chairman, I ask that a statement Megan has prepared on behalf of CPRA be included in the record of this roundtable discussion.

I want to thank my friends Senator Portman and Senator McCaskill for sponsoring and obtaining passage of the FAST-Act in 2015 and for their continued interest in building on the progress made by the FAST-Act by sponsoring S.3017, the Federal Permitting Reform and Jobs Act. Both the current legislation and the proposed legislation are important to Louisiana's effort to secure our coast and has expedited the permitting of our first billion dollar sediment diversion project.

As most of you know, Louisiana faces a crisis-level loss of coastal area. Since 1932, when the levees on the Mississippi River were completed, the state has lost over 1800 square miles of coastal area and the loss continues at a rapid rate. Time is of the essence for us. Fortunately, the people and

government of Louisiana take this problem seriously and have committed resources to and developed a plan to protect and restore our coast. CPRA is responsible for developing and implementing our Coastal Master Plan of over 100 projects to be built over the next 50 years. Louisiana has identified \$11 billion in funding available to the state over the next 15 years that is committed to this effort. With funds identified, CPRA is undertaking its first major project, the Mid-Barataria Project, to restore Mississippi River sediment to the Barataria Basin – an area that was historically a freshwater wetland but is today an open salt water area. The project is sponsored by Louisiana, through the CPRA, and its \$1.3 billion cost will be paid completely by Louisiana.

When CPRA first approached the Corps, our lead federal agency, about the time line for permitting this project, the Corps indicated that the permitting likely would require 10 years. In late 2016, Louisiana Governor John Bel Edwards asked the Obama Administration to list this project on the FAST-Act dashboard maintained by the permitting council. In March, 2017, at a public meeting of CPRA in New Orleans, the Corps stated that at least 6 years would be required to permit this project. Neither time line was acceptable to Louisiana in light of our daily continuing land loss – a football field on average every hour and a half.

Fortunately, the FAST-Act was in place and the Trump Administration adopted the FAST-Act as its vehicle for expediting the permitting of major infrastructure projects. The President, on August 15, 2017, issued Executive Order EO 13807 that further implemented the FAST-Act and adopted a two year time line as the goal for permitting projects on the dashboard. In September, we began negotiating with CEQ and the FAST-Act Permitting Council a Memorandum of Agreement under the FAST-Act and the Executive Order regarding the permitting process for the Mid-Barataria Project.

In January, 2018, we achieved the first MOU between a state and the federal government under the FAST-Act and also under the Executive Order. The MOU established the framework for the state agencies and federal agencies to work together to expedite the permitting of the Mid-Barataria Project.

We have not yet achieved the two year time line goal established by the President's Executive Order. However, the MOU has made a substantial positive different in the permitting of this project. Megan addresses the benefits of the FAST-Act on this project in the CPRA statement for the record of this hearing. Megan is prepared to answer your questions regarding how the FAST-Act has worked in this case. The FAST-Act, the amendments that are being proposed to the FAST-Act and future permitting improvements that we envision will allow Louisiana to move forward expeditiously with projects to protect and restore our coast.

Thank you again for the FAST-Act and for the opportunity to appear before you today.

**U.S. Senate Homeland Security and Governmental Affairs Committee  
Permanent Subcommittee on Investigations**

**Roundtable Discussion**

**Washington D.C.  
June 27, 2018**

**Written Statement of**

**Jolene S. Thompson,  
Executive Vice President, American Municipal Power, Inc. (AMP)  
Executive Director, Ohio Municipal Electric Association (OMEA)**

### **Introduction**

Good morning. My name is Jolene Thompson. I am the Executive Vice President of American Municipal Power, Inc. (AMP) and Executive Director of the Ohio Municipal Electric Association (OMEA). I am pleased to have the opportunity to appear before you to discuss AMP's experience with the Federal Permitting Improvement Steering Council and FAST-41 process and want to express our appreciation for the support provided by Senator Portman for our projects, as well as his efforts and those of other subcommittee members to pursue balanced regulatory reforms.

On September 7, 2017, the CEO and President of American Municipal Power, Inc. (AMP) testified before the U.S. Senate Homeland Security and Governmental Affairs Committee, Permanent Subcommittee on Investigations, to discuss the importance of reasonable, timely and cost-conscious permitting of generation projects, as well as the Federal Permitting Improvement Steering Council (FPISC) and FAST-41 process. Mr. Gerken's testimony focused on the licensing and permitting process for AMP's remaining hydropower project -- the proposed 48 MW R.C. Byrd run-of-the-river hydropower project, which would be located in Ohio at the existing USACE Gallia Locks and Dam on the Ohio River, as well as provided AMP's unique perspective on infrastructure development and regulatory processes given that we recently completed the largest development of new run-of-the-river hydropower generation in the United States. This effort consisted of four new projects located in Kentucky and West Virginia at existing U.S. Army Corps of Engineers (USACE) dams along the Ohio River, totaling more than 300 megawatts (MW) and representing nearly \$2.6 billion in capital investment, along with an estimated 1,600 direct jobs, more than 1,000 indirect jobs, \$342 million in payroll and the use of vendors from at least 12 states during construction. (R.C. Byrd would join new and existing hydropower projects in AMP and AMP member portfolios registering more than 600 MW of hydropower in the region.)

AMP's RC Byrd hydropower project is one of the 34 projects in the initial FPISC inventory of covered projects. This written statement provides an update on the RC Byrd hydropower project since Mr. Gerken's testimony in September of last year, as well as AMP's experience with the FPISC process and recommendations based upon that experience for improvements for your consideration. I have appended Mr. Gerken's testimony hereto for reference.

### **Background Points**

□ American Municipal Power, Inc. (AMP) is the wholesale power supplier and services provider for 135 member municipal electric systems in nine states. AMP has a diverse generation portfolio, including a mix of fossil and renewable resources.

□ AMP has a unique perspective on infrastructure development and regulatory processes as we are in the process of completing the largest development of new run-of-the-river hydropower generation in the United States today. Our four projects are located at existing U.S. Army Corps of Engineers (USACE) dams along the Ohio River.



□ Hydropower projects are expensive to plan for and build, typically beginning as above-market resources; however, their operational, economic and environmental attributes make hydropower a good investment in the long term.

□ Regardless of where in the country you are located, the siting and permitting processes for any new generating asset are not for the faint of heart; the licensing and permitting processes for hydropower are especially arduous and typically take more than a decade.

□ While the Federal Energy Regulatory Commission (FERC) is the lead agency, approvals for hydropower developments must come from myriad federal and state agencies and require separate and sometimes duplicative permitting by the USACE and state resource agencies.

### **AMP's Experience**

As a public power entity, AMP is unique in our resource planning approach because we are able to take a longer view than investor-owned utilities that are subject to quarterly profit reports. Our member city, village, town and borough council members have been willing to invest in certain projects that will be above market in the early years because of the overall benefits in the long term. Our development of hydropower generation is a good example – the price of power from these facilities will be above market in the early years, competitive in the middle years, and below market in the later years once the debt service is paid off. However, when you take into account the many positive attributes associated with hydropower, like the ability to provide baseload power (unlike many other renewable resources); the lack of fuel risk, emissions and waste streams; and, long life span (80 to 100 years); the value of the investment is clear even in the early years.

Hydropower projects can also provide a significant revenue stream to the federal government. For instance, AMP's budget for FERC fees for 2018 across our projects is in excess of \$5 million. Additionally, the USACE receives electricity at no cost from the projects for lock and dam operations, which amounts to an additional \$900,000 a year from our projects.

Hydropower is unique compared to other infrastructure projects. First, in our region, hydropower projects are limited from a practical standpoint to existing dams and the generation capacity are finite. Additionally, hydropower projects on federal locks and dams are subject to multiple duplicative and extremely arduous regulatory approval processes.

While we understand the need to balance environmental protection with economic development, and anticipate that there will be some bumps along the road, AMP has found that regulatory timelines do not align efficiently across the numerous required permits, various agencies and different jurisdictions. AMP's RC Byrd project, thus far, has served as an example of the regulatory challenges of hydropower projects.

Licensing for the R.C. Byrd Project, which would be located at the Gallia Locks and Dam in Ohio on the Ohio River, began in 2007. A decade later, on August 30, 2017, FERC issued the final license, with the delay largely due to issues raised by the USACE. The time from initial application to final approval from regulatory agencies can best be described as a gauntlet, taking a decade and costing millions of dollars.

During the FERC licensing process, although FERC is the lead agency, the public and mandatory conditioning agencies, including State and Federal Fish and Wildlife Service (FWS) agencies, are consulted to ensure that activities during initial construction and ongoing operation are carried out in a manner that safeguards wildlife, including endangered or threatened species. In addition, USACE serves as a mandatory conditioning authority under Section 4(e) of the Federal Power Act. The USACE actively participates in the FERC licensing process, including the development of the National Environmental Policy Act (NEPA) environmental assessment for the Project. The USACE uses this authority to influence the direction and extent of FERC license articles. Through a Memorandum of Understanding (MOU) with the USACE, FERC includes a series of license articles in licenses that were created to help protect the USACE navigation interests established in the Rivers and Harbors Act of 1899. The articles also include a requirement that the licensee provide power for the USACE dam for the term of the license.

In spite of the active participation of the conditioning agencies throughout the FERC licensing process, after the FERC license process has been completed, the USACE has several additional regulatory approvals that an applicant must obtain to get a final approval to start construction of a hydropower project. One of these regulatory processes involves Section 10 of the Rivers and Harbors Act, which prohibits unauthorized obstruction or alteration of any navigable water without a permit from the USACE. The USACE retains its post licensing authority under Section 404 of the Clean Water Act, which regulates the discharge of dredged, excavated, or fill material in wetlands, streams, rivers, and other U.S. waters. In general, to obtain what is termed the "404 permit," applicants must demonstrate that the discharge of dredged or fill material will not significantly degrade the nation's waters and that there are no practicable alternatives less damaging to the aquatic environment.

Prior to issuance of the 404 permit, a "408 Approval" must be provided by the USACE. The intent of this approval is to protect government property and ensure the facilities are not compromised by other non-federal developments. The Section 408 Approval is granted by the USACE once they complete their evaluation of a project, involving reviews of the technical aspects of a project, specifically the water retaining structures and their interface with the existing USACE facilities, as well as completion of a physical hydraulic model to verify that a project will not have any detrimental effects on navigation into or out of the locks.

USACE authorizations begin at the District level where the locks and dams are operated, but also require approval from the Division, and ultimately from the Director of Civil Works from the USACE Headquarters. In our experience, there is wide variability

between the District evaluations. For example, some Districts will defer to FERC license-based evaluations by the State Preservation Office for cultural impacts, and state and federal FWS agencies for issues within their areas of expertise. However, another District will conduct a repetitive evaluation of these same criteria and reach different conclusions. In the case of R.C. Byrd, despite FERC's Environmental Assessment (EA) and concurrence by FWS agencies, the USACE stated that they would pursue the same environmental issues previously raised, but that FERC determined should not be included in the EA, to their satisfaction through their subsequent permit process. As such, for planning purposes, it is assumed that the issuance of the 408 Approval and 404 Permit will take anywhere from 12 to 36 months after issuance of the FERC license in spite of many of the issues having already been resolved by FERC.

This method of permitting costs licensees millions of dollars in capitalized interest. Extended permitting timeframes and redundant review of issues has caused AMP to not award supply contracts until after permits are issued, which results in longer construction schedules and increased costs. For our recent hydropower projects, AMP had to delay financing at significant cost to members. By a point of comparison, we estimate that we lost 50 basis points for financing our hydro projects when compared to our financing for our investment in the Prairie State Generating Company over a six month period. This was a direct result of uncertainty associated with USACE permitting.

In addition to the FERC license and the USACE's Section 408 and 404 permit processes, the Environmental Protection Agency (EPA), through the states, requires a 401 Water Quality Permit under the Clean Water Act (CWA). The intent of the 401 Permit is to provide for the protection of the physical, chemical, and biological integrity of water bodies.

#### **R.C. Byrd and FAST-41**

In 2007, AMP decided to pursue a license for a 48 MW hydropower plant at the R.C. Byrd (Gallia) Locks and Dam on behalf of the AMP member community of Wadsworth, Ohio (the licensee) for potential subscription to interested AMP members. As described in Mr. Gerken's testimony, AMP spent years on permitting this project.

On July 14, 2014, FERC issued a draft Environmental Assessment. Shortly thereafter, a stalemate between AMP and FERC on the one hand and USACE and USFWS on the other began as a result of a disagreement about the necessary timing of a Physical Hydraulic Model Study, estimated to cost \$1-\$2 million. USFWS and USACE requested that AMP complete the full hydraulic study prior to receiving the FERC license. AMP agreed to perform the study post-license but has been unwilling and unable to do so pre-licensing, as it would put the study cost at risk if the project did not proceed. As an alternative to performing the full study prior to license issuance, AMP provided as much detail as possible, recognizing that this project was notably similar to our other recent projects. The impasse resulted in USFWS's inability to draw a conclusion on whether the project would adversely affect mussels and bats.

Much of 2016 was spent gathering and submitting additional information to FERC in an attempt to address USFWS and USACE comments. During this time, USFWS continued their evaluation of whether the project would impact endangered species, including freshwater mussel species and the Northern Long Eared Bat.

Concurrent with this process and stalemate, AMP's experience with the FAST-41 process began on September 22, 2016, when R.C. Byrd was included as one of the 34 projects in the FPISC inventory of covered projects. In early 2017, AMP staff participated in two conference calls to educate and familiarize FAST-41 staff with hydropower permitting and explain specific challenges associated with R.C. Byrd. We also exchanged information with Senate staff who were following the process.

For reasons AMP attributes to the new visibility on the RC Byrd project as a result of being added as a FPISC covered project, after a lengthy exchange, concurrence was reached between FERC and USFWS (which has both the statutory responsibility and technical expertise on Endangered Species Act determinations) that the project would not likely jeopardize endangered mussels or bats and the final Biological Opinion (BO) was issued by the USFWS in June of 2017. This decision was facilitated by FAST-41's efforts to encourage FERC to make a decision. FERC issued a letter explaining its EA to USFWS and requesting concurrence within 30 days from the date of receipt of the letter. Notably, FERC also indicated that FERC would take failure to respond as concurrence that FERC had met its responsibilities and would resolve the matter. Consequently, USFWS concurred and issued a final Biological Opinion on June 19, 2017. Due to disagreements with FERC's conclusions, USACE withdrew support of FERC's determination and explained that USACE would address the same issues through the mandatory USACE 404 and 408 permit process to USACE's satisfaction.

As noted above, the final license was received on August 30, 2017. AMP's economic commitment to this project now exceeds \$4 million.

For the reasons just described, although the FAST-41 Committee's permit and license processing guidance has been helpful, our experience places the value of FAST-41 on: (1) agency accountability through making agency actions and timeliness highly visible; and (2) the ability to informally resolve longstanding disputes and shepherd permits/licenses to completion. To that end, we are thankful for the assistance we received to break a log jam and strongly encourage the committee to continue its efforts and not allow it to sunset.

### **Recommendations**

Once AMP received the license, AMP began reviewing its obligations to comply with each license article, many of which require significant and ongoing coordination with the conditioning agencies. One of the standard license articles obligates the licensee to enter into an agreement with the USACE to coordinate plans for site access and activities within 90 days from the issuance of the license. Specifically, referred to as a Memorandum of Understanding (MOU), the agreement identifies the location of the

facility and the study and construction activities, and terms and conditions under which studies and construction will be conducted. Importantly, other license obligations are contingent upon completion of the MOU. Specifically, AMP cannot begin the required Physical Hydraulic Modeling Study and the Sediment Transport Modeling Plan prior to completion of the MOU because AMP is not permitted to begin the initial core drilling without the MOU. Without the core drilling, potential powerhouse locations cannot be determined. Without a potential powerhouse location, any hydraulic studies and the impact on mussel beds could also not be determined.

AMP took the initiative to draft an initial MOU and sent it to the USACE Huntington District for their review on October 2, 2017, following FERC license issuance. After repeatedly requesting a response, USACE Huntington District sent proposed changes to the October 2017 draft on June 20, 2018.

The current license schedule does not require the MOU to be completed until November 28, 2018 - the same day the Physical Hydraulic Modeling Study and the Sediment Transport Modeling Plan are due to be filed with the Commission.

This results in a schedule that is impossible to meet and is illogical at best, particularly given that it took over ten years for AMP to obtain the License but was given only one year from the License issuance to complete all of the major pre-construction requirements.

AMP has requested extensions of time that reflect a more reasonable timeframe for completion but FERC rejected most of AMP's requests and has limited the extensions to November 28, 2018. To be clear, even if AMP had proceeded to undertake the Physical Hydraulic Modeling Study and the Sediment Transport Modeling Plan without USACE's agreement, which would have resulted in a license violation, AMP could not have completed the studies required by November 28, 2018.

The point in describing this post-licensing Catch-22 here is to highlight the importance of continuing the FIPSC process into the USACE permitting phase, particularly for hydropower projects, like RC Byrd. Accordingly, extending the FIPSC process beyond licensing is AMP's first recommendation for process improvement.

Additionally, AMP understands that FAST-41 was designed to improve the timeliness, predictability, and transparency of the federal environmental review and authorization process for covered infrastructure projects and believes from its experience that FAST-41 has largely been successful. Along with other provisions to address the project delivery process and track environmental review and project milestones, the Permitting Dashboard was codified into law to track project timelines, and increase transparency, predictability and accountability. However, participation by agency stakeholders is voluntary and state agencies are currently not participants. Moreover, the Permitting Dashboard timeline may reflect a delay caused by a dispute, as happened on RC Byrd with regard to the EA, without any formal process to resolve the dispute.

Accordingly, to further improve the process, AMP strongly recommends that the FIPSC process be broadened to identify licensee and inter-agency disputes and include some authority to settle disputes.

One avenue for dispute resolution, and a key feature of S. 1460, the Energy and Natural Resources Act of 2017, would be to designate FERC as the lead agency for all license and permit environmental reviews, authorize FERC to set a schedule for all permitting, enable FERC to incentivize additional environmental improvements during the licensing term, and streamline the process for license amendments to enable efficiency improvements and capacity additions at existing projects and, most importantly, empower FERC to serve as the arbiter of disputes between a licensee and conditioning agencies.

Although license articles indicate that FERC will resolve disputes, we have not found that to be the case in practice. Specifically, when AMP disputed an obligation that the USACE Huntington District demanded be included in an MOU for AMP's Willow Island hydropower project regarding dissolved oxygen monitoring that exceeded the license requirements regarding the same, AMP requested that FERC resolve the dispute. FERC was reluctant to direct another federal agency to adhere to the terms of the license. FERC indicated that no other licensee had ever invoked the license dispute resolution provision and FERC did not have a timely process in place. Empowering FERC as the lead agency, requiring FERC to develop an efficient dispute resolution process and providing FERC the authority to actually resolve disputes would be a profound change that will have a direct impact on hydropower infrastructure projects.

This could allow FERC to eliminate duplicative reviews by preventing alternative agencies from formally or informally contributing to the decision-making process that is outside of their authority and expertise. This would provide developers with increased predictability, reduce time, and reduce cost.

### **Conclusion**

In closing, as evidenced in AMP's pursuit of necessary licenses and permits for our multiple hydropower projects, there is room for improvement throughout the process. The FAST-41 effort to increase transparency, predictability and accountability has already made a notable impact on the R.C. Byrd project. AMP strongly supports continuation of the FAST-41 program as well as expanding the process to cover permitting in addition to licensing, designating FERC as the lead agency, and empowering FERC to effectively and efficiently resolve disputes. This would help facilitate hydropower infrastructure development ensuring that new resources of all types can be brought online in an economical and timely manner through streamlining the regulatory process, eliminating redundancies, and providing developers and investors with added certainty.

Thank you again for providing me with the opportunity to appear before you today. I would be happy to respond to any questions.

June 25, 2018

**RC Byrd Timeline**

Apr. 24, 2007	Preliminary Permit Application (PPA) filed by the Wadsworth, Ohio (AMP member)
May 30, 2007	FERC notices Wadsworth PPA and competing PPAs.
Apr. 11, 2008	FERC issues Preliminary Permit (PP) to Wadsworth
Jun. 17, 2009	AMP files Notice of Intent and Preliminary Application Document (PAD) with FERC
Aug. 7, 2009	FERC notice of commencement of proceeding and grants AMP use of the Traditional Licensing Process
Oct. 1, 2009	AMP holds Joint Agency and Public Meeting on Project
Feb. 19, 2010	AMP holds consultation meeting with ODNR at their offices
Mar. 12, 2010	EA Engineering, Science and Technology submits "Freshwater Mussel Survey of the Ohio River at RC Byrd Lock and Dam" report to ODNR
Jun. 22, 2010	Meeting to discuss Project studies and Baseline Fish & Water Quality Surveys (attendees included: WVDNR, ODNR, USACE, USFWS, AMP, MWH Global, and EA Engineering)
Jul. 15, 2010	USFWS responds w/ comments to Freshwater Mussel Survey Report; recommend Best Management Practices used during construction and operation activities associated with Project
Jul. 17, 2010	EA Engineering responds to USFWS and requests further information regarding endangered species within Project vicinity
Aug. 17, 2010	USFWS issues letter regarding endangered species in vicinity of Project
Oct. 12, 2010	Bat species inventory is submitted to ODNR Bat species inventory is submitted to USFWS (OH)
Oct. 21, 2010	Bat species inventory is submitted to USFWS (WV) Bat species inventory is submitted to WVDNR
Nov. 5, 2010	AMP files Draft FERC License Application for RC Byrd
Nov. 10, 2010	USFWS responds with comments on Bat Species Inventory at Project – No Further Action (NFA) necessary
Feb. 11, 2011	Public meeting with Landowners
Feb. 11, 2011	Meeting to discuss comments on Draft License Application (attendees included: WVDNR, ODNR, USACE, USFWS, AMP, MWH Global, EA Engineering, Ohio Power Siting Board)
Mar. 28, 2011	AMP files Final License Application with FERC
Apr. 11, 2011	FERC Notices Application and solicits additional study requests
May 4, 2011	USFWS issues letter to FERC regarding response to Notice of Tendering of Application; Additional Study Requests for the Project
Jul. 19, 2011	AMP submits 401 application to WVDEP
Nov. 17, 2011	AMP files all additional information requested by FERC

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Dec. 12, 2011	AMP submits 401 application to OEPA
Jan. 4, 2012	OEPA states that 401 application is incomplete and requests additional information
Feb. 7, 2012	FERC issues acceptance of application
Feb. 27, 2012	FERC issues Scoping Document
Mar. 5, 2012	AMP submits letter to USFWS (WV) regarding FERC information request – raptor habitat in vicinity of proposed transmission line
Mar. 27, 2012	USFWS (WV) responds to AMP's letter requesting information regarding raptor habitat – letter states USFWS does not have any data on bald eagle/other raptor species within proposed Project area
Mar. 28, 2012	FERC Public Scoping meeting
July 11, 2012	Meeting with ODOT on State Route 7 relocation
Aug. 9, 2012	AMP submits additional information to OEPA re: 401 application
Aug. 20, 2012	FERC Issues Revised Scoping Document
Oct. 15, 2012	FERC issues Ready for Environmental Analysis (REA) Notice and requests comments
Oct. 18, 2012	AMP responds to ODNR regarding 401 certification
Oct. 23, 2012	AMP reapplies to WVDEP for 401 certification
Nov. 30, 2012	AMP submits proof of requests for Ohio and WV 401 certification to FERC
Dec. 12, 2012	WVDNR submits preliminary terms & conditions in accordance with 10(j)
Dec. 17, 2012	ODNR comments on License Application in accordance with 10(j)
Dec. 21, 2012	AMP responds to WVDNR and OEPA 10(j) comments
Feb. 28, 2013	AMP forwards FERC letter acknowledging OEPA waiver of 401 certification
Nov. 21, 2013	AMP informs FERC that WVDEP has waived 401 certification
Jul. 8, 2014	FERC Issues Draft Environmental Assessment for comment
Jul. 11, 2014	FERC asks for USFWS concurrence on Draft Environmental Assessment
Jul. 24, 2014	FERC provides AMP with Programmatic Agreement with Corps
	US Department of Interior (USDOI) responds to FERC regarding Draft Environmental Assessment with recommendations for Best Management Practices
Aug. 6, 2014	AMP files comments to the Draft Environmental Assessment
	WVDNR comments on Draft Environmental Assessment
Aug. 7, 2014	USACE submits comments to Draft Environmental Assessment
	ODNR issues comments to Draft Environmental Assessment
	USFWS (WV) issues comments to Draft Environmental Assessment regarding endangered species



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Aug. 19, 2014	USACE Huntington issues letter withdrawing comments to Environmental Assessment
Aug. 22, 2014	USACE issues letter on programmatic agreements to FERC
Sept. 3, 2014	USEPA comments on Environmental Assessment
Nov. 23, 2014	WVDNR states intent to issue 401 certification during 404 process
Jan. 13, 2015	USACE Huntington issues letter stating Environmental Assessment did not address all of its concerns and says the concerns will have to be addressed during their 404/408 permitting
Jan. 22, 2015	USACE issues letter on Draft Environmental Assessment
Jan. 23, 2015	FERC issues Final Environmental Assessment
Jan. 28, 2015	FERC asks for concurrence from USFWS on Final Environmental Assessment
Feb. 26, 2015	USFWS responds to FERC on Final Environmental Assessment
Mar. 11, 2015	FERC requests formal consultation with the USFWS regarding mussels
Apr. 9, 2015	USFWS states they will not begin formal consultation process until more information is received
Jun. 3, 2015	FERC holds conference call with all parties
Jun. 23, 2015	AMP files Mussel and Bat study information with FERC and agencies
Jul. 31, 2015	USFWS responds to draft Mussel and Bat conservation plans
Jul. 17, 2015	Ohio State Historic Preservation Office (OSHPHPO) forwards signed Programmatic Agreement to FERC
Apr. 28, 2016	FERC holds conference call with all parties
May 11, 2016	FERC requests recent information from WVDNR on presence of listed bat species in vicinity of project; WVDNR responds saying there are no known records for the species at proposed Project site
May 13, 2016	FERC provides summary of teleconference call of April 28, 2016
Jun. 16, 2016	USFWS issues letter to FERC regarding status of endangered species consultation and additional information needs
Jun. 24, 2016	USDOJ/USFWS motions for late intervention before FERC
Jun. 27, 2016	USFWS issues letter to FERC – Request of USFWS to reserve Federal Power Act Section 18 Authority to Prescribe Fishways
Jul. 12, 2016	AMP request FERC take action that data provided is sufficient and FERC should not allow its proceedings to be indefinitely delayed
Aug. 9, 2016	FERC issues notice granting late intervention to USFWS
Sept. 20, 2016	FERC holds another conference call with all parties
Sept. 27, 2016	Corps provides data regarding known areas of effect on mussels
Oct. 17, 2016	AMP provides bat study data to agencies and FERC
Nov. 4, 2015	FERC-CRO provides inspection report

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Nov. 17, 2016	FERC requests additional data
Nov. 22, 2016	USFWS issues additional letter on Bats and Mussels
Dec 1, 2016	FERC Issues letter asking for AMP's response to USFWS letter of November 22, 2016
Dec. 2, 2016	AMP responds with data regarding mussels
Dec. 29, 2016	AMP provides responses to FERC and USFWS letters
Feb. 3, 2017	FERC issues letter to USFWS requesting concurrence with endangered species determinations stating <i>"we conclude that issuing an original license for the proposed project, with our recommended measures, would not be likely to adversely affect the endangered Indiana bat. Therefore, we do not believe that formal consultation is required."</i>
Mar. 3, 2017	USFWS disagrees with FERC assessment regarding mussels stating <i>"...federally listed mussels. Therefore, the Service does not concur with your determination that the project is not likely to adversely affect federally listed mussels and we agree that the project should proceed through the formal consultation process."</i>
Mar. 16, 2017	FERC issues letter to USFWS stating its Environmental Assessment addressed USFWS comments. FERC asks for concurrence by April 19, 2017 in regard to the Northern Long Eared Bat
Jun. 1, 2017	USFWS issues a Draft Biological Opinion to the FERC and the USACE and concluded:  "After reviewing the current status of the species, the environmental baseline for the action area, the effects of the proposed actions, and the cumulative effects, it is our biological opinion that the R.C. Byrd Hydroelectric Project and the Corps' Navigation Channel Dredging Maintenance Project, as proposed, are not likely to jeopardize the continued existence of the fanshell, pink mucket pearly mussel, sheepsnose, and snuffbox. No critical habitat has been designated for these species; therefore, none will be affected."
Jun. 9, 2017	AMP issues a response to the USFWS Biological Opinion and agrees with most but objects to perpetual water monitoring including dissolved oxygen, temperature and total dissolved gases.
Jun. 14, 2017	FERC comments on USFWS Draft Biological Opinion
Jun. 19, 2017	USFWS issues Final Biological Opinion
Aug. 23, 2017	FERC issues the signed copies of the executed programmatic agreement for Archaeological compliance with the Historic Preservation Act
Aug. 30, 2017	FERC issues a license after 10 years and 131 days from the PAD submission.
Oct. 2, 2017	AMP Submits draft MOU to the USACE.
Oct. 3, 2017	AMP files requests for extension of time for Articles 305, 306, 308, 310 with FERC.
Oct. 13, 2017	AMP submits Exhibit F Drawings with FERC.
Nov. 28, 2017	AMP files Exhibit G drawings with FERC.
Feb. 26, 2018	AMP files requests for extensions of time with FERC for near term License articles.
Mar. 15, 2018	AMP files supplemental information with FERC regarding license extensions.
Mar. 15, 2018	AMP Staff meets with FERC Staff for a License Transition Meeting.

		June 25, 2018
Apr. 19, 2018	FERC Order grants and denies certain requests for extension of time.	
May 31, 2018	Following a 30-day consultation period with state and federal agencies, AMP submits revised extension request for Articles 403 and 408.	
Jun. 20, 2018	The USACE Huntington provides comments to the draft MOU.	
Jun. 21, 2018	FERC Order approving revised Exhibit G drawings.	

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**RC Byrd Timeline (FERC Project No. 12796)**

April 24, 2007	Preliminary Permit Application (PPA) filed by the Wadsworth, Ohio (AMP member)
May 30, 2007	FERC notices Wadsworth PPA and competing PPAs.
April 11, 2008	FERC issues Preliminary Permit (PP) to Wadsworth
June 17, 2009	AMP files Notice of Intent and Preliminary Application Document (PAD) with FERC
Aug. 7, 2009	FERC notice of commencement of proceeding and grants AMP use of the Traditional Licensing Process
Oct. 1, 2009	AMP holds Joint Agency and Public Meeting on Project
Feb. 19, 2010	AMP holds consultation meeting with ODNR at their offices
Mar. 12, 2010	EA Engineering, Science and Technology submits "Freshwater Mussel Survey of the Ohio River at RC Byrd Lock and Dam" report to ODNR
June 22, 2010	Meeting to discuss Project studies and Baseline Fish & Water Quality Surveys (attendees included: WVDNR, ODNR, USACE, USFWS, AMP, MWH Global, and EA Engineering)
July 15, 2010	USFWS responds w/ comments to Freshwater Mussel Survey Report; recommend Best Management Practices used during construction and operation activities associated with Project
July 17, 2010	EA Engineering responds to USFWS and requests further information regarding endangered species within Project vicinity
Aug. 17, 2010	USFWS issues letter regarding endangered species in vicinity of Project
Oct. 12, 2010	Bat species inventory is submitted to ODNR Bat species inventory is submitted to USFWS (OH)
Oct. 21, 2010	Bat species inventory is submitted to USFWS (WV) Bat species inventory is submitted to WVDNR
Nov. 5, 2010	AMP files Draft FERC License Application for RC Byrd
Nov. 10, 2010	USFWS responds with comments on Bat Species Inventory at Project – No Further Action (NFA) necessary
Feb. 11, 2011	Public meeting with Landowners
Feb. 11, 2011	Meeting to discuss comments on Draft License Application (attendees included: WVDNR, ODNR, USACE, USFWS, AMP, MWH Global, EA Engineering, Ohio Power Siting Board)
March 28, 2011	AMP files Final License Application with FERC
April 11, 2011	FERC Notices Application and solicits additional study requests
May 4, 2011	USFWS issues letter to FERC regarding response to Notice of Tendering of Application; Additional Study Requests for the Project
July 19, 2011	AMP submits 401 application to WVDEP
Nov. 17, 2011	AMP files all additional information requested by FERC

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Dec. 12, 2011	AMP submits 401 application to OEPA
Jan. 4, 2012	OEPA states that 401 application is incomplete and requests additional information
Feb. 7, 2012	FERC issues acceptance of application
Feb. 27, 2012	FERC issues Scoping Document
Mar. 5, 2012	AMP submits letter to USFWS (WV) regarding FERC information request – raptor habitat in vicinity of proposed transmission line
Mar. 27, 2012	USFWS (WV) responds to AMP's letter requesting information regarding raptor habitat – letter states USFWS does not have any data on bald eagle/other raptor species within proposed Project area
Mar. 28, 2012	FERC Public Scoping meeting
July 11, 2012	Meeting with ODOT on State Route 7 relocation
Aug. 9, 2012	AMP submits additional information to OEPA re: 401 application
Aug. 20, 2012	FERC issues Revised Scoping Document
Oct. 15, 2012	FERC issues Ready for Environmental Analysis (REA) Notice and requests comments
Oct. 18, 2012	AMP responds to ODNR regarding 401 certification
Oct. 23, 2012	AMP reapplies to WVDEP for 401 certification
Nov. 30, 2012	AMP submits proof of requests for Ohio and WV 401 certification to FERC
Dec. 12, 2012	WVDNR submits preliminary terms & conditions in accordance with 10(j)
Dec. 17, 2012	ODNR comments on License Application in accordance with 10(j)
Dec 21, 2012	AMP responds to WVDNR and OEPA 10(j) comments
Feb. 28, 2013	AMP forwards FERC letter acknowledging OEPA waiver of 401 certification
Nov. 21, 2013	AMP informs FERC that WVDEP has waived 401 certification
July 8, 2014	FERC Issues Draft Environmental Assessment for comment
July 11, 2014	FERC asks for USFWS concurrence on Draft Environmental Assessment
July 24, 2014	FERC provides AMP with Programmatic Agreement with Corps
	US Department of Interior (USDOI) responds to FERC regarding Draft Environmental Assessment with recommendations for Best Management Practices
Aug. 6, 2014	AMP files comments to the Draft Environmental Assessment
	WVDNR comments on Draft Environmental Assessment
Aug. 7, 2014	USACE submits comments to Draft Environmental Assessment
	ODNR issues comments to Draft Environmental Assessment
	USFWS (WV) issues comments to Draft Environmental Assessment regarding endangered species

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Aug. 19, 2014	USACE Huntington issues letter withdrawing comments to Environmental Assessment
Aug. 22, 2014	USACE issues letter on programmatic agreements to FERC
Sept. 3, 2014	USEPA comments on Environmental Assessment
Nov. 23, 2014	WVDNR states intent to issue 401 certification during 404 process
Jan. 13, 2015	USACE Huntington issues letter stating Environmental Assessment did not address all of its concerns and says the concerns will have to be addressed during their 404/408 permitting
Jan. 22, 2015	USACE issues letter on Draft Environmental Assessment
Jan. 23, 2015	FERC issues Final Environmental Assessment
Jan. 28, 2015	FERC asks for concurrence from USFWS on Final Environmental Assessment
Feb. 26, 2015	USFWS responds to FERC on Final Environmental Assessment
Mar. 11, 2015	FERC requests formal consultation with the USFWS regarding mussels
Apr. 9, 2015	USFWS states they will not begin formal consultation process until more information is received
June 3, 2015	FERC holds conference call with all parties
June 23, 2015	AMP files Mussel and Bat study information with FERC and agencies
July 31, 2015	USFWS responds to draft Mussel and Bat conservation plans
July 17, 2015	Ohio State Historic Preservation Office (OSHPD) forwards signed Programmatic Agreement to FERC
Apr. 28, 2016	FERC holds conference call with all parties
May 11, 2016	FERC requests recent information from WVDNR on presence of listed bat species in vicinity of project; WVDNR responds saying there are no known records for the species at proposed Project site
May 13, 2016	FERC provides summary of teleconference call of April 28, 2016
June 16, 2016	USFWS issues letter to FERC regarding status of endangered species consultation and additional information needs
June 24, 2016	USDOJ/USFWS motions for late intervention before FERC
June 27, 2016	USFWS issues letter to FERC – Request of USFWS to reserve Federal Power Act Section 18 Authority to Prescribe Fishways
July 12, 2016	AMP request FERC take action that data provided is sufficient and FERC should not allow its proceedings to be indefinitely delayed
Aug. 9, 2016	FERC issues notice granting late intervention to USFWS
Sept. 20, 2016	FERC holds another conference call with all parties
Sept. 27, 2016	Corps provides data regarding known areas of effect on mussels
Oct. 17, 2016	AMP provides bat study data to agencies and FERC
Nov. 4, 2015	FERC-CRO provides inspection report

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Nov. 17, 2016	FERC requests additional data
Nov. 22, 2016	USFWS issues additional letter on Bats and Mussels
Dec 1, 2016	FERC Issues letter asking for AMP's response to USFWS letter of November 22, 2016
Dec. 2, 2016	AMP responds with data regarding mussels
Dec. 29, 2016	AMP provides responses to FERC and USFWS letters
Feb. 3, 2017	FERC issues letter to USFWS requesting concurrence with endangered species determinations stating <i>"we conclude that issuing an original license for the proposed project, with our recommended measures, would not be likely to adversely affect the endangered Indiana bat. Therefore, we do not believe that formal consultation is required."</i>
Mar. 3, 2017	USFWS disagrees with FERC assessment regarding mussels stating <i>"...federally listed mussels. Therefore, the Service does not concur with your determination that the project is not likely to adversely affect federally listed mussels and we agree that the project should proceed through the formal consultation process."</i>
Mar. 16, 2017	FERC Issues letter to USFWS stating its Environmental Assessment addressed USFWS comments. FERC asks for concurrence by April 19, 2017 in regard to the Northern Long Eared Bat
June 1, 2017	USFWS issues a Draft Biological Opinion to the FERC and the USACE and concluded:  "After reviewing the current status of the species, the environmental baseline for the action area, the effects of the proposed actions, and the cumulative effects, it is our biological opinion that the R.C. Byrd Hydroelectric Project and the Corps' Navigation Channel Dredging Maintenance Project, as proposed, are not likely to jeopardize the continued existence of the fanshell, pink mucket pearly mussel, sheepnose, and snuffbox. No critical habitat has been designated for these species; therefore, none will be affected."
June 9, 2017	AMP issues a response to the USFWS Biological Opinion and agrees with most but objects to perpetual water monitoring including dissolved oxygen, temperature and total dissolved gases.
June 14, 2017	FERC comments on USFWS Draft Biological Opinion
June 19, 2017	USFWS issues Final Biological Opinion
August 23, 2017	FERC issues Final Programmatic Agreement for Cultural Resources Management
August 30, 2017	FERC issues License

**LIST OF PERMITS/APPROVAL/LICENSES/EVALUATIONS--FOSSIL**

OPSB Certificate	Ohio Power Siting	Certificates for 50MW+ projects and T-line
Section 404/10	Army Corps	Impacts to jurisdictional water
Section 401	OEPA	Impacts to wetlands/streams
Permit to Install-water	OEPA	Build source(s) of water discharge
Permit to Install-sanitary	OEPA	On-site sanitary water discharge
Water withdrawal registration	ODNR	Withdrawal of water
NPDES	EPA/OEPA	Discharge of industrial water
Stormwater Permit	OEPA	Manage site/construction stormwater
Permit to Install-Air	EPA/OEPA	Installation of air emission source(s)
Title V Operating-Air	EPA/OEPA	Operation of air emission source(s)
Solid Waste Permit to Install	OEPA	Management of solid waste (ash etc)
Hazardous Waste Permit	EPA/OEPA	Management of Haz. Waste
Historic Preservation	SHPO	Evaluation of cultural/historic resources
Endangered Species Eval.	ODNR/USF&W	Evaluation of endangered/threatened species
License	FAA	Stack height approval for aviation
ODOT Permit	ODOT	Roadway considerations/crossings

**LIST OF PERMITS/APPROVAL/LICENSES/EVALUATIONS--HYDRO**

OPSB Certificate	Ohio Power Siting	Certificates for 50MW+ projects and T-line
Preliminary Permit	FERC	Permit to prepare and submit a License App.
License	FERC	Comprehensive energy project license
NEPA	EPA	Compliance with statute on federal projects
Section 404/10	Army Corps	Impacts to jurisdictional water
Section 408	Army Corps	Permission to impair federal structure
Section 401	OEPA	Impacts to wetlands/streams
Water withdrawal registration	ODNR	Withdrawal of water
NPDES	EPA/OEPA	Discharge of industrial water
Stormwater Permit	OEPA	Manage site/construction stormwater
Historic Preserv. Act	SHPO	Evaluation of cultural/historic resources
Endangered Species Eval.	ODNR/USF&W	Evaluation of endangered/threatened species
License	FAA	Transmission Tower approval for aviation
ODOT Permit	ODOT	Roadway considerations/crossings
Flood Impact Approval	FEMA	To insure no impacts to flood waters

**OTHER REQUIRED/POTENTIAL CONSULTING AGENCIES**

U.S Dept. of Agriculture-Forestry  
National Park Service  
U.S. Bureau of Land Management  
Federal Emergency Management Agency  
U.S. Geological Services  
U.S. Department of Commerce

**OTHER REQUIREMENT**

Regional Transmission Organization Interconnection Process (more than 20 MW) – PJM or MISO in our region



U.S. Senate Homeland Security and Governmental Affairs Committee  
Permanent Subcommittee on Investigations

***Cutting Through the Red Tape: Oversight of Federal Infrastructure  
Permitting and the Federal Permitting Improvement Steering Council***

Washington D.C.

September 7, 2017

Written Testimony of

Marc S. Gerken, PE, CEO/President,  
American Municipal Power, Inc. (AMP)

### **Summary Points**

- American Municipal Power, Inc. (AMP) is the wholesale power supplier and services provider for 135 member municipal electric systems in nine states. AMP has a diverse generation portfolio, including a mix of fossil and renewable resources.
- AMP has a unique perspective on infrastructure development and regulatory processes as we are in the process of completing the largest development of new run-of-the-river hydropower generation in the United States today. Our four projects are located at existing U.S. Army Corps of Engineers (USACE) dams along the Ohio River.
- Hydropower projects are expensive to build and typically begin as above-market resources; however, their operational, economic and environmental attributes make hydropower a good investment in the long term.
- Regardless of where in the country you are located, the siting and permitting processes for any new generating asset are not for the faint of heart; the licensing and permitting processes for hydropower are especially arduous and typically take more than a decade.
- While the Federal Energy Regulatory Commission (FERC) is the lead agency, approvals for hydropower developments must come from myriad federal and state agencies and require separate permitting by the USACE and state resource agencies.
- Licensing for the R.C. Byrd Project, which would be located at the Gallia Locks and Dam in Ohio on the Ohio River, began in 2007. A decade later, on August 30, 2017, FERC just issued the final license, with the delay largely due to issues raised by the USACE.
- The R.C. Byrd Project licensing process is part of the initial Federal Permitting Improvement Steering Council (FPISC) inventory. To date, our experiences with the permitting dashboard and FAST-41 processes have shown improvements in timeliness, predictability, and transparency. However, it is critical that these improvements continue during the permitting stages.
- The hydropower licensing and permitting reform legislation that the US Senate and House are considering will also improve processes. However, additional steps can be taken to: avoid unnecessary studies, establish and recognize best practices, coordinate scientific reviews and credit project developers for time lost during permitting.

Good morning, Chairman Portman, Ranking Member Carper and distinguished members of the Subcommittee. My name is Marc Gerken. I am a registered professional civil engineer and the Chief Executive Officer of American Municipal Power, Inc. I commend you for holding this hearing and I am pleased to have the opportunity to appear before you this morning to discuss the importance of reasonable, timely and cost-conscious permitting of generation projects, as well as the Federal Permitting Improvement Steering Council and FAST-41 process.

AMP is the non-profit wholesale power supplier and services provider to 135 member municipal electric systems in nine states, including the home states of the Chairman and Ranking Member. More information on AMP, our assets and operations appears in the next section of this written testimony.

While I am appearing today on behalf of AMP, I am the former Chair of the National Hydropower Association (NHA) Board and I currently serve as Co-Chair of the NHA CEO Council. I am also the former Chair of the American Public Power Association (APPA) Board of Directors. AMP is an active member of both organizations.

AMP has a unique perspective on infrastructure development and regulatory processes as we are in the process of completing the largest development of new run-of-the-river hydropower generation in the United States. Our four new projects located in Kentucky and West Virginia at existing U.S. Army Corps of Engineers (USACE) dams along the Ohio River total more than 300 megawatts (MW) and represent nearly \$2.6 billion in capital investment, along with an estimated 1,600 direct jobs, more than 1,000 indirect jobs, \$342 million in payroll and the use of vendors from at least 12 states during construction. (Our four new projects join with existing hydropower projects that AMP and AMP members own to total more than 600 MW of hydropower in the region.)

We appreciate the support provided by Senator Portman for our projects, as well as his efforts and those of other subcommittee members to pursue balanced regulatory reforms.

I have been asked to discuss the licensing and permitting process for our remaining hydropower project -- the proposed 48 MW R.C. Byrd run-of-the-river hydropower project, which would be located in Ohio at the existing USACE Gallia Locks and Dam on the Ohio River. The project is one of the 34 projects in the initial FPISC inventory of covered projects. This written testimony includes information about AMP, hydropower and our infrastructure development experience followed by detailed information on the project, its history and my staff's experience with the FPISC process.

#### **Background on AMP**

AMP is a non-profit wholesale power supplier and service provider for 135 members, including 134 member municipal electric systems in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana and Maryland, and the Delaware

Municipal Electric Corporation, a joint action agency with nine members, headquartered in Smyrna, Delaware. These member utilities combined serve more than 650,000 customers. AMP is based in Ohio and has more than 177 employees at its headquarters and generating facilities. The organization is governed by a 21-member Board of Trustees comprised of member community officials.

AMP's core mission is to be public power's leader in wholesale energy supply and value-added member services and AMP is one of the largest public power joint action organizations in the country. We offer our member municipal electric systems the benefits of scale and expertise in providing and managing energy services. AMP's diverse energy portfolio makes it a leader in deploying power assets that include a variety of baseload, intermediate, and peaking generation, using coal, natural gas, hydropower (our new projects as well as older projects), solar, wind and diesel assets, as well as a robust energy efficiency program.

Last year, the organization sold 16.7 million MWh of energy, with power sales revenue of \$1.2 billion and total assets of \$6.7 billion. In addition to power supply, AMP offers a variety of services to its members to assist in their service to their customers, including: engineering, financial, environmental, sustainability, generation operations, legal, mutual aid coordination, safety training and regulatory support.

AMP utilizes third-party nationally recognized firms to develop strategic long-term power resource plans for each of our members. Our members then use this information as part of their local decision-making regarding their power supply planning with respect to purchase power agreements and generation project investments.

We offer our members the opportunity to subscribe to each generation project, providing them with an independent feasibility study, beneficial use analysis and market projection provided by third-party experts. Members who choose to participate in a project do so only after affirmative action by their local governing board and execution of a take-or-pay power sales contract. Our projects move forward if we achieve the critical mass of AMP member participation required. When projects advance, a committee representing our participating member communities is formed to govern major project decisions.

AMP finances our projects using a mix of tax-exempt and taxable bonds. Since 2000, all AMP construction project financing ratings have been in the "A" category and AMP has maintained an A1 entity rating from Moody's (the only agency to offer such a rating). Because of the importance of tax-exempt financing to our infrastructure projects, we have been working in tandem with other state and local government groups to protect this essential mechanism in the context of congressional tax reform.

We also utilized Build America Bonds to finance our hydro and coal investments and New Clean Renewable Energy Bonds to finance our hydro investments. Unfortunately, the

federal payments promised with these direct pay bonds were subjected to budget sequestration, which has resulted in our participating members and their consumers losing more than \$20 million to date and an estimated \$42 million more over the life of the sequester. We strongly encourage that this situation be corrected and the sequestration of these bonds end in the next budget cycle.

Our philosophy is not to place all of our eggs in one basket, but to diversify our generation resource portfolio to include fossil fuel assets, renewable assets, purchase power agreements and energy efficiency so that our members can blend costs and risks. Our projects represent fuel, technology and geographic diversity, and will yield a long-term, risk-balanced portfolio with predictable rates. We firmly believe this is the best approach.

#### **Hydro Benefits and Opportunities**

As a public power entity, AMP is unique in our resource planning approach because we are able to take a longer view than investor-owned utilities that are subject to quarterly profit reports. Our member city, village, town and borough council members have been willing to invest in certain projects that will be above market in the early years because of the overall benefits in the long term. Our development of hydropower generation is a good example – the price of power from these facilities will be above market in the early years, competitive in the middle years, and below market in the later years once the debt service is paid off. However, when you take into account the many positive attributes associated with hydropower, the value of the investment is clear even in the early years.

Hydropower projects are capital intensive, but have many very attractive qualities, including:

- The ability to provide baseload power (unlike many other renewable resources);
- Dispatchability (we can forecast the output a day ahead);
- The ability to provide ancillary services and grid support;
- No fuel risk (meaning no hedging exposure, no counterparty risk and no transportation risk);
- No waste stream;
- Low operation and maintenance costs;
- Reliability;
- Predictable rates;
- Limited regulatory risk (once operating);
- A long life span (80 to 100 years); and
- No emissions (a sustainable resource and the leading form of renewable energy in the country).

Hydropower projects can also provide a significant revenue stream to the federal government. For instance, AMP's budget for FERC fees for 2018 across our projects is in excess of \$5 million. Additionally, the USACE receives electricity at no cost from the projects for lock and dam operations, which amounts to an additional \$900,000 a year from our projects.

Hydropower does have limitations, particularly in our region where the number of existing dams and the generation capacity are finite; however, more can still be done with hydropower even in our region, and the figures regarding untapped hydropower nationally are staggering.

In July 2016, the Department of Energy (DOE) released "Hydropower Vision: A New Chapter for America's 1<sup>st</sup> Renewable Electricity Source." This analysis found that as of the end of 2015, the U.S. hydropower generation fleet included 2,198 active power plants with a total capacity of 79.6 GW and 42 pumped storage hydropower (PSH) plants totaling 21.6 GW, for a total installed capacity of 101 GW. At the beginning of 2014, hydropower supported approximately 143,000 jobs in the United States, with 2013 hydropower-related expenditures supporting \$171.1 billion in capital investment and \$5.9 billion in wages paid to workers.

Looking to the future, the analysis predicts that "U.S. hydropower could grow from 101 gigawatts (GW) of capacity to nearly 150 GW by 2050. Growth under this modeled scenario would result from a combination of 13 GW of new hydropower generation capacity (upgrades to existing plants, adding power at existing dams and canals, and limited development of new stream-reaches), and 36 GW of new pumped storage capacity."

Hydropower resources can play an important role in efficient operation of the grid. Hydropower, like natural gas, can be a good partner for balancing resources like wind and solar, and can provide ancillary services such as frequency control, regulation, load following, spinning reserves and supplemental reserves. Natural gas and some hydropower resources have the capability to come online quickly and provide significant rotating mass (inertia). Hydro pumped storage is the only widely implemented grid-scale energy storage technology. The benefits to the grid are considerable, including deferral or avoidance of costly transmission upgrades at a time when the North American Electric Reliability Council (NERC) has estimated that 27 percent of grid upgrades are related to integrating wind and solar resources.

#### **Hydropower Licensing and Permitting**

Regardless of where in the country you are located, the siting and permitting processes for any new generating asset are not for the faint of heart. The regulatory approval process for each type of new generating source presents its own unique challenges. As

a developer, you must be passionate about the benefits that will result from your project, have supportive participants, flexible financing, be open to working with various stakeholders, be committed to the project, and willing to tackle the unanticipated challenges that present themselves.

As a developer, you have many challenges and opportunities. One of your key challenges is to keep costs down and stay on schedule – escalation can kill even the best project, and as the old adage goes, “time is money.” The regulatory process plays a critical role in a project schedule and ultimately can drive whether or not a project comes to fruition.

It's important to note that most developers don't enter the regulatory process with unreasonable expectations – we understand the need to balance environmental protection with economic development, and that there will be some bumps along the road. Unfortunately, regulatory timelines don't align efficiently across the numerous required permits, various agencies and different jurisdictions – it's not an A to Z process. Across our various projects, AMP has worked with dozens of different state and federal regulatory bodies throughout the air, water, waste, transmission and siting permitting processes. Attachment B is a listing of the various agencies that AMP has worked with during our permitting for both fossil fuel and hydro resources.

Developers must carefully time the required modeling, studies and site assessments when preparing their regulatory schedules as some studies have seasonal or weather limitations that must be taken into account. For instance, there are only limited months of the year when you can perform certain tree clearing work in our region because of the migratory habits of the Indiana bat.

Based on our experience, the timeframe from inception to commercial operation for new natural gas combined cycle generation is four to five years – approximately two years of which is dedicated to required regulatory permitting approvals, and the remainder to siting, contract and equipment vendor negotiation, construction and commissioning. Coal and nuclear developments have a much longer timeframe. And, while the development timeframe for wind and solar resources is shorter, those projects are not necessarily “easier” compared to fossil fuel generation – you still may potentially deal with “NIMBYism” and multi-faceted approval processes that can involve both state and federal agencies.

Despite hydropower's many positive attributes, hydropower faces an extremely arduous approval process. The time from initial application to final approval from regulatory agencies can best be described as a gauntlet, typically taking a decade and costing millions of dollars.

During the FERC licensing process, the public and mandatory conditioning agencies, including State and Federal Fish and Wildlife Service (FWS) agencies, are consulted.

This consultation is to ensure that activities during initial construction and ongoing operation are carried out in a manner that safeguards wildlife, including endangered or threatened species. In addition, USACE serves as a mandatory conditioning authority under Section 4(e) of the Federal Power Act. The USACE uses this authority to influence the direction and extent of FERC license articles. Through a Memorandum of Understanding (MOU) with the USACE, FERC includes a series of license articles that were created to help protect the USACE navigation interests established in the Rivers and Harbors Act of 1899. The articles also include a requirement that the licensee provide power for the USACE dam for the term of the license.

After the FERC license process has been completed, the USACE has several regulatory approvals that an applicant must obtain to get a final approval to start construction of a hydropower project. One of these regulatory processes involves Section 10 of the Rivers and Harbors Act, which prohibits unauthorized obstruction or alteration of any navigable water without a permit from the USACE. The USACE retains its post licensing authority under Section 404 of the Clean Water Act, which regulates the discharge of dredged, excavated, or fill material in wetlands, streams, rivers, and other U.S. waters. In general, to obtain what is termed the "404 permit," applicants must demonstrate that the discharge of dredged or fill material will not significantly degrade the nation's waters and that there are no practicable alternatives less damaging to the aquatic environment.

Prior to issuance of the 404 permit, a "408 Approval" must be provided by the USACE. The intent of this approval is to protect government property and ensure the facilities are not compromised by other non-federal developments. The Section 408 Approval is granted by the USACE once they complete their evaluation of a project, involving reviews of the technical aspects of a project, specifically the water retaining structures and their interface with the existing USACE facilities, as well as completion of a physical hydraulic model to verify that a project will not have any detrimental effects on navigation into or out of the locks.

It is interesting to note that the USACE 408 approval process for run-of-the-river hydropower is a new obligation. AMP was the first hydropower developer required by the USACE to obtain a 408 Approval in addition to the 404 permit. Unfortunately, this extended our permitting timeframe by roughly to two and a half years for one plant and an average of one year across all four new projects.

USACE authorizations begin at the District level where the locks and dams are operated, but also require approval from the Division, and ultimately from the Director of Civil Works from the USACE Headquarters. In our experience, there is wide variability between the District evaluations. For example, some Districts will defer to FERC license-based evaluations by the State Preservation Office for cultural impacts, and state and federal FWS agencies for issues within their areas of expertise. However, another District will



conduct a repetitive evaluation of these same criteria and reach different conclusions. In the case of R.C. Byrd, the USACE responded to FERC's Environmental Assessment (EA) by stating that the USACE would pursue the same issues they raised, but that FERC determined should not be included in the EA, to their satisfaction through their subsequent permit process. As such, for planning purposes, it is assumed that the issuance of the 408 Approval and 404 Permit will take anywhere from 12 to 36 months after issuance of the FERC license in spite of many of the issues having already been resolved by FERC.

This method of permitting costs licensees millions of dollars in capitalized interest. Extended permitting timeframes and redundant review of issues has caused AMP to not award supply contracts until after permits are issued, which results in longer construction schedules and increased costs. For our recent hydropower projects, AMP had to delay financing at significant cost to members. By a point of comparison, we estimate that we lost 50 basis points for financing our hydro projects when compared to our financing for our investment in the Prairie State Generating Company over a six month period. This was a direct result of uncertainty associated with USACE permitting.

Our Willow Island project located in West Virginia provides an example of the challenges that developers face when undertaking significant infrastructure projects and how those challenges can result in delays. In order for AMP to gain approval for the USACE's Section 408 and 404 permits, the USACE required AMP to perform more than \$1.5 million in archaeological work at the powerhouse site adjacent to the dam in a location where the USACE had itself previously re-routed a creek, excavated and filled over known archaeological sites. From 2008 to 2011, AMP was required to undertake three progressively more expensive and elaborate archaeological investigations that involved probes, test pits, more than 24 backhoe trenches and finally full excavation of bones, mussel shells and charcoal pieces that were sent to labs for further evaluation. All of the required work was justified by the USACE as necessary to address research questions regarding the nature of 2,000-3,000-year-old settlement patterns in the area; however, the items found were common along this stretch of the Ohio River, which is a known artifact area.

In addition to the FERC license and the USACE's Section 408 and 404 permit processes, the Environmental Protection Agency (EPA), through the states, requires a 401 Water Quality Permit under the Clean Water Act (CWA). The intent of the 401 Permit is to provide for the protection of the physical, chemical, and biological integrity of water bodies.

A developer must have significant capital (millions of dollars in many cases) to cover the cost of the hydropower project through permitting, including: subsurface core drilling, hydraulic model studies, design and initial payments for equipment with long lead times.

Long-term financing is unlikely until a developer has all of the required permits in hand, which can drive both the timing of the access to the market and the cost of money.

#### **R.C. Byrd and FAST-41**

In 2007, AMP decided to pursue a license for a 48 MW hydropower plant at the R.C. Byrd (Gallia) Locks and Dam on behalf of the AMP member community of Wadsworth, Ohio (the licensee) for potential subscription to interested AMP members.

In April 2007, a Preliminary Permit Application (PPA) was filed with FERC by Wadsworth, effectively beginning the process. Meetings were held with the USACE to review the project and plans in November 2008 at the project site with several USACE staff providing input on the project concepts. Attachment A is a detailed timeline of the regulatory process to date for FERC Project No. 12796.

Based on those early engagements and input from the USACE, a proposed project concept was developed. In June 2009, AMP filed with FERC (and served copies to the USACE's Huntington District) the Notice of Intent and Preliminary Application Document (PAD). This action initiated the more formal process and provided an opportunity for agencies to express their concerns and comment on likely conditions. In theory, this establishes a pathway and transparency for an applicant that will ultimately be seeking USACE 404 and 408 permits, as well as operating agreement approvals later in the approval process.

In October 2009, AMP held a joint regulatory agency and public meeting regarding the proposed project. In June 2010, AMP met with West Virginia DNR (WVDNR), Ohio DNR (ODNR), USACE, USFWS, and two consultants to discuss specific project studies and surveys that would meet agency needs.

By November 2010, the studies were completed and submitted to various state and federal agencies for review along with AMP's draft FERC License Application. Comments were solicited from all agencies and stakeholders on the full project proposal including protection, mitigation and enhancement measures. Based on those comments, AMP adjusted its proposed project development plan and submitted its final FERC license application in March 2011.

Shortly after the filing of the final license application in 2011, FERC arranged for the USACE, specifically the Huntington District, to be a cooperating agency in developing the National Environmental Policy Act (NEPA) environmental assessment for the Project in order to avoid multiple NEPA documents being needed.

Due to the location of the proposed plant, in 2008 and 2009 AMP also met with the Ohio Department of Transportation (ODOT) regarding the need to relocate State Highway 7. By September 2010, AMP had worked with ODOT on a clear process to design a

compliant highway relocation. From 2008 through 2012, AMP held several meetings with local land-owners who were generally supportive of the project going forward. Approximately 35 property owners would be directly affected by the relocation of State Highway 7.

In February 2012, FERC provided formal notice that the application was complete and ready for its NEPA analysis and requested terms and conditions from resource agencies. In March 2012, FERC held a public scoping meeting with all of the necessary state and federal agencies to identify any additional studies or information that was needed.

In December 2012, the USFWS, WVDNR and ODNR provided their comments and terms and conditions on the final licensing proposal. FERC worked with the federal and state agencies to incorporate necessary conditions into the draft EA and issued it on July 8, 2014.

From the point of the initial regulatory scoping process, five years had been spent on permitting this project. But that was the easy part. From this point on, the process slowed down significantly. The USACE expressed additional concerns over mussels and the impact of the project on dredging that the USACE does downstream of the dam. The USACE continued to raise concerns, including new concerns not previously identified, which appeared to be an intentional effort to prevent the project from proceeding. As an example, after working with FERC to draft the EA issued July 8, 2014, an additional 38 pages of comments that needed to be addressed were submitted on August 7, 2014 by USACE. A subsequent revised version reduced the length to 25 pages. FERC issued a final EA for the project on January 23, 2015.

The USACE has repeatedly taken the position that any comments not resolved by FERC or AMP to the USACE's satisfaction will have to be addressed in their 408 and 404 permits, which are obtained after the FERC license is issued. This position has been reiterated on several occasions, including a letter dated January 22, 2015. In June 2015, FERC held a conference call with all affected state and federal agencies. During that call, USACE staff's persistent skepticism of conclusions in FERC's draft and final EA resulted in what appeared to be frustrated FERC staff abruptly ending the call.

Much of 2016 was spent gathering and submitting additional information to FERC in an attempt to address USFWS and USACE comments. During this time, USFWS continued their evaluation of whether the project would impact endangered species, including freshwater mussel species and the Northern Long Eared Bat. Through a lengthy exchange, concurrence was reached between FERC and USFWS (which has both the statutory responsibility and technical expertise on Endangered Species Act determinations) that the project would not likely jeopardize endangered mussels or bats and the final Biological Opinion (BO) was issued by the USFWS in June of 2017. Due to disagreements with FERC's conclusions, USACE withdrew support of FERC's

determination and explained that USACE would address the same issues through the 404 and 408 permit process to their satisfaction. In late August, FERC issued the final programmatic agreement for cultural resources management.

FERC issued the license on August 30, 2017 and AMP was reviewing the license conditions at the time of finalizing this testimony. The next steps will be for AMP to begin implementing the license requirements and subsequently pursue 404 and 408 permits from the USACE.

AMP's economic commitment to this project now exceeds \$4 million.

I understand that the FAST-41 effort originated with the Fixing America's Surface Transportation (FAST) Act which was signed into law on December 4, 2015. Title 41 of the FAST Act (FAST-41) was designed to improve the timeliness, predictability, and transparency of the federal environmental review and authorization process for covered infrastructure projects.

The Federal Permitting Improvement Steering Council (FPISC) as authorized, is composed of agency Deputy Secretary-level members and chaired by an Executive Director appointed by the President. FAST-41 established new procedures that standardize interagency consultation and coordination practices.

Along with other provisions to address the project delivery process and track environmental review and project milestones, the Permitting Dashboard was codified into law to track project timelines, and increase transparency, predictability and accountability. However, participation by agency stakeholders is voluntary and state agencies are currently not participants.

Other goals of the Permitting Dashboard are to improve early coordination of schedules for environmental reviews and to identify inter-agency disputes and delays in the permitting process.

AMP's experience with the FAST-41 process began on September 22, 2016, when R.C. Byrd was included as one of the 34 projects in the FPISC inventory of covered projects. In early 2017, AMP staff participated in two conference calls to educate and familiarize FAST-41 staff with hydropower permitting and explain specific challenges associated with R.C. Byrd. We also exchanged information with Senate staff who were following the process.

At that point, progress on the project was at a standstill due to a disagreement about the necessary timing of a Physical Hydraulic Model Study, estimated to cost \$1-\$2 million. USFWS and USACE requested that AMP complete the full hydraulic study prior to receiving the FERC license. AMP agreed to perform the study post-license but has been unwilling and unable to do so pre-licensing, as it would put the study cost at risk if the

project did not proceed. As an alternative to performing the full study prior to license issuance, AMP provided as much detail as possible, recognizing that this project was notably similar to our other recent projects. As noted in a FERC letter, the impasse resulted in USFWS's inability to draw a conclusion on whether the project would adversely affect mussels and bats.

Shortly after our communications with FAST-41, FERC issued a letter explaining its EA to USFWS and requesting concurrence within 30 days from the date of receipt of the letter. Notably, FERC also indicated that FERC would take failure to respond as concurrence that FERC had met its responsibilities and would resolve the matter. Consequently, USFWS concurred and issued a final Biological Opinion on June 19, 2017. As noted above, the final license was received on August 30, 2017, and is under review by AMP.

While the FAST-41 Committee has released permit and license processing guidance and successfully developed and continues to maintain the Permitting Dashboard, our experience places the value of FAST-41 on: (1) agency accountability through making agency actions and timeliness highly visible; and (2) the ability to informally resolve longstanding disputes and shepherd permits/licenses to completion. To that end, we are thankful for the assistance we received to break a log jam and encourage the committee to continue its efforts.

It's important to note that in the case of hydropower projects, it will be especially important that the FIPSC process continue into the permitting phase.

We are also curious about how the process will accommodate a heavier workload when the initial stages are broadened.

#### **Process Improvements**

When pursuing authorization for a new hydropower plant or even a renewal of existing permits and licenses, the general industry recommendation is to start 10 years in advance and estimate several million dollars. While the process may ultimately be completed sooner and less costly, this is the general starting point/rule of thumb. These initial investment costs are considered at-risk developmental dollars due to the unknown nature of potential opposition or concerns and resulting project terms and conditions.

The time and cost alone are a significant impediment to new hydropower development, especially in the face of other competitive generation options. While FERC has exclusive authority to issue licenses, other federal and state agencies, including USACE, both interface with the FERC process and conduct separate duplicative regulatory evaluations and permitting processes. As you know, each agency operates using their own respective guidance documents and regulations.

Unfortunately, there is no silver bullet to streamlining and accelerating the license and permit approval labyrinth. Although the shared goal of DOE, USACE, FERC and private developers as outlined in the Hydrovision Report highlights the substantial domestic energy generation potential that remains untapped within the United States, the regulatory process has negatively impacted the ability to execute this goal.

As with many complicated processes, I firmly believe that a multi-pronged approach is necessary to ensure that as many of the nuanced challenges are addressed as possible.

AMP is supportive of the hydropower reform legislation that has been enacted by Congress over the past few sessions, as well as the pending legislation that would streamline processes. We also appreciate the Trump Administration's efforts on regulatory reform.

Improving the federal process is perhaps the most tangible approach within reach. Thankfully, streamlining the federal hydropower licensing process enjoys both bipartisan and bicameral support. A key feature of S. 1460, the Energy and Natural Resources Act of 2017, would designate FERC as the lead agency for all environmental reviews, authorize FERC to set a schedule for all permitting, enable FERC to incentivize additional environmental improvements during the licensing term, and streamline the process for license amendments to enable efficiency improvements and capacity additions at existing projects. Companion hydropower licensing reforms are contained in stand-alone legislation in the House. S. 1460 is awaiting action by the full Senate.

These are profound changes that will have a direct impact; however, more can be done to help streamline the process and eliminate overlapping reviews to make the process more predictable and economically viable. The following are suggestions based on our experience:

- Identify administrative policies that add cost and time to the license process with limited or no benefit. As an example, one mandatory conditioning agency follows an internal policy of not recognizing scientific studies if they are greater than five years old. While the intent of the policy may have been innocent, in practice, this policy can require costly studies without sound scientific justification.
- Ensure that every decision and requirement is based on sound, established science that is included in the respective determination. As an example, water quality monitoring and fish mortality studies are inconsistently applied across practically identical plants. Turbines that have been previously studied and accepted by a mandatory conditioning agency to result in low fish mortality should not need to repeat these studies. Similarly, once a specific technology is demonstrated to not impact water quality, the need for continual monitoring should be retired. It's our understanding that one agency, through written guidance, has been instructed to require water quality monitoring in licenses or permits simply so

that agency need not do so themselves. The cost and requirement even continues after the developer establishes no impact on the sample parameter.

- Treat similar projects in an identical manner to the extent possible. Through shared learning between Districts or Field Offices, this approach would provide predictability for developers that similar projects, regardless of the owner, could be used as templates for subsequent projects, regardless of location.
- Agencies should allow licensees more flexibility in using offsite mitigation (e.g. mitigation banks) of measures commensurate with anticipated impacts. This minor change is an excellent example of a win-win for both the threatened or endangered species and the developer.
- Eliminate duplicative reviews by preventing alternative agencies from formally or informally contributing to the decision-making process that is outside of their authority and expertise. This would provide developers with increased predictability, reduce time, and reduce cost. We have experienced this duplicative review first hand due to the location of our hydropower plants in different USACE Districts. While one USACE District defers to the appropriate federal and state agencies specifically mandated to assess a project's impact on cultural and endangered species, projects located within the boundaries of a different District experience a duplicative, time-consuming, costly and onerous evaluation conducted by the District itself.
- Reform the culture regarding how USACE and civilian staff interact with developers during the process.
- Allow FERC to extend license terms for a period not to exceed 50 years from the start of construction for projects that are proceeding.
- Require the USACE to develop concurrent reviews between its District, Division and Headquarters by forming joint review teams from differing disciplines so that each review captures all comments in one coherent review.

For the improvements outlined above to be effective, a paradigm shift within federal and state agencies is necessary. There must be a focus on providing customer service, helping applicants comply and developing innovative solutions.

### **Conclusion**

In closing, I want to stress my strong belief in the great opportunity that hydropower presents for this country. As a generating resource, hydropower provides baseload, reliable, low-cost power. In addition, as a qualified renewable energy resource, it provides emissions-free power with an exceptionally long generating life approaching 100 years.

Hydropower plays an important role in AMP's efforts, and we are encouraged by the increasing recognition by policymakers of the untapped potential for new and enhanced hydropower development in the United States. The commitments of AMP and its member communities serve as evidence that hydropower is recognized as a desirable and beneficial contribution to those seeking to embrace a diverse resource portfolio.

Despite hydropower's attributes, the process to obtain authorization for a hydropower plant is challenging. As evidenced in AMP's pursuit of necessary licenses and permits for our multiple hydropower projects, there is room for improvement throughout the process. The FAST-41 effort to increase transparency, predictability and accountability has already made a notable impact on the R.C. Byrd project.

Active legislation in the House and Senate will have a positive impact on the development of hydropower infrastructure, especially if coupled with additional changes outlined by AMP in this testimony, as well as ideas proposed by the NHA.

To facilitate this development and to ensure that new resources of all types can economically and timely be brought online, it's important that regulatory processes be streamlined to eliminate redundancies and provide developers and investors with added certainty.

Thank you again for holding this hearing and providing me with the opportunity to appear before you today. I would be happy to respond to any questions.





Coastal Protection and Restoration Authority



**Senate Committee on Homeland Security and Governmental Affairs:  
ROUNDTABLE – FAST-41 and the Federal Permitting Improvement Steering Council:  
Progress and Next Steps**

**June 27, 2018**

Chairman Johnson, Senator Portman, Ranking Member McCaskill and Members of the Committee:

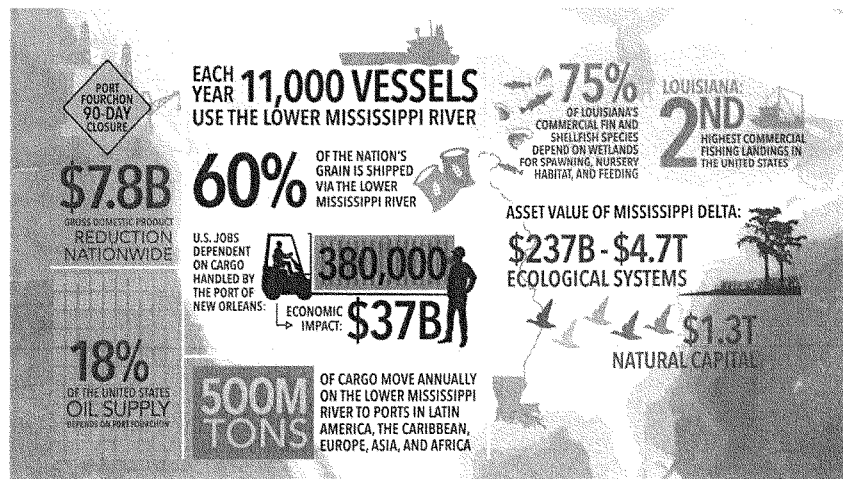
Mr. Chairman and Senators, thank you for the opportunity to provide a statement to this Committee on our experience as it examines the federal authorization and environmental review processes for major infrastructure projects. Before going any farther, I want to thank, on behalf of our agency and the people of Louisiana, Senators Portman and McCaskill for their sponsorship of the Fixing America's Surface Transportation Act of 2015 ("FAST-41") and for S. 3017, their pending legislation to build on the foundation laid by that important legislation.

The efforts of Congress, through the enactment of FAST-41, and President Trump, through Executive Order 13807, demonstrate the will of the federal government to improve and streamline existing permitting and environmental review processes. Modernizing and effectuating meaningful changes to these processes is critical to enabling the Louisiana Coastal Protection and Restoration Authority ("CPRA") to successfully carry out its charge to implement an integrated coastal protection program to reduce the catastrophic rate of coastal land loss in Louisiana, and we fully and aggressively support this effort. It is essential to our mission.

**Louisiana is facing a coastal crisis, and time is of the essence.**

The State of Louisiana loses an unprecedented amount of land to coastal erosion every year. Since the 1930s, Louisiana has lost approximately 2,000 square miles of land to coastal

erosion, and an additional 4,000 square miles of coastal Louisiana could be lost in the next 50 years if significant action is not taken. The restoration of Louisiana's coast is vital not only to the millions of people who live along our coast but also to our nation. Our coast serves as a gateway to other economic engines with vast national impact, including energy resources, the commercial seafood industry, and maritime transportation and trade. The impacted area is home to half the country's oil refineries and pipelines serving 90 percent of the nation's offshore energy production. Louisiana ships the most cargo in the nation along the Mississippi River and its waterways. Louisiana's wetlands today represent about 40 percent of the wetlands in the continental United States, but account for about 80 percent of the losses of the nation's original wetland habitats. These wetlands protect these valuable assets and infrastructure from storm surge and flooding. These assets include fisheries, oil and gas pipelines, petroleum reserves, and the Henry Hub – a national distribution point for natural gas. Louisiana's commercial fishing landings are the largest in the continental United States, second in the nation after Alaska.



**Louisiana's Response: the Coastal Master Plan**

Every five years, CPRA updates the State's Coastal Master Plan, which includes projects to protect and restore our coast. Our first Master Plan was developed in 2007. The 2017 Coastal Master Plan was unanimously approved by the Louisiana legislature. It represents a 50 year, \$50 billion plan to restore and protect Louisiana's coast. Implementation of the 124 projects in the Plan would add or maintain over 800 square miles of coastal land and wetlands, compared to a future where no projects are built. These projects are expected to reduce storm and flood damage by \$8.3 billion annually, which equates to more than \$150 billion in damage reduction over the next 50 years.

Louisiana has secured approximately \$11 billion in funding for our Coastal Master Plan projects over the next 15 years, with a reasonable expectation of receiving up to \$19 billion over the next 50 years. With such significant funding in place, Louisiana is ready to demonstrate to the nation what can be accomplished with improvement to the environmental review and permitting processes.

The State of Louisiana itself continuously strives to expedite implementation of its priority integrated coastal protection projects. Over the last few years, these efforts have included legislative updates to state law, gubernatorial proclamations and executive orders, and increased communication and coordination among state regulatory agencies in an effort to expedite the permitting and implementation of these projects.

For example, in 2016, the Louisiana legislature passed a bill authorizing CPRA to develop a natural resource damages ("NRD") restoration banking program. The NRD banking program provides a mechanism to bring funding from the private sector, through the utilization of public-private partnerships, to implement restoration projects. Also, in 2017, the legislature

passed a bill authorizing CPRA to utilize outcome-based performance contracting. This is an alternative, full delivery model that provides the state with an opportunity to utilize up-front private investment to get marsh creation and ecosystem restoration projects on the ground faster.

Louisiana has also taken unprecedented steps to elevate our coastal crisis and the associated environmental review and federal permitting processes to national focus. On April 18, 2017, Governor John Bel Edwards signed an emergency proclamation declaring the Louisiana coast in a state of crisis and emergency. The Proclamation recognizes the importance of coastal Louisiana, to the state and the nation, and represents the type of bold decision that needs to be made to respond to this crisis. The Proclamation directs Louisiana agencies to take all necessary actions authorized by law to expedite the implementation of ecosystem restoration projects, including expediting the applicable state permitting and environmental reviews.

#### **Federal Infrastructure Permitting Process**

FAST-41 and EO 13807 have been welcome additions to the legal landscape. CPRA applauds the federal agencies' recent efforts, under the leadership of the executive staff at Federal Permitting Improvement Steering Council ("FPISC" or "the Council") and the Council on Environmental Quality ("CEQ"), to implement the changes needed to improve the environmental review and permitting processes for major infrastructure projects. CPRA also encourages the continued evaluation of these processes and improvements to existing law, including the amendments outlined in S. 3017.

##### *a. Mid-Barataria Sediment Diversion*

The Mid-Barataria Sediment Diversion ("MBSD") is one of five cornerstone projects in the Louisiana Master Plan. The proposed MBSD is one of the largest coastal restoration projects in the history of the country and will provide much needed sediment, water, and nutrients to the

Barataria Basin to build, maintain, and sustain the wetlands to restore valuable ecosystem services injured by the *Deepwater Horizon* (“DWH”) oil spill. In just a short time, the MBSD has become a prime example of how the FAST-41 and EO 13807 can provide increased efficiencies and streamlined processes, leading to significant improvements to the permitting timetable for this project.

In June 2016, CPRA submitted an updated permit application to the New Orleans District of the United States Army Corps of Engineers (“USACE”). Shortly thereafter, CPRA met with USACE, as lead federal agency for the proposed project, and the federal coordinating agencies and asked for an estimated timeline for the environmental review and decision on the permit. CPRA was given a timeline of ten years. Given the state of crisis of Louisiana’s coastal land loss, which was exacerbated by the DWH oil spill, this timeframe was unacceptable.

Governor Edwards requested in the fall of 2016 that the Council place the MBSD on its permitting “dashboard”. In January, 2017, the Council approved Governor Edwards’ request. A coordinated project plan (“CPP”) was developed with an anticipated permit decision date of October 2022 – five and a half years from the notice of intent to prepare an environmental impact statement and over six years from the submission of the permit application, a significant improvement over the initial ten year estimated timeline. In the months following the issuance of the original CPP, CPRA engaged in negotiations and meetings with FPISC and CEQ, in coordination with USACE and the federal cooperating agencies. In January, 2018, CPRA successfully executed the first Memorandum of Understanding (“MOU”) between a state and the federal government under the FAST-Act and EO 13807. This MOU was a milestone achievement. Since entering into the MOU, the State has been able to participate more fully in the environmental review and permitting process, and the federal agencies and the State have

revisited and revised the permitting timeline. The MOU has provided the framework for a productive working relationship between the State and its agencies and the federal agencies for permitting the MBSD project. Through this process, USACE developed an updated CPP, and on April 2, 2018, announced that the new CPP advanced the anticipated permit decision date from October 2022 to November 2020 – a savings of 22 months. More time savings may be possible as we proceed in the coming months.

The advancement of the permit decision date in no way eliminates vital steps in the permitting and environmental review process, does not reduce the environmental standards applicable to the project under current law, and will not jeopardize the integrity of the permitting process. Instead, FAST-41 and EO 13807 have had the positive effect of streamlining permitting and environmental review process through increased coordination, cooperation, and transparency between the State of Louisiana and the FAST-41 lead and cooperating agencies. Through the MOU, CPRA and the federal agencies committed to dedicating necessary personnel and resources to the environmental review and permitting processes, ensuring executive level participation to monitor the work on the proposed project, and improving communication within and among agencies. Additionally, as outlined in the MOU, the agencies committed to identifying issues early in the process that may result in delay, and resolving concerns through the dispute resolution procedures.

Through the leadership of FPISC and CEQ, the application of FAST-41 to the MBSD project permitting timetable has resulted in a more efficient permitting process. Applying lessons learned and continuing to improve upon and effectuate meaningful changes to the environmental review and permitting process will lay the groundwork for future projects that CPRA plans to

undertake. Indeed, stronger state and federal collaboration will ensure the continued success of Louisiana's coastal program and fully meet the goals of the nation's environmental policy.

*b. FAST-41 Improvements*

While CPRA is pleased with the permitting timetable improvements achieved for the proposed MBSD project, for a variety of reasons, the new time line for the permitting process for MBSD is still too long. This suggests that additional changes are necessary to ensure that the underlying spirit and intent of FAST-41 and EO 13807 become ingrained in the agency psyche – so that expedience and good governance become the bywords of agency process, supplanting delay and bureaucratic red tape as the norm.

S. 3017 provides an opportunity for Congress to effectuate meaningful change and pursue amendments that will allow agencies to continue to engage in comprehensive, legally-sufficient environmental reviews without undue delay. CPRA supports and is pleased to see the incorporation of a two-year timeline into the legislation. Establishing a clear target has provided strong motivation to all involved to meet the deadlines outlined in the CPP for the proposed MBSD. Further, requiring the facilitating and lead agency to include specific reasons why the permitting process will take longer than two years and to articulate the specific efforts that will be made to reduce the time needed to complete the permitting process, not only increases public transparency, but also ensures that the agencies are taking a hard look at their internal procedures. CPRA would recommend, however, including an upward limit (*e.g.* three to four years) on environmental review and permitting for projects that will take longer than two years. While an upward limit should never compromise fulsome environmental review, CPRA does believe that this approach is better than an unbounded process because it will provide agencies

with an accountability mechanism that encourages both good governance and effective communication.

As noted above, the MOU between the State of Louisiana and the FAST-41 lead and cooperating agencies includes a provision establishing an appropriate and effective role for CPRA in the environmental review and authorization process. The MOU recognizes that, through the planning process for the Louisiana Coastal Master Plan and its status as the FAST-41 project sponsor, CPRA is uniquely situated to provide significant, substantive information and perspective that can meaningfully aid the Parties in achieving the efficient execution of the environmental review and authorizations. This increased role for CPRA has proven to be noteworthy in the efforts to find efficiencies in the development of the EIS for the proposed MBSD. As such, CPRA suggests broadening the definition of “cooperating agency” to allow a state, when it is a project sponsor, to be considered a cooperating agency for purposes of FAST-41.

As outlined above, the involvement of a state as a cooperating agency has multiple advantages, and the environmental review and authorization process could be even further improved by encouraging increased reliance on existing studies and environmental analysis that has been undertaken by, or on behalf of, a state. For example, the State of Louisiana has spent more than a decade working with a myriad of scientific experts developing, testing, and refining its Coastal Master Plan. The Coastal Master Plan is a long-term program of construction, operations and maintenance, and adaptive management that is guided by a robust and continuous planning process. It is based on the best available science and engineering to sequence and prioritize projects for implementation. The development of the Coastal Master Plan prioritizes active involvement from our coastal stakeholders and communities. The increased reliance on



such efforts and analyses by federal authorizing agencies is a means by which to further expedite environmental review and permitting in the future.

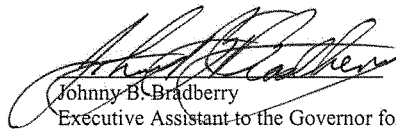
Active engagement by the Council has been extremely valuable to CPRA and the numerous federal agencies during the development of the EIS for the proposed MBSD. Council staff regularly participates in meetings related to the proposed project and has assisted with the identification and resolution of issues and concerns identified early in the process. The Council and CEQ have been accommodating, engaging with CPRA in multiple face-to-face and telephonic meetings. As more projects are added to the federal dashboard, it will be important for the Council to have a dedicated budget and staff to ensure it can efficiently meet its statutory charges.

#### **Conclusion**

FAST-41 and EO 13807 have resulted in a momentous shift to the permitting timetable for CPRA's cornerstone large-scale integrated coastal protection infrastructure project. By implementing the principles of these legislative and executive mandates, CPRA has seen firsthand the efficiencies that can be found in the current environmental review and permitting processes. However, we have also observed obstacles to fully achieving meaningful change to these processes. We strongly encourage Congress to continue to pursue opportunities to streamline the environmental review and authorization processes. Coastal Louisiana is in an existential crisis and needless delay is not an option. We continue to lose coastal land at an average rate of a football field every 100 minutes. Time is of the essence for us. We must work to identify all available efficiencies so that project implementation can move forward expeditiously. If the laws and processes that are intended to protect the environment instead function as tools to delay or proscribe implementation of the State's coastal restoration and

protection projects, then Louisiana coastal restoration becomes a fool's errand and the unique, dynamic, and critically important resources we are so desperately trying to protect and restore will soon vanish.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Johnny B. Bradberry", is written over a horizontal line.

Johnny B. Bradberry  
Executive Assistant to the Governor for Coastal Activities  
Chairman, Louisiana Coastal Protection and Restoration Authority Board

**Post-Roundtable Questions for the Record  
Submitted to Angela Colamaria  
Acting Executive Director  
Federal Permitting Improvement Steering Council  
From Senator Rob Portman**

**“Roundtable on Fast-41 and the Federal Permitting Improvement Steering Council: Progress to Date and Next Steps”**

June 27, 2018

1. The Federal Energy Regulatory Commission has resisted in participating in the development of the initial timeline by arguing it is an independent agency not subject to the same requirements as other agencies. What is the status of FERC and the Nuclear Regulatory Commission’s participation with the Commission and their posting of information on the Permitting Dashboard?

**Response:** FERC has posted and updated all required information since the inception of the Dashboard, with the exception of target completion dates for FERC Commission authorizations. FERC has explained that its status as a multi-member, independent agency impacts its approach to complying with this mandate. However, because these dates can impact the timing of other agencies’ actions, FERC staff has indicated to FPISC staff that the agency is working to post the dates in order to maximize the development of a coordinated, concurred upon timetable. We are in discussions with FERC to discuss options for compliance. The NRC has posted and updated all required information for covered projects that are on the Dashboard, including target completion dates (i.e., projection of NRC Commission decision dates).

2. What level of service could the Permitting Council provide with a \$10 million appropriation? With \$15 million? How does that compare with the proposed \$6 million appropriation for FY2018?

**Response:**

The FY 2019 Budget requests \$6.07 million for the Federal Permitting Improvement Steering Council Office of the Executive Director (FPISC-OED). Given the current inventory of FAST-41 covered projects, this appropriation, in conjunction with anticipated fees, will allow the Permitting Council to execute its statutory requirements and to carry out responsibilities under Presidential Executive Order 13807 on Establishing Discipline and Accountability in the Environmental Review and Permitting Process Infrastructure. We will consider future resource needs through the annual Budget process.