



November 27, 2019

*Submitted via Email*

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**Re: Public Comment on the Environmental Assessment for the  
I-80 Reconstruction Project (MPMS 76357), SR 0080 Section 17M**

Dear Mr. Schieferdecker:

On behalf of Citizens for Pennsylvania's Future (PennFuture) and its members, I hereby submit the following public comments regarding the Environmental Assessment ("EA") for the I-80 Reconstruction Project (MPMS 76357), SR 0080 Section 17M (October 2019) ("I-80 EA").<sup>1</sup>

PennFuture is a membership-supported, environmental non-profit organization dedicated to leading the transition to a clean energy economy in Pennsylvania and beyond. PennFuture strives to protect our air, water and land, and to empower citizens to build sustainable communities for future generations. PennFuture enforces environmental laws and advocates for the transformation of public policy, public opinion and the marketplace to restore and protect the environment and safeguard public health. A significant focus of PennFuture's work relates to protecting and improving Pennsylvania's water resources.

While there are a number of important and significant environmental and socio-economic impacts discussed in the I-80 EA, these comments focus only on the impacts to the water resources from the proposed reconstruction of a section of Interstate 80 in Monroe County, PA ("the Project"). In sum, we believe that due to nature of the special protection waters at issue and the significant level of impact being proposed to those special protection waters by the Project warrants a full Environmental Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA").

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<sup>1</sup> See PennDOT and FHA, Notice of Public Hearing and Availability for Public Review and Comment: Environmental Assessment Report, available at [http://www.i80project.com/wp-content/uploads/I-80\\_Newspaper-Ad-for-Nov-13-2019-HEARING.pdf](http://www.i80project.com/wp-content/uploads/I-80_Newspaper-Ad-for-Nov-13-2019-HEARING.pdf) (all written comments must be received/post-marked by 5:00pm on November 29, 2019).

## **The Agencies Must Extend the Public Comment Period and Offer Additional Public Hearings**

Before we comment on the impacts to the water resources, PennFuture must reiterate the comments we made during the November 13, 2019 public hearing that the Pennsylvania Department of Transportation (“PennDOT”) and the Federal Highway Administration (“FHA”) (collectively, “the Agencies”) must provide for an extension of the public comment period (at least 45 days) and hold at least one additional public hearing within the impacted community.

One of the hallmarks of NEPA is that it guarantees that federal agencies account for the environmental costs of their actions, promoting environmental protection through the procedural process, which necessarily ensure meaningful citizen involvement as an *integral part* of the analysis of the potential environmental impacts.<sup>2</sup> As the Supreme Court recognized, one of NEPA’s goals is to give “the public the assurance that the agency ‘has indeed considered environmental concerns in its decisionmaking process,’ . . . perhaps more significantly, provide[] a springboard for public comment.”<sup>3</sup> When agencies fail to provide meaningful opportunity for public comment, as the Agencies did here, they frustrate the purpose of NEPA by denying the public its full right to be involved in the process. The Supreme Court in *Robinson* stated:

NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct. Similarly, the broad dissemination of information mandated by NEPA permits the public and other government agencies to react to the effects of a proposed action at a meaningful time.<sup>4</sup>

The Agencies’ failure to provide an adequate public comment period or accessible public hearing opportunities regarding the I-80 EA violates both the spirit and letter of NEPA. The surprisingly lackluster turnout at the public hearing is evidence that the Agencies must do more to provide for meaningful public input from the impacted communities. For example, all other public hearings and open houses regarding the Project were held at the Stroudsburg Area High School,<sup>5</sup> a location that is not only centrally located relative to the Project but is also easily accessible to all, including via public transportation. In the past, these public meetings regarding the Project have been extremely well attended, with over 100 community members attending the first meeting. Moreover, given the sheer length and highly technical nature of the I-80 EA,

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<sup>2</sup> *Weinberger v. Catholic Action of Haw./ Peace Educ. Project*, 454 U.S. 139, 143 (1981) (NEPA serves twin aims of “inject[ing] environmental considerations into the federal agency’s decisionmaking process” and “inform the public that the agency has considered environmental concerns”); see *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (“[NEPA gives the public the assurance that the agency ‘has indeed considered environmental concerns in its decisionmaking process,’ . . . perhaps more significantly, provides a springboard for public comment”) (quoting *Baltimore Gas & Elec. Co. v. Nat’l Resources Def. Council, Inc.*, 462 U.S. 97 (1983)). See, generally, CEQ, A Citizen’s Guide to the NEPA (2007), [https://ceq.doe.gov/docs/get-involved/Citizens\\_Guide\\_Dec07.pdf](https://ceq.doe.gov/docs/get-involved/Citizens_Guide_Dec07.pdf).

<sup>3</sup> *Robertson*, 490 U.S. at 349.

<sup>4</sup> 490 U.S. at 349.

<sup>5</sup> See AECOM, I-80 Project Website: Public Involvement, <http://www.i80project.com/public-involvement/>

the public deserves a longer period of time to review and digest the information – and if necessary, consult with experts – in order to provide the Agencies with appropriate and meaningful public comment that will inform the decisionmaking process.

### **The Proposed Impacts to Special Protection Waters from a Project of This Magnitude Warrants a Full EIS**

NEPA<sup>6</sup> was established in recognition of our human impact on the environment around us.<sup>7</sup> With NEPA, Congress created a framework for environmental review within federal agency decision-making.<sup>8</sup> NEPA guarantees that federal agencies account for the environmental costs of their actions, promoting environmental protection through the procedural process.<sup>9</sup> While not outcome determinative, NEPA's goal is to foster informed decision-making within the federal agencies, and as a corollary ensure citizen involvement within the process:

The ultimate goal of the NEPA process is to foster excellent action that protects, restores, and enhances our environment. This is achieved through the utilization of environmental assessments (EAs) and environmental impact statements (EISs), which provide public officials with relevant information and allow a “hard look” at the potential environmental consequences of each proposed project.<sup>10</sup>

NEPA's main tools for achieving these goals lie within the EA and EIS requirements of environmental review process. Whereas the purpose of an EA is to determine the significance of the environmental effects and to look at alternative means to achieve the agency's objectives,<sup>11</sup> preparation of an EIS is required for all “major Federal actions significantly affecting the human environment.”<sup>12</sup> While an EIS contains a more in-depth analysis, both EAs and EISs must at least contain identification of all feasible alternatives, including the proposed action, and a “hard look” analysis of their corresponding environmental impacts both direct and indirect.<sup>13</sup>

This is one of the largest infrastructure projects for Monroe County in recent history, which is dependent on numerous crossings of highly sensitive special protection waters – waters that provide not only ecological benefits but recreational tourism benefits to the community. The I-80 EA fails to take the requisite hard look at the impacts of the Project on water resources and therefore erroneously concludes that an EIS is not required.

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<sup>6</sup> 42 U.S.C. §§ 4321, *et. seq.*

<sup>7</sup> 42 U.S.C. § 4331; *see also* Congressional White Paper, 19<sup>th</sup> Cong., Congressional White Paper on a National Policy for the Environment (1968); *Robertson*, 490 U.S. at 348 (“Section 101 of NEPA declares a broad national commitment to protecting and promoting environmental quality.”).

<sup>8</sup> 42 U.S.C. § 4331.

<sup>9</sup> *See Robertson*, 490 U.S. at 349 (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 409 (1976)); *Weinberger*, 454 U.S. at 143.

<sup>10</sup> CEQ, National Environmental Policy Act “Welcome” page, <https://ceq.doe.gov/> (last visited Nov. 27, 2019).

<sup>11</sup> 40 C.F.R. §§ 1501.4(b)-(c).

<sup>12</sup> 42 U.S.C. § 4332(C).

<sup>13</sup> *See* 43 C.F.R. § 46.310 (EA Requirements); 40 C.F.R §§ 1502.14, 1502.16 (EIS Requirements).

The Project involves 3.5 miles of full roadway reconstruction, widening, and interchange reconfiguration for a heavily-traveled stretch of Interstate 80 along Stroud Township and the Boroughs of Stroudsburg and East Stroudsburg.<sup>14</sup> The I-80 EA describes two options (Built Alternative 2B and Build Alternative 2D) in addition to the standard no-build option, but preliminarily recommends Build Alternative 2D as the preferred alternative.<sup>15</sup> The I-80 EA concludes that the Build Alternative 2D would have “fewer impacts on the natural and built environment” as compared to the other alternatives, including, as is relevant to these comments, “less stream, floodway, and floodplain impacts” and “less impacts on wetlands.”<sup>16</sup> To be sure, however, the Project is no small undertaking and will have a significant impact not only on the natural environment, but also on the communities and residents along this section of I-80.

The preferred Build Alternative 2D would replace four main surface water crossings, impacting, among others, Pocono Creek, McMichael Creek, and Brodhead Creek, and improve or replace several of the smaller stream crossing structures.<sup>17</sup> To be clear, this means that new bridge structures will be built in these HQ waters.<sup>18</sup> The Agencies also engaged in refinement of the design of preferred Build Alternative 2D, and identified additional water resource impacts that were not considered in the initial analysis.<sup>19</sup> In fact, the I-80 EA states that the increased impacts to water resources is one of “[t]he main adverse impacts” of the proposed design refinements to Build Alternative 2D.<sup>20</sup> In total, the I-80 EA summarizes that preferred Build Alternative 2D for this massive construction project would result in impacts to a total of:

- 11,022 linear feet of primarily HQ streams<sup>21</sup>
- 2,144 linear feet of Class A Wild Trout Stream<sup>22</sup>
- 29.9 acres of 100-year floodplains<sup>23</sup>
- 14.7 acres of floodways<sup>24</sup>
- 1.57 acres of EV wetlands<sup>25</sup>

The preferred Build Alternative 2D will also result in impact to 65.2 acres of woodlands,<sup>26</sup> which have an indirect, and in many cases a direct, influence on the water quality

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<sup>14</sup> FHA and PennDOT, Interstate 0080 Section 17M I-80 Reconstruction Project Environmental Assessment (MPMS 76357, Oct. 2019), at 1-3, available at <http://www.i80project.com/environmental-assessment-ea/> (“I-80 Environmental Assessment”).

<sup>15</sup> See *id.* at 1, 81.

<sup>16</sup> *Id.* at 81.

<sup>17</sup> I-80 Environmental Assessment, at 59.

<sup>18</sup> *Id.*

<sup>19</sup> See, generally, *Id.* Section 5.

<sup>20</sup> *Id.* at 90.

<sup>21</sup> *Id.* at Table 20.

<sup>22</sup> *Id.* at Table 11. Note that Class A Wild Trout Streams qualify as HQ waters under 25 Pa. Code § 93.4b(a)(2)(ii).

<sup>23</sup> *Id.* at Table 20.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 83.

of streams and wetlands. The I-80 EA, however, seems to gloss over these significant impact to critical water resources.

As is relevant to the focus of these comments, Section 3.14 of the I-80 EA discusses the impacts of the Project on water resources. The Project will impact 16 streams – including 10 High Quality (HQ) waters.<sup>27</sup> All of these 16 streams contain both stocked and naturally reproducing trout, and 6 are classified by the Pennsylvania Fish and Boat Commission (“PFBC”) as Class A wild brown trout streams.<sup>28</sup> Moreover, all of the wetlands surrounding these streams are considered Exceptional Value (“EV”) wetlands.<sup>29</sup>

The classification of the majority of these impacted waters as “special protection waters” under the Pennsylvania Clean Streams Law and the Pennsylvania Department of Environmental Protection (“PADEP”) regulations must not be overlooked in the environmental assessment. Special Protection Waters include both HQ and EV waters, both of which are recognized as the most important waters of the Commonwealth (with EV being the most exceptional, as the name implies). Because of their outstanding water quality, special protection waters are afforded the most stringent protections under Pennsylvania law. For example, the outstanding water quality of EV waters cannot be degraded under any circumstances.<sup>30</sup> The water quality of HQ waters (including Class A Wild Trout Streams<sup>31</sup>) may only be lowered in limited circumstances where it is proven that the degradation is necessary for some important economic or social development but only if the existing use is maintained and protected.<sup>32</sup> For EV wetlands, there are significant restrictions on the ability to build in or impact the wetlands and the applicant must affirmative prove that its project meets all the stringent standards.<sup>33</sup>

The I-80 EA fails to account for the extremely sensitive nature of the special protection and trout waters that will be impacted by the Project. The water quality of HQ streams and EV wetlands is the best in the Commonwealth and, consequently, degradation of any kind is not allowed or severely restricted. The I-80 EA provides no consideration or analysis based on the outstanding water quality of these water resources, to which even the slightest adverse impact could result in a significant adverse impact. Moreover, there seems to be no accounting for the cumulative impacts that the Project will have on the water quality of the streams and wetlands downstream of the Project, including the long-term effects of temporary construction impacts on wild trout population health.<sup>34</sup>

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<sup>27</sup> *Id.* at Table 9; *id.* at 88-89.

<sup>28</sup> *Id.* at Table 9; *id.* at 88-89.

<sup>29</sup> *Id.* at 58 (under 25 Pa. Code § 105.17(1)(iii), wetlands that are in or adjacent to naturally reproducing trout streams are considered EV wetlands).

<sup>30</sup> 25 Pa. Code § 93.4a(d).

<sup>31</sup> 25 Pa. Code § 93.4b(a)(2)(ii) (Class A wild trout stream qualifier for HQ waters).

<sup>32</sup> 25 Pa. Code §§ 93.4a(c), 93.4c(b)(1)(iii).

<sup>33</sup> 25 Pa. Code § 105.18a(a).

<sup>34</sup> The I-80 EA uses the Lower McMichael Creek and Lower Pocono Creek subwatersheds as the research study area (RSA) for analyzing the cumulative impact of the Project on water resources. See I-80 Environmental Assessment, Section 3.18. This level of study fails to account for the Project’s impacts on downstream HQ and/or EV waters and trout habitat and populations.

In conclusion, due to the significant impacts of the Project on special protection water resources, the Agencies must undertake a full EIS.

### **Any Stream or Wetlands Mitigation Must Be Located within the Brodhead Watershed**

The I-80 EA proposes that any necessary stream or wetlands mitigation required as a result of the Project's impacts must necessarily occur outside of the Brodhead Creek watershed.<sup>35</sup> This is simply unacceptable. The Agencies must apply the "watershed approach" to wetlands and stream mitigation, using the Brodhead Watershed as the appropriate scope.

It may be that the immediate Project impact area and corridor may prove limiting in the availability of suitable mitigation sites.<sup>36</sup> However, the Agencies' conclusion that its project team should consider potential offsite stream and wetland mitigation sites within the *Delaware River watershed* is highly inappropriate. The Agencies should choose "mitigation sites that best fit with the mitigation goals of the project *and its contributing basin.*"<sup>37</sup> Although there are parts of the Brodhead Watershed that are highly urbanized and industrialized, such as along the I-80 corridor, there are many other areas that are more natural landscapes and ecosystems.

The Agency staff must limit their review of potential offsite stream mitigation sites to locations within the Brodhead Creek Watershed. This would allow not only the ecology of the Brodhead watershed to benefit from mitigation of destruction of wetlands and surface waters, but would also provide the necessary benefit for the community members who have been negatively impacted by the Project.<sup>38</sup> Finally, any proposed mitigation should be done in consultation with the community and those conservation organizations who are the true experts on the waters of the Brodhead Watershed, including but not limited to Brodhead Watershed Association and the Brodhead Chapter of Trout Unlimited.

### **Construction Windows Must Be Imposed for Water Adjacent Construction Projects to Protect Trout Populations**

All of the impacted streams support trout populations. According to the I-80 EA, construction windows will be imposed for all in-stream work in order to protect trout populations, the time and duration of which is dependent on the classification of the stream

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<sup>35</sup> See *id.* at 62.

<sup>36</sup> See *id.* at 62.

<sup>37</sup> Hruby, T., K. Harper, and S. Stanley, Selecting Wetlands Mitigation Sites Using a Watershed Approach (Wash. Dept. of Ecology Publication #09-06-032) (Dec. 2009), at 1 (emphasis added), available at <https://fortress.wa.gov/ecy/publications/documents/0906032.pdf>.

<sup>38</sup> Although we do not think it likely given the size of the Brodhead Watershed, should the Agency staff need to look outside of the immediate watershed, they should be limited to consideration of adjacent watersheds.

(i.e., stocked trout, naturally reproducing trout, or Class A Wild Trout).<sup>39</sup> These limitations on in-stream construction work are critical to the health of the trout populations (which, in turn, supports the area's fly-fishing tourism industry), and must be imposed. Given that almost all of the impacted streams have been identified as having one or more PFBC trout stream classifications (e.g., "stocked trout and natural reproduction of trout"),<sup>40</sup> it must be made clear that the appropriate construction windows will be imposed, even if that means that multiple construction restrictions will be imposed on the same stream. For example, in some cases *both* the March 1 – June 15 and the October 1 – December 31 (or April 1) construction restrictions must be imposed for a particular stream.<sup>41</sup>

As is discussed above and recognized in the I-80 EA, even construction that takes place adjacent to or in close proximity to surface waters can have direct and indirect impacts.<sup>42</sup> Consequently, these construction windows must be imposed upon all construction activities that take place adjacent to or in close proximity to the streams or that will otherwise have the potential to impact the water quality of the streams in order to fully protect the health of these important trout waters.

### **Development of Stormwater Basins along I-80 Does Not Negate the Significant Impacts to the Water Resources the Project Will Cause**

The I-80 EA states that "PennDOT will develop and implement an approved Post-Construction Stormwater Management ["PCSM"] Plan for the project to protect water resources."<sup>43</sup> The goal of this stormwater management will be that "[t]he quality and quantity of stormwater runoff will be managed through the use of preventative non-structural BMPs where possible through mitigation using structural BMPs, such as the proposed basins and establishment of buffers."<sup>44</sup> We recognize that there is currently no such stormwater management for I-80 and that the establishment of such controls will likely be a benefit for the special protection waters in the vicinity of the Project. However, the I-80 EA must not consider these post-construction stormwater controls to in any way negate or diminish the significance of the impacts the Project will have on the special protection waters along I-80. Indeed, construction of the propose basins may result in some adverse impacts to the surface waters they are meant to ultimately help protect. The I-80 EA fails to take a hard look at the potential impacts on water resources from the construction of stormwater mitigation measures.

Finally, in developing its PCSM Plan, PennDOT must incorporate the use of green stormwater infrastructure ("GSI") to the fullest extent. The benefits of GSI cannot be overstated:

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<sup>39</sup> I-80 Environmental Assessment, at 61.

<sup>40</sup> *See id.* at Table 9.

<sup>41</sup> The I-80 EA does state in Table 20 that "In summary, instream work is permitted July 1 – Sept 30." *Id.* at 92.

<sup>42</sup> I-80 Environmental Assessment, at 60 (impacts from the widening of I-80 and associated facilities, for example, will "impact[] surface waters that run parallel and in close proximity to the roadway").

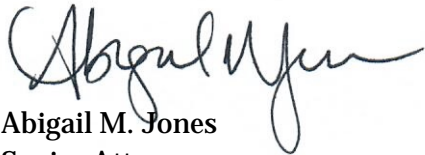
<sup>43</sup> *Id.* at 62.

<sup>44</sup> *Id.*

[GSI] is a nature-based solution to water quality issues that urban stormwater runoff causes and provides greater benefits than conventional (or “Gray”) stormwater solutions. GSI combines economic and environmental sustainability, adaptability, resiliency, and social equity. GSI is defined as soil-water-plant systems that intercept stormwater, infiltrate a portion of it into the ground, evaporate a portion of it into the air, and in some cases release a portion of it slowly back into the sewer system. In addition to better stormwater management practices and improved water quality, GSI provides benefits such as beautified communities, improved public health, creation of ecological habitat, and enhanced local economic vitality.<sup>45</sup>

Use of GSI for the Project must not be an afterthought or only an option if such measures are economically practicable, must be the standard for the PCSM design.

Respectfully submitted,



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<sup>45</sup> PennFuture, “What is Green Stormwater Infrastructure,” <https://pennfuture.org/what-is-green-stormwater-infrastructure>.