May 25, 2023

The Honorable Kevin McCarthy
Speaker
United States House of Representatives
Washington, D.C. 20515

The Honorable Hakeem Jeffries
Minority Leader
United States House of Representatives
Washington, D.C. 20515

AGC KEY VOTE: VOTE “YES” ON S.J. RES. 24

Dear Speaker McCarthy and Minority Leader Jeffries,

On behalf of the Associated General Contractors of America (AGC) –representing over 27,000 construction firms in every state – I urge you and your colleagues to vote “YES” on the S.J. Res. 24 providing for congressional disapproval of the U.S. Fish & Wildlife Service (Service) rule establishing endangered species status for the northern long-eared bat (NLEB). AGC will record this vote as a KEY VOTE for the education of its members.

The successful management of threatened and endangered wildlife and plants within the scope of a project is of great importance to the construction industry. AGC members perform many construction activities on land and water, which range from large infrastructure projects that require a breadth of lengthy environmental reviews to small projects that may be covered, in part or in full, by general permits. Even small projects (e.g., that disturb as little as one acre of land) must consider the impact of the construction activities on ESA-listed species and the habitat of listed species.

The ESA contemplates different protections for endangered species and threatened species. These tiered protections help enable the Service to prioritize its resources on endangered species and allow the construction industry to plan projects accordingly. However, there must be a sufficient and comprehensive justification to uplist a species from threatened to endangered status. In the case of the NLEB, the Service fails to demonstrate that there has been a significant change of circumstances between the 2015 rule listing the NLEB as threatened and the final rule uplisting it to endangered. The disease rates upon which the 2015 threatened designation relied remain unchanged. The Service even acknowledges there are “no proven measures to reduce the severity” of the disease rates.1

The result of this insufficient uplisting decision leaves hosts of infrastructure projects in regulatory purgatory awaiting re-dos of ESA consultations that will delay project delivery. As the Service admits, numerous federal agencies will need to reinitiate consultation,” because many of the 24,480 projects reviewed over the last three years are not complete. To date, the Service is only aware of 3,095 projects that it will need to provide an incidental take statement (ITS) where it did not previously.2 And, the Service fails to consider the impacts of possible litigation resulting from consultation re-dos that could further delay project delivery and even jeopardize projects moving forward at all.

At a time of historic federal construction investment, the Administration risks the timely delivery of projects that will help better connect communities to transportation, broadband, and clean drinking water, help the nation become energy independent, and increase production of domestically made semiconductor chips to ensure our national security. Consequently, AGC urges Congress to help right the ship and urges all representatives to vote “YES” on the S.J. 24.

Sincerely,

James V. Christianson
Vice President, Government Relations

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