127 Hagen Road
San Felipe Pueblo, NM 87001



Phone: (505) 867-3381/3382
Fax: (505) 867-3383

Office of the Governor

November 5, 2026

The Honorable Charles E. Schumer
Democratic Leader
United States Senate
Washington, D.C. 20510

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

RE: Opposition to S. 5653, the Bipartisan American Affordability and Jobs Act of 2026

Dear Leader Schumer and Leader Jeffries:

On behalf of the Pueblo of San Felipe, we write to oppose S. 5653, the Bipartisan American Affordability and Jobs Act of 2026, as it is written. The Senate is expected to begin procedural votes on the bill as soon as Members return next week. We ask that you not let it move, on its own or inside a year-end package, until the rewrite of the National Historic Preservation Act comes out and the damage the bill does to Tribal consultation, judicial review, and Tribal water authority is fixed. On November 4, San Felipe joined Tribal Nations, Indigenous-led organizations, and conservation groups from across the country in an open letter to Congress opposing S. 5653. We write separately so you hear from us directly about what this bill means for our Pueblo. We should not have to give up these protections to build a power grid, transmission lines, or clean energy. S. 5653 trades away foundational protections for speed and calls it modernization.

The timing matters. Voters just gave the Democrats Senate and House majorities in a truly historical mid-term election. In January you will have the leverage to fix this bill through regular order, with hearings, amendments, and a chance for Tribes to be heard. Some supporters call this deal a bird in the hand. For Tribes, a weaker Section 106 and no court remedies is a loss that would

be very hard to undo. Representative Huffman, who is in line to chair the Natural Resources Committee, has said the bill should go through regular order. Representative Stansbury, the champion of San Felipe's legislation to protect the Ball Ranch and Espinosa Ridge area, and Representative Adelita Grijalva have already opposed the bill's changes to the National Historic Preservation Act. We stand with them. Your position will shape how much Democratic support this bill gets. We ask that you use it to send S. 5653 to the new Congress.

San Felipe is a Keres Pueblo on the Rio Grande in Sandoval County, New Mexico. Our people have been here for centuries. The places that matter most to us do not stop at the Pueblo's boundary. Many of them sit on federal land, across the Greater Chaco landscape and the public lands the Bureau of Land Management manages around us. We do not own those places and we cannot fence them. What we have is the law. The National Environmental Policy Act, Section 106 of the National Historic Preservation Act, the Clean Water Act, and the Endangered Species Act are how a Pueblo gets a seat at the table before a federal agency approves a project that could destroy something that cannot be replaced. S. 5653 weakens every one of them.

Section 106 is the leg we stand on

For San Felipe, Section 106 is not one argument among many. It is the basis of our engagement on Greater Chaco and Public Land Order 7923. It is central to our work to protect the Ball Ranch and Espinosa Ridge area, where we obtained a Solicitor's Opinion from the Department of the Interior - M-37082 - that for the first time formally recognizes paleontological resources as potential cultural patrimony of the Pueblo. None of that work is possible without a consultation requirement an agency has to honor. Title III of S. 5653, and Section 2301 in particular, rebuilds Section 106 so that an agency can satisfy its obligation to a Tribe by sending a report and waiting thirty days.

The bill makes consultation optional at the most important stage. An agency "may consult" with Tribes when it draws the area of potential effects and identifies historic properties. Those two decisions control everything that follows. If a place is never identified, it is never protected, and an agency cannot know where our places are without asking us. The agency would also get more room to decide adverse effects on its own.

The bill also puts Tribes on a thirty-day clock. If a Tribe does not respond in time, the agency moves on and does not have to revisit what it already decided. That is not how Pueblo government works. Decisions about sharing cultural information involve the Governor, the Tribal Council, and our traditional religious leaders. Some information can only be discussed at certain times of the year and by certain people. Our ceremonial calendar does not move for a federal deadline. The agencies, meanwhile, get months to do their part.

The bill writes a narrow test into law for what counts as a place of traditional religious or cultural importance. The place must be tied to a location "at which an event" of continuing significance occurred. That may work for a battlefield. It does not work for places our people have used continuously for centuries, or for a landscape like Chaco, whose meaning cannot be reduced to a single event. Sacred mountains, rivers, springs, burial grounds, and cultural landscapes could fall outside this test if their significance is not tied to a particular event. The federal government cannot define what is sacred to Indigenous people, and a statutory test lets agencies decide which of our places count. With no savings clause, we do not know what happens to places that are already recognized. Chaco Canyon, Bears Ears, Mauna Kea, Haleakalā, Mount Graham, and Bear Butte

all show why a sacred place cannot be reduced to one event or one feature. The bill also limits review of visual, atmospheric, audible, and cumulative effects. Our sacred places are landscapes. A shrine, the view from it, the quiet around it, and the trail that leads to it are one place, not four. And a federal official could decide, in that official's sole discretion, that other considerations outweigh preservation and skip mitigation entirely.

Title III also puts Tribal Historic Preservation Offices under federal evaluation at least every two years and directs the Secretary of the Interior to take over a THPO's functions if deficiencies are not resolved. Our THPO is a small office answering requests from several agencies at once, and consultation delays very often start with the agency, not the Tribe. Funding can be suspended for a program found deficient. Tribal and preservation organizations have warned that this gives the federal government a tool to displace Tribal preservation officers. We agree. A federal takeover of a Tribal government function is not consistent with self-determination or the trust responsibility. It should come out of the bill. Section 2302 also funds databases of culturally significant properties. Any such database must stay under Tribal control, with information shared only with the Tribe's consent. Our knowledge of where sacred places are is not public information.

Taken together, these changes are a direct affront to the government-to-government relationship, the trust responsibility, and Tribal sovereignty. Fast-tracking Section 106 may serve project developers. It does not serve Tribal Nations or the American people.

Winning in court has to mean something

Section 1110 cuts the time to challenge a NEPA decision from six years to 150 days, sends cases straight to the courts of appeals, and requires courts to give agencies substantial deference. A Tribe could only sue if it filed comments detailed enough to put the agency on notice of the exact issue, and only if it can show direct, actual, or imminent harm. Worse, it takes away a court's ability to vacate an unlawful approval or stop a project over a NEPA violation. The only remedy is a remand to the agency to fix its work within 180 days, while the project keeps going. Preliminary injunctions stay available for violations of other laws, but not for NEPA alone. Tribes have seen how that ends. The Standing Rock Sioux Tribe won in court on the Dakota Access Pipeline, and the oil kept flowing. The fight over Line 5 in Michigan tells the same story. When a sacred site is bulldozed while an agency corrects its paperwork, there is nothing left to remand.

NEPA has been called the Magna Carta of environmental law. It requires agencies to look at the harm a project could do and consider other options before deciding, while there is still time to avoid that harm.

The bill also narrows what counts as a major federal action and widens the list of projects that skip review altogether, including pipeline and transmission work inside existing rights-of-way, repairs that add up to 20 percent more capacity, administrative actions under $10 million, and Army Corps of Engineers projects with a federal share under $50 million. It also gives more weight to the project sponsor's goals in deciding which alternatives an agency even has to consider. Pipelines, power lines, and roads already cross our ancestral lands. An existing right-of-way is not empty of cultural resources. If the work is excluded from review, no one has to look, and the agency and the applicant have no reason to find and fix the risks.

The Rio Grande

The Rio Grande runs through San Felipe. It is our water, our farmland, and central to our way of life. Sections 1202 and 1203 narrow the authority of states and eligible Tribes under Section 401 of the Clean Water Act require them to prove potential water quality impacts, and limit any conditions to those least burdensome to the project applicant. A Tribe could identify a real threat to drinking water or fish and still face new legal hurdles to stopping it. Section 1204 doubles the life of nationwide dredge-and-fill permits to ten years, a long time on a river already strained by drought, limits Endangered Species Act and NHPA consultation on those permits, and restricts EPA's authority under Section 404(c) to block disposal sites that would cause unacceptable harm to water, fisheries, or wildlife. The bill would also let states take over Endangered Species Act consultation from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, and exempts some infrastructure work. State agencies may not have the expertise, funding, or independence to do that job. Once critical habitat is gone or a species is pushed toward extinction, no permit review can bring it back. These changes push the risk downstream, onto communities like ours.

We are not against building

San Felipe wants faster permitting too. Our community needs housing, infrastructure, broadband, and energy as much as anyone. But faster permitting and real consultation are not in conflict. The fastest way to permit a project is to talk with the Tribe at the start, before routes are drawn and money is committed. The delays these laws get blamed for usually come from understaffed agencies, incomplete applications, and consultation that started too late, not consultation that went on too long. S. 5653 fixes none of that. It takes away the tools Tribes use to protect what cannot be replaced. Communities already carrying the costs of pollution and development would have even less recourse. Permitting success cannot be measured only in time saved for applicants and agencies. It has to be measured by whether our water, our sacred places, and our communities are still protected.

Our requests

First, we ask that you not allow S. 5653 to come to the floor or be attached to any year-end vehicle in its current form, and that you oppose cloture if it does. A rewrite of the country's bedrock environmental and historic preservation laws should not be settled in a lame-duck session. It should be taken up in the 120th Congress through regular order, with hearings in the committees of jurisdiction.

Second, if permitting legislation moves, Title III's rewrite of Section 106 has to come out, and the Tribal amendments put forward by the Native American Rights Fund, the National Congress of American Indians, and the USET Sovereignty Protection Fund should be adopted.

Third, any bill must keep the ability of courts to halt a project when a Tribal sacred site faces irreparable harm, and must leave Tribal authority under Section 401 of the Clean Water Act intact. And Congress should hear directly from Tribes before it acts.

We have raised our concerns directly with Senator Heinrich, who has stood with New Mexico's Pueblos for many years and who fought to keep a role for Tribes in this bill. Our disagreement is with the text, not with him. We would welcome the chance to meet with your staff. Thank you for your leadership.

Sincerely,

Governor Mark A. Calabaza
Pueblo of San Felipe

Lt. Governor Thaddeus Garcia
Pueblo of San Felipe

cc: Senator Martin Heinrich
Senator Ben Ray Luján
Representative Teresa Leger Fernández
Representative Melanie Stansbury
Representative Gabe Vasquez
Senator Mike Lee
Senator Shelley Moore Capito
Senator Sheldon Whitehouse
Congressman Jared Huffman