



Obama Energy Policies: Myth vs. Fact

Oversight hearing on Obama Administration Energy policy

“Rhetoric vs. Reality: Does President Obama Really Support an ‘All-of-the-Above’ Energy Strategy?”

May 31, 2012 – 9:30 a.m.

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An “all-of-the-above” energy strategy is a plan that entails maximizing all available sources of domestic energy, whether it is generated from renewable or traditional sources. In his 2012 State of the Union Address, President Obama declared, “This country needs an all-out, all-of-the-above strategy that develops every available source of American energy.”¹ Yet in 2010, President Obama declared quite different intentions, stating that, “One of my top priorities next year is to have an energy policy that begins to address all facets of our overreliance on fossil fuels. We may end up having to do it in chunks, as opposed to some sort of comprehensive omnibus legislation.”² (emphasis added). Consistent with his 2010 statement, his Administration has taken several actions that would hinder the production and use of oil, natural gas, and coal as energy sources, thus casting doubt on whether the President has truly embraced an all-of-the-above strategy. This document outlines common myths and provides important details omitted by the president.

1) Myth v. Fact: How Obama’s Rhetoric on Oil Production Distorts Reality

- a) **MYTH:** The President frequently states that the U.S. only has 2% of the world’s oil reserves. *“The United States consumes more than 20 percent of the world’s oil, but we only have 2 percent of the world’s oil reserves – 20 percent we use; we only produce*

¹ Press Release, *Remarks by the President in State of the Union Address*, The White House, Jan. 24, 2012, available at <http://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address>.

² Barack Obama, President of the United States, Interview in Rolling Stone Magazine (Sept. 28, 2010) available at <http://www.rollingstone.com/politics/news/obama-in-command-br-the-rolling-stone-interview-20100928?page=5>.

2 percent.”³ **This statement dramatically misrepresents the amount of oil resources within the U.S.**

FACT: The United States has the potential to produce trillions of barrels of oil, far larger than President Obama’s stated 2% of world oil reserves.

- i) According to the Institute for Energy Research, the U.S. has 1.4 trillion barrels of technically recoverable oil, enough to meet U.S. demand for oil for the next 200 years, without imports.⁴ This amount of oil is approximately five times the proven reserves of Saudi Arabia.
- ii) **The term “proven reserves” counts only oil that companies are currently drilling for in existing fields.**⁵ Examples of notable countries’ proven oil reserves: Saudi Arabia (262 billion barrels), Canada (175 billion barrels), Iran (137 billion barrels), Iraq (115 billion barrels), Kuwait (104 billion barrels), Russia (60 billion barrels), China (14 billion barrels), Mexico (10.4 billion barrels).⁶
- iii) **President Obama’s 2% claim does not include potential oil producing regions where regulatory barriers prevent the recovery of oil.**

(1) For example, billions of barrels of oil are known to exist in the Arctic National Wildlife Refuge (ANWR) and are not included President Obama’s numbers. According to U.S. Geological Survey (USGS), 12 billion barrels of oil exist in ANWR and 2 billion barrels of oil exist in Alaska’s North Slope.

(2) According to U.S. Department of the Interior’s (DOI) Bureau of Ocean Energy Management (BOEM), 86 billion barrels of oil exist in the Outer Continental Shelf.

FACT: President Obama’s 2% myth does not include regions that can now produce oil given technological advancements and economic factors.

- iv) Proven oil reserves traditionally are based on conventional resources.⁷ *The United States does not currently include unconventional plays in our count of proven reserves.*⁸ However, oil production increases in the United States have occurred through unconventional oil resources and technology (mostly shale gas).

³ Press Release, *Remarks by the President on American Energy*, The White House, Mar. 1, 2012 available at <http://www.whitehouse.gov/the-press-office/2012/03/01/remarks-president-american-energy>.

⁴ <http://energyforamerica.org/wp-content/uploads/2012/01/Energy-InventoryFINAL.pdf>

⁵ John Merline, *Scarce Oil: ? U.S. Has 60 Times More than Obama Claims*, Investor’s Business Daily, Mar. 14, 2012, available at <http://news.investors.com/article/604303/201203141303/oil-abundant-in-the-united-states.htm>.

⁶ The World Factbook, Country Comparison: Oil-Proved Reserves, U.S. Central Intelligence Agency, available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2178rank.html>.

⁷ Exposing the 2 Percent Oil Reserves Myth, Institute for Energy Research, available at <http://www.instituteforenergyresearch.org/2012/03/13/exposing-the-2-percent-oil-reserves-myth>.

⁸ Exposing the 2 Percent Oil Reserves Myth, Institute for Energy Research, available at <http://www.instituteforenergyresearch.org/2012/03/13/exposing-the-2-percent-oil-reserves-myth>.

- v) The amount of proven oil reserves change with increased exploration and technology. For example, hydraulic fracturing and horizontal drilling have opened vast tracts of land to oil and gas production in the Bakken Shale (North Dakota), Eagle Ford Shale (Texas), Marcellus Shale (Pennsylvania), and other plays.⁹
- vi) The U.S. has an estimated 6 trillion barrels of oil shale (not all of which is currently recoverable), which is becoming more economical to produce due to technological advancements.¹⁰ Oil shale is released from sedimentary rock after it's heated.

b) MYTH: Obama claims credit for increasing oil production: “So when it comes to oil production, under my administration, America is producing more oil today than at any time in the last eight years. That is a fact. That’s a fact.”¹¹

FACT: In reality – the dramatic increases in production are taking place on private lands, despite Administration policies that have obstructed production on federal lands.

- i) The Congressional Research Service reported that **96 percent** of the increase in U.S. oil production since 2007 has **occurred in non-federal lands.**¹²

- (1) In fact, North Dakota produces 546,050 barrels per day as of January 2012, more oil produced per day than the country of Ecuador, an OPEC member nation.¹³ Most production from the Bakken shale is on private land that does not require federal lease sales and has a different regulatory regime with which to comply.¹⁴

- ii) **According to EIA, total crude oil sales from Federal and Indian lands has remained stagnant between 2009 and 2011.**

- iii) Sales of crude oil from offshore federal leases in 2011 are below both 2009 and 2010 levels.¹⁵

- iv) President Obama has often relied upon a comparison between 2011 and 2008 data (where there is an increase in production from federal lands) to show that his administration is responsible for the increased production. However, this comparison

⁹ Selam Gebrekidan, *Shale Boom Turns North Dakota Into No. 3 Oil Producer*, Reuters, Mar. 8, 2012, available at <http://www.reuters.com/article/2012/03/08/us-oil-output-bakken-idUSBRE82714V20120308>.

¹⁰ Fact Sheet: U.S. Oil Shale Resources, Department of Energy Office of Petroleum Reserves, available at http://fossil.energy.gov/programs/reserves/npr/Oil_Shale_Resource_Fact_Sheet.pdf.

¹¹ Press Release, *Remarks by the President on American Energy*, The White House, Mar. 1, 2012 available at <http://www.whitehouse.gov/the-press-office/2012/03/01/remarks-president-american-energy>.

¹² Marc Humphries, U.S. Crude Oil Production in Federal and Non-Federal Areas, Congressional Research Service, March 20, 2012, available at <http://www.crs.gov/pages/Reports.aspx?PRODCODE=R42432&Source=search>.

¹³ Selam Gebrekidan, *Shale Boom Turns North Dakota Into No. 3 Oil Producer*, Reuters, Mar. 8, 2012, available at <http://www.reuters.com/article/2012/03/08/us-oil-output-bakken-idUSBRE82714V20120308>.

¹⁴ National Atlas of the United States, *Federal Lands and Indian Reservations, North Dakota*, available at <http://www.nationalatlas.gov/printable/images/pdf/fedlands/ND.pdf>.

¹⁵ U.S. Energy Information Administration, *Sales of Fossil Fuels Produced from Federal and Indian Lands, FY 2003 through FY 2011*, March 2012, at 2-3.

fails to reflect the actuality that oil production on federal lands shows a decreasing trend.

- (1) According to Bureau of Land Management (BLM) data, **the number of new federal oil and gas leases issued by BLM is down 44%, from an average of 1,874 leases in 2007-2008 to 1,053 in 2009-2010.**¹⁶
- (2) The number of new wells drilled on federal lands have declined by 39% from an average of 4,890 wells to 2,973.¹⁷
- v) According to the Institute for Energy Research (IER), **the Obama Administration has the lowest number of average annual leases since President Reagan. IER calculated that Obama has issued, on average, 1,856 leases per year as compared with 2,879 a year, under the George W. Bush Administration.**¹⁸
- vi) According to the Western Energy Alliance, **federal onshore permit approvals declined 42.7% in the Rockies and 39.3% across the United States since FY 2006.**¹⁹

FACT: The Obama Administration has closed off public lands to exploration and drilling that were available during the Bush Administration. When Obama took office, nearly all offshore lands were available for drilling and exploration. Since that time, the Administration has curtailed efforts to drill offshore in Alaska as well as off the coast of Virginia.

i) 97 % of Federal offshore areas are not leased and 94% of Federal onshore areas are not leased.

ii) In 2009, Secretary Salazar voided drilling leases on 77 parcels of public lands in Utah; he also pulled leases on eight parcels of land in Wyoming.²⁰ In March 2010, Obama's BLM suspended 61 leases in Montana in order to perform NEPA reviews.²¹

- c) **MYTH – To justify his Administration's failure to issue new leases, the President argues that oil companies are not developing the land they lease: "For example, right now, the (oil) industry holds leases on tens of millions of acres — both offshore and on land — where they aren't producing a thing."**²²

¹⁶ API, Employment, Government Revenue, and Energy Security Impacts of Current Federal Lands Policy in the Western U.S., Jan 2012.

¹⁷ *Id.*

¹⁸ Obama Administration Fast Tracks Renewables, Slows Oil and Gas, Institute for Energy Research, 2012, available at <http://www.instituteforenergyresearch.org/2012/05/21/obama-administration-fast-tracks-renewables-slows-oil-and-gas>.

¹⁹ Western Energy Alliance Dashboard, available at http://westernenergyalliance.org/wp-content/uploads/2011/08/dashboard_permitting.pdf (last visited Mar. 27, 2012).

²⁰ Juliet Eilperin, *Salazar Voids Drilling Leases on Public Lands in Utah*, Wash. Post, Feb. 5, 2009.

²¹ Phil Taylor, *BLM to Suspend 61 Leases in Mont. To Review Climate Impacts*, E&E, Mar. 18, 2010.

²² Sean Higgins, *Obama Blames Oil Companies For Lack of Drilling*, Investors Daily, Mar. 11, 2011.

FACT: Arguments that oil companies hold on to leases without producing on them are misleading. The Institute for Energy Research determined that a producer needs 60 total leases to make one discovery of oil.²³ Therefore, a producer will purchase more leases than are fit for production.

- i) The law requires that oil companies use the land they lease or surrender it back to the U.S. The Mineral Leasing Act requires that a company must have a producing well within 10 years or surrender the lease.²⁴ The Outer Continental Shelf Lands Act, regulating offshore production, requires that an oil company must produce energy between 5 to 10 years or surrender the lease.²⁵ Leases can be extended to allow for the continuation of exploration operations or production; therefore, reaching production can often take longer than the 10 year lease term.²⁶
- ii) Reaching the oil production phase on a Federal Onshore Lease on average takes longer than 10 years.²⁷
 - (1) **Discovery of oil on a lease typically does not occur until the 5th or 6th year of a lease** after exploration, contracting, and drilling are completed.²⁸
 - (2) After discovery, **it takes 5 to 6 years to drill, perform a National Environmental Policy Act (NEPA) analysis, and apply for permits before a facility with production wells can be built and the development phase begins.**²⁹ *Development typically does not begin until the 12th year of the lease.*
- d) **MYTH: Even though the President has vetoed the construction of the Keystone Pipeline, he has suggested that approval of the southern portion of the line will provide relief. He has brazenly claimed that “Under my Administration, we’ve added enough new oil and gas pipeline to encircle the Earth and then some.”**³⁰

FACT: The Keystone Pipeline is Key to Relieving the Price at the Pump

- i) The largest sources of increased North American oil production are in the *NORTH*: most notably, the Athabasca oil sands in Alberta, Canada, and the Bakken shale formation in North Dakota and Montana. Production in these regions is skyrocketing:

²³ Issue Focus: Oil and Gas Leasing on Federal Lands, Institute for Energy Research, 2008, available at <http://www.instituteforenergyresearch.org/2008/06/25/truth-about-ocs>.

²⁴ 30 U.S.C. §226(e).

²⁵ 43 U.S.C. §1337(b).

²⁶ Adam Vann, Energy Projects on Federal Lands: Leasing and Authorization, Congressional Research Service, Feb. 1, 2012.

²⁷ Producing Oil and Natural Gas – Not a “Just in Time” Business, Independent Petroleum Association of America (on file with author).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Joe Romm, *Obama’s Worst Speech Ever: “We’ve Added Enough New Oil and Gas Pipeline to Encircle the Earth”*, Think Progress, Mar. 22, 2012, available at <http://thinkprogress.org/climate/2012/03/22/450397/obama-worst-speech-ever-weve-added-enough-new-oil-and-gas-pipeline-to-encircle-the-earth/?mobile=nc>.

- (1) Canadian oil sands production is expected to **double to 3 million barrels** a day between 2010 and 2020.³¹
 - (2) **Domestic oil production will increase by as much as 20%** as drillers tap into large oil shale formations by successfully pairing the techniques of hydraulic fracturing and horizontal drilling.³²
- ii) However, the refineries capable of processing these heavier oils (from oil sands) are along the Gulf Coast in Texas and Louisiana.
- (1) **Therefore, the only way to capitalize on this enormous amount of domestic resources is to find a way to move this oil from the northern part of the continent to the Gulf.**

FACT: Due to inaction by the Obama Administration, on the southern line there is a bottleneck of oil just sitting at Cushing, Oklahoma.

- iii) Getting the oil from rig-to-refinery is a two step process: first, it is moved south to the central distribution hub in Cushing, Oklahoma. Second, it is moved from Cushing to the refineries in the Gulf region.
- (1) The second step in that process has totally broken down. Due to a lack of pipeline capacity, we cannot move this tremendous amount of oil to the refineries in the Gulf.
 - (2) As of March 16, 2012, the storage tanks in Cushing held **38.5 million barrels, valued at more than \$4.1 billion.**³³ **This is oil just sitting in the middle of Oklahoma, because we don't have the pipeline infrastructure to move it.**
 - (3) At the current rates, **the total storage capacity of 60 million barrels at Cushing** is going to be filled quickly. The oil traffic jam will only grow larger.
 - (a) There is more oil stuck in Cushing, due to the Obama Administration's refusal to issue permits for pipelines, than can be withdrawn from the Strategic Petroleum Reserve (SPR)!

FACT: President Obama's "fast-tracking" of the southern portion of the Keystone pipeline from Cushing to the Gulf Coast was all show and no substance.

- iv) The Cushing-to-Gulf leg of the pipeline does not even require a Presidential Permit for construction. It does not cross an international boundary.

³¹ Jeremy van Loon, *Canadian Oil-Sands Producers Considering Hong Kong Listings*, Bloomberg, Mar. 6, 2012, available at <http://mobile.bloomberg.com/news/2012-03-06/canadian-oil-sands-producers-considering-hong-kong-listings>.

³² Annual Energy Outlook 2012, U.S. Energy Information Agency, 2012, available at <http://www.eia.gov/forecasts/aeo/er/pdf/0383er%282012%29.pdf>.

³³ Adam Wilmoth, *Cushing, OK Stores More Than \$4.1 Billion in Oil*, The Oklahoman, March 25, 2012, available at <http://newsok.com/cushing-ok-stores-more-than-4.1-billion-in-oil/article/3660501>

2) Myth v. Fact: Despite Claims of Support, The Obama Administration Is Impeding Natural Gas

- a) Natural gas is the primary driver of the American “energy renaissance.” It is clean, cheap, and due to new technologies of hydraulic fracturing and horizontal drilling, incredibly abundant here in the United States.
 - i) A 2011 PricewaterhouseCoopers study estimates that high rates of shale gas recovery could result in **millions of new manufacturing jobs** by 2025.³⁴
 - ii) Robert McCutcheon, an analyst at PricewaterhouseCoopers, said in a statement that the revived natural gas industry “**has the potential to spark a manufacturing renaissance in the U.S., including billions in cost savings, a significant number of new jobs, and a greater investment in U.S. plants.**”³⁵
- b) **MYTH: The Administration claims it supports the domestic production of natural gas and the use of hydraulic fracturing.**
 - i) In his State of the Union address, President Obama claimed “my *administration will take every possible action to safely develop this energy.*”³⁶

FACT: The Administration continues to take regulatory action that will slow natural gas production and make it costlier to businesses and the public.

- ii) Federal agencies have pushed through new regulations that are *duplicative* or *unjustified*, and place an *enormous burden on production*.
 - iii) Federal officials, particularly at EPA, have lent credence to specious claims by anti-fossil fuel extremists that fracking endangers drinking water – *despite a mountain of evidence to the contrary.*³⁷
- c) **The Department of the Interior will begin regulating hydraulic fracturing through the BLM’s Proposed Regulations for Fracking on Federal Lands.**

³⁴ Jim Motavalli, *Natural gas Signals a ‘Manufacturing Renaissance’*, N.Y. Times, Apr. 11, 2012, available at <http://www.nytimes.com/2012/04/11/business/energy-environment/wider-availability-expands-uses-for-natural-gas.html>.

³⁵ Jim Motavalli, *Natural gas Signals a ‘Manufacturing Renaissance’*, N.Y. TIMES, Apr. 11, 2012.

³⁶ Press Release, *Remarks by the President in State of the Union Address*, The White House, Jan. 24, 2012, available at <http://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address>.

³⁷ See, in general: *Natural Gas Drilling: Pennsylvania’s Perspective*, The States’ Regulation of the Natural Gas Industry, Testimony of Michael L. Krancer, Secretary, Commonwealth of Pennsylvania, Department of Environmental Protection, Subcommittee on Water Resources and Environment, Committee on Transportation and Infrastructure, Wednesday, November 16, 2011, available at <http://republicans.transportation.house.gov/Media/file/TestimonyWater/2011-11-16-Krancer.pdf>.

- (1) BLM recently announced regulations governing hydraulic fracturing on federal and tribal lands. These rules require reporting **enormous amounts of information to BLM**, ranging from well construction data to chemicals used.
- (2) However, almost all of these requirements duplicate an intricate regulatory regime implemented by the individual states and by interstate agencies, such as the Ground Water Protection Council. State regulations are comprehensive, environmentally protective, and the result of intensive cooperation among all stakeholders - including state agencies, environmental groups, and industry.
- (3) **FACT: State agencies are the superior regulators.** They possess an enormous:
 - i. informational advantage *both* through experience and familiarity with their unique regional geology. Whereas state regulators conduct a well-by-well analysis, BLM issues blanket, ill-fitting regulations.
 - ii. resources advantage BLM does not possess anywhere near enough staff to handle the deluge of data the rule mandates. In one demonstration, state and BLM regulators were posed the same technical question on a particular well. BLM stated it would take three weeks to have the answer ready, whereas the state regulator responded in hours.
 - iii. responsiveness advantage fracking is developing at an exceptional pace. Regulations that are current one quarter are often antiquated in the next. State regulators are far more nimble and responsive than federal agencies that operate under notice-and-comment procedures.
- (4) The burden of these new regulations will push production from federal to private lands. **The real harm will be to taxpayers because less money will be paid to the treasury and Indian tribes who will be unable to utilize all the economic potential of their lands.**
 - ii) The broken National Environmental Policy Act (NEPA) permitting process and leasing program at BLM protracts the amount of time it takes for producers to get permits on federal land, increasing costs, and preventing producers from tapping into these federal resources.
 - (1) An exhaustive economic analysis conducted by Western Energy Alliance revealed that BLM draws out the permitting process for oil and gas projects, lasting anywhere from three to seven years. This process should reasonably take a year or two at most. The total annual cost of these delays are 3,164 wells left undrilled, 120,905 jobs not created, \$8 billion in unearned wages, \$27.5 billion in economic activity, and \$139 million in government revenue.³⁸

³⁸ Economic Impacts of Oil & Gas Development on Federal lands in the West, Western Energy Alliance, April 2012, available at <http://westernenergyalliance.org/wp-content/uploads/2012/05/Final-Combined-ES-Econ-Impacts-of-OG-Dev-on-Fed-Lands-in-the-West.pdf>.

d) The Environmental Protection Agency has greatly expanded its regulatory authority to further regulate the fossil fuel industry and has engaged in a campaign to generate fear of hydraulic fracturing.

- i) Proposed “Guidance” on Permitting for Hydraulic Fracturing that uses diesel fuels turns the Clean Water Act on its head and could impose more stringent guidelines than were originally intended by the law.
- ii) This past month, EPA issued a new “guidance document” instructing agency permit writers on how to regulate fracturing. This seemingly-sleepy guidance document **has the potential to have enormous and unexpected impacts on the industry and government regulation as a whole.**

- (1) The **Safe Drinking Water Act (SDWA)** was passed by Congress in 1974 to protect public health by regulating the nation’s public drinking water supply.
- (2) The Energy Policy Act of 2005 **explicitly exempted hydraulic fracturing from EPA regulation under the Safe Drinking Water Act**, unless diesel was a component of the fracturing fluid.
- (3) However, EPA’s new guidance document defines “diesel fuels” to cover an incredibly wide range of chemicals, including such diesel precursors as “petroleum distillates” and crude oil. This allows EPA to reach fracking fluid constituents that Congress clearly prohibited the agency from regulating.
- (4) Implementing the guidance will result in **significant delays in permitting and decreased production.** Unlike the BLM rule, which applies only to federal lands, EPA rules will apply *everywhere*.

iii) EPA Regulation of Emissions From Oil and Gas Wells

- (1) On April 17, 2012, EPA issued a final rule concerning emissions from oil and gas wells. The burden of the rules disproportionately falls on hydraulically fractured wells.
- (2) The rule is classic example of regulatory overreach: EPA is using the Clean Air Act to regulate the practice of hydraulic fracturing.

iv) EPA has engaged in a “shoot first” campaign against natural gas producers in an attempt to justify its regulatory agenda; however, there is no demonstrable scientific basis for the agency’s actions, despite extensive testing by EPA and state regulators.

- (1) **EPA’s “Crucify” Strategy:** EPA Region 6 Administrator Al Armendariz resigned after stating that his approach to enforcing regulations on hydraulic fracturing in oil and gas extracting was “like how the Romans used to conquer

villages in the Mediterranean – they’d find the first five guys they saw and they’d crucify them.”³⁹

- (2) **Range Resources:** In late 2010, responding to claims by residents in Parker County, Texas, that their drinking water was contaminated, the EPA immediately issued an emergency order against Range Resources for the contamination without sufficient scientific evidence.⁴⁰ Studies by both the Texas Railroad Commission and Range Resources determined that the water contamination was naturally occurring and not a result of hydraulic fracturing.⁴¹ EPA ultimately dropped its case against Range.⁴²
- (3) **Pavillion, Wyoming:** In late 2011, EPA claimed to discover hydraulic fracturing fluids in two deep water monitoring wells near a gas field in Pavillion, Wyoming, in areas where Encana Corporation has gas wells.⁴³ However, numerous groups have challenged the methods that EPA used to gather the water samples as well as the analytical methods employed by the agency.⁴⁴ Moreover, the criticism shows that EPA tested water from aquifers that are below those that contain drinking water. Due to this criticism, EPA has agreed to retest the water in Pavillion, WY.⁴⁵

3) Myth v. Fact: The Obama Administration Does Not Support Coal Use

- a) **MYTH:** The Obama Administration supports the use of clean coal as part of an “all-of-the-above” energy plan. This month, a campaign spokesman said that clean coal has “been an essential part of the president’s all-of-the-above energy strategy.”⁴⁶

FACT: The Obama Administration has waged a “war on coal” since coming into office, proposing a host of regulations that will cost enormous amounts of money, jobs, and electricity production. In fact, on the Obama campaign’s website, the

³⁹ John M. Broder, *EPA Official in Texas Quits Over ‘Crucify’ Video*, NY Times, May 1, 2012, available at <http://www.nytimes.com/2012/05/01/us/politics/epa-official-in-texas-resigns-over-crucify-comments.html>.

⁴⁰ Range Resources Imminent and Substantial Endangerment Order, Parker County, TX, available at <http://www.epa.gov/region6/region-6/tx/tx005.html>.

⁴¹ Barry Shlachter, *EPA Drops Action Against Range Resources Over Parker County Water Wells*, Star-Telegram, Mar. 31, 2012, available at <http://www.star-telegram.com/2012/03/30/3849362/epa-drops-action-against-range.html>.

⁴² *Id.*

⁴³ Jim Efstathiou Jr., *Gas-Fracking Chemicals Detected in Wyoming Aquifer, EPA Says*, Bloomberg, Dec. 8, 2011 available at <http://www.bloomberg.com/news/2011-12-08/gas-fracking-chemicals-detected-in-wyoming-aquifer-epa-says.html>.

⁴⁴ Stephanie Seay, *IPAA-funded Review Faults EPA Draft Report on Pavillion Contamination*, Platts, May 16, 2012, available at <http://www.platts.com/RSSFeedDetailedNews/RSSFeed/NaturalGas/6302700>.

⁴⁵ Tennille Tracy, *EPA to Retest Wyoming Water*, Wall St. J., Mar. 8, 2012, available at http://online.wsj.com/article/SB10001424052970204781804577269972329481962.html?mod=WSJ_topics_obama.

⁴⁶ Andrew Restuccia, *House Republicans, Romney Take Aim at Obama’s Stance on Coal Industry*, The Hill, May 20, 2012, available at <http://thehill.com/blogs/e2-wire/e2-wire/228455-gop-takes-aim-at-obamas-stance-on-coal>.

description of his “all-of-the-above” plan did not even mention coal—a heading on clean coal was only added after criticism of its absence was made.⁴⁷

i) Since the Obama Administration failed to pass cap-and-trade, it appears to be trying to increase the cost of using coal through regulation so that coal becomes economically unviable.⁴⁸

(1) The President has made statements indicating his support for ending or significantly curtailing the use of coal, and other fossil fuels, as an energy source. In 2008, as a candidate, President Obama said:

(a) “Under my plan of a cap-and-trade system, electricity rates would necessarily skyrocket. . . . Coal-powered plants, you know, natural gas, you name it, whatever the plants were, whatever the industry was, they would have to retrofit their operations. That will cost money.”⁴⁹ (emphasis added)

ii) The Environmental Protection Agency (EPA) has been busy promulgating a series of regulations aimed directly at coal that will increase the cost of America’s energy supply, while simultaneously decreasing its reliability. Some of the most significant are:

(1) Greenhouse Gas New Source Performance Standard (NSPS) for Electric Generating Units (EGUs) which ban future builds of coal-fired power plants.

(a) On March 27, 2012, EPA issued a proposed rule to limit greenhouse gas (GHG) emissions from U.S. coal-fired power plants. Specifically, the proposed rule would limit carbon dioxide (CO₂) emissions from new power plants to 1,000 pounds of CO₂ per megawatt hour. The average coal-fired power plant in the U.S. currently produces more than 1,700 pounds of CO₂ per megawatt hour.

(i) While EPA claims to allow future generation so long as it deploys carbon capture and storage (CCS) technology, this is a false choice. CCS technology is unproven and commercially unavailable.

(ii) In a March 27, 2012, Congressional briefing on the new source performance standards for GHGs, EPA expressed that there would be no new health benefits from this rule.⁵⁰ EPA cited projections that the reduction in GHG emissions from EGUs occurs regardless of the implementation of the NSPS. Given this assertion, it becomes clear that

⁴⁷ *Id.*

⁴⁸ See generally, American Legislative Exchange Council, *EPA’s Regulatory Train Wreck: Strategies for State Legislators*, American Legislative Exchange Council, available at <http://www.alec.org/AM/Template.cfm?Section=EPATrainWreck&Template=/CM/ContentDisplay.cfm&ContentID=15350>.

⁴⁹ Deroy Murdock, *Obama Declares War on Coal*, National Review (Nov. 3, 2008) (Original source: audio/video of Obama’s appearance before the San Francisco Chronicle’s editorial board in Jan. 2008.)

⁵⁰ Congressional Briefing with U.S. EPA, Mar. 27, 2012.

the purpose of the NSPS rule is to prevent further domestic coal production.

(2) Mercury and Air Toxics Standards (MATS) for Power Plants (a.k.a. Utility MACT)

(a) On March 16, 2011, EPA proposed a rule to reduce emissions of toxic air pollutants from power plants. The proposal requires new and existing coal- and oil-fired electricity generating units (EGU) to reduce these emissions under a strict timeline.⁵¹ It does this by requiring EGUs to install additional anti-pollutant technologies.

(i) Approximately 1,100 existing coal-fired units and 300 oil-fired units at about 600 power plants will be affected by this rule.⁵²

(ii) The final standards were issued in December 2011, with compliance deadlines three to four years after that.

(iii) EPA estimates the total national annual cost of this rule will be \$9.6 billion.⁵³

(iv) Another study projects this regulation, combined with the CSAPR rule (detailed in the following section), will cost the economic equivalent of 215,000 full-time jobs in 2015.⁵⁴ The study estimates that these losses will continue as the economy suffers from higher energy prices.⁵⁵

(3) Cross-State Air Pollution Rule (CSAPR) (a.k.a. the Transport Rule)

(a) On July 6, 2011, EPA issued a final rule requiring 27 states to significantly improve air quality by reducing power plant emissions that contribute to ozone and/or fine particle matter in neighboring states.⁵⁶ This rule replaces a 2005 rule known as the Clean Air Interstate Rule (CAIR). A December 2008 court decision kept the requirements of CAIR in place temporarily, but directed EPA to issue a new rule to implement the CAA requirements concerning the transport of air pollution across state boundaries. CSAPR is EPA's replacement of CAIR designed to implement these Clean Air Act

⁵¹ Environmental Protection Agency, Fact Sheet, *Proposed Mercury and Air Toxics Standards* (May 4, 2011) available at <http://epa.gov/airquality/powerplanttoxics/pdfs/proposalfactsheet.pdf>.

⁵² Environmental Protection Agency, Fact Sheet, *Mercury and Air Toxics Standards for Power Plants*, available at <http://www.epa.gov/mats/pdfs/20111221MATSummaryfs.pdf>.

⁵³ *Id.*

⁵⁴ *An Economic Impact Analysis of EPA's Mercury and Air Toxics Standards Rule*, NERA Economic Consulting (March 2012).

⁵⁵ *Id.*

⁵⁶ Environmental Protection Agency, Fact Sheet, *The Cross-State Air Pollution Rule: Reducing the Interstate Transport of Fine Particulate Matter and Ozone*, (July 6, 2011) available at <http://www.epa.gov/airtransport/basic.html>.

requirements. CSAPR has yet to go into effect as it is still being litigated in federal court.⁵⁷

- (i) EPA estimated that implementation of this rule will cost \$800 million in 2014.⁵⁸
- (ii) Another study projects this regulation combined with the Utility MACT rule (detailed in the previous section) will cost consumers \$71 billion in disposable income between now and 2033.⁵⁹
- (iii) Independent analysis estimates that compliance with Utility MACT (detailed in the previous section) & CSAPR regulations will cost the economic equivalent of 215,000 full-time jobs in 2015.⁶⁰

⁵⁷ Lawrence Hurley, *Judges Sharply Question EPA, Petitioners During Cross-State Rule Arguments*, Greenwire, available at <http://www.eenews.net/Greenwire/2012/04/13/archive/2?terms=csapr>.

⁵⁸ Environmental Protection Agency, Fact Sheet, *The Cross-State Air Pollution Rule: Reducing the Interstate Transport of Fine Particulate Matter and Ozone*, (July 6, 2011) available at <http://www.epa.gov/airtransport/basic.html>.

⁵⁹ *An Economic Impact Analysis of EPA's Mercury and Air Toxics Standards Rule*, NERA Economic Consulting (March 2012).

⁶⁰ *Id.*