RHETORIC VS. REALITY: DOES PRESIDENT OBAMA REALLY SUPPORT AN "ALL-OF-THE-ABOVE" ENERGY STRATEGY?

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

MAY 31, 2012

Serial No. 112–153

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

75–111 PDF WASHINGTON : 2012

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RHETORIC VS. REALITY: DOES PRESIDENT OBAMA REALLY SUPPORT AN "ALL–OF–THE–ABOVE" ENERGY STRATEGY?

Thursday, May 31, 2012,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The committee met, pursuant to call, at 9:30 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Platts, McHenry, Jordan, Walberg, Lankford, DesJarlais, Ross, Farenthold, Kelly, Cummings, Tierney, Quigley, Davis, Welch, Murphy, and Speier.

Staff Present: Kurt Bardella, Majority Senior Policy Advisor; Robert Borden, Majority General Counsel; Will L. Boyington, Majority Staff Assistant; Molly Boyl, Majority Parliamentarian; Lawrence J. Brady, Majority Staff Director; Joseph A. Brazauskas, Majority Counsel; Sharon Casey, Majority Senior Assistant Clerk; Steve Castor, Majority Chief Counsel, Investigations; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Ryan M. Hambleton, Majority Professional Staff Member; Mark D. Marin, Majority Director of Oversight; Kristina M. Moore, Majority Senior Counsel; Laura L. Rush, Majority Deputy Chief Clerk; Cheyenne Steel, Majority Press Assistant; Rebecca Watkins, Majority Press Secretary; Lisa Cody, Minority Investigator; Kevin Corbin, Minority Deputy Clerk; Ashley Etienne, Minority Director of Communications; Jennifer Hoffman, Minority Press Secretary; Carla Hultberg, Minority Chief Clerk; Chris Knauer, Minority Senior Investigator; Dave Rapallo, Minority Staff Director.

Chairman ISSA. This hearing of the Government Oversight Reform Committee will come to order.

The Oversight Committee exists to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureauc-

racy. This is the mission of the Oversight and Government Reform Committee.

In his 2012 State of the Union, President Obama declared this Country needs an all out, all-of-the-above strategy that develops every available source of American energy. Unfortunately, the actions of the Obama Administration reflects a much narrower approach. The reality is the Obama Administration has taken several actions that would limit the production and use of oil, natural gas, and coal energy sources. I might add they have also shut down Yucca, effectively dooming nuclear.

These actions are justified by the advancement of rhetoric and reliant on distortion of the actual facts. For example, the President frequently states that the U.S. only has two percent of the world's oil reserves. Nothing could be further from the truth. The statement of proven reserves has been disproven for my entire life.

The fact is that America ignores potential a multi-trillion dollar barrels of oil that we know exist that have not yet been proven. Saudi Arabia, on the other hand, talks of proven reserves counting virtually every drop of oil, while America talks only about an amount roughly equal to the amount that we said we had in the 1950s, when I was born.

According to the Institute of Energy Research, the U.S. has 1.4 trillion barrels of technically recoverable oil, enough to meet the demand for at least the next 200 years. The President likes to take credit for increased oil production, but in reality the dramatic increase in production that has happened has happened on private lands in spite of the Administration's policy of obstructing all use of Federal lands. Today we enjoy a 36 percent reduction in new drilling on Federal lands as a result of these policies.

The Congressional Research Service reports that 96 percent of U.S. oil production increases in 2007 have occurred on non-Federal lands. This as the Obama Administration has closed off public lands to exploration and drilling that would have been available just a few years ago.

While many Americans believe that construction of the Keystone pipeline is key to relieving escalating gas prices, the President has stood in the way and even had the audacity to claim that an executive order that specifically does nothing new, advances nothing new, expedites nothing new, and only fails to stop that which would occur without any effort at the same time line in fact was his initiative.

It is ironic that the President stood in front of empty green oil pipeline for his photo shot, because the empty green promise of this Administration should be in fact the key to understanding Obama's all-of-the-above strategy: any energy made above ground counts; any energy found below ground is off limits.

We should harken back to the period of time in which the Democrats controlled the House, the Senate, and the White House. During that period of time, on the President's insistence, cap-and-trade was passed out of the House, which would have curtailed virtually all coal production in this Country and severely limited other sources. It failed in the Senate, but not for a lack of leadership from the President. Today, by regulatory fiat, the President is effec-

tively shutting down 26 gigawatts of electric power produced from coal as we speak.

The bottom line is virtually all of the success and security of our Nation to develop avenues of oil and natural gas have either come from the previous administration and simply are a legacy that continues in spite of this one, or in fact have occurred on private lands in spite of the best efforts by the Federal Government to stop it.

We cannot exist as a modern day superpower unless we have means to fuel a 21st century economy. President Obama has to make a choice. He can either be part of the problem or he can be part of the solution. All-of-the-above is only half of the solution. We have to have an all-of-the-above and all-of-the-below mentality if we are in fact going to deliver affordable energy for the American people.

It is often said, but needs to be said as often as possible, the Stone Age did not end because we ran out of stones; it ended because we harnessed energy.

With that, I recognize the distinguished Ranking Member for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to thank you for calling today's hearing.

The title of today's hearing poses the following question: Does President Obama really support and all-of-the-above energy strategy? In my opinion, the answer is clearly yes, resounding and obvious.

Under President Obama, total domestic oil production in the United States has increased by 14 percent since the final year of the Bush Administration. Every year since Mr. Obama became President total U.S. crude oil production has increased. In 2011, over 2 billion barrels of oil were produced in the United States. This is the highest rate of domestic oil production since 2003. In 2011, onshore oil production on Federal lands was the most productive since 2003, with 112 million barrels produced; offshore oil production at its most productive year, in 2010, with 618 million barrels produced.

As part of this all-of-the-above strategy, natural gas production is also now at record levels. In fact, it is at its highest level in 30 years, with more than 28 trillion cubic feet produced in 2011.

The Administration has also pursued nuclear power. It approved an $8.3 billion conditional loan guarantee for nuclear reactors in Burke County, Georgia, which is the first nuclear plant to receive a construction license in more than three decades. After touring the facility, Energy Secretary Steven Chu stated, "Nuclear energy is a critical part of the President's all-of-the-above energy strategy." The President has also requested an additional $770 million for nuclear programs in his budget for 2013.

In a stark difference from the previous administration, the Obama Administration has also invested significantly in clean energy technologies of the future that promote our global competitiveness and enhance our energy independence.

Because of investments in solar, biofuel, wind, geothermal, and electric vehicle technologies that were included in the Recovery Act, the United States is now home to the world's largest photovoltaic

generation facility, one of the world's largest wind farms, and the world's largest concentrated solar power plants.

In addition to taking these steps, the Administration's new fuel economy standards will reduce oil consumption by 2.2 million barrels a day, saving American families an average of $8,000 at the pump.

I understand that many of the witnesses invited by the Chairman today will express their desire to drill for even more oil and to remove existing health and safety protections to allow them to do so. They will also argue that the Administration is somehow blocking their efforts.

To the contrary. Arguments that the Administration has been refusing to approve drilling permits in the Gulf are a complete myth. Following the monumental BP disaster, the Administration worked quickly with industry to develop and implement new offshore drilling rules to reduce the chances that such a catastrophe would ever happen again. Since enacting these rules, the Administration has issued more than 400 deepwater drilling permits and Gulf operations have resumed more safely as a result.

In addition, in 2011, the Administration offered 21 million acres for new offshore oil and gas development, and next month an additional 38 million acres will be offered as part of a lease sale in the Gulf of Mexico, an area estimated to hold close to 31 billion barrels of oil and 134 trillion cubic feet of natural gas.

The record is abundantly clear. President Obama has pursued an aggressive strategy to significantly boost domestic energy production from all sources—oil, natural gas, nuclear, clean energy—and he deserves an enormous amount of credit for his accomplishments.

With that, Mr. Chairman, I yield back.

Chairman ISSA. I thank the gentleman.

All members will have seven days to submit opening statements for the record.

We now recognize our opening panel.

Mr. Michael Krancer is the Secretary of Pennsylvania's Department of Environmental Protection; Ms. Kathleen Sgamma is the Vice-President of Government and Public Affairs at the Western Energy Alliance. Welcome. Mr. Mark Perry is a scholar at the American Enterprise Institute for Public Policy Research; Mr. Daniel J. Weiss is Senior Fellow and Director of Climate Strategy at the Center for American Progress Action Fund; Mr. Charles T. Drevna is President of American Fuel & Petrochemical Manufacturers; and, lastly, Mr. Peter Glaser is a partner at Troutman Sanders LLP.

Pursuant to our Committee rules, just like on television, would you please rise to take the oath and raise your right hands?

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witnesses respond in the affirmative.]

Chairman ISSA. Let the record indicate that all witnesses answered in the affirmative.

Please be seated.

This is a large panel today and each of your full opening statements will be placed in the record, so I would ask you to observe

the timer light in front of you. Try to stay as close to your five minutes, or under, as you can so that we can get to a sufficient amount of questions.

Contrary to opening statements, we do not know whether what you are going to say today is accurate or inaccurate, regardless of presumption, so we would like to have a healthy dialogue so that we can get to a full and hopefully bipartisan understanding.

Mr. Krancer.

WITNESS STATEMENTS

STATEMENT OF MICHAEL KRANCER

Mr. KRANCER. Thank you very much. It is an honor and a privilege to be here. I am from Pennsylvania. We are in the middle, as you all know, of a natural gas exploration and extraction revolution in Pennsylvania.

I want to just react to Representative Cummings' statement. Nobody on this panel, certainly me above all, the DEP Secretary of Pennsylvania, has any desire to remove any health and safety protections. As a matter of fact, that is one of the points that we are here today on, and that is the States are already doing a very fine job regulating, for example, natural gas extraction. It is being done in Pennsylvania.

I would also say that the point that natural gas production has increased, that is true, but it is true in spite of the Federal Government. It is true in Pennsylvania. Our production has quadrupled since 2009, and it is because the Federal Government is not intervening and interposing; it is because Pennsylvania is getting it right.

What I see in Pennsylvania as DEP Secretary is—of course, we have a coal State. We are not totally a coal State, we are very diverse; we have nuclear, we have a very healthy nuclear industry, we have coal, natural gas, we have oil, we have wind and solar. But what I see is a Federal Government that seems to be picking winners and losers, attempting to be picking winners and losers, and promulgating a regulatory agenda that does not have an all-of-the-above flavor to it, it picks winners and losers. And I will just use a couple of examples.

In my own State, with respect to the hydraulic fracturing, I think the Federal Government has created somewhat of a hostility. There is a hostile attitude towards the science of hydraulic fracturing, which has been ongoing in this Country for many years, 60 years, probably, and the Federal Government has never, until now, expressed any interest whatsoever to be involved in it, and I cover that in my testimony. And there seems to be some fear churning, going on as well.

One of the matters in my State was in Dimock, Pennsylvania, where, after the State had taken control, had control of the matter, the Federal Government came in and started doing water testing this year. After four rounds of water testing, there are no problems indicated and now I think the Federal Government is looking for an exit strategy from Dimock, and I am not sure how they are going to do that or if they are going to do that before the election.

In terms of air regulations, what I see is a severe hostility towards coal, absolutely. The air regulations are hostile to coal. I am talking about Utility MACT, I am talking about the transport rule, and I am talking about an incredible over-activity with respect to the NAAQS, the National Ambient Air Quality Standards.

This Administration, in three and a half years, has done more with respect to NAAQS than has been done in history. Under Clinton, under Bush more. They have already announced four of the six that they are going to change, and for some very shaky technical reasons. And I will tell you with respect to my State, on the air regulations, EPA has refused to consider that those air regulations are going to kill waste coal-burning plants in my State, which provide an important environmental benefit.

Another matter is the coal ash residuals regulation. Here is EPA headed towards, with the help of a friendly piece of litigation now, regulating coal ash residuals as hazardous waste. That would be devastating in my State, and other States, too. And I have written to Congress on that on several occasions. There is no scientific justification for it; there is no legal justification for it. It would cause the loss of between 180,000 jobs and 316,000 jobs and cost between $78 billion and $110 billion over 20 years.

Another area where my State has seen this is in the coal mining permits, the water aspects of coal mining permits. EPA has interposed more than they ever have in history and we think for a technically very questionable basis.

I think the Chairman hit the nail on the head with respect to nuclear. We see the Federal Government not stepping to the plate to fulfill its promise to deal with the nuclear waste disposal issue and, in fact, reneged on its promise, and that is costing billions of dollars, or will cost billions of dollars, and really the Federal Government needs to deal with that.

I did hear a quip the other day, and it follows on the Chairman's comment, that the all-of-the-above moniker, if you will, really means only the above, meaning only wind, only solar, only those things. We have assets here in our Country under the ground in my State and in other States that can be safely extracted in an environmentally manner, and all economies need available abundant domestic energy, and our potential in that regard, my State and in our Nation, is off the charts.

With that, I will leave it to the next testifier and look forward to questions.

[Prepared statement of Mr. Krancer follows:]

Rhetoric vs. Reality: Does President Obama Really Support an "All-of-the-Above" Energy Strategy?

Testimony of
Michael L. Krancer
Secretary
Commonwealth of Pennsylvania
Department of Environmental Protection
Before the United States House of Representatives
Committee on Oversight and Government Reform
Thursday, May 31, 2012

Members of the committee, thank you for the opportunity to provide this testimony on behalf of the Commonwealth of Pennsylvania Department of Environmental Protection.

We are blessed in Pennsylvania to have a very diverse energy generation portfolio: coal, nuclear, natural gas, wind, solar and more. Pennsylvania truly is an energy capital of the country. We have a true "all of the above" energy strategy in Pennsylvania. We are also blessed in this country to have a very diverse domestic energy production portfolio. The United States has all of the resources right here to be the energy production leader of the world.

And make no mistake about it: Energy equals jobs. Every economy needs the most affordable and plentiful energy it can have to sustain itself and to grow. Energy demand is projected to increase 50% worldwide in the next 20 years. The majority of that growth will come from the developing world. 80% of that increased demand will have to be met with hydrocarbon-based energy. This presents us with a daunting task and a tremendous opportunity because we have tremendous domestic energy resources right here in Pennsylvania and in America. You really need ask just three basic questions: (1) do we want energy; (2) do we have it here; and (3) who can develop it in a more environmentally sensitive manner than we here in America?

We have a great domestic energy resource right in Pennsylvania and other states around us—natural gas. The supply we have right here is huge, and the technology to enable us to get it in a safe and environmentally protective manner is here. This fuel is available, abundant, domestic, clean and cheap. And this fuel can provide the path to cleaner air in our urban areas where vehicles now fueled with largely imported oil are the main source of air contaminants. The department I lead oversees the safe development of natural gas.

Pennsylvania's natural gas extraction has dramatically increased over the past few years, and we are delivering huge amounts of cheap clean fuel to Americans because of our ability to know our state and regulate and oversee the safe conduct of this activity within our state better than anyone. The Energy Information Administration reported on May 23, 2012, that natural gas production in Pennsylvania has quadrupled since 2009, averaging now nearly 3.5 billion cubic feet per day in 2011. See http://www.eia.gov/todayinenergy/detail.cfm?id=6390. A copy of the dramatic chart from the EIA is attached as an exhibit. This has, in turn, resulted in what PJM, the largest competitive electric power grid operator covering 13 states and the District of Columbia

from New Jersey to Illinois and over 51,000,000 consumers, has called a massive increase in future gas powered electricity generation. In fact, the PJM capacity auction of May 2012 cleared nearly 5 GW of new gas fired generation capacity. Low gas and electric utility rates for consumers is only one side of the story. The promise for the future is even brighter, as this and other domestic energy sources can unlock an economic renaissance that America can lead.

However, it is distressing to see on the federal level actions that show that there is not a similar commitment to, or even a focus on, an "all of the above" strategy toward domestic energy resources. We also see federal policies and actions which seem to be geared toward picking selected winners and losers in the energy generation market instead of policies which foster a true "all of the above" energy extraction and utilization process. We in Pennsylvania have been frustrated to see at the federal level a negative attitude, even hostility, toward development of domestic energy resources, especially certain resources like coal. We see this manifested in many respects including, but not limited to, our interactions with the federal government in the following areas:

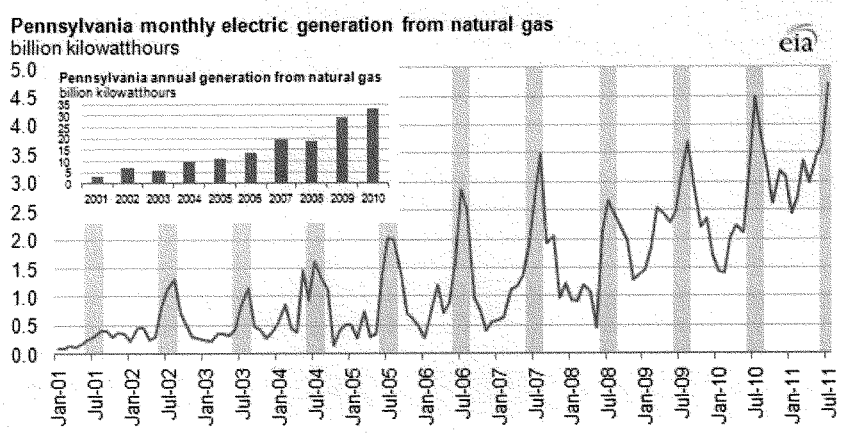
- EPA's and other federal agency's treatment of and intervention in hydraulic fracturing
- The Army Corps of Engineers' increased intervention into infrastructure projects such as natural gas pipelines
- Federal air regulations, such as NAAQS, Utility MACT, the Cross-State Transport Rule and regulation of carbon dioxide
- EPA's course for the treatment of coal residuals
- EPA's treatment of coal mining-related water discharge permits
- The federal government's inability or unwillingness to deal with the issue of disposal of waste from nuclear power plants

I look forward to discussing each of these items in more detail and answering your questions.

Exhibit to Accompany the Testimony of
Michael L. Krancer
Secretary
Commonwealth of Pennsylvania
Department of Environmental Protection
Before the United States House of Representatives
Committee on Oversight and Government Reform
Thursday, May 31, 2012

Chart, *Horizontal drilling boosts Pennsylvania's natural gas production, U.S. Energy Information Administration*, May 23, 2012.

http://www.eia.gov/todayinenergy/detail.cfm?id=6390



Chairman ISSA. Thank you. I will note that as someone born and raised in Ohio, you were as close as I could get to somebody from our region with the same abundance.

Mr. KRANCER. Well, I have good news for you. I was born in Cleveland.

Chairman ISSA. East or West side?

Mr. KRANCER. Shaker Heights, is that it?

Chairman ISSA. Yes.

Mr. KRANCER. Shaker Heights. That was a long time ago and I don't remember very much, but I was born there, so I am told.

Chairman ISSA. You should come back. My family is in Cleveland Heights and Shaker Heights.

Mr. KRANCER. I will do that.

Chairman ISSA. I will give you that time back later from that round of questioning.

Ms. Sgamma?

STATEMENT OF KATHLEEN SGAMMA

Ms. SGAMMA. Thank you, Mr. Chairman, Ranking Member Cummings, and members of the Committee.

Western Energy Alliance represents about 400 companies engaged in all aspects of environmentally responsible oil and natural gas development in the West. Our members are proud to produce 27 percent of the Nation's natural gas and 14 percent of oil production, while disturbing 0.07 percent of public lands.

It seems that my industry has figured into the Administration's strategy as an annoyance to be avoided in favor of its preferred energy sources. The attitude has translated into budgets intended to reduce so-called overproduction of oil and natural gas through increased taxes.

One thing that particularly rings hollow with Western producers is the Administration taking credit for increased oil and natural gas production. Despite all the obstacles put in place by this Administration, oil and gas companies responding to market forces have dramatically increased productions on private lands and reduced foreign imports.

But it is not just a matter of who should take credit for increased U.S. production. It is important that we recognize the role of policies and regulations that stifle economic growth. Where the Administration has the most controls, the Interior Department has put in place more obstacles to producers. On onshore public lands, oil production has declined by nearly 15 percent and natural gas increased by a scant half of a percent from 2010 to 2011. However, natural gas production on all Federal lands declined by 27 percent from 2009 levels, while natural gas production on State and private lands increased 28 percent.

To deflect criticism, we continue to hear accusations and misleading statistics that industry is letting millions of acres sit idle. Yet, this tired rhetoric fails to take into account the fact that not every lease has recoverable oil and gas and the huge obstacles the Federal Government places in the way of producers.

Western Energy Alliance recently released a study of the enormous economic potential of just 20 projects on public lands. These 20 projects, of about 3100 wells per year, would generate nearly

121,000 sustained jobs, $8 billion in wages, and $27.5 billion in annual economic impact, all from just about 3100 wells.

However, once a project is proposed by a company, the Interior Department's Bureau of Land Management must complete environmental analysis under the National Environmental Policy Act. We are seeing even small 9-well projects take over four years and large projects take over seven years.

In fact, if we look at projects waiting over three years, we see that government delays are preventing the creation of nearly 65,000 jobs and $15 billion in economic activity annually. These NEPA delays are the direct result of government inaction that prevents companies from operating on their leases.

Other obstacles abound. Interior Secretary Salazar started his tenure by cancelling leases in Utah. He followed that up with policies that added three new layers of analysis to the leasing process, which has resulted in an 80 percent decline in leases offered in the Rocky Mountain States. If there was any doubt about his intention to slow oil and gas production, Secretary Salazar allayed those doubts when he introduced new policies by saying his agency would no longer be a candy store for the petroleum industry. The attitude that there was a new sheriff in town who needed to stop unfettered development, as if a responsible industry providing over a quarter of our Nation's natural gas production, while disturbing less than a tenth of a percent of acreage, was an industry gone wild.

Secretary Salazar recently admitted that it takes the Government 298 days, on average, to process drilling permits and promised to reduce the time to 60 days. Since every proposed budget for the last four years has attempted to zero out funding for improving permit processing, again, the rhetoric doesn't match the reality.

Interior has also decided to regulate hydraulic fracturing despite the lack of a single incident on Federal lands and successful State regulation. We estimate that will add another 100 days on to permitting times.

For the last three years we have been part of an anything-but-oil-and-gas energy strategy. We are heartened that the Administration has changed the rhetoric. Now we are just waiting for reality to catch up.

While I have only had time for a few instances of policies that are preventing development, I look forward to some more examples as questions come up.

[Prepared statement of Ms. Sgamma follows:]

Kathleen Sgamma
Vice President of Government & Public Affairs
Western Energy Alliance

Before the
House Oversight and Government Reform Committee

Rhetoric Versus Reality: Does President Obama Really Support an "All-of-the-Above" Energy Strategy?
May 31, 2012

Chairman Issa, Ranking Member Cummings, and Members of the Committee, thank you for the opportunity to appear before you today. Western Energy Alliance represents 400 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. Alliance members are mainly small businesses and independent producers. Because of the huge portion of public lands in the West, my members are particularly affected by government policies that reduce access to energy owned by all Americans on federal lands. Our members are proud to produce 27% of America's natural gas and 14% of its oil production while disturbing only 0.07% of public lands.

To this representative of the oil and natural gas industry, it seems that my industry has figured into the Administration's strategy as an annoyance to be eliminated in favor of its preferred energy sources. The attitude has translated into budgets intended to reduce oil and gas production through increased taxes and the elimination of business expense deductions:

> "To the extent expensing encourages overproduction of oil and gas, it is detrimental to long-term energy security and is also inconsistent with the administration's policy of reducing carbon emissions and encouraging the use of renewable energy sources through a cap-and-trade program." (FY2010 budget)

Since America still imports over 50% of its oil from overseas, it's hard to understand how we're "overproducing" in America. That doesn't sound like "all-of-the-above" to me. The energy strategy has been based on idealism, not the reality of US energy security. Of course, less American oil and natural gas production means more oil imports from unfriendly nations.

We have seen some acknowledgement from the Administration recently that domestic oil and natural gas are important for energy security and one of the few bright spots in the economy driving significant job creation, economic growth, and new manufacturing opportunities. The fact that recent rhetoric has been toned down for political expediency doesn't wipe away reality.

One thing that particularly rings hollow with western producers is the Administration taking credit for increased production of oil and natural gas. The dramatic success of my industry increasing production and significantly decreasing foreign imports is the story of private sector investment on mainly private lands. Despite all the obstacles put in place by this Administration, oil and gas companies, responding to market forces and the demands of a nation for energy,

jobs, and economic growth, have dramatically increased production and reduced foreign imports. 5.5 times more oil is produced on private and state lands than on federal lands.

For example, North Dakota would not have increased its oil production 250% over the last decade, with most of that increase coming in the last five years, if the Bakken formation were largely on federal lands. If the Bakken were on federal lands, it would be year five of a seven year federal environmental analysis with little additional production in sight.

But it's not just a matter of who should take credit for increased US production. More important is how to ensure that America continues to increase energy production, create jobs and grow the economy. On that front, it's important that we recognize the role of policies and regulations that stifle economic growth. We've seen Interior Department policies intended to slow development on federal lands, and numerous regulations from the Environmental Protection Agency that divert significant productive resources away from energy development and toward environmental compliance without commensurate environmental benefit.

On onshore public lands where the Administration has the most control, the Department of the Interior has put in place more obstacles to producers. As a result, oil production has declined by 14.7% and natural gas increased by a scant half of a percent from FY 2010 to 2011, according to the Office of Natural Resources Revenue. Moreover, natural gas production on all federal lands declined by 27% in FY2011 from its FY2009 level, while natural gas production on state and private lands increased 28% over that time period.

Whereas on state lands production can be realized within a matter of months from the time of leasing, on federal lands three years is a general minimum before full production can occur. Usually it is a matter of five to ten years, and we've seen delays stretching over fifteen years. Therefore, today's production is the result of policies and actions taken three to five years ago. The decline in FY 2011 is the first true indication of this Administration's policies.

To deflect criticism of policies that have slowed production, we continue to hear accusations and misleading statistics that industry is letting millions of acres sit idle. By looking at the statistics over time, it is evident that industry has become much more efficient over the last several decades. While we used to hold 80,000 leases and produce on 24% in 1988, we now hold just 49,000 leases and produce on 46%. Secretary Salazar's statements that this shows industry is intentionally leaving leases idle is tired rhetoric that fails to take into account the huge obstacles the federal government places in the way of oil and natural gas producers, and the fact that not every lease has recoverable oil and gas.

For example, Western Energy Alliance recently completed a study which shows the enormous economic potential of just twenty projects proposed in the West on public lands. These twenty projects propose just 3,164 wells annually, but would generate 120,905 sustained jobs, and $8 billion in wages and $27.5 billion in economic activity *annually.*

However, once a project is proposed by a company on federal lands, the Interior Department's Bureau of Land Management must complete environmental analysis under the National Environmental Policy Act (NEPA). Despite the fact that companies pay for contractors to complete the analysis, the government still manages document completion and approval. We're seeing even small nine-well projects take up to four years, and large projects taking over seven years.

In fact, if we look at projects that have been waiting for NEPA completion for three years or more, we see that government delays are preventing the creation of 64,805 jobs, $4.3 billion in wages and $14.9 billion in economic activity annually. These NEPA delays are the direct result of government inaction that prevents companies from producing on their leases.

Other obstacles abound. Secretary Salazar started his tenure by cancelling leases in Utah. He followed that up with policies that added three new layers of analysis to the leasing process, which have resulted in an 81% reduction in acreage offered in the Rocky Mountain West. If there was any doubt about the intention to slow oil and natural gas development, Secretary Salazar allayed those doubts when he introduced those new policies by saying his agency would no longer be a "candy store" for the petroleum industry. The attitude was that there was a new sheriff in town who needed to stop unfettered development, as if a responsible industry providing 27% of our nation's natural gas and 14% of oil production while disturbing less than a tenth of a percentage of public lands was an industry gone wild.

Secretary Salazar recently admitted that it takes the government 298 days on average to process a drilling permit and promised to reduce that time to sixty days. Given that every proposed budget for the last four years has attempted to zero out funding for improving processing of oil and natural gas permits, again the rhetoric doesn't match reality.

Furthermore, Interior has decided to regulate hydraulic fracturing despite the lack of a single incident on federal lands, EPA's ongoing scientific study to determine if any regulation is even warranted, and successful state regulation. Western Energy Alliance estimates conservatively that BLM's planned regulations will add about 100 days to permitting times. With federal permitting times of 298 days while states can process their corresponding permits in about thirty days, it's difficult to understand why the federal government is trying to usurp control from the states which have proved themselves more effective and efficient. The effect will be to further disadvantage federal production and the states in the West dominated by public lands.

For the last three years, we have been part of an "anything but oil and gas" energy strategy. We're heartened that the Administration has changed the rhetoric – now we're just waiting for reality to catch up.

Kathleen Sgamma
Western Energy Alliance

Chairman ISSA. Thank you.
Mr. Perry.

STATEMENT OF MARK J. PERRY

Mr. PERRY. Chairman Issa, Ranking Member Cummings, and other members of the Committee, thank you for the opportunity to appear today. In my written testimony I have provided 10 pages of analysis on the topic you are considering and here is an oral summary of that testimony.

My main point today I think is that, as the Chairman has indicated, it would be more accurate to describe President Obama's energy strategy as some-of-the-above, rather than all-of-the-above, for the following reasons:

President Obama has shown certain favoritism towards alternative energies, which he has described publicly as energy sources of the future, while he has publicly dismissed oil as an energy of the past; that some of the above favoritism has been demonstrated in several ways.

Domestic production of fossil fuels on Federal lands fell to a 9-year low in fiscal year 2011, as crude oil production fell by 14 percent, the largest annual decrease in at least a decade, and natural gas production fell by more than 9 percent.

The Administration's fiscal year 2013 budget targets oil and natural gas companies with eight proposals for higher taxes, which it is estimated would burden the oil and gas industry with almost $86 billion in higher taxes over the next 10 years.

There are drilling restrictions or limited permitting for oil and natural gas that continue off the mid-Atlantic coast and much of the Gulf of Mexico, in the Arctic National Wildlife Refuge, on Federal lands in the Rockies, where leases are down 70 percent since 2009.

Other actions taken by the Administration, including rejecting the Keystone XL pipeline, cancelling millions of acres in offshore lease sales, and closing the majority of the Outer Continental Shelf to new energy production for the next five years demonstrate an Administration that does not support an all-of-the-above energy strategy that includes increasing domestic production of fossil fuels that will remain critical to America's energy and economic future for many decades.

In contrast, the President's proposed budget for fiscal year 2013 includes preferences for the politically favored green energy sector in the form of numerous tax subsidies, tax credits, public expenditures, procurement preferences, and grants for alternative energy. In my written testimony, I have identified nine specific budget provisions that favor alternative energy.

Based on the Obama Administration's demonstrated preference for alternative energies that are supposed to be the energy sources of a future that is no longer dependent on traditional hydrocarbon energies of the past, a misleading message is being conveyed to the American people that our Country's need for substantial levels of oil, natural gas, and coal will soon be a distant memory. The reality, however, is much different.

In its most recent forecast, in January of 2012, the U.S. Department of Energy estimated that the importance of fossil fuels for

meeting the energy demands of the U.S. economy will decline only modestly over the next several decades, from 83 percent of total U.S. energy consumption in 2010 to 77 percent in 2035. In contrast, despite all of the attention, preferences from the Obama Administration, loan guarantees and taxpayer subsidies for renewable energy, their contribution to U.S. energy consumption of 7.3 percent in 2012 was barely higher than the 7.1 percent share back in 1997. Current estimates from the Department of Energy predicted even by the year 2035 the renewable energy share of U.S. energy consumption would be less than 11 percent.

Even the Government's own forecasts predict that renewable energy will continue to play a relatively minor role as an energy source over the next several decades out to the year 2035, and traditional energy sources like oil, gas, and coal will continue to provide the overwhelming share, more than three-quarters of the fuel required to meet U.S. energy demand for the next three decades, at least.

By favoring new, costly, subsidy-dependent alternative energy sources over traditional sources, and by not fully supporting the proven, job-creating, low-cost fossil fuels, it would be more accurate to describe President Obama's costly energy strategy as some of the most costly above instead of all-of-the-above. What we really want is an energy policy that is not based on all-of-the-above or some-of-the-above regardless of cost, reliability, and economic and scientific merits, but, rather, an energy policy as grounded in the logic of all of the energy sources that are actually cost-competitive.

President Obama might wish for an energy future of alternative energy, but the scientific and economic realities suggest that the fuels of the future will mostly do the same as the fuels of the past: dependable, reliable, low-cost oil, natural gas, coal, and nuclear.

Thank you.

[Prepared statement of Mr. Perry follows:]

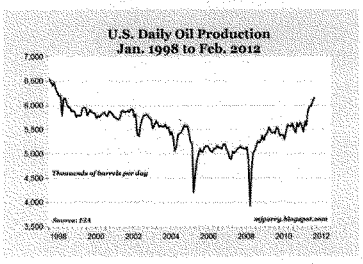
Thank you, Chairman Issa, Ranking Member Cummings, and other members of the committee for the opportunity to appear before you this morning at your hearing to review President Obama's "All-of-the-Above Energy Policy." My name is Mark J. Perry, and I am a tenured, full professor of economics at the Flint campus of the University of Michigan and also a scholar at the American Enterprise Institute. As an economist and now full-time blogger, I follow many economics topic very closely and provide daily commentary on my blog Carpe Diem. One of the topics I have been writing about frequently over the last several years is the U.S. energy revolution, including tracking domestic energy statistics on production and prices, fracking technology and horizontal drilling, the shale revolution, energy-related job creation, etc., and it's because of my interest and frequent writing on energy issues that I have been invited to provide testimony to your committee today on the topic of whether President Obama really supports an "all-of-the-above" energy strategy. To summarize my conclusion, I would say it would be more accurate to describe the President's strategy as "some of the above" rather than "all-of-the-above," with favoritism being directed toward alternative energy over traditional energy sources.

1. Introduction: The Factual Record on Domestic Oil Production

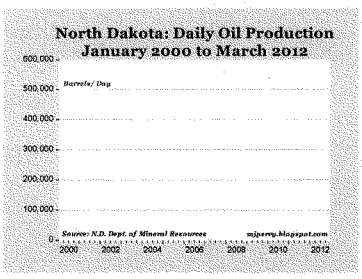
In his January State of the Union address, and in several subsequent speeches, President Obama said that the country needs an "all-out, all-of-the-above strategy that develops every available source of American energy—a strategy that's cleaner, cheaper, and full of new jobs." Further, the president boasted that "under my administration, America is producing more oil today than at any time in the last eight years."

I'd like to start by helping to clarify the factual record on domestic oil production.

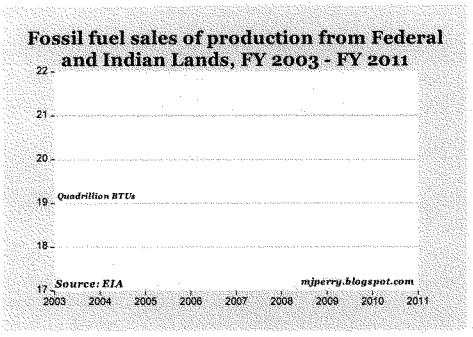
First, the president failed to mention that the increases in oil drilling on federal lands in 2009 and 2010 reflected leases and permits that were approved before his administration took office, and that oil production on federal lands fell by 14% in 2011.



Further, it's true that total domestic oil production was higher in 2011 than in any year since 2002, but that's because oil production has increased most significantly on state and private lands, not federal lands. And those increases in U.S. crude oil production have continued this year, and in February reached their highest monthly level (more than six million barrels per day) since 1998 (see chart above), but those increases have taken place in locations like the Bakken region of North Dakota (see chart below) and the Eagle Ford Share formation in Texas, and mostly on private lands. Those ongoing increases in domestic oil production are largely because of technology advances in 3D seismic imaging, hydraulic fracturing and horizontal drilling, and not because of any intentional energy policy.



If we focus on the production of all fossil fuels (coal, oil and natural gas) on federal and Indian lands, fossil fuel production fell to a nine-year low in 2011 according to the Department of Energy (see chart below). In fiscal year 2011, crude oil production on federal lands actually fell by 14%, the largest annual decrease in at least a decade, natural gas production on federal lands fell by more than 9%, and coal production fell by 1%. So in the most recent year available, the "all of the above strategy" has actually resulted in declines in fossil fuel production on federal lands. In other words, the increases in oil production in recent years referenced by the President were largely from drilling on state and private lands, and happened in spite of Obama's restrictive energy policies, not because of them.



2. Preferences for Alternative Energies in FY 2013 Budget

Shortly after he called for an "all-of-the-above" energy policy, the President then dismissed oil in a speech as an "energy of the past," and instead urged Americans to embrace alternative energies as "energy sources of the future." Those statements suggest that there is a clear preference in the White House for "some of the above" energy sources over others.

The president's proposed budget for fiscal year 2013 reflects those preferences for some energy sources - the politically-favored "green" energy sector gets preferential treatment over

fossil fuel energy, in the form of numerous tax subsidies, tax credits, public expenditures, procurement preferences and grants for alternative energy. Below are the administration's top nine budget provisions for green energy in the proposed fiscal year 2013 budget:

1. Extending the production tax credit for wind energy through calendar year 2013.

2. Extending the Treasury Cash Grant Program (Section 1603 of the American Recovery and Reinvestment Act) to assist small renewable energy companies through 2012, extending tax credits (for renewable companies able to use the credits) for one year, and converting the program into a refundable tax credit through 2016.

3. Increasing research and development funding to $350 million for advanced energy technologies (up from $40 million disbursed by the U.S. Department of Energy over the last two years).

4. Expenditures for clean domestic manufacturing, with $290 million for improving industrial processes and materials, and $5 billion for the "48C" clean energy tax credit available to manufacturers of "cleantech" products.

5. Expenditures for solar and wind energy, providing $310 million for the SunShot Initiative, a program designed to make solar energy cost competitive with fossil fuel energy without government subsidies by 2020, and $95 million for wind energy, including expansion in offshore wind technologies.

6. Expenditures for energy efficiency, including an 80 percent increase in funding to promote energy efficiency in commercial buildings and industries.

7. A 10 percent increase in funding for the U.S. Environmental Protection Agency's FY2013 budget for implementation and enforcement of federal environmental safeguards, and $222 million for the U.S. Department the Interior's newly formed Bureau of Safety and Environmental Protection.

8. Expanding Department of Defense clean energy initiatives, including doubling (to $1 billion more than the FY2012 budget) expenditures for efficiency retrofitting of buildings and meeting efficiency standards for new facilities.

9. Maintaining funding (at the FY2012 budget level) for international climate financing, with at least $833 million to support sustainable landscapes, clean energy, and adaptation to climate change in developing countries.

3. Targeting Fossil Fuels in the FY 2013 Budget with Higher Taxes

In stark contrast, the administration's fiscal year 2013 budget targets oil and natural gas companies with eight proposals for higher taxes, including plans to repeal: a) the expensing of intangible drilling costs, b) "last-in, first- out" (LIFO) accounting in favor of the higher-taxed "first-in, first-out" accounting methodology, c) the deduction for tertiary injectants (fluids, gases, and chemicals) that are used in unconventional drilling, and d) the percentage depletion allowance to recover costs for capital investments. Additional tax increases on the oil and natural gas industry would come from proposed modifications of the dual capacity rule (a U.S. tax policy that prevents the double taxation of foreign earnings), increasing the amortization period for exploration costs, and reinstating Superfund taxes.

Taken together, it is estimated by the American Petroleum Institute that all eight targeted proposals of the administration's FY2013 budget would burden the oil and gas industry with almost $86 billion in higher taxes over the next ten years.

4. Drilling Restrictions

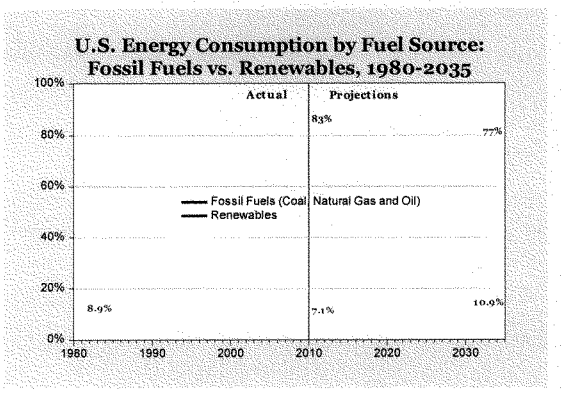
In addition to the tax proposals favoring alternative energies over fossil fuel energy sources, the administration's preferences for alternative energy sources are also reflected in drilling restrictions or limited permitting for oil and natural gas that continue in places like:

- off the Mid-Atlantic coast
- much of the eastern Gulf of Mexico
- in the broader Gulf of Mexico (where drilling in 2012 is expected to drop 30% below pre-moratorium forecasts)
- in the Arctic National Wildlife Refuge
- on federal lands in the Rockies (where leases are down 70 percent since 2009).

Other actions taken by the administration, including rejecting the Keystone XL pipeline, cancelling millions of acres in offshore lease sales, and closing the majority of the Outer Continental Shelf to new energy production for the next five years — demonstrate an administration that does not support an "all-of-the-above energy strategy" that includes increasing domestic production of fossil fuels that will remain critical to America's energy and economic future for many decades.

5. Meeting Future Energy Demands

Based on the Obama administration's ongoing focus on developing alternative energy sources energy sources as the future of an America no longer dependent on traditional hydrocarbon energy, the average American would believe that the nation's need for substantial production levels of oil, natural gas, and coal will soon be a distant memory. The reality, however, is much different.



In its most recent forecast in January 2012, the U.S. Department of Energy estimated that the importance of fossil fuels (oil, gas and coal) for meeting the energy demands of the U.S.

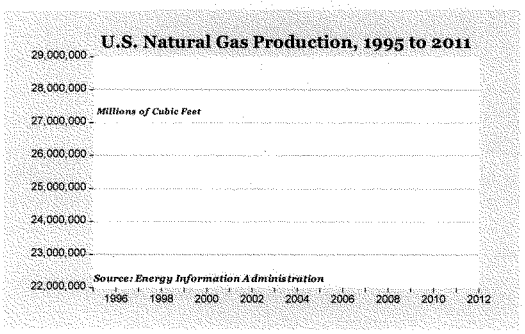
economy will decline only modestly over the next several decades, from 83% of total U.S. energy consumption in 2010, to 77% in 2035 (see chart above). In contrast, despite all of the attention, preferences from the Obama administration, loan guarantees, and taxpayer subsidies for renewable energy, their contribution to U.S. energy consumption of 7.3% in 2012 was barely higher than the 7.1% share back in both 1996 and 1997, and even less than the 8.9% share in 1983. Current estimates from the Department of Energy suggest that even by 2035, the renewable share of U.S. energy consumption will be slightly less than 11%.

And the most recent Department of Energy estimates may not even yet include new oil and natural gas reserves that have just recently increased significantly in importance in places like Eagle Ford Shale in South Texas, the Green River Formation in Wyoming, Utah and Colorado, and the Mississippian Lime formation in south Kansas. And it also may not yet account for new technological advances under development by oil companies known as "super-fracking," which will move drilling technology from fracking to super-fracking. This new wave of innovation has the potential to significantly raise the efficiency of domestic drilling, and will extend the current wave of fracking technology, leading to potentially huge increases in domestic oil and gas production in the near future.

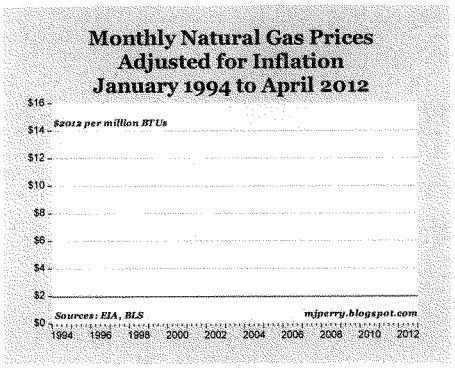
The key point here is that even the government's own forecasts predict that renewable energy will continue to play a relatively minor role as an energy source over the next several decades out to the year 2035. And traditional energy sources like oil, gas and coal will continue to provide the overwhelming share (more than three-quarters) of the fuel required to meet U.S. energy demand through for the next three decades at least.

5. Natural Gas

Turning from oil to natural gas, we see a similar story of proven success and future promise. Domestic natural gas production has soared by more than 21% since 2005 (see chart below), but has fallen on federal lands by 24% over that period, and by almost 17% since Obama took office. Like oil, the increases in natural gas production have taken place on state and private lands and have happened because of the significant technological advances in drilling (3D seismic imaging, hydraulic fracturing and horizontal drilling), and not because of any energy policies of the Obama administration.



Further, the significant increases in domestic natural gas production in the last six years, have brought inflation-adjusted natural gas prices to their lowest levels in several decades (see chart below). Although there are some differences between crude oil and natural gas markets, the dramatic price declines in response to increased drilling for natural suggest that we should be skeptical of President Obama's claim that "We can't just drill our way to lower gas prices." In the case of natural gas, it was clearly the case that we did exactly that – drill our way to lower gas prices.



It's important to emphasize several key economic factors relating to shale gas production in the U.S. over the last five years.

1. **Huge cost savings.** There has been a powerful $250 billion economic stimulus to the economy from lower prices over the last three years for natural gas customers (residential, commercial, industrial and electric utilities), according to the American Gas Association.

2. **Significant job creation** from increased natural gas production has provided another energy-related economic stimulus to the U.S. economy.

3. **Lower natural gas prices** are sparking an American manufacturing renaissance that promises to create up to one million new U.S. jobs by 2025 in energy-intensive manufacturing sectors like chemicals, fertilizers, ethylene, iron and steel.

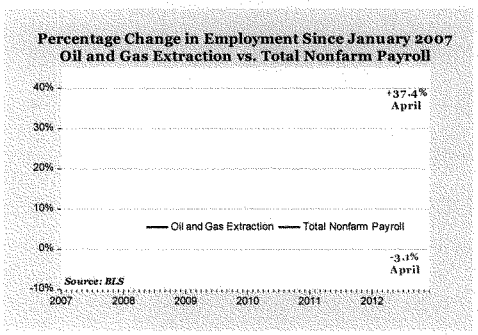
4. **Clean natural gas** has contributed to significant reduction in CO2 emissions in the U.S.

6. Concluding Remarks

At a critical time for America's energy future, Obama's proposed energy platform that so heavily favors high-cost, subsidy-dependent alternative energies is likely to damage the economy, drive energy prices higher, and move us further away from energy independence and

economic security. Behind Obama's claim that he supports a "sustained, all-of-the-above strategy that develops every available source of American energy," lays a war against traditional fossil-based energy sources like oil, which he has publicly dismissed to be a "fuel of the past."

When it comes to evaluating different energy sources, it should be recognized that fossils fuels have delivered a significant "energy stimulus" to the U.S. economy over the last four years at a critical time for America. Even today, while we struggle through another jobless, sub-par recovery, America's energy sector has been one of the strongest sectors, delivering thousands of shovel-ready, energy-related jobs in places like North Dakota, Texas and Pennsylvania (see chart).



While the U.S. economy is still more than four million payroll jobs below the pre-recession 2007 levels, oil and gas extraction employment has increased by more than 37% during the same period. North Dakota has been labeled as the "Economic Miracle State" for its economic success over the last four years, and boasts jobless rates below 1% in cities and counties located in the heart of the Bakken oil region. That oil prosperity is now spreading to places like Eagle Ford Shale in Texas and south Kansas bringing thousands of new jobs, rising incomes and growing wealth. Likewise, the shale gas revolution has brought energy-related prosperity to the Marcellus region of Pennsylvania and West Virginia, and in the process brought

such an abundance to natural gas to the market that prices have fallen to historic lows, saving Americans billions of dollars in energy costs. Now the low energy costs are also sparking an industrial revolution in energy-intensive industries like chemical, fertilizers, iron and steel, in addition to lowering carbon emissions in the process.

Importantly, this powerful energy-related stimulus has happened as a result of technological advances and entrepreneurship, not as part of any intentional energy policy in Washington, and has not even required any direct taxpayer subsidies in the process. Therefore, when it comes to creating "shovel-ready" jobs at no direct cost to the taxpayer, hydrocarbon energy like oil and gas have a proven track record of delivering significant benefits to the U.S. economy in the form of jobs, stable energy prices, and the shale revolution is moving us closer to energy independence every year now. When President Obama called for an energy strategy in his State of the Union address that's "cleaner, cheaper and full of new jobs," he could easily have been describing the shale revolution that has clearly already delivered on all three points.

In conclusion, the reality is that fossil fuel energy sources will continue to play a dominant role in providing stable supplies of affordable energy to America for decades to come, despite Obama's embrace of alternative energies as the "energies of the future," and his claim that oil is the "fuel of the past." Hydrocarbon energy is America's future, and it's the energy treasures beneath our feet that will continue to power the U.S. economy for many generations. By favoring new, costly, subsidy-dependent alternative energy sources over traditional sources, and by not fully supporting the proven, job-creating, low-cost fossil fuels, it would be more accurate to describe President Obama's costly energy strategy as "some of the above" instead of "all-of-the-above." Obama might wish for an energy future of alternative energy, but the scientific and economic realities suggest that the "fuels of the future" will mostly be the same as the "fuels of the past" — dependable and low-cost oil, natural gas, coal and nuclear.

Chairman ISSA. Mr. Weiss.

STATEMENT OF DANIEL J. WEISS

Mr. WEISS. Chairman Issa, Ranking Member Cummings, and members of the Committee, thank you very much for the opportunity to testify today. I am a Senior Fellow at the Center for American Progress Action Fund, a tax-exempt organization dedicated to progressive values and ideas.

First, I would like to address the assumption that producing more oil will lower gasoline prices. In fact, the Associated Press examined 30 years of monthly production and gassing price data and found "no statistical correlation between how much oil comes out of U.S. wells and the price at the pump." In other words, the idea that we can drill our way to lower oil prices is rhetoric, not a record. If so, then Canada would have had very low gasoline prices this year because they produce nearly all their own oil. In fact, Canada also had high gasoline prices this year, according to The Wall Street Journal.

Now, let's address the question posed for this hearing: Does President Obama really support an all-of-the-above energy strategy? What is an all-of-the-above energy strategy? To most Americans it means we must do three things: first, develop the energy resources of today while using them more efficiently; second, invest in the new cleaner technologies of tomorrow; third, reduce public health threats from pollution generated by producing and burning coal, oil, and other fossil fuels.

We have just heard all the rhetoric. Now let's review the Obama record on the all-of-the-above energy strategy checklist.

First, develop energy resources. U.S. oil production is at its highest since 1998. The Energy Information Administration just demonstrated that annual oil production for Federal lands and waters was higher under the first three years of President Obama than under the last three years of his predecessor. In all, this was 646 million barrels, 12 percent higher than 2008.

Let's look at oil imports and are we using oil efficiently. In 2011, the United States imported only 45 percent of its oil, the lowest since 1997. When the modernization of fuel economy standards is complete in 2025, we will use 2 million fewer barrels of oil per day and drivers will save $8,000 per car in lower gasoline purchases. And I say this as the son-in-law and brother-in-law of car dealers.

Nuclear power. The first two nuclear reactors in a generation were just approved in February for a plant in Waynesboro, Georgia.

Coal employment. U.S. Mine Safety and Health Administration reports that there were more coal miners employed in the United States in 2011 than in any year since 1997.

So it looks like we are producing more of the resources we have and using them wisely.

Are we investing clean energy in jobs? In 2011, U.S. clean energy investments moved ahead of China for the first time in 2008, according to Bloomberg. The non-hydro renewable electricity generation will nearly double between 2008 to 2012, according to Energy Information Administration. And the Bureau of Labor Statistics re-

cently reported that "In 2010, 3.1 million jobs in the United States were associated with the production of green goods and services.

Last question: Are we protecting public health from pollution? The Cross-State Air Pollution Rule and mercury air toxic standards will reduce smog, acid rain, mercury, and cancer-causing pollution from power plants. These rules will protect children, seniors, and the infirm from air pollution, and will save up to 45,000 lives annually.

The record demonstrates that President Obama passes the all-of-the-above test. What about the House of Representatives? We know that it supports expanded oil and gas production. What about the other essential elements of all-of-the-above? Is the House of Representatives supporting clean energy investments in jobs? Will the House pass fiscal year 2013 budget, which slashes these investments, according to the Office of Management and Budget? "Clean energy programs will be cut by 19 percent."

Instead, the House budget would retain $40 billion in tax breaks for big oil, even though the five largest companies earned $137 billion in profits in 2011. And the House has not extended the production tax credit for wind and other renewable energy sources, even though it expires at the end of this year. There is a bipartisan extension bill that has languished since last November.

Would the House protect public health from pollution? Last year the House held 209 votes to weaken public health safeguards or environmental protection, including blocking protections from mercury.

So President Obama has successfully pursued an all-of-the-above energy strategy by increasing oil production, reducing imports, and using oil more efficiently and protecting public health from pollution. The House of Representatives has ignored oil use production, slashed investments for new clean energy technologies, and would eviscerate public health protection from hazardous pollutants. This is an oil-above-all strategy that would benefit big oil companies at the expense of everyone else. Hopefully, the House of Representatives will join President Obama in supporting his all-of-the-above energy strategy.

Thank you very much.

[Prepared statement of Mr. Weiss follows:]

Chairman Issa, Ranking Member Cummings, and members of the committee, thank you very much for the opportunity to testify today.

I am Daniel J. Weiss, a Senior Fellow at the Center for American Progress Action Fund, a tax-exempt organization dedicated to improving the lives of Americans by transforming progressive values and ideas into policy.

The question posed for this hearing is, "Does President Obama really support an 'all of the above' energy strategy?"

What is an "all of the above" energy strategy? To most Americans, it means we must do three things:

- Develop the energy resources of today while using less of them.
- Invest in the new, cleaner technologies of tomorrow.
- Reduce the public health threat from pollution generated by producing and burning coal, oil, and natural gas.

President Obama, employing the tools provided to him by the 110th, 111th and previous Congresses, is accomplishing all of these goals. The United States is producing more oil and gas from private and federal lands. We are importing and using less oil. We are investing in efficiency, wind, solar, and other new technologies of the future. And the administration's reductions in smog, acid rain, and toxic air pollutions will prevent up to 45,000 premature deaths annually.

Let's review the record that demonstrates that President Obama is successfully pursuing an "all of the above" energy strategy.

Develop the energy resources of today

Oil and gas production is up

There has been a lot of rhetoric about this topic that has crowded out the record. The truth, however, is that the United States is producing more oil while using and importing less. Here are some facts about oil and gas production:

- U.S. oil production is at its highest rate since 1998. The Energy Information Administration predicts that it will reach 6.2 million barrels/day by the end of this year.

- Oil production from federal lands and waters is higher than in 2008. The Energy Information Administration, or EIA, determined that in 2011 the United States produced 646 million barrels of crude oil from federal lands and waters compared to 575 million barrels in 2008—a 12 percent increase in production. Oil production from federal areas was higher in every year from 2008 to 2011 than in 2006 to 2008. Since 2003, the most

oil produced from federal lands was in 2011, and the most from federal waters was in 2010.

- The EIA determined that natural gas production in the United States increased by 19 percent between 2008 and 2011, with a record 28.6 trillion cubic feet of natural gas production last year.

- According to Bureau of Labor Statistics data, there were 75,000 more oil and gas jobs in 2011 compared to 2009.

Additionally, a *National Journal* poll of 1,004 adults found significant bipartisan support for banning or regulating hydraulic fracking that produces shale gas. A majority (53 percent) supported an "increase [in] regulation of fracking to protect the environment, but NOT ban it," while 15 percent wanted to "ban fracking altogether because it's not safe for the environment."

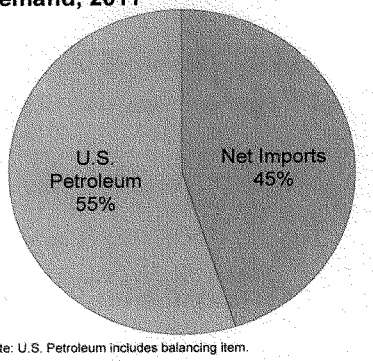
Only one-quarter of poll subjects wanted to "reduce regulation of fracking to encourage more natural gas production." A clear majority – 55 percent -- of Republicans wanted either a fracking ban or more regulation; only 41 percent of Republicans wanted to reduce regulations on fracking.

Oil use and imports are down

As stated above, the United States is using and importing less oil. This has reduced the transfer of income to other oil producing countries. U.S. oil consumption is down by 1 percent between 2008 and 2011, according to EIA data. Expenditures on foreign oil were $4.5 billion lower in 2011 than in 2008, even though oil prices were higher.

In 2011 the United States imported only 45 percent of our oil—the lowest rate since 1997. In 2008 we imported 57 percent of our oil, according to the EIA.

Net Imports and Domestic Petroleum as Shares of U.S. Demand, 2011



Note: U.S. Petroleum includes balancing item.

Source: U.S. Energy Information Administration, *Monthly Energy Review*, Table 3.3a (March 2012), preliminary data.

President Obama also modernized fuel economy standards for the first time since 1987. After the implementation of the second round of improvements in 2025, the United States will use 2.2 million fewer barrels of oil per day, and drivers will save $8,000 per car in lower gasoline purchases compared to a 2010 car.

Because of the fuel economy standards that will take effect from 2011 to 2016, the EIA predicts that passenger (light duty) vehicle miles traveled will increase by 16 percent from 2009 to 2019, while oil use will increase by only 3 percent. This does not include the proposed standards that will further improve fuel economy between 2017 and 2025.

In addition to saving oil, domestic biofuels will provide nearly 1 million barrels of fuel per day in 2012, according to the EIA.

Investments in buses, subways, and trains can also reduce our dependence on oil and create jobs. Public transportation saves 4.2 billion gallons of gasoline annually. Every $1 billion of investment in public transportation supports 36,000 jobs.

Big Oil companies make record profits due to high prices

High oil and gasoline prices increase oil company profits, and oil prices averaged a near-record $103 per barrel in 2011. It's little surprise, then, that the big five oil companies—BP, Chevron, ConocoPhillips, ExxonMobil, and Royal Dutch Shell—made a combined record profit of $137 billion last year. And from 2001 to 2011, these companies made more than $1 trillion in profits

(2011 dollars). These same five companies made $33.5 billion—or $368 million per day—in the first quarter of 2012.

Although these companies made hundreds of billions of dollars in profits, four of the five are producing *less* oil. Between 2006 and 2011 these five companies combined produced 12 percent fewer barrels of oil.

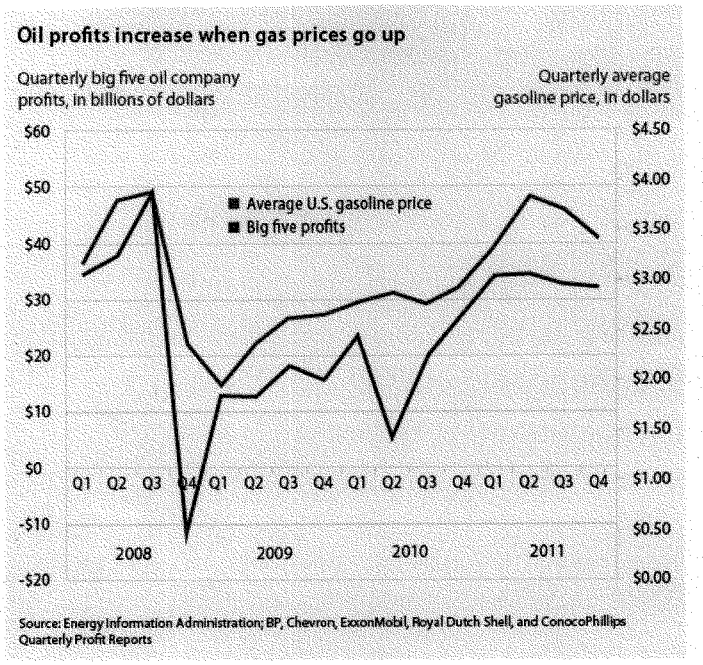
Big Oil pumps out fewer barrels despite higher profits

Annual worldwide liquid fuels production by the big five companies, 2006–2011, millions of barrels per day

Year	BP	Chevron	ConocoPhillips	ExxonMobil	Shell	Total
2006	2.48	1.73	1.11	2.68	2.03	**10.03**
2007	2.41	1.76	0.98	2.62	1.82	**9.59**
2008	2.40	1.65	0.92	2.41	1.69	**9.07**
2009	2.54	1.85	0.97	2.39	1.68	**9.41**
2010	2.37	1.92	0.91	2.42	1.71	**9.34**
2011	2.16	1.85	0.80	2.31	1.67	**8.78**
Percent change in production between 2006 and 2011						
2010-2011	-9%	-4%	-12%	-5%	-3%	**-6%**
2006 - 2011	-13%	7%	-28%	-14%	-18%	**-12%**

Source: BP, Chevron, ConocoPhillips, ExxonMobil, and Shell Annual Profit Reports, 2006 -2011

High oil and gasoline prices help offset these five companies' decline in production. CAP conducted an analysis of gasoline prices and big five oil company profit data and found that from 2008 to 2011, every one-cent increase in the price of gasoline translated into $200 million in profits for the big five companies (on a quarterly basis). This explains how high prices increased their profits even as their oil production fell.



Also, despite their demand to open fragile, previously protected places for oil and gas production, oil and gas companies are not developing many of the leases that they already hold. The Department of the Interior recently determined that:

> There are approximately 26 million leased acres offshore and over 20 million leased acres onshore that are currently idle – that is, not undergoing exploration, development, or production.
>
> Leased areas in the Gulf of Mexico – that are not producing or not subject to pending or approved exploration and development plans – are estimated to contain 17.9 billion barrels of UTRR oil and 49.7 trillion cubic feet of UTRR natural gas.

According to a May 2012 report from the Department of Interior, "more than 70 percent of the tens of millions of offshore acres under lease are inactive." This includes almost 24 million acres that do not have "approved exploration or development plans" in the Gulf of Mexico. This area has an estimated 11.6 billion barrels of oil and 50 trillion cubic feet of natural gas.

The Department of Interior held "three of the top five largest [lease] sales in the agency's history" last year, while 56 percent of the public lands leased to the oil and gas industry in the lower 48 states were not being explored or producing any fossil fuels.

Lease Activity (in millions of acres)			
	Offshore	Onshore (lower 48)	Total
Total Number of Leased Acres	34.8	37.0	71.9
Number of Leased Acres that are NOT in exploration or production	25.7	20.8	46.5
Percentage of Leased Acres NOT in exploration or production	74%	56%	65%

Source: Department of Interior May 2012 report: "Oil and Gas Lease Utilization, Onshore and Offshore: Updated Report to the President"

Big Oil companies receive billions of dollars of tax breaks

Despite their trillion-plus dollars of profits earned over the past decade due to high oil and gasoline prices, Big Oil companies still receive $40 billion per decade in federal tax breaks. One of these provisions—"expensing of intangible drilling costs"—originated in 1916 and costs taxpayers $12.5 billion per decade..

President George W. Bush, a former oil man, actually supported the elimination of Big Oil tax provisions in 2005 because they were unnecessary. He said:

> I will tell you with $55 oil, we don't need incentives to the oil and gas companies to explore. There are plenty of incentives. What we need is to put a strategy in place that will help this country over time become less dependent.

Big Oil's tax break defense is full of holes

Big Oil companies and the American Petroleum Institute, or API—their lobbying arm—have misleading or wrong defenses for these tax breaks.

Rhetoric: "The industry receives not ONE subsidy, and it is one of the largest contributors of revenue to our government of any industry in America." — Jack Gerard, API president and CEO, February 23, 2012

Record: Numerous Republican leaders have noted that a tax break is the same as a direct government payment or subsidy, in a different form. This includes former President Ronald Reagan's chief economic advisor, Martin Feldstein; former Senate Budget Committee Chair Pete Domenici (R-NM); House Ways and Means Committee Chair Dave Camp (R-MI); and Speaker of the House John Boehner (R-OH).

- Feldstein: "These tax rules — because they result in the loss of revenue that would otherwise be collected by the government — are equivalent to direct government expenditures."

- Domenici: "Many tax expenditures substitute for programs that easily could be structured as direct spending. When structured as tax credits, they appear as reductions of taxes, even though they provide the same type of subsidy that a direct spending program would."

- Rep. Camp: "'Tax expenditures' [are] provisions that technically reduce someone's tax liability, but that in reality amount to spending through the tax code."

- Rep. Boehner: "What Washington sometimes calls tax cuts are really just poorly disguised spending programs."

Rhetoric: "Raising taxes will not lower energy prices for American families and businesses — in fact, the Congressional Research Service says this plan could cause gasoline prices to go higher." — Jack Gerard, API president and CEO, March 26, 2012

Record: A May 2011 Congressional Research Service memo to Senate Majority Leader Harry Reid (D-NV), "Tax Policy and Gasoline Prices," determined that eliminating tax breaks for Big Oil companies would have little impact on the price of gasoline. Here is a summary of CRS's conclusion of the impact of eliminating specific tax breaks for Big Oil:

> Section 199: With current prices at, or near, $100 per barrel in the United States, it is unlikely that firms will slow production, or close wells with the loss of the Section 199 deduction.
>
> Intangible drilling costs: The Woods MacKenzie study did not conclude that U.S. gasoline prices would be affected by the tax changes.

> Dual Capacity Rules: [Elimination of] this provision…should have no effect on the firms output or pricing decisions, and therefore no effect on the price of gasoline.
>
> General Considerations: The total expected tax revenues are only 5% of the earnings of the five largest firms in the industry and a smaller percentage of the total industry.

Rhetoric: Reducing or eliminating these tax breaks will reduce oil production or cost jobs.

Record: Even with the tax breaks, oil production and employment by the big five companies is lower. As previously noted, the big five companies produced 12 percent less oil in 2011 compared to 2006. And despite earning more than $1 trillion in profits between 2001 and 2011, the big five oil companies have shed more than 11,000 U.S. jobs over the past few years, according to "Profits and Pink Slips: How Big Oil and Gas Companies Are Not Creating U.S. Jobs or Paying Their Fair Share" by the House Natural Resource Committee Democrats.

Rhetoric: Big Oil already pays its fair share of taxes.

Record: The biggest oil companies claim that they pay a large amount of taxes. Reuters found that they support this claim by lumping various fees, payments, and taxes together:

> The industry lumps together U.S. and foreign taxes. It includes taxes that are deferred and thus not paid yet. U.S. companies must pay taxes on profits earned abroad, but they can defer these taxes until they bring the cash into the country.

Reuters also determined that "Exxon Mobil paid 13 percent of its U.S. income in taxes after deductions and benefits in 2011, according to a Reuters calculation of securities filings. Chevron paid about 19 percent."

And Reuters reports that ConocoPhillips paid an effective federal tax rate of 18 percent last year. These tax rates, Reuters concludes, are "a far cry from the 35 percent top corporate tax rate."

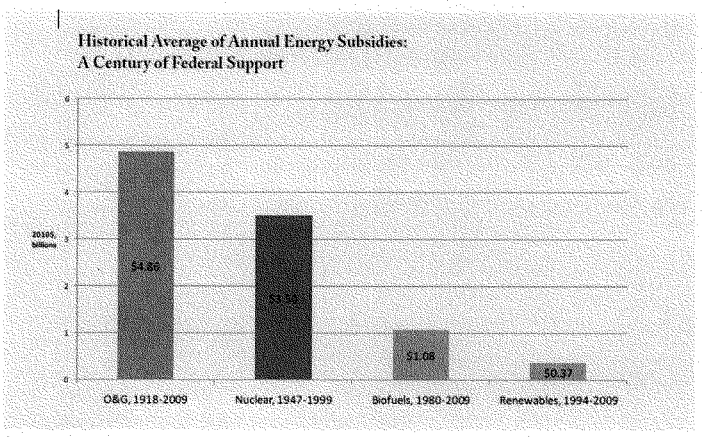
To further put this into perspective, the average American household paid an effective federal tax rate of 20 percent in 2007, the last year for which data are available.

Big Oil receives far more subsidies than renewables

Despite Big Oil's trillions of dollars of earnings, and billions of dollars of tax breaks dating back 100 years, some Big Oil allies claim that these companies need these tax breaks. Meanwhile, important incentives to invest in clean, emerging renewable technologies are under attack. For example, the production tax credit for wind energy will expire at the end of this year. Its demise threatens 37,000 jobs. In addition, it would surrender the growing market for clean tech to our economic competitors.

It is important to note that Big Oil and nuclear energy have received vastly more federal assistance than wind, solar, and other renewable energy sources. According to a DBL Investors analysis from 2011:

In inflation adjusted dollars, nuclear spending averaged $3.3 billion over the first 15 years of subsidy life, and O&G subsidies averages $1.8 billion, while renewables averaged less than $0.4 billion. … federal incentives for early fossil fuel production and the nuclear industry were much more robust than the support provided to renewables today.



Source: DBL Investors, "What Would Jefferson Do?'

First new nuclear reactors approved in 30 years

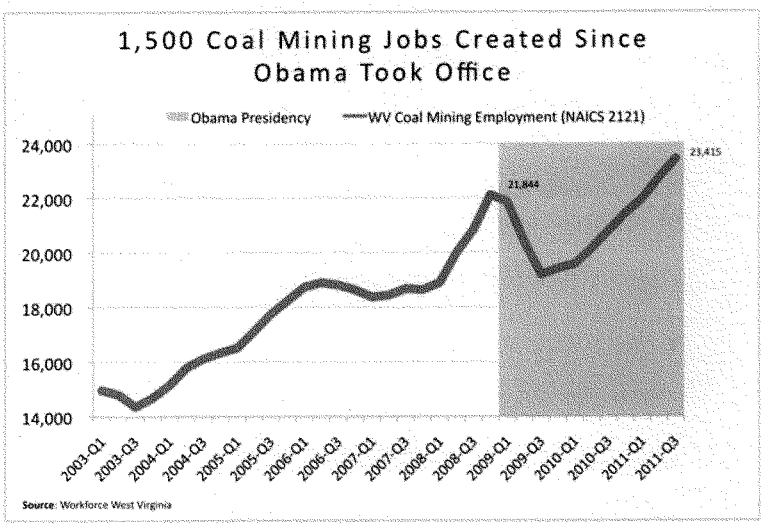
The first two new nuclear reactors in a generation were approved in February 2012 for Plant Vogtle in Waynesboro, Georgia. Two more reactors in South Carolina were approved in March. The Georgia reactors are in the process of receiving a federal loan guarantee from the Department of Energy.

Coal mining jobs are up

Coal companies, some utilities, and the coal industry's lobbying arm claim that there is a so-called "War on Coal" because the Environmental Protection Agency is requiring power plants to reduce their pollution (see below for more details). Despite their high profits, these companies want to avoid reducing their smog, acid rain, toxic, and carbon pollution.

This alleged war is little more than a myth. Coal employment has been growing. The U.S. Mine Safety and Health Administration reports that there were more coal miners employed in the United States in 2011 than any year since 1997, and nearly 3 percent more compared to 2008. This includes more miners in 2010 in Pennsylvania and Virginia, according to the Energy

Information Administration. There are also 1,500 more coal miners in West Virginia since President Obama took office, according to the West Virginia Center on Budget & Policy.



Coal production in Colorado and Utah rose 25 percent in the third quarter of 2011 compared with the same period in 2010. Craig, Colorado, "a northwest Colorado town based on an economy powered largely by the surrounding county's coal mines, is doing relatively well, according to the mayor," reported *Politico*. Mitt Romney gave a speech there about the economy on Tuesday May 29, 2012.

There has been a reduction in coal production over the last several years, but protecting children's health isn't the reason. The *West Virginia Gazette* reports that coal companies "have most frequently cited competition from low natural gas prices, a warm winter and the sluggish economy -- not tougher environmental rules -- as the central reasons for production cutbacks."

Invest in the cleaner technologies of tomorrow

Investments in renewables are vital to U.S. economic competitiveness

The United States is competing with China, Germany, and other nations to produce the clean energy technologies of the future that the world will demand to reduce the carbon pollution responsible for climate change. By 2020 clean energy will be one of the world's biggest industries, totaling as much as $2.3 trillion. Of the seven strategic emerging industries identified by China's State Council as focal points for government investment in economic growth, five are related to the clean energy economy.

The growing clean energy industry is very attractive to investors. Reuters just reported that the "Goldman Sachs Group Inc. plans to channel investments totaling $40 billion over the next decade into renewable energy projects, an area the investment bank called one of the biggest profit opportunities."

The question is whether there is a friendly or hostile economic climate in the United States that encourages Goldman Sachs and others to invest in renewable energy here at home. Opposition to incentives and other forms of government support could drive these companies to invest in other nations instead.

Renewable electricity has nearly doubled under Obama

Under President Obama, the United States made investments in renewable energy and they are paying off. In 2011, "U.S. clean energy investment moved back ahead of China for the first time since 2008," according to *Bloomberg New Energy Finance*. And federal loans or guarantees are a good deal for taxpayers. For every $100 the government lends or guarantees, the program only costs taxpayers 94 cents.

Thanks to such investments, the generation of non-hydro renewable electricity will nearly double from 108 gigawatts in 2008 to 196 gigawatts in 2012, based on EIA data. This includes nearly tripling wind-generated electricity and more than doubling solar electricity.

Wind energy is a growing source of electricity

One of the fastest growing electricity sources of any kind is wind generation. According to the American Wind Energy Association:

> The U.S. wind industry now totals 48,611 MW of cumulative wind capacity through the end of the first quarter of 2012.
>
> The U.S. wind industry has added over 35% of all new generating capacity over the past 5 years, second only to natural gas, and more than nuclear and coal combined.

Currently, total wind generation is enough to power more than 12 million homes.

The production tax credit for wind energy became law in 1992. It "has generated $15 billion to $20 billion a year in private investment over the past five years, in the process becoming one of the fastest growing U.S. manufacturing industries," according to the American Wind Energy Association, or AWEA.

Clean energy investments create jobs

Federal investments in clean energy technologies beginning in 2009 "created or save[d] nearly 1 million jobs [through 2010], according to a report from the Economic Policy Institute and the BlueGreen Alliance." The Bureau of Labor Statistics recently determined that, "In 2010, 3.1 million jobs in the United States were associated with the production of green goods and services."

The wind industry employs 75,000 people, according to AWEA. Jobs in the solar industry will grow by one-third to 124,000 between 2010 and 2012, according to the National Solar Jobs Census 2011. This includes an 11 percent increase in manufacturing jobs.

Investments in home energy efficiency save families money

The Department of Energy's Weatherization Assistance Program has supported the weatherization of more than 750,000 low-income homes over the past three years. The program provides:

> Energy efficiency upgrades [that] include adding insulation, sealing ducts, and installing more efficient windows, heaters, and cooling systems -- and are lowering energy bills for low-income families across the country, supporting economic growth and creating jobs.

Weatherized homes saves the average household $400 in lower heating and cooling bills in the first year alone by reducing energy consumption by up to 35 percent.

Investments in alternative transportation will save oil, create jobs

We must also invest in alternatives to oil. Plug-in hybrids and all electric vehicles consume little or no gasoline. During their first year, the combined sales of the plug-in hybrid Chevrolet Volt and the all-electric Nissan Leaf were twice as large as the now-familiar Toyota Prius and Honda Insight hybrids during their first year. It took fifteen years after its introduction for the Toyota Prius to become the third best-selling car in the world today. In March, Chevrolet sold more Volts than in any previous month. Sales in the emerging plug-in electric car market rose 323 percent while auto sales rose 13.4 percent in the quarter overall.

The Volt and other innovative American oil-savings technologies require enhanced infrastructure to speed their adoption. There is a long history of government support for the infrastructure that is essential to grow pioneering technologies, from FM radio to telephones. Electric vehicles would likewise benefit from such assistance with recharging infrastructure. The Electric Drive Vehicle Deployment Act of 2011, H.R. 1685, sponsored by Reps. Judy Biggert (R-IL) and Ed Markey (D-MA) would provide financial assistance to states for the deployment of electric vehicles.

In addition to making more sophisticated electric-fueled vehicles, the United States is investing in the advanced batteries necessary to power them. In 2009 the United States had only two

factories manufacturing advanced vehicle batteries, producing less than 2 percent of the worldwide share of batteries. Due to investments made under the Recovery Act, battery and parts manufacturers are building 30 U.S. factories. As of January 2012 the battery program has created and saved more than 1,800 jobs—not including construction jobs—according to a ProPublica analysis.

Protect the public from pollution

Our use of coal and oil provide many essential economic and lifestyle benefits. These fuels have powered the United States to become the world's largest economy. At the same time, our reliance on coal and oil has a huge hidden public health and economic price tag. The National Academy of Sciences concluded that combustion of these two fuels causes $120 billion annually in economic damage due to premature deaths, asthma attacks, hospitalizations, and lost productivity. Most vulnerable to acid rain, smog, toxics, and carbon pollution are children, seniors, and the infirm.

Fortunately, it is possible to use these fuels while reducing the pollution responsible for these human and economic harms. The Clean Air Act of 1990 provides the administration with tools to protect the public from these deadly air pollutants.

The Environmental Protection Agency has recently finalized rules to reduced major pollutants from power plants. In 2011 it finished the "Cross-State Air Pollution Rule," designed to protect downwind states from acid rain or smog pollution from upwind states. It requires cuts in sulfur dioxide and nitrogen oxide pollution—the ingredients of acid rain and smog. This rule will prevent up to 34,000 premature deaths and avoid 858,000 other health problems annually, including 400,000 cases of aggravated asthma. These air quality improvements will result in $120 billion to $280 billion in annual benefits.

Another long overdue rule the EPA recently promulgated would require coal-fired power plants to dramatically reduce the emission of mercury, lead, arsenic, and other toxic pollutants. These contaminants can cause birth defects, brain damage, cancer, and other serious ailments. The EPA predicts that these reductions—which don't take effect until 2015 or 2016—will save 11,000 lives annually and prevent more than 100,000 asthma and heart attacks too. These health improvements will provide economic benefits of up to $90 billion every year.

More domestic production will not lower gasoline prices

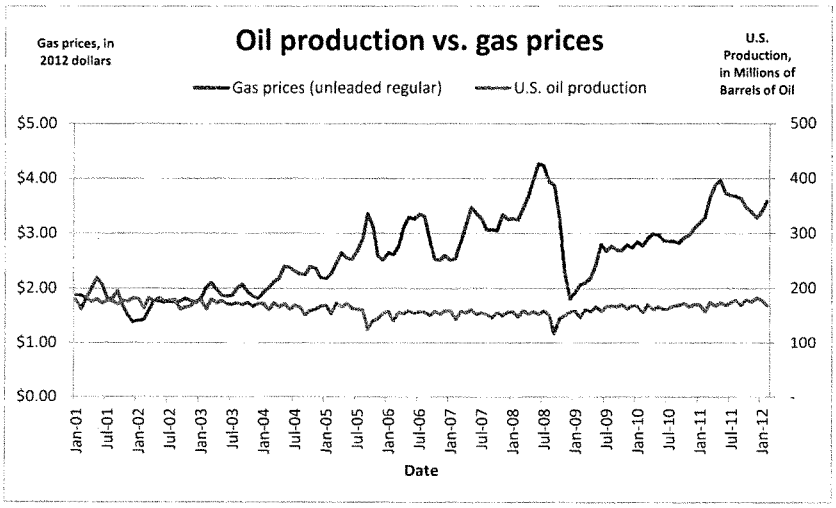
High oil prices are responsible for high gasoline prices. The Energy Information Administration estimates that the cost of crude oil was 66 percent of the cost of a gallon of gas in May 2012. And oil prices are set on the global market, which is controlled by the Organization of Petroleum Exporting Countries, a cartel. The Federal Trade Commission found that "OPEC attempts to maintain the price of oil by limiting output and assigning quotas."

Other nations that produce most of their oil also experienced high gasoline prices this year. For instance, Canada had high gasoline prices too. *The Edmonton Journal* on March 30 reported that "Canadians are paying some of the highest prices they ever have for gasoline."

No president has much control over oil prices, as noted by the Cato Institute and a survey of economists by the University of Chicago. *The Wall Street Journal* noted that:

> Producing a lot of oil doesn't lower the price of gasoline in your country. According to the U.S. Energy Information Administration, Germans over the past three years have paid an average of $2.64 a gallon (excluding taxes), while Americans paid $2.69, even though the U.S. produced 5.4 million barrels of oil per day while Germany produced just 28,000.

Big Oil and their political allies claim that the expansion of oil drilling would lower gasoline prices. The Associated Press tested this hypothesis by analyzing three decades' worth of monthly oil production and gasoline price data. AP determined that there is "no statistical correlation between how much oil comes out of U.S. wells and the price at the pump."



House of Representatives ignores "all of the above" strategy?

This hearing is designed to examine whether the Obama administration has pursued an "all of the above" energy strategy. The record clearly shows that it has.

Unfortunately, the House of Representatives does not appear to have joined the administration in pursuit of that strategy. The House-passed fiscal year 2013 budget resolution, H. Con. Res. 112, sponsored by House Budget Committee Chairman Paul Ryan (R-WI) favors fossil fuels at the expense of cleaner, new renewable energy technologies. In addition, the House has passed numerous bills that would put children, senior citizens, and the infirm at risk by blocking or delaying long-overdue safeguards to protect them from pollution. Let's quickly look at the House's record on "all of the above" energy:

- The FY 2013 budget proposal calls for a $3 billion cut in energy programs in FY 2013 *alone*. From 2013 through 2017 the Ryan budget would spend a paltry total of $150 million over these five years on these programs—barely 20 percent of what was invested in 2012 alone.

- The proposal includes scant specifics about cuts in energy programs. Yet it explicitly calls for ending investments in programs that promote emerging technologies, which would include renewable, efficiency, advanced vehicle, and other emerging technologies:

  > This budget would … [pare] back duplicative spending and non-core functions, such as applied and commercial research or development projects best left to the private sector. And it would immediately terminate all programs that allow government to play venture capitalist with taxpayers' money.

- These cuts in energy programs could include:

  - Investments in the development of advanced batteries, essential for electric vehicles that use little or no oil.

  - Loans to auto companies to help them build super-fuel-efficient vehicles. For instance, a program signed into law by President George W. Bush provided a $5.9 billion loan to Ford to help it build 2 million fuel-efficient vehicles annually while creating 33,000 jobs.

  - Tax incentives to encourage investment in wind and solar energy deployment, which will create electricity with little or no pollution.

- The Ryan budget would slash investments in clean energy technologies. According to the Office of Management and Budget:

  > Clean energy programs would be cut by 19 percent over the next decade, derailing efforts to put a million electric vehicles on the road by 2015, retrofit residential

homes to save energy and consumers money, and make the commercial building sector 20 percent more efficient by 2022.

- The House budget retains $40 billion in tax breaks for Big Oil companies over the coming decade.

- In the first session of the 112th Congress, the House of Representatives held 209 votes to weaken public health safeguards or environmental protections, according to an analysis by Reps. Henry Waxman (D-CA), Ed Markey (D-MA), and Howard Berman (D-CA). There were 77 votes to weaken the Clean Air Act, including efforts to "block EPA regulation of toxic mercury and other harmful emissions from power plants" and other major sources of dangerous air pollution.

- The House has not extended the production tax credit for wind and other renewable energy sources even though the credit expires at the end of 2012. Rep. Dave Reichert (R-WA) introduced the American Renewable Energy Production Tax Credit Extension Act, H.R. 3307, last November. Although it has 100 co-sponsors from both parties, it has not moved through the Ways and Means Committee or to the House floor.

- The Electric Drive Vehicle Deployment Act, H.R. 1685, sponsored by Reps. Judy Biggert (R-IL) and Ed Markey (D-MA) was introduced in May 2011. It would create a "race to the top" for communities that wanted to invest in recharging infrastructure for electric vehicles. It has not been acted on, either.

Conclusion

As stated at the beginning, an "all of the above" strategy includes increasing oil and gas production, reducing use, investing in new clean energy technologies, and protection of public health. My testimony is just a brief summary of the available evidence that conclusively demonstrates—based on the record and not rhetoric—that President Obama has successfully pursued an "all of the above" energy strategy.

Just as clearly, the House of Representatives has ignored oil use reductions, slashed investments for new clean energy technologies, and would eliminate or eviscerate public health protection from hazardous pollutants.

In particular, the House budget's disinvestment in clean energy threatens industries and jobs in a new worldwide economy that other nations are racing to claim. Such policies wave the white flag of surrender by proposing to kill the public-private investments essential to compete with China, Germany, and other nations.

The record demonstrates that President Obama has successfully pursued an "all of the above" energy strategy that creates jobs, builds new industries, reduce families' energy spending, and cuts pollution. Despite its rhetoric, it seems that the House of Representatives has pursued an "oil above all" strategy that would benefit big oil companies at the expense of everyone. Hopefully, the House of Representatives will pass bipartisan legislation to invest in clean

technologies, as well as join President Obama in supporting "an all of the above" energy strategy.

Chairman ISSA. Thank you.

Before I go to the next witness, just so you are prepared when we go to questioning, I heard the Ranking Member use the exact same term you used, the $8,000 per family, so your source is probably the same. If I do my calculation on gasoline correctly, at $4.00 a gallon, $8,000 is 2,000 gallons. Two thousand gallons at 20 miles per gallon would take a family, for free, 40,000 miles. Be prepared to answer how you are going to get that much savings and have your sources ready.

No, no. I just want to make sure you were fully informed because both of you used a term that we have never seen on this side of the dais before.

Mr. Drevna.

STATEMENT OF CHARLES T. DREVNA

Mr. DREVNA. Chairman Issa, Ranking Member Cummings, and members of the Committee, thank you for giving me the opportunity to testify today. I am Charlie Drevna and I am President of AFPM, the American Fuel & Petrochemical Manufacturers.

We are a trade association that was formerly known as the National Petrochemical & Refiners Association until earlier this year. We represent high tech American manufacturers who use oil and gas to make almost all the fuels, heating oil, and petrochemicals used in our Nation.

Let me first echo the statements of Secretary Krancer. We are not here, sir, to dismantle health and safety provisions, and any suggestion to the contrary is totally inaccurate. Quite honestly, I think that is part of the problem that we see as we have categorized the war on fossil fuels.

In response, on the global markets and increasing domestic supply and it will not lower prices, I only have to reference President Obama when he suggested that we can release oil from the strategic petroleum reserve to lower prices. I can also look to President Obama when he went to Brazil and asked the Saudis to increase production so we can lower prices.

Markets react to a stimulus, and if the United States can send that stimulus, that message to the world markets that we are dead serious about our energy and national security, it could go a long way to moderating prices throughout the globe.

The entire oil and natural gas sector supports more than 9 million American jobs and pays more than $31 billion in taxes to the Government, making it the largest taxpayer to the Federal Government, plus additional funds to State and local governments, and the tax provisions that American oil and natural gas refiners get are the same provisions that every manufacturer gets; they are not subsidies, they are not anything special than anyone else gets. And even though these companies make big profits, it is better than losing money and going bankrupt like other companies that the Federal Government has tried to prop up.

Contrary to popular opinion about an energy crisis and our long-term dependence on foreign oil, the fact is the United States is an energy giant and we can meet all our needs domestically by 2025 without the need for taxpayer money.

The Shell gas revolution currently underway in States like Pennsylvania, Ohio, Oklahoma, the Dakotas, Colorado underscores the vast potential of U.S. resources. Just four years ago, proved reserves of natural gas were estimated to be 10 to 15 years. Today those estimates are 40 to 100 years, a staggering change in a very small time frame.

These vast new resources have driven down natural gas prices and have led to a manufacturing renaissance in industries that use natural gas as electricity or as a feed stock, such as petrochemical manufacturing, which is actually building new plants and infrastructure in Pennsylvania, Oklahoma, Texas, and Louisiana; and, ladies and gentlemen, that is just the beginning. This renaissance happened because of continuous innovation and ingenuity of the industry. There were no government plans or policies, or blue ribbon panels involved. There were no subsidies and no government-favored winners or losers. Rather, the drastic turnaround came about through free market incentives to find and produce more supply. The same could be said for crude oil.

However, government actions are threatening the future of this renaissance. In debating energy policy, it is important that we do not lose sight of the regulatory environment that fuel and petrochemical manufacturers face currently. The recent resignation of EPA Region 6 Administrator, Mr. Armendariz, shined a bright public light on an issue we already knew and confront daily: the EPA and this Administration are hostile to fossil fuels.

Fuel manufacturers are being hit with costly and, in many cases, conflicting regulations that threaten refinery operations in our Nation. These include Tier 3 regulations to reduce sulfur in gasoline, greenhouse gas regulations, lengthy permitting delays. You have to really think about how a permitting delay impacts investment, impacts future operations and, therefore, jobs in this Country.

Finally, we can't go without mentioning the unachievable requirements under the renewable fuels standard involving biofuels. Our recommendations are simple: the Administration should allow the oil and gas industry to fully develop domestic resources and immediately approve the Keystone XL pipeline; they should consider the cumulative impact of new regulations prior to imposing them and eliminate costly, contradictory, or ineffective regulations.

Last week The Wall Street Journal ran an excerpt from a November 16, 1980 memo to President-elect Ronald Reagan from his coordinating committee entitled Economic Strategy for the Reagan Administration. One quote is particularly beneficial: "The battle between government regulation and the private market is nowhere more apparent than in energy. Where the market has a decisive comparative advantage, government intrusion into energy production and use provides a glaring example of how regulation costs us all dearly."

Thank you, and I look forward to your questions.

[Prepared statement of Mr. Drevna follows:]

Introduction

Chairman Issa, Ranking Member Cummings and Members of the Committee, thank you for giving me the opportunity to testify at today's hearing on the myths and realities in the debate over America's energy future. I'm Charlie Drevna and I serve as president of AFPM, the American Fuel & Petrochemical Manufacturers.

AFPM is a 110-year old trade association that was known as the National Petrochemical & Refiners Association until early this year. Our association represents high-tech American manufacturers that use oil and natural gas liquids as raw materials to make virtually the entire U.S. supply of gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of vital products in daily life. Most of our members do not have any crude oil and natural gas production operations. But while we do not specifically represent the units of companies that explore and develop oil and natural gas reserves, several of these companies are members of AFPM and we share their goal of a steady, secure supply of oil and natural gas as a vital component of our nation's economy.

AFPM members make modern life possible and keep America moving and growing as we meet the needs of our nation and local communities, strengthen economic and national security, and support 2 million American jobs. The entire oil and natural gas sector – including the producers of oil and natural gas – supports more than 9 million American jobs and pays more than $31 billion a year in taxes to the U.S. government, plus additional funds to state and local governments. According to a recent report from

the World Economic Forum/IHS CERA, the oil and gas extraction industry added 150,000 jobs in 2011—9 percent of all jobs created in the U.S. last year.

Still, America's oil and natural gas sector has the ability to do much more. It can lead a new revolution in energy production – strengthening the U.S. economy and creating jobs. My testimony will focus on two areas: developing American resources and the regulatory environment refiners face.

Develop America's Domestic Energy

The Energy Information Administration (EIA) projects that the U.S. will need 16 percent more energy by 2035. Yet, despite the common refrain from the political class is that we are in the midst of an "energy crisis" and we are too dependent on "foreign oil". Yet, the EIA "Annual Energy Outlook" shows that the U.S. has the capacity to become nearly 100 percent energy secure through domestic production and Canadian imports by 2025. Indeed, to the extent that there is an "energy crisis," it is self-imposed. **The Administration should allow the oil and natural gas industry to fully develop onshore and offshore resources on federal lands, streamline and expedite the leasing and permitting processes, and immediately approve the Keystone XL pipeline.**

How we accomplish these important national goals is an important debate that should be grounded in fact. Unfortunately, while the administration claims to support an "all of the above" approach to U.S. energy, its actions do not always match its rhetoric, and its approach would be more aptly characterized as "all of the above, but none of the

below." In particular, some common claims of opponents of fossil fuels need to be corrected.

First, some continue to claim that the U.S. only has 2 percent of the world's oil reserves to justify subsidies for inefficient, expensive, and ultimately failed "green" businesses. But "reserves" do not include undiscovered resource potential, which current statistics shows could be **10 times greater** than current proven reserves. In fact, the Congressional Research Service notes that the U.S. has the largest resource base of fossil fuels in the world – in the U.S. Continental Shelf, ANWR, and federal lands onshore – much of which is off limits due to actions of politicians that bemoan "energy scarcity" while ensuring that we can not extract readily available supplies. Things are rapidly changing however, in spite of government recalcitrance. Just look at what is happening in the "shale revolution" that many consider a game changer for U.S. energy security.

In 2005 the U.S. produced 48 billion cubic feet (BCF) per day of natural gas and production had declined for five consecutive years. Today, the U.S. is producing nearly 65 BCF per day of natural gas, an increase of 35 percent (and all-time high), and is the largest producer of natural gas in the world. To put a finer point on it, just four years ago, proved reserves of natural gas were estimated to be 10 to 15 years. Today, proved reserves are estimated to be 40 to 100 years, a staggering change to the reserve base in a very short period of time. Over those four years, U.S. natural gas liquids production has increased by 33 percent and is set to increase significantly more over the coming decade as NGL-rich shale plays from the Western Marcellus in Pennsylvania and West Virginia, to the Eagle Ford in West Texas, to the Utica in East Ohio, to the Niobrara in Colorado

and Wyoming, to the Baaken in North Dakota ramp up production of these vital industrial, agricultural, and petrochemical feedstocks.

Technology and innovation have unleashed new resources and helped revitalize not only domestic natural gas production, but also industries that use natural gas as electricity or as a feedstock, such as petrochemical manufacturing. The petrochemical industry was previously plagued by record high natural gas prices, which soured investment and drove production oversees. The "shale revolution" has revitalized the industry and today the industry is investing in new and expanded petrochemical plants and infrastructure from Pennsylvania to Oklahoma to Texas and Louisiana. In fact, the American Chemistry Council estimates that 30 major capital investment projects, totaling $30 billion, are now being planned in the U.S. due to the low cost of feedstocks.

This renaissance happened because of the continuous innovation and ingenuity of the private sector on private lands. There were no plans or policies or "blue ribbon" panels involved. There were no subsidies and no government favored winners and losers. Rather, the drastic turnaround came in areas and sectors where the government could not stand in the way of market incentives to find and produce more supply.

A similar trend is now developing for oil production, which is reaching record highs. Unfortunately, the Administration claims credit for ongoing record oil production that is growing on private lands, in spite of the administration's policies. The administration claims that it is opening more than 75 percent of the potential offshore oil

and gas resources, but the fact is that the "75 percent" number only includes areas already explored. **In fact, 85 percent of offshore resources remain off-limits and new production is occurring on private and state lands, not federal property.** The reality is that production is flat on federal lands, of which only 3 percent are available for lease, and down on federally- controlled offshore areas. A January 2012 report using Bureau of Land Management data shows that leasing and permitting on Western federal lands dropped 44 percent and 39 percent, respectively, between 2007 and 2008 - 2009 and 2010. Furthermore, EIA estimates that oil production in the Gulf was down 22 percent in 2011 and projects a further decline in 2012. A report for the American Petroleum Institute in December 2011 found that deepwater permits for the Gulf of Mexico are being issued at less than half the rate compared with pre-moratorium levels, and shallow water permits are being issued at rates 40 percent lower.

No conversation about North American energy security is complete without mentioning the Keystone XL pipeline. Last month, the President gave a speech in Cushing, OK where he seemingly took credit for approving a part of the Keystone pipeline from Cushing to the Gulf— a section of the pipeline that did not need his approval to be built. At the same time, the Administration continues to delay approval of this important project that will bring 800,000 barrels more oil per day from our neighbor and ally, Canada, not to mention 20,000 construction and manufacturing jobs and another 118,000 spin-off jobs for American workers. Allowing Keystone XL to be built will reduce oil imports to the U.S. from OPEC by 12%. If we fully developed our own national resources, including shale oil, we could displace OPEC imports completely. The

pipeline has received three separate environmental reviews and TransCanada has agreed to 57 special conditions above and beyond typical standards.

The U.S. is an energy giant that has the potential to become energy secure by 2025 without spending any taxpayer dollars. The U.S. is already the largest natural gas producer in the world and the third largest crude oil producer. By implementing policies that allow the U.S. oil and gas industry to explore and develop its domestic resources, the U.S. has the capacity to surpass Russia and China as the world's largest producer of crude oil. In addition to strengthening our energy security and national security, this future will also enhance U.S. economic security. A study conducted by consultants Wood Mackenzie and released by API in January found that increasing access by American companies to our nation's oil and natural gas would create 530,000 jobs and generate $150 billion more in government revenue by 2025, at the same time boosting domestic production by 4 million barrels of oil equivalent a day.

Reduce Regulatory Uncertainty

The recent resignation of EPA Region 6 Administrator Al Armendariz shined a bright light on an issue we already knew— the EPA and the Administration are hostile to fossil fuels. Mr. Armendariz's comments on sharing the "philosophy of enforcement" with the soldiers of the Roman Empire, and that he would "crucify" industry to make it easier to manage are indicative of the larger problem. Government's role should not be to manage the industry; it should work to provide an environment that facilitates growth (and the jobs that come with it) while balancing the costs and benefits of proposed

regulations. **AFPM urges Congress and the administration to consider the cumulative impact of new regulations prior to imposing them, to examine both the efficacy and cost of existing regulations, and to eliminate costly or ineffective regulations hampering American energy producers.**

The administration has failed to recognize the cumulative costs and burden associated with its litany of regulations -- from new and redundant regulations governing tailpipe standards to implementation of the renewable fuel standards to greenhouse gas standards (GHG).

Tier 3/New Source Performance Standards. The Obama administration is claiming it needs to mandate lower sulfur fuels in order to achieve its greenhouse gas tailpipe and CAFE standards. These new requirements are referred to as Tier 3 gasoline standards. However, since EPA's Tier 2 fuel rules were implemented in 2004, domestic fuel manufacturers have already reduced sulfur levels in gasoline by 90 percent, from an average of 300 parts per million in 2004 to an average of 30 parts per million today. EPA's own data indicates air quality will continue improving under the existing Tier 2 standards, but EPA has indicated it will advance Tier 3 regulations regardless. In addition, the Agency has failed to publicly produce analysis that shows what if any benefits would result from Tier 3 fuel standards. Independent analysis indicates Tier 3 sulfur reductions could result in a 6 to 25 cents per gallon increase in the cost of manufacturing gasoline. In addition, the higher end of such costs could lead to four to seven refinery closures, depending on the scope of the regulations.

Recent EPA testimony indicating the agency is looking to scale back its Tier 3 proposal and focus solely on sulfur reductions is encouraging and could serve to lessen these costs. Based on the agency's testimony, costs and impacts are likely to fall more on the lower end of the previously mentioned ranges. However, the tailored rule would still impose a high-cost, minimal-benefit regulatory requirement on America's already heavily regulated fuel supply. It could still lead to significant domestic fuel supply reductions, higher petroleum product imports, potentially increased consumer costs, closed U.S. refineries, lost jobs, and reduced energy security.

Finally, these regulations are in direct conflict with other EPA priorities. In particular, a process called hydrotreating is the principal technology used to reduce sulfur in petroleum products, including motor fuels such as gasoline and diesel. This and other such technologies require energy consumption that results in increased GHG emissions and will also increase emissions of other criteria pollutants. As a result, a regulation requiring a reduction of sulfur in petroleum fuel increases emissions that refiners are being told they must reduce under other Clean Air Act (CAA) regulations.

Renewable Fuel Standard and CAFE standards. The 2007 Energy Independence and Security Act requires refiners to blend at least 36 billion gallons of renewable fuel into the fuel supply. Unfortunately, the RFS was an ill-conceived law that is being implemented poorly. It was also passed into law at a time when some erroneously believed we were an energy poor nation, held hostage by OPEC. As

previously discussed, technological advances in domestic oil production and better information about the extent of our nation's resource potential show we are an energy rich nation. Given this reality, we should repeal, or at the very least revisit, the ill-crafted RFS.

Current infrastructure, all marine, outdoor power equipment, off-road engines, and the vast majority of automobiles are unable to use more than 10 percent ethanol per gallon of fuel. One major flaw with the RFS is that it is volumetric (rather than percentage based) and was draft at a time when U.S. fuel consumption was much higher than it is today. It is also not subject to modification based on the technical feasibility of using more ethanol.

Currently, refiners blend nearly 14 billion gallons of ethanol into the fuel supply each year, which means that more than 90 percent of gasoline sold in the U.S. already contains 10 percent ethanol. The inability to blend more ethanol into the fuel supply that vehicles, engines and infrastructure can handle is referred to as the "blendwall," and as previously noted, we have essentially reached this critical point. Implementation of new CAFÉ standards will exacerbate the problem of increasing gasoline's ethanol content, since it will lead to a situation where higher percentages of ethanol will have to be blended into less gasoline. In fact, a recent report released by the National Association of Convenience Stores (NACS) found that full implementation of the RFS and CAFE would require a nearly 40 percent blend over the next decade.

The relative merits of the RFS aside, EPA's implementation of the law has also created a litany of new problems. Some include:

- **EPA's "partial waiver" approving a 50 percent increase in the amount of ethanol permitted in gasoline for cars and light duty trucks MY 2001 or newer**. Despite widespread opposition from engine and auto manufacturers, environmental organizations, consumer advocates, refiners, food, and agricultural interests, EPA broadly interpreted the requirements of the Clean Air Act and relied on incomplete and inadequate testing when approving E15 (15 percent ethanol, 85 percent gasoline) for certain model vehicles. As a result, obligated parties face a de-facto mandate to meet the RFS using a fuel blend that EPA's data shows will likely lead to widespread misfueling and engine damage. In fact, a recent report from the Coordinating Research Council shows that 2 of 8 automobiles approved by EPA for E15 use failed on the higher blend.

- **Cellulosic Mandates**. Congress granted EPA the authority to waive RFS obligations if it believes supply will not be available. Yet EPA continues to require obligated parties to blend cellulosic ethanol, a phantom fuel that EPA's own data shows does not exist. This year, refiners paid nearly $7 million to EPA to comply with the mandate despite the fact that the industry had no ability to buy cellulosic ethanol. In fact, just last week EPA denied a joint petition from AFPM/API/WSPA to retroactively waive the previous years' volumes despite the

fact that no fuel was available for purchase. This is nothing more than a backdoor energy tax.

- **Renewable Identification Numbers (RINs).** A RIN is the 38 digit number that identifies a gallon of biofuel for RFS compliance. Each year, an obligated party must produce the requisite number of RINs to show it was in compliance with the RFS. However, EPA has uncovered 140 million fraudulent RINs generated by three biodiesel companies, which comprises 5-12 percent of all biodiesel RINs. These companies were registered with EPA and traded the RINS through the EPA Moderated Transaction System (EMTS). Despite registering the companies and allowing the credits into its system, EPA has enforced a "buyer beware" policy and has fined obligated parties that unknowingly purchased fraudulent RINs. Obligated parties are also required to replace all of these RINs for compliance.

EPA's defense of these policies usually boils down to some version of "the industry can afford it." Ability to pay should never be a justification for taxing an industry. More importantly, the consumers ultimately bear the burden of unnecessary regulatory costs.

EPA GHG Regulations. Although the Clean Air Act (CAA) was never intended to regulate global emissions of greenhouse gases, EPA is moving forward in regulating such emissions through the statute. Such action is in line with the Administration's attempt to advance its back door cap-and-trade agenda. In fact, when asked about the future of cap-and-trade after Congress failed to pass legislation on the topic in 2010, the

President explicitly stated, "There is more than one way to skin a cat." The agency is proceeding with its GHG regulations even though Administrator Jackson has said several times that they will do nothing to address global concentrations of GHG emissions.

India, China and other growing economies are not imposing the same carbon restrictions on themselves that EPA is imposing on the American economy. Therefore, under EPA's regulations, we will make U.S. refiners less competitive, send other countries our jobs and more of our manufacturing base – and those countries will export more manufactured products to America.

General Burden of Continuously Tightening CAA and other Regulations. The $128 billion that U.S. refiners have spent since 1990 to comply with federal environmental regulations adds significantly to their costs of manufacturing fuel. Refiners supported, and continue to support, many of these regulations that were clearly beneficial to the environment. However, as environmental standards are tightened, often with very little impact on emissions, the cost to meet those standards increases exponentially, threatening the global competitiveness of American fuel manufacturers.

In discussing the many factors behind its refinery closures, Sunoco noted that environmental regulatory costs consumed approximately 15 percent of its operating budget. Similarly, over the last 10 years ConocoPhillips invested 100 percent or more of its profit into its Trainer refinery in the Philadelphia area to meet regulatory requirements before idling the refinery last year. The refinery also lost money in each of the previous

three years. Finally, a Hovensa refinery that shut down in the U.S. Virgin Islands was located in a region that was in attainment with the Clean Air Act. EPA was nevertheless requiring the company to spend an additional $700 million replacing turbines. After losing $1.3 billion in last three years, the refinery could not afford the additional regulatory compliance costs and decided to instead close its doors.

Conclusion

"The battle between government regulation and the private market is nowhere more apparent than in energy, where the market has a decisive comparative advantage. Governmental intrusion into energy production and use provides a glaring example of how regulation costs us all dearly."

- Excerpt from a Nov. 16, 1980 memo to President-elect Ronald Reagan from his Coordinating Committee on Economic Policy: "Economic Strategy for the Reagan Administration."

The U.S. has the ability to secure its long- term energy security through a combination of ingenuity and the right policy choices. One way of doing this would be to increase the supply of crude oil produced in the United States and purchased from our close friend and neighbor Canada and brought here via the Keystone XL pipeline. This would show that the U.S. is serious about our energy security and would send a message to the rest of the world.

Contrary to the claims of the critics of fossil fuels, America is not energy-poor. We are energy-rich. There is a treasure trove of oil and natural gas under our feet and off

our shores – enough to make America the biggest energy producer in the world. Our challenge is not to find this buried treasure or to extract it, but rather to get federal approval to develop these reserves in a safe and environmentally responsible manner on more federal lands and in more federally controlled waters. Developing our own oil and natural gas resources would also produce badly needed jobs for American workers and revenue for all levels of government.

We understand that different federal and state regulatory agencies face the need to balance effective regulation with the demands of meeting sometimes conflicting decisions from the courts, positions of special interest groups and even newly enacted laws. However, the size, scope, and cumulative burden of current and impending regulatory activity is creating both significant regulatory uncertainty and a slew of conflicting regulations that will impose significant burdens on domestic fuel manufacturers and eventually consumers.

For 40 years or more, opponents of fossil fuels have been telling us that opening up more of America for oil and natural gas exploration and drilling isn't worth doing because any single project would take years before it could reach production and get its oil or natural gas to market. Yes, it's impossible to find and start producing oil and delivering it to refineries at lightning speed. But all the projects we were told decades ago would take too long to build could have been up and running and serving Americans for decades by now if they had only been built.

Imagine if the generations that came before us and built America into the great nation it is today had rejected beneficial projects that changed the face of our nation because the projects couldn't be completed in a timely manner. Technological advances like the telegraph, telephone, radio, television, computers and the Internet all required years of reach and development. None could have been developed it they would have been required to go from the idea stage to the operating stage in a short time period.

Producing more oil and natural gas in the United States, getting more from Canada and reducing harmful regulation can't take place overnight. But these actions are the path towards creating a secure and stable energy supply for American consumers and will result in strong job growth in America.

Members of the American Fuel & Petrochemical Manufacturers are eager to work with Congress and the administration to purse this course while protecting our environment to build a better life for Americans today and future generations.

Chairman ISSA. Thank you.
Mr. Glaser.

STATEMENT OF PETER S. GLASER

Mr. GLASER. Mr. Chairman, Ranking Member Cummings, members of the Committee, my name is Peter Glaser. I am a partner in the Washington, D.C. office of the law firm of Troutman Sanders. I greatly appreciate the opportunity to give this testimony today concerning the effect of the Administration's policies on coal. Let me say at the outset that although I represent clients in the coal industry, my testimony today is my own and does not necessarily represent the views of any of my clients, and neither I nor my firm is being compensated by any client for this testimony.

Based on a review of this Administration's policies towards coal, it can only be concluded that coal does not represent a portion of the Administration's all-of-the-above energy policy. This conclusion is plain from a review of the policies the Environmental Protection Agency is implementing that affect the use of coal in new and existing coal field electric generating stations and in industrial boilers, and it is also clear from the policies of EPA and the Office of Surface Mining for the permitting of coal mines.

EPA's policies are having their intended effect. The Agency now has one rule, the so-called MATS rule, or UMACT rule, that effectively prohibits the construction of new coal-fueled electric generation, and it has another proposed rule, the greenhouse gas New Source Performance Standards rule, that will accomplish the same result. It is also in the process of implementing a suite of power sector regulations that is leading to a larger number of retirements of existing coal-fueled electric generation and it is making it extremely difficult to permit coal mines in Appalachia and other places, threatening the ability to continue mining in those regions and creating the possibility of the loss of hundreds of thousands of mining and related jobs.

EPA's anti-coal policies are motivated by what appears to be the misplaced conclusion that such policies are needed to protect the public health and welfare, but EPA's own statistics show that over the last several decades, even as the use of coal increased, emissions of traditional pollution from coal-fueled electric generation has steadily declined. Coal and environmental protection are compatible.

Moreover, EPA has far, far, far overstated the health and welfare benefits its rules will supposedly create for reasons that I go to in my written testimony. Indeed, EPA's anti-coal regulations will actually harm public health and welfare. Studies show that the rules will cause very large increases in cost to electric ratepayers, will eliminate jobs, even net of so-called green jobs created, and will harm the economy. These costs will fall on those least able to afford them, disproportionately fall on those least able to afford them, and it is a truism that wealth equals health, and the corollary is that reducing disposable income through increased energy costs will create negative health outcomes as people are forced to cut off their air-conditioning in the summer, reduce expenditures for health services, or lose their health insurance because of lost jobs.

EPA's policies are also impairing the reliability of the electric grid, threatening blackouts which tend to occur when the weather is the hottest and air-conditioning is needed the most. EPA's estimates of the number of retirements, electric generation retirements its rules will cause are dramatically understated, far below even the number of retirements that have already been announced as a result of EPA's regulations. Yet EPA has never produced a valid study of how its regulations will affect the reliability of the grid and, indeed, it has disregarded recommendations from the Federal Energy Regulatory Commission that it cumulatively assessed the effect of all of its regulations on grid reliability. Indeed, the business community has been asking EPA from the beginning of this Administration to cumulatively assess how all of its regulations together will affect the electric, mining, and other sectors. Yet, despite the fact of Executive Orders of Presidents Obama and Clinton require cumulative analysis, EPA has refused to produce such a study.

In the end, EPA appears to fail to grasp that coal is good for the economy and good for Americans. As global economic conditions become increasingly competitive, America must look to where it has competitive advantage as compared with other countries. Coal is one of our competitive strengths. There is more heating value in coal in America than there is in Saudi oil reserves. Coal is comparatively low cost to produce and transport, its price has been low and stable over time, it is easy to stockpile, and it has been the bedrock of the American electric system for a very long time. It would be a serious mistake to think that America can be competitive without coal. Certainly, some of our main international competitors, such as India and China, are increasing their use of coal.

In sum, this Administration, and particularly EPA, has been actively adverse to coal and that policy hurts America.

Thank you again for this opportunity to testify.

[Prepared statement of Mr. Glaser follows:]

House Committee on Oversight and Government Reform

Hearings on "Rhetoric vs. Reality: Does President Obama Really Support an "All-of-the-Above" Energy Strategy?"

Testimony of Peter Glaser
Troutman Sanders LLP

The Impact of the Administration's Policies on Coal

May 31, 2012

Introduction

My name is Peter Glaser. I am a partner in the Washington, D.C. office of the law firm of Troutman Sanders LLP. Although I represent clients in the coal industry, my testimony today is my own and does not necessarily represent the views of any of my clients. I am not being compensated by any client for this testimony.

Based on a review of this Administration's policies towards coal, it can only be concluded that coal does not represent a portion of the Administration's "all-of-the-above" energy policy. In other words, when the Administration says it is pursuing an "all-of-the-above" energy strategy, it does not include coal in the "all-of-the-above." This conclusion is plain from a review of the policies the Administration, and particularly the Environmental Protection Agency (EPA or Agency), is implementing as to new and existing coal-fueled electric generating stations, in the use of coal in manufacturing and industrial boilers, as well as in the permitting of coal mines.

EPA's policies are having their intended effect. The Agency now has one rule that effectively prohibits the construction of new coal-fueled electric generation and another proposed rule that will accomplish the same result. It is in the process of implementing a suite of

power sector regulations that is leading to a large number of retirements of existing coal-fueled electric generation. And it is making it extremely difficult to permit coal mines in Appalachia.

EPA's anti-coal policies are motivated by what appears to be the misplaced conclusion that such policies are needed to protect the public health and welfare. EPA, however, is misguided. EPA's own statistics show that over the last several decades, even as the use of coal for electric generation has increased, emissions of traditional pollutants from coal-fueled generation has steadily declined. This is because coal has become a steadily cleaner fuel as pollution control technology has developed.

Moreover, EPA has far overstated the health and welfare benefits its rules are creating. The best case in point is EPA's Mercury and Air Toxics Standards (MATS) rule, where EPA estimated a demonstrably preposterous $33 to $99 billion in annual benefits in 2016 based mostly on the claim that the rule will prevent between 4,200 and 11,000 premature deaths per year. But close analysis reveals that only between $500,000 and $6 million per year of those benefits actually results from reducing the hazardous air pollutants the rule was designed to control. The rest of the benefits come from what EPA calls the "co-benefit" or reducing fine particle concentrations in the atmosphere, as control technologies utilities install to control acid gases (for which EPA is unable to monetize any benefits at all) also reduce sulfur dioxide emissions. But EPA's hugely overstated benefit numbers for reducing fine particle concentrations in the air result from a string of suspect assumptions, including the double-counting of benefits that occur from the regulations the Agency has adopted to directly control sources of fine particle matter. And virtually all of the benefits EPA attributes to the MATS rule result from reducing fine particle concentrations to a level below that in the fine particle National

Ambient Air Quality Standards (NAAQS), even though EPA set the NAAQS at a level that it concluded is protective of human health with a margin of safety.

Instead of promoting the public health and welfare, EPA's anti-coal regulations will actually harm the public health and welfare. Studies show that the rules will cause very large costs to electric ratepayers, will eliminate jobs (even net of "green jobs" created), and will harm the economy. These costs will disproportionately fall on those least able to afford them. Lower-income electric consumers and senior citizens living on fixed incomes will be forced to curtail the use of electricity, which means they will reduce air conditioning usage in the summer, which is a direct health hazard. Higher energy costs also reduce the ability of lower-income and fixed-income people to pay for health care and good nutrition, and those who lose their jobs because of EPA's misguided energy policies will likely lose their health insurance.

EPA's policies also affect the reliability of the electric grid, threatening blackouts which tend to occur when the weather is hottest and air conditioning is needed the most. Blackouts represent a serious threat to both public health and public safety. EPA's estimates of the number of retirements its rules will cause are dramatically understated, far below even the number of retirements that have already been announced as a result of EPA's regulations. Yet EPA has never produced a valid study of how its regulations will affect the reliability of the grid, and indeed it has disregarded recommendations from the Federal Energy Regulatory Commission that it cumulatively assess the effect of all of its regulations on grid reliability.

In the end, EPA fails to grasp that coal is good for the economy and good for Americans. As global economic conditions become increasingly competitive, America must look to where it has competitive advantages as compared with other countries. Coal is one of our competitive strengths. There is more heating value in American coal reserves than in Saudi oil reserves.

Coal is comparatively low-cost to produce and transport, its price has been low and stable over time, it is easy to stockpile, and it has been the bedrock of the American electric system for a long time. It would be a serious mistake to think that America can be competitive without coal. Certainly some of our main international competitors, including India and China, do not see the need to reduce coal usage. To the contrary, they are significantly increasing their use of coal.

In sum, this Administration, and particularly EPA, has been actively adverse to coal, and that policy hurts America.

Administration's Policies Prevent the Construction of New Coal-Fueled Electric Generation

EPA now has one final rule and one proposed rule that, unless changed or overturned in court, will prevent the construction of new coal-fueled electric generation in the United States. The first is the now-final MATS rule and the second is the proposed greenhouse gas New Source Performance Standards rule for new electric generating units ("GHG NSPS rule").

EPA's MATS rule sets standards for hazardous air pollutant (HAP) emissions from new coal plants at such a stringent level that vendors of air pollution control equipment have told EPA that they cannot guarantee that their equipment will control emissions to the level of those standards. In a petition to EPA to reconsider the rule, the Institute for Clean Air Companies (ICAC), a trade association for "approximately 100 companies that comprise nearly all the suppliers of air pollution control equipment and systems as well as measurement and detection equipment," told EPA that the mercury standard for new coal generators is set at a level that cannot be detected by pollution control measurement systems. As a result, "ICAC member companies are not in a position to offer commercial guarantees to their customers to meet this particular standard." ICAC concludes that "[t]his standard will make it nearly impossible to

construct new coal-fired EGUs because financing of such units requires guarantees from equipment suppliers that all emission limits can be met."

Babcock and Wilcox, a leading pollution control equipment vendor, concurred as to all three MATS rule standards for new coal generation: "As a leading supplier of HAPs emissions control equipment as well as emissions monitoring systems for the US electric utility industry, Babcock & Wilcox Power Generation Group, Inc. (B&W) asserts that the particulate matter (PM), HCl and mercury emission limits established for new units are not measurable with sufficient accuracy for reliable control of the emissions reduction systems and sustainable long term emissions compliance."

Recognized industry expert Ralph E. Roberson concurs. In February 2012 testimony before the Subcommittee on Energy and Power of the House Committee on Energy and Commerce, Roberson testified that "EPA's new-unit standards will prevent the construction of new coal-fired EGUs.... I am convinced that no pollution equipment vendor will offer guarantees that their equipment will meet these standards. Absent those guarantees, developers will be unable to obtain financing of the hundreds of millions of dollars that this equipment will cost. And absent that financing, new units will not get constructed."

EPA's proposed GHG NSPS would also kill new coal-fueled units. The rule sets a performance level for new coal units equivalent to what EPA says a combined cycle natural gas combustion turbine can meet – 1000 lbs. CO2/MWh. Yet EPA recognizes that even a modern, efficient supercritical coal plant can only meet a standard of 1800 lbs. CO2/MWh. EPA says that a coal plant with carbon capture and storage (CCS) could meet the 1000-lb. standard, but it also recognizes that CCS technology is not commercially competitive. It cites to Department of Energy/National Energy Technology Laboratory "estimates that using today's commercially

available CCS technologies would add around 80 percent to the cost of electricity for a new pulverized coal (PC) plant." CCS is a technology that holds promise, but it has not been demonstrated to be commercially available at scale. As important, the basic legal and regulatory architecture is not in place to make CCS a reality. There is no comprehensive permitting system for storing CO2 underground for the very long time periods required, nor is there a liability structure in place to cover potential liabilities over this long term. A July 22, 2009 paper prepared for the American Public Power Association entitled *Geologic CO2 Sequestration, Issue Spotting and Analysis White Paper*, details the numerous legal and regulatory impediments that must be resolved before CCS can become a commercial reality. Nearly three years later, these impediments remain unresolved. As the Administration's CCS task force explains:

> In addition to the challenges associated with cost, these projects will need to meet regulatory requirements that are currently under development. Long-standing regulatory programs are being adapted to meet the circumstances of CCS, but limited experience and institutional capacity at the Federal and State level may hinder implementation of CCS-specific requirements. Key legal issues, such as long-term liability and property rights, also need resolution.

See Executive Summary: Report of the Interagency Task Force on Carbon Capture and Storage August 2010, at 2. Hence, for EPA to say that new coal generation can be built if it uses CCS is no different than EPA saying that no new coal plants can be built for the foreseeable future.

EPA states in the proposed GHG NSPS rule that the rule will incent CCS and that CCS costs will come down over time as more units are built, but the opposite is the case. It may be true in general that the cost of the first unit in a new industry is high, while the cost of the thousandth unit is lower, but that maxim won't apply in an industry where no one is allowed to build coal plants. There will be no way to get from the first unit to the thousandth unit.

EPA also states that new coal plants installing CCS can average their emissions over 30 years to meet the 1000-lb. standard. EPA states that a new unit meeting an 1800-lb. standard in

the first ten years of operation will be deemed to meet the standard over 30 years if it eventually installs CCS and its 30-year average emission are 1000 lbs. But this proposal is just a mirage. No unit can get financed if it will violate EPA standards in 10 years unless it installs technology that, at best, is only projected to be available in 10 years. Lending institutions putting more than a billion dollars at risk will require considerably more certainty than the *possibility* that the unit will avoid violating regulatory standards if in 10 years CCS technology proves to be ready both commercially and as matter of law and regulation.

The GHG NSPS seems to be motivated by the unfounded assumption that combined cycle natural gas plants emit less GHGs than coal plants. But there is a significant basis to question that assumption. Research indicates that, considered on a life-cycle basis, natural gas plants may emit as much of or more GHGs than coal plants. See Howarth, Santoro, Ingraffea, Methane and the greenhouse-gas footprint of natural gas from shale formations, A letter. Climatic Change, DOI 10.1007/s10584-011-0061-5; Howarth, Santoro, Ingraffea, Venting and leaking of methane from shale gas development: response to Cathles et al. Climatic Change, DOI 10.1007/s10584-012-0401-0; Tollefson, Air sampling reveals high emissions from gas field, Nature, Feb. 2012, p. 139.

Finally, EPA identifies what it says are 15 currently proposed coal units that it says would be grandfathered from the effect of the proposed GHG NSPS so long as they commence construction within one year of the date of the proposed GHG NSPS. But these units are subject to an EPA regulatory Catch-22. On the one hand, under the proposed GHG NSPS, they must begin construction within the one-year period or they will be subject to what even EPA concedes are project-killing CCS requirement (applying those standards "would likely result in the loss of [these project's] sunk costs and would likely cause multi-year delays, or even abandonment of

their plans to construct"). On the other hand, however, for the reason set forth above, EPA's MATS rule standards prevent these units from commencing construction. So as things now stand, these 15 units are caught in a regulatory bind that threatens their ability to construct and will result in their loss of tens of millions of dollars in sunk investment.

In sum, then, the clearest example of coal not being a part of the Administration's "all-of-the-above" energy strategy are these two rules that prevent new coal-fueled facilities from being built.

Administration's Policies Are Reducing the Use of Coal for Electric Generation

This Committee is by now familiar with the numerous regulations that EPA has adopted, proposed or is about to propose that, in toto, are leading to numerous retirements of coal-fueled electric generators, increasing the cost of electricity to consumers, and jeopardizing the reliability of the supply of electricity in the United States. In addition to the MATS Rule and the proposed GHG NSPS for new coal generators discussed above, EPA has (a) promulgated, based on its climate change "endangerment finding," the first-ever GHG regulations governing air quality permitting of large industrial and manufacturing facilities, including coal generators; (b) promulgated the Cross-State Air Pollution Rule (CSAPR), directed against coal-fueled generators in most states in the eastern two-thirds of the country; (c) adopted new and more stringent ambient air quality standards for nitrogen dioxide and sulfur dioxide; (d) proposed regulations governing the disposal of coal combustion residuals; (e) proposed regulations of cooling water intake structures; (f) will soon propose new air quality standards both for ozone and particulate matter; (g) will soon propose "guidelines" requiring states to develop GHG performance standards for coal-fueled electric generators; and (h) will soon propose effluent guidelines applicable to coal generators.

EPA has dramatically understated the impact of these regulations. For instance, EPA estimated that the MATS rule would cause 4.7 GW of coal-fueled generation to retire and the CSAPR rule would cause another 4.8 GW to retire. Yet as of today, with the CSAPR rule stayed in court and the MATS rule 3-year compliance period only having started to run, the number of retirements already announced far exceeds these EPA estimates. The National Mining Association tracks public announcements of retirements and has found that owners of coal-fueled units have announced that 57 power plants with 25.1 GW of power will retire specifically as a result of EPA's regulations. A large number of financial institutions and other third-party experts have determined that probably 30-60 GW of capacity will retire, with one financial institution estimate exceeding 80 GW.

EPA says that many of the units that are retiring would have retired anyway for economic reasons, principally low natural gas prices. But this conclusion is implausible. Currently low natural gas prices would only incent these units to run less or to be placed on stand-by, not retire. Prudent utilities would keep these units available against the likelihood that gas prices, which have proven to be very volatile in the past, will increase again in the future. What is forcing these units to retire permanently and prematurely is that they cannot meet EPA's MATS, CSAPR and impending additional standards without investing hundreds of millions of dollars of pollution control equipment.

Economic Impacts of the EPA Rules

EPA's anti-coal agenda is likely to create hugely negative impacts for electric consumers. In a September 2011 study performed for the American Coalition for Clean Coal Electricity (ACCCE) entitled *Potential Impacts of EPA Air, Coal Combustion Residuals, and Cooling Water Regulations*, the National Economic Research Associates (NERA) analyzed the impact of

four EPA rules – the MATS rule, CSAPR, the coal combustion residuals rule and the cooling water intake structures regulation. It noted the following effects:

- **Retirements**. It estimated ***39 GW of prematurely retired capacity by 2015*** among the current coal-fired power plants. This estimate represents additional retirements above those in the reference case (i.e., retirements predicted without the four regulations in place) and accounts for ***about 12 percent of the 2010 U.S. coal-fired electricity generating capacity***. This estimate does not include the potential effects of other potential requirements – notably potential greenhouse gas emission regulations.

- **Energy Market Effects**. Costs are projected to be approximately $21 billion (in 2010$) per year over the period from 2012 to 2020. The costs represent a total of ***$127 billion*** (present value in 2010$ as of January 1, 2011) over the period from 2012 to 2020. ***Capital costs for environmental controls and replacement capacity are about $104 billion.*** These costs include compliance costs for coal units that do not retire, capital costs for new capacity that would replace retiring coal units, and changes in fuel costs.

- **Natural Gas Prices**. The regulations are predicted to increase natural gas-fired generation by 19.7 percent on average over the period and increase Henry Hub natural gas prices by 10.7 percent on average. The increases in natural gas prices would lead to an ***estimated average increase in costs of about $8 billion per year for residential, commercial and industrial natural gas consumers***, which translates into ***an increase of $52 billion over the 2012-2020 period*** (present value in 2010$ as of 2011 discounted at 7 percent).

- **Electricity Prices**. Average U.S. ***retail electricity prices are projected to increase by an average of 6.5 percent over the period 2012 to 2020***, with prices in certain regions increasing considerably more than that.

- **Jobs**. Over the period from 2012 to 2020, about ***183,000 jobs per year are predicted to be lost***, net of "green jobs" created, due to the effects of the four regulations. The cumulative effects mean that over the period from 2012 to 2020, ***about 1.65 million job-years of employment would be lost***.

- **GDP and Income**. ***U.S. GDP would be reduced by $29 billion each year*** on average over the period, with a ***cumulative loss from 2012 to 2020 of $190 billion*** (2010$). ***U.S. disposable personal income would be reduced by $34 billion each year*** on average over the period, with a ***cumulative loss from 2012 to 2020 of $222 billion*** (2010$). The average annual loss in disposable personal income per household is $270, with a cumulative present value loss of about $1,750 (2010$) over the period from 2012 to 2020.

A more recent NERA analysis for ACCCE analyzed just the effects of the MATS rule. NERA used EPA's retrofit assumptions and costs to project the following impacts of the final MATS rule. It found:

- Compliance costs for the electric sector in 2015 are **$10.4 billion** (2010$). By comparison, EPA estimated compliance costs of $9.7 billion (2010$) in 2015. Total compliance costs based on NERA's analysis are **$94.8 billion.** EPA declined to provide total compliance costs, despite requests from Congress.

- Additional capital investments by the electric sector total **$84 billion** between 2012 and 2015. This represents an increase of 30 percent in electric sector capital requirements which, according to NERA, could cause financing challenges, credit downgrades and higher costs of borrowing.

- Labor wages decline significantly, which results in the loss of **180,000 to 215,000 jobs** in 2015. In addition, GDP losses total as much as **$112 billion**. Total household disposable income is reduced by as much as **$71 billion**. The largest annual loss in household income occurs in 2012.

Impacts of the EPA Rules on the Reliability of the Electric Grid

The wave of retirements caused by EPA's rules – combined with the fact that most coal-fueled units that are not retiring must be temporarily pulled from service in the next 2-3 years to install extensive pollution control equipment – threatens to undermine the reliability of the electric grid and to increase electric rates to consumers. The North American Electric Reliability Corporation (NERC), in its most recent long-term assessment of grid reliability, termed EPA regulation the number one risk to reliability. According to NERC, 1350 electric generating units at 525 stations will be required by these rules either to install controls or retire in the next several years.

This risk is being experienced across the gird, and the issue is not just whether the lights will stay on but how much it will cost to keep the lights on. Both the Electric Reliability Corporation of Texas (ERCOT), which is responsible for grid operations in most of Texas, and the Southwest Power Pool, which is responsible for grid operations in all or parts of 8 southwestern states, concluded that CSAPR threatens the ability of those organizations to keep the lights on. According to an SPP September 9, 2011 letter to EPA on CSAPR, there will be "negative implications to the reliable operation of the electric grid in the SPP region ***raising the***

possibility of rolling blackouts or cascading outages that would likely have significant impacts on human health, public safety and commercial activity." (Emphasis supplied.)

The Midwest Independent System Operator (MISO), which is responsible for interstate grid operations in a region consisting of all or parts of 11 U.S. states and the Canadian province of Manitoba estimates that 61 of 71 GW of baseload coal in the MISO region will require some action to comply with EPA's regulations over the next three years or sooner. Of those 61 GW, 13 GW are at immediate risk of retirement, according to MISO. MISO estimates that it will cost ratepayers $33 billion to retrofit or replace the 61 GW. MISO describes reserve margins as "plummeting." For example, "[r]etirement of 13 GW of coal-fired generation would cause MISO's current projected reserve margin for 2016 to plunge to 8.3 percent – 9.1 percent short of our required 17.4 percent reserve margin."

The problem may be similar in the 13-state (and District of Columbia) PJM region, where, according to PJM, 14 GW of generation have already announced plans to retire between May 2012 and 2015, "enough generation to produce enough power to supply Indiana's needs for a year." To alleviate the reliability problem, PJM recently approved nearly $2 billion to fund the cost of 130 separate electric transmission upgrades during this period. This is an unprecedented number of projects occurring simultaneously in the region, and with transmission development always being controversial and some of these projects requiring new rights-of-way, the prospect that all of these projects will not get built in time is concerning.

The recent PJM capacity auction for 2015-16 may be a harbinger of things to come. Capacity prices for PJM have been significantly increasing in the last several annual auctions, so that capacity payments for electricity delivered in 2015 – the year the UMACT takes effect – would be $137 per megawatt/month for most of PJM as compared to $16 today. This effect is most pronounced in northern Ohio, including Cleveland, which has significant transmission

bottlenecks. In this area, capacity prices in the most recent auction skyrocketed to $357. These high capacity prices may occur in other regions to the extent PJM transmission upgrades do not keep up with EPA-forced coal plant retirements, and new bottlenecks emerge.

EPA's response to all of this is to say that any grid reliability problems are local and can be solved. It is true that, as EPA belatedly recognizes, the perhaps the greatest problem its regulations pose to grid reliability is "local" in the sense that many of the retiring units, although they don't run frequently, are needed for local reliability reasons – in order to provide voltage support and black-start capability, and to provide critical additional power to the grid on the hottest days of the year. But calling a problem "local" does not mean it is confined to someone's neighborhood. Last year's blackout in San Diego and other areas of the southwest that affected more than a million people began with the actions of a single utility worker in Yuma, Arizona. The Northeast blackout of 2003 that affected an estimated 10 million people in Ontario and 45 million people in eight U.S. states began with conditions on one utility's system in the same area of northern Ohio where the current bottleneck exists.

Failure to Study and Adequately Address Grid Reliability Problem

Perhaps the most interesting facet of how EPA's regulations will affect the grid is that no one, not EPA, not FERC or anyone else, has attempted to study what the actual impact will be – and therefore what the cost of maintaining grid reliability will be. EPA's assessment of the effect its own rules will have on grid reliability consists of rule-by-rule resource adequacy analyses that examine whether the number of retirements that EPA (under)predicts will cause regional generation to fall below reserve requirements. In conducting that assessment, EPA assumed that power on the grid flows freely within broad regions and between regions. But that assumption is demonstrably wrong, as the grid is subject to bottlenecks that impede the flow of

power and local reliability requirements that require local generation or additional transmission. As the Federal Energy Regulatory Commission (FERC), NERC, regional transmission organizations (RTOs) and Independent System Operators (ISOs), and others have told EPA, the key concern for grid reliability is where retirements occur, as a unit in a particular location that is forced to retire could cause cascading reliability problems even in a region with overall excess power reserves. As FERC Chairman Wellinghoff testified at a September 14, 2011 hearing before the Subcommittee on Energy and Power of the House Energy and Commerce Committee, ***regional and national resource adequacy studies of the type EPA conducted are "irrelevant" in assessing reliability***. (Emphasis added). And as FERC Commissioner Moeller stated in an August 1, 2011 response to Senator Murkowski, referring to issues that relate to localized reliability concerns, "[a]ccording to the information that I received from Commission staff, they have pointed out to EPA that a reliability analysis should explore transmission flows on the grid, reactive power deficiencies related to closures, loss of frequency response, black start capability, local area constraints, and transmission deliverability." Yet this study was never done.

Moreover, although FERC itself rejected requests that it perform the needed reliability analysis, FERC strongly recommended to EPA on several occasions that EPA cease examining reliability impacts piecemeal on a rule-by-rule basis and instead examine the impact of all the EPA rules cumulatively. As summarized by FERC Chairman Wellinghoff in responses to questions from the Energy and Power Subcommittee following its September 14, 2011 hearing:

> Question: Why did Commission staff take the position that it was important to cumulatively assess the impact of all the upcoming EPA regulations? During meetings with EPA staff, did EPA explain its preference for completing "individual best case studies" (as opposed to a cumulative assessment), as suggested in the documents accompanying the Commission's July 27th letter?
>
> Answer: ***Commission staff took this position because the effects to system reliability are based on the cumulative impact of all the proposed regulatory factors. I do not know why EPA did not do a cumulative assessment.***

(Emphasis added).

And according to notes of the FERC Office of Electric Reliability, EPA's analysis "focused only on the effects that the Transport Rules would have on the nation's electric generation capacity—specifically the reduction of coal plants [and] did not consider the cumulative impact from additional legislative initiatives, including water restrictions, coal ash byproduct sequestration or any renewable generation mandates" (note of 10/20/10 meeting with EPA in material produced by FERC for Senate Energy Committee); ***FERC OER "wants EPA to use a holistic approach when studying the impacts of the EPA rule … whereas EPA would like to do individual best case studies"*** (note of 11/4/10 meeting with EPA in material produced by FERC for Senate Energy Committee, emphasis added).

In order to deal with local reliability concerns, EPA has put a mechanism in place under which a unit needing more time to retire or install controls can ask EPA's Office of Enforcement and Compliance Assurance (OECA) for additional time to comply with the MATS rule. But this mechanism is likely to be ineffective. Under the MATS rule, utilities must install controls or retire within three years, with the possibility of a fourth year if granted by the applicable air permitting agency. Many utilities say they need more than four years. The OECA mechanism ostensibly is designed to give units a fifth year, but it doesn't do so. Under the mechanism, OECA states that it will issue an "administrative order" allowing a unit needed for reliability to keep running. But what OECA really means is that any unit that has not installed the necessary controls within three years (or four years if the permitting agency grants the extension) and keeps operating will be in violation of the Clean Air Act but that OECA will not seek to impose penalties as a result. But even if OECA does not seek to impose penalties, the unit will nevertheless be exposed to citizens suits for violating the Clean Air Act. Moreover, OECA says it won't even act on applications for the fifth year until the fifth year has begun, meaning that if

OECA denies the application the unit will be in violation of the Clean Air Act and subject to EPA enforcement action as well as citizens' suits. Additionally, referring to the possibility that OECA might issue an administrative order regarding the fifth year, OECA states, in its own italics to emphasize the point, *"EPA reserves the right to act at variance with these policies and to change them at any time without public notice."* Under these circumstances, EPA's fifth-year mechanism is wholly insufficient to address the serious reliability problem.

The Administration's Reliance on Natural Gas to Replace Coal Is Imprudent

It is no secret that the country is experiencing a repeat of the 1990s-era "dash for gas," with the country becoming increasingly dependent on natural gas for electric generation. The 1990s experience did not end well, with gas prices sharply increasing and a wave of bankruptcies by companies that had bet on sustained low natural gas prices.

We are told that this time will be different because of what is described as the fracking paradigm shift. Gas prices have dropped to very low levels, recently below even $2/MMBTU, although they have bounced back to over $2.50 since then. But will these low gas prices last, and what are the consequences if it doesn't? I am not a geologist and so cannot offer an opinion on how much fracked gas will be available in future years. But I have been in the energy industry long enough to realize that overreliance on one fuel for electric generation is a very bad idea. No one's crystal ball is good enough to predict the future. Utilities are forced to make very long-term, very capital-intensive resource decisions based on imperfect information and inherently unknowable projections of future energy prices. Just a few years ago, natural gas prices were above $13, now they are low. A review of Energy Information Administration (EIA) 10-year projections of natural gas prices over the last several decades will reveal that EIA has

frequently been wrong, often dramatically so. This is not the fault of EIA; they would be the first to admit that predictions are based on assumptions that often prove to be wrong.

Against this back-drop, it is a very bad idea for utilities to go all-in on natural gas. If natural gas prices begin to rise because of increased demand, yet we have shut down significant coal capacity, there will be no choice but to continue to use gas and pass the costs on to the consumers. Building substitutes for natural gas generation will take a long time, and meanwhile the ratepayer is exposed. And rising natural gas prices because of increased utility demand doesn't just harm electric ratepayers. It harms those who use natural gas for home-heating as well. Thus, over-dependence on natural gas is a double whammy for consumers who will face both increased electric and heating bills.

In contrast to historically fluctuating natural gas prices, coal prices have proved steady and low over time. Coal is this country's most abundant energy source – there is more heating value in America's coal than there is in Saudi Arabia's oil. It is hard to imagine any energy independence policy that excludes coal.

Of course, all sources of energy should be allowed to compete on a level playing field. If there has truly been a paradigm shift in natural gas supplies, then natural gas can prove its advantage in the market over time. I would still argue that there is an independent value in resource diversity, but ultimately the market will have a very large influence on utility resource decisions. But the problem we are facing today is not one of markets. It is EPA's thumb on the scales that is forcing utilities to retire large amounts of coal power and replace it with natural gas. This is wrong-headed. The government should not pick winners and losers in energy markets. History shows that such efforts are doomed to failure.

It is also more than a little ironic that the Administration's anti-coal policies create such an incentive for generators to switch from coal to natural gas when EPA itself is only beginning to address how it will regulate fracking. Many people wonder whether the Administration will ultimately make fracking regulation considerably more stringent in the future. The Sierra Club has begun a "Beyond Natural Gas" campaign in which it labels natural gas "[d]irty, dangerous, and run amok." According to the Sierra Club, "[n]atural gas drillers exploit government loopholes, ignore decades-old environmental protections, and disregard the health of entire communities. Fracking,' a violent process that dislodges gas deposits from shale rock formations is known to contaminate drinking water, pollute the air, and cause earthquakes. If drillers can't extract natural gas without destroying landscapes and endangering the health of families, then we should not drill for natural gas." The Sierra Club goes on to say that "[f]ossil fuels have no part in America's energy future – coal, oil, and natural gas are literally poisoning us. The emergence of natural gas as a significant part of our energy mix is particularly frightening because it dangerously postpones investment in clean energy at a time when we should be doubling down on wind, solar and energy efficiency."

Even assuming that natural gas proves to be as abundant as some are predicting, the infrastructure problems of bringing the amount of natural gas that is needed to market are daunting and have received insufficient attention. According to a July 2010 study by the Aspen Environmental Group for the American Public Power Association entitled *Implications of Greater Reliance on Natural Gas for Electricity Generation*, "[i]f all existing coal fired generation were to switch to gas today, overall natural gas demand would total 36 Tcf per year, or half again as much as today. Two-thirds of the natural gas produced in the U.S. would serve

electric power plants, compared to just under one-third today." As a result, according to the study:

> To deliver the 60 or so Bcf we use each day from the supply basins where gas is produced to the end-users who will burn it, we use 300,000 miles of natural gas transmission pipelines and associated facilities that provide 130 Bcf per day interregional transfer capability. Nearly half the capacity we have today was built AFTER the industry achieved its previous peak demand of 22+ Tcf in 1972. The new capacity was needed in part to increase flexibility and to serve shifting regional markets, but primarily it was needed because old supply areas depleted and new ones were developed in other regions. ***Estimates of new pipeline capacity required range from $106 Billion to $163 Billion in one industry study. This study escalates those estimates to $348 Billion should all coal-fired generation need to be replaced with natural gas-fired generation.*** In looking at existing capacity, states would find the interstate pipeline capacity coming into their state sufficient to serve existing demand plus the demand that would result from converting existing coal-fired generation to gas.

On February 3, 2012, FERC Commissioner Moeller asked for comments on the need for better coordination between natural gas and electricity markets. As Commissioner Moeller stated:

> As we have seen over the last few years, natural gas is being used much more heavily in electricity generation. This trend appears likely to accelerate as coal-powered generation is retired, renewable energy resources require more backup by natural gas plants, and low natural gas prices encourage more use of gas. ***And recent problems, most importantly, the southwest outage in February 2011, suggest that more resources need to be allocated to planning for the increased use of natural gas to generate electricity.***

(Emphasis added.) Increased reliance on natural gas thus creates its own set of issues for ensuring that both the physical and regulatory infrastructure is in place to ensure that EPA's dramatic push to close coal plants does not undermine system reliability. But these issues are far from solved and indeed are only just being addressed.

Little Benefits from EPA Regulations to Public Health and Welfare

Despite inflicting massive costs on American consumers, the EPA regulations achieve very little in health and welfare benefits. Indeed, the benefits of the MATS rule may be among

the most puffed of any rule anywhere. EPA claims that the rule will create $33 to $99 billion in annual benefits in 2016 based mostly on the claim that the rule will prevent between 4,200 and 11,000 premature deaths per year (in 2016). But only an infinitesimal amount of these benefits result from reducing the hazardous air pollutants that are the subject of the rulemaking. According to EPA, the benefit of reducing mercury emissions is only between $500,000 and $6 million per year, and the agency was unable to quantify the benefits of reducing the other hazardous air pollutants regulated by the rule.

In fact, virtually all of the rule's benefits are the "co-benefit" that EPA says is created by reducing sulfur dioxide emissions. Since the control technologies needed to reduce acid gas emissions, one of the HAPs the rule requires utilities to control, simultaneously reduces sulfur dioxide emissions (which are not directly targeted by the rule), the rule will result in the reduction of both acid gas and sulfur dioxide emissions, Yet virtually all of the benefits of the rule stem from reducing sulfur dioxide emissions, which in turn reduces fine particle concentrations in the air (thus, according to EPA, preventing 4,200 and 11,000 premature deaths per year), whereas EPA was unable to monetize any benefits from reducing acid gas emissions. But EPA's asserted fine particle benefits are so overstated as to be meaningless. I commend the Committee to two sets of testimony submitted to the Subcommittee on Energy and Power of the House Committee on Energy and Commerce on February 8, 2012, one by Anne E. Smith, Ph.D., Senior Vice President of NERA Economic Consulting, and one by Dr. Julie Goodman, a board-certified toxicologist and a Principal at Gradient, an environmental consulting firm in Cambridge, Massachusetts, who also teaches a graduate-level epidemiology course at the Harvard School of Public Health. These two sets of testimony provide a comprehensive debunking of EPA's claims of health benefits from reducing fine particle emissions.

I would highlight two of the issues here. First, fine particle matter is regulated under a host of EPA regulatory programs, including the National Ambient Air Quality Standards (NAAQS) program. Hence, any benefits EPA claims from reducing fine particle matter as a co-benefit of regulating hazardous air pollutants is double-counting benefits that will be created from directly regulating fine particles under these other programs.

Second, although EPA is required to set the fine particle NAAQS at a level that protects human health with an adequate margin of safety and without regard to compliance costs, the large majority of benefits EPA claims from the co-benefit of reducing fine particles in the MATS rule stems from reducing fine particles to levels below the NAAQS. This is a logical fallacy. EPA cannot simultaneously set the fine particle NAAQS at a level protective of human health and then claim thousands of lives saved by reducing fine particles to levels below the NAAQS.

As Dr. Smith shows, nearly all of the 11,000 deaths that EPA says will be avoided by the MATS rule are in areas that are already in attainment with the current fine particle annual NAAQS of 15 μg/m3. Under current EPA policy, all of those estimated deaths would be deaths of people living in areas that are protected with an "adequate margin of safety" from PM2.5 risks. The 15 μg/m3 annual fine particle NAAQS is under review now, and it is possible that the standard will be reduced, perhaps to as low as between 11 to 13 μg/m3. But even if the standard is so reduced, between 94% and nearly 100% of the 11,000 mortality benefits that EPA has estimated from the MATS rule will still occur at levels below that standard.

The Administration's Anti-Coal Policy Will Impair Public Health and Welfare

EPA claims that its anti-coal policies will protect public health and welfare, but the opposite is the case. These policies will impair public health and welfare. The reason is that

these policies will raise costs to consumers, and the effect will be felt by those least able to afford them. Dollars spent on higher energy bills will in turn crowd out dollars that would otherwise be available to pay for good nutrition and health care. Jobs lost because of higher energy costs means less money for health insurance. It is a truism that wealth equals health, and it is equally true that health will deteriorate as energy costs rise, particularly for lower income people and those living on fixed incomes.

In a report prepared for the American Coalition for Clean Coal Electricity entitled *Energy Cost Impacts on American Families*, 2001-2012, attorney and economist Eugene Trisko reported that energy cost increases fall disproportionately on those least able to afford them. Key findings of this report are:

- In 2010, the median household income of U.S. families was $49,445. Slightly more than one-half of U.S. households have average pre-tax annual incomes below $50,000. In 2001, families with gross annual incomes below $50,000 spent an average of 12% of their average after-tax income of $21,834 on residential and transportation energy. By 2005, energy costs rose to 16% of their average aftertax income of $22,682. In 2012, these households are projected to spend 21% of their average after-tax income of $22,390 on energy.

- Family incomes have not kept pace with the rising costs of energy. Since 2007, the U.S. Census Bureau reports that real (inflation-adjusted) median household income has declined by 6% (from $52,823) and is 7% below the median household income peak ($53,252) that occurred in 1999.

- Poverty rates have increased to historic highs along with the declining long-term trend in family incomes. The number of people in poverty in 2010 was the largest number in the 52 years since the Census Bureau began to publish poverty statistics. Poverty is more prevalent among some minority groups. Some 27% of Blacks and 26% of Hispanics lived in poverty in 2010, compared with 15% for the overall population.

- Higher gasoline prices account for nearly four-fifths of the increased cost of energy for consumers since 2001. In nominal dollars, average U.S. household expenditures for gasoline will grow by 136% from 2001 to 2012, based on EIA gasoline price projections for 2012. In comparison, residential energy costs for heating, cooling, and other household energy services will increase on average by 43%, from $1,493 in 2001 to a projected $2,131 per household in 2012.

- Electricity is the bargain among all consumer energy products. Among consumer energy goods and services, electricity has maintained relatively lower annual average price increases compared to residential natural gas and gasoline. Electricity prices have increased by 51% in nominal dollars since 1990, well below the 72% rate of inflation in the Consumer Price Index. The nominal prices of residential natural gas and gasoline have nearly doubled and tripled, respectively, over this period.

- Virtually all of the residential electricity price increases over the past two decades have occurred since 2000. These increases are due in part to additional capital, operating and maintenance costs associated with meeting clean air and other environmental standards.

- Lower-income families are more vulnerable to energy costs than higher-income families because energy represents a larger portion of their household budgets. Energy is consuming one-fifth or more of the household incomes of lower- and middle-income families, reducing the amount of income that can be spent on food, housing, health care, and other necessities.

- In 2010, 62% of Hispanic households and 68% of Black households had average annual incomes below $50,000, compared with 46% of white households and 39% of Asian households. Due to these income inequalities, the burdens of energy price increases are imposed disproportionately on Black and Hispanic households. Fixed-income seniors are a growing proportion of the U.S. population, and are among the most vulnerable to energy cost increases due to their relatively low average incomes. In 2010, the median gross income of 25.4 million households with a principal householder aged 65 or older was $31,408, 36% below the national median household income.

These increased costs to lower income people cause not just economic harm but harm to their health as well. Studies show that greater use of coal-fueled electricity helps free up a family's disposable income for good nutrition, quality medical care and other smart lifestyle choices that lead to improved health. A 2002 study by researchers Daniel E. Klein and Ralph L. Keeney found that coal prevents at least 14,000 to 25,000 premature deaths each year due to low-cost electricity. A 2007 study by Dr. M. Harvey Brenner, a professor of Health and Policy Management at Johns Hopkins University, confirmed the Klein-Keeney findings. Brenner concluded that if coal were removed from the energy mix, the result would be approximately 170,000 to 368,000 premature deaths in the United States.

EPA Hostility to the Use of Coal for Industrial and Manufacturing Processes

Although coal is mostly used in this country for electric generation, it is also used as fuel in industrial and manufacturing processes. Yet here too EPA is trying to discourage or outright eliminate the use of coal. EPA issued and is now reconsidering regulations that would regulate hazardous air pollutant emissions from industrial boilers. As promulgated, these regulations would eliminate coal as a boiler fuel.

This was intentional. EPA's original proposal was explicitly designed to encourage coal-fired boilers to switch to natural gas and to discourage natural gas-fired boilers from switching to coal. EPA did not propose a MACT standard for natural gas-fueled boilers because "proposing emission standards for gas-fueled boilers and process heaters that result in the need to employ the same emission control system as needed for the other fuel types would have the negative benefit of providing a disincentive for switching to gas as a control technique (and a pollution prevention technique) for boilers and process heaters in the other fuel subcategories." At the same time, according to EPA, establishing MACT standards for natural gas-fueled boilers would "have the negative effect of providing an incentive for a facility to switch from gas (considered a "clean" fuel) to a "dirtier" but cheaper fuel (i.e., coal)."

This fuel-switching rationale disappeared when the rule was finalized, perhaps because it is an improper one under the relevant statutory authority and was a bit too revealing about EPA's agenda to use its regulations to ensure fuel-switching from coal to gas. But the effect is the same: EPA is trying to make sure that coal is not used as a boiler fuel.

This is unfortunate because the energy-intensive industrial and manufacturing community wants to make sure coal remains an available fuel for industry. This community is particularly concerned that the renewed dash for gas will ultimately drive up gas prices, which will produce

two negative effects for the U.S. industrial and manufacturing sectors. First, many in this sector use natural gas as a feedstock (for instance, to produce fertilizer or plastics) and as a primary boiler fuel. Second, many in this industry are electric-intensive (for instance, the steel and aluminum industries), and driving up natural gas prices will drive up electricity prices. In both instances, the result will be to increase costs to the industrial and manufacturing sectors, making them less competitive against foreign firms.

EPA's Actions Against Coal Mine Permitting

Coal mining operations require various permits to commence operations, including oftentimes Clean Water Act (CWA) Section 404 permits, issued by the Army Corps of Engineers (Corps) for the discharge of dredge or fill material, and CWA Section 402 permits, issued by either states with primacy or the U.S. Environmental Protection Agency (EPA) for the discharge of pollutants into waters of the United States. A timely and efficient CWA permit review process is therefore critical to the success of mining enterprises since new permits are necessary to expand existing operations or begin new operations.

Last September, this Committee released a staff report, "How Obama's Green Energy Agenda is Killing Jobs," that examined this Administration's radical new process for obtaining Clean Water Act permits for coal mines. Specifically, EPA has:

- Impermissibly instituted a new de-facto water quality standard for conductivity for CWA Section 402 permits over the objections of states with primacy over their Section 402 programs.. Relying upon a draft agency report, EPA imposed a presumptive threshold for conductivity in streams – a level that was derived from data that did not follow the agency's standard methodology and that states have not deemed necessary to meet applicable water quality standards.

- Initiated so-called "Enhanced Coordination Procedures" (ECP) that unlawfully expanded EPA's jurisdiction pursuant to CWA Section 404 and held up more than 100 permit applications that were ready to be issued by the Corps. The ECP impermissibly allowed EPA to commandeer the CWA Section 404 process by placing itself as the initial

screener, and for practical purposes the final decision maker, for all Section 404 Appalachian surface coal mining applications filed with the Corps.

- Issued a Memorandum of Understanding (MOU) that set forth a series of actions designed to disrupt the timely and orderly processing of coal mine permits. The MOU: discourages the use of streamlined general permits for coal mines; increases EPA interference in Corps' CWA Section 404 permit decisions and states' CWA Section 402 permit decisions; unnecessarily escalates state-federal tensions under the Surface Mining Control and Reclamation Act (SMCRA); and vacates a Bush era Office of Surface Mining (OSM) regulation known as the stream buffer zone rule that provided much needed clarity concerning SMCRA applications for both surface and underground mines that encounter stream channels.

The stream buffer zone rule was finalized in 2008 after the federal government spent five years and more than $5 million on developing the rule that governs how and whether mining activities are permitted near perennial and intermittent streams. The rule was a clarification of the longstanding regulatory interpretation of a prior rule and added significant environmental protections.

Yet, before the rule went into effect, OSM unsuccessfully attempted in early 2009 to vacate the rule and, instead, launched a new rulemaking process that includes significant and sweeping changes to coal mining regulatory programs well beyond the scope of the stream buffer zone rule.

By its own admission and testimony, OSM has already wasted more than $4.4 million on this project, and poured another $900,000 into the project because it did not agree with its own contractor's report, which showed that the agency's rewrite of existing regulations would likely cost tens of thousands of jobs. ENVIRON International Corporation recently completed an analysis on behalf of National Mining Association (NMA) on the anticipated economic impacts associated with the proposed rewrite of the stream buffer zone rule, which found that direct mining jobs at risk of loss are predicted to be between 55,120 and 79,870, with the majority of these job losses being in the Appalachian region and total number of jobs at risk, including

mining and linked sector employment is between 133,441 and 273,227. The House Natural Resources Committee is currently conducting an investigation into OSM's rewrite of the stream buffer zone rule. Despite all of the controversy and predictions by its own analysts of tens of thousands of potential job losses, OSM continues to move forward with a proposed rule.

On Oct 6, 2011, the U. S. District Court for the District of Columbia ruled in *NMA v. Jackson* that EPA unlawfully changed the CWA Section 404 permitting process for coal mines. The court held that EPA and the Corps had unlawfully obstructed the issuance of CWA permits by allowing EPA to usurp the Corps' CWA authority and creating a de facto moratorium on surface and underground coal mining within the Central Appalachian region.

NMA has also challenged the EPA and Corps' detailed guidance on Appalachian surface coal mining, issued on April 1, 2010. Like EPA's other actions described above, the guidance amounts to an attempt by EPA to unlawfully interject itself into both state-authorized CWA permitting processes as well as the SMCRA permitting process.

In short, EPA has exceeded its authority by improperly expanding its role, displacing the Corps and encroaching upon the role reserved to the states under the CWA and SMCRA. EPA's actions are creating massive uncertainty in the coal mining industry, putting jobs in Appalachia at risk, and threatening our domestic energy security.

Conclusion

Coal is not part of this Administration's "all-of-the-above" energy policy. To the contrary, to the detriment of America's best interests, EPA's policies have been directly adverse to coal.

I appreciate the opportunity to submit this testimony.

Chairman ISSA. Thank you all for your testimony.

I will now recognize myself for a round of questioning and I will start with Mr. Drevna. There is a map they are going to put up on the screen here. Just happens to show the Keystone pipeline. Now, when you work with refiners and you get North Dakota, American. We will ignore the part—I don't want to attach any jobs to Canada. I do look at the $100,000 per employee, including bonuses, that currently are being paid for North Dakota jobs, $70,000 plus bonuses. And, by the way, I understand that they are paying a couple thousand dollars in bonuses just to go to work for McDonald's because they have less than 1 percent up there. But when you look at that, when you get oil from those refineries today, my understanding is because there is no pipeline, you get the oil from North Dakota, you would get it by truck or train, is that correct?

Mr. DREVNA. If it were to come from the Bakken Reserves. That is the only way to get it.

Chairman ISSA. Okay. Which means that they would have a higher carbon footprint by transporting a less efficient way. Literally, by not building the pipeline, we are burning more carbon to inefficiently deliver oil that we are going to ultimately use from somewhere in the world, isn't that right?

Mr. DREVNA. Mr. Chairman, the most inefficient way to transport oil is either by rail or by truck.

Chairman ISSA. So not building the pipeline is in fact environmentally hazardous because, if you care about the carbon footprint, you are increasing it through that inefficiency.

Mr. DREVNA. Chairman, absolutely right, especially when you consider our good friends and neighbors to the north, Canada, that oil is going to go somewhere; it is not going to stay in the ground up there.

Chairman ISSA. No, it is not.

Mr. Weiss, I am going to ask unanimous consent that the President's March 2012 plan in which the—or actually propaganda piece—what was it actually called? This is hot off the presses, pretty much. A Secure Energy Future Progress Report that cites that $8,000. I will note that is cites it over an undescribed period of time, not per year. In fact, it appears to cite between now and 2025. But we will leave that alone because ultimately the American family doesn't spend $8,000 per year today on gasoline——

Mr. WEISS. Can I address that?

Chairman ISSA. No, you can't.

In order to get that savings, you must necessarily quadruple prices and then get your 54 miles per gallon. But we will put that entire thing in the record and I will ask my staff to file a counter report.

Unidentified SPEAKER. Would you let him answer that?

Chairman ISSA. No. I didn't ask him a question.

But I do have a question for Mr. Glaser.

If we will put up the chart that the President came out with for his all-of-the-above strategy. It was on his campaign website.

[Slide.]

Chairman ISSA. Mr. Glaser, I know it is hard to see, but will you note there that nuclear is included, biofuels, but coal is omitted?

Mr. GLASER. Yes. And I don't think that is a mistake, either.

Chairman ISSA. Well, he must have considered it a mistake because he corrected it when being pointed out that he had no coal.

Would you put up the next slide?

[Slide.]

Chairman ISSA. The next slide says clean coal. So is that to imply that the coal of today is unacceptable and, thus, he has no plan for coal, only a plan for coal when it is somehow different than it is here today?

Mr. GLASER. Yes. I actually don't know what that means. Coal, as I indicated in my testimony, is being burned in an increasingly clean fashion. There is no reason that we need to dial coal out of the American energy equation.

Chairman ISSA. But isn't the Administration currently, by new standards that are shutting down at least 26 gigawatts of electric power because these coal plants are shutting down, essentially taking the 46 percent of our energy that comes from coal and ratcheting it down as we speak?

Mr. GLASER. Yes. Right. And that 26 gigawatts figure, of course, is only currently announced retirements; the projections are much higher than that.

Chairman ISSA. Okay, Mr. Weiss, I do have a question for you. Now, you stated that more oil would not reduce the cost. You wouldn't make the same statement about natural gas, would you?

Mr. WEISS. [Remarks made off microphone.]

Chairman ISSA. No, that is a yes or no. Would you or wouldn't you make the same statement about natural gas?

Mr. WEISS. No, I would not because that is not priced on the global market in the way that oil is——

Chairman ISSA. Very good. So when you put more into a market, you reduce price. In other words, even progressives believe that supply and demand actually works, that more supply with a given demand will in fact reduce cost.

Mr. WEISS. I do not agree with that when the price is set by a cartel——

Chairman ISSA. Let's go through that. Isn't it——

Mr. WEISS.—percent of our reserves——

Chairman ISSA. Mr. Weiss, that wasn't a question. And, by the way, a fraction, a fraction of the world's oil comes from cartels. The fact is that natural gas is proof. We have the lowest cost of natural gas of anyone in the world. We deliver clean, natural gas throughout the world. As a matter of fact, if Mr. Markey wasn't blocking it from going to New England, they would be taking out fuel oil and putting in natural gas. But let me just get to the main point. The assumption that the world does not have enough oil, and that if the world had an abundance of oil and other fuels that, in fact, the world price would go down, you would have to agree with us, wouldn't you, that ultimately if non-cartel states like Canada and the United States were producing an abundance of oil, we would in fact break the back of the cartels, bring down the price on a global basis, wouldn't we?

Mr. WEISS. I do not agree. The price is set by a cartel——

Chairman ISSA. But why don't we go through——

Mr. WEISS. Excuse me, Mr. Chairman——

Chairman ISSA. No, no, no. Mr. Weiss, you answered the question——

Mr. WEISS.—and they have the same high gasoline prices that we have here.

Chairman ISSA. Well, thank you very much for deciding that you are going to be an economist here after you agreed that it worked in natural gas.

Mr. Drevna, perhaps you are a little bit more reasonable. If in fact the world supply reaches a glut, as it periodically does, as it did in the early part, I believe, of the Bush Administration when we got down to, like $9 or $10 a barrel for a short time, ultimately, with supply and demand, on a global basis, it is a world market because it is so transportable, don't we in fact reduce the cost per barrel? Weren't your refiners paying dramatically less when, for a period of time, there was an excess?

Mr. DREVNA. Absolutely, Mr. Chairman.

Chairman ISSA. Isn't it also true that the difference between a shortage that drives up the price to $100 a barrel and more and an excess that can drive the price down into the teens at times can be a very small amount relative to the world demand?

Mr. DREVNA. That is absolutely correct, Mr. Chairman. When you look at the cost of production of various wells throughout the world, it is the last burrow in that makes the difference. But if we are serious about our own energy and natural security, and if you will permit me some statistics——

Chairman ISSA. Of course.

Mr. DREVNA. Four years ago natural gas was $11.70 per million btu; today it is—a couple days ago it was $2.43. Four years ago West Texas Intermediate was $127 a barrel; today, a couple days ago, it was $87.57. And why is that? Because natural gas production is up dramatically, and even on State lands, I must admit again, on State lands crude oil production is up dramatically in this Country. If we want to send a message, if we want to take care of the American economy, if we want to let the rest of the world know that we are dead serious about our energy and national security, let's open up our own God given reserves.

Chairman ISSA. I will give the Ranking Member equal time, but, Mr. Krancer, the natural gas that you have in abundance in Pennsylvania and our common birthplace, Ohio, isn't it a highly substitutable fuel over the intermediate stage 4 oil and gas? In other words, can't your natural gas in greater numbers—and we had the Secretary of Energy here telling us about the advancements—be substituted? And, if so, isn't it true that you are talking about less than $1.50 a gallon for the equivalent amount of natural gas in today's prices?

Mr. KRANCER. Absolutely correct. It is substitutable on a number of fronts. I used to be in the electricity generation business. I work for a company. There is what is going on a dash-to-gas going on right now, gas-fueled power plants. Gas-fueled liquid and compressed natural gas transportation vehicles could prove the key to clean air in urban areas like the area where I live near Philadelphia and in Pittsburgh and so forth. So you are absolutely right.

Chairman ISSA. So, in fact, our natural gas is just as much part of breaking the back of the world cartels as our oil production.

Mr. KRANCER. Absolutely correct.

Chairman ISSA. Thank you.

I would ask the gentleman have nine minutes, please.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Weiss, so that the record will be clear, the Chairman asked you about the $8,000 figure, you never said annually, I never said annually. Would you clear that up? I will clear mine up, but you clear yours up.

Mr. WEISS. Thank you, Mr. Cummings.

Mr. CUMMINGS. Because it was never said.

Mr. WEISS. That $8,000 figure is over the lifetime of the vehicle, and it compares gasoline purchases by a 2025 average model, which will be 54.5 miles per gallon, compared to a 2010 model, which was averaging at 27.5 miles per gallon. It is an $8,000 difference over the life of the vehicle. It was generated by the White House, I believe. Since I am under oath, I don't want to swear to it, but I believe it was generated by the White House using Department of Transportation data and it assumes a relatively low price for gasoline of $2.50 per gallon.

So that is where that figure comes from.

Mr. CUMMINGS. Let me ask you this, Mr. Weiss. In 2001, under the Bush Administration, 2.12 billion barrels of crude oil were produced from U.S. fields and total oil production fell every single year since 2001. According to the Energy Information Administration, since 2001 through 2008, oil production of United States fields fell by more than 14 percent. Mr. Weiss, have you seen this data and isn't it true, according to EIA data, that U.S. production of crude oil fell each year under the Bush Administration? Is that correct?

Mr. WEISS. I would have to go back and look at that data, Mr. Ranking Member, but it is clearly up since President Obama took office. We were at about 4.7 million barrels per day, I believe, in 2008. This year, Energy Information Administration predicts we will be at 6.2 million barrels per day, which is about a 30 percent increase, if I did the math correctly, over what the last years of the Bush Administration.

Mr. CUMMINGS. Well, let me clarify that a little bit more. During the last year of the Bush Administration, 1.811 billion barrels were produced from United States fields. In 2009, the first year of the Obama Administration, this figure went up to 1.956 billion barrels produced. In 2010, the figure continued to climb—folks want to talk about in spite of, but the fact is the numbers are going up—continued to climb to 1.998 billion barrels. This upward trend continued in 2011, when 2.066 billion barrels were produced.

Mr. Weiss, comparing the last year of the Obama Administration to the last year of the Bush Administration, oil production increased by 14 percent. This is based on data from the Energy Information Administration.

Now, Mr. Weiss, what does this suggest to you in terms of the Obama Administration's record and its commitment to domestic oil production?

Mr. WEISS. There is no question that we are producing more domestic oil now than we did under the previous administration. In fact, Energy Information Administration released a report in March of 2012 that looked at the production from public lands of

oil, and 2011 was 646 million barrels; 2008, 575 million barrels. The 2011 production was bigger than any of the last three years under the previous administration, and that is from a March 2012 EIA report.

Mr. CUMMINGS. Mr. Krancer, you were talking about enforcement generally, I guess with regard to EPA, and I just want to refer an article to you. It is the Mercury News and it is dated yesterday, entitled, Oil Stats Belie Tough Enforcement Talk. Let me just read the first two paragraphs, but I just want you to take a look at this when you get a chance.

It says in the three years since President Barack Obama took office, Republicans have made the Environmental Protection Agency a lightning rod for complaints that this Administration has been too tough on oil and gas producers. But an Associated Press analysis of enforcement data over the past decade finds that is not the case. In fact, the EPA went after producers more often in the years of Republican president George W. Bush, a former Texas oil man, than under Obama, and it gives a lot of details. I just refer that article to you and I understand what you said.

Mr. KRANCER. Well, I appreciate that, Ranking Member. I have not read that article and, of course, enforcement is perhaps a different issue than what we are talking about, and to some extent maybe statistics about what was produced when versus now, they may be a little bit of a red herring. What we are looking at is what we need to do in the future.

Mr. CUMMINGS. Mr. Krancer, I promise you I am not trying to create red herrings. I swear to God I am not. I am trying to make sure that credit is given where credit is due. The fact is that it seems like all the stats are going up, and I think the thing that upsets me more than anything else is how this President seems to be given credit for nothing. No matter what he does, he is given credit for nothing. Nothing. And when there are things that are happening positive, they say stuff like it is happening in spite of, you know, in spite of him, in spite of this. When they go bad they say, uh-oh, the President did that, he did something wrong. I hear that in almost every single committee I sit in, and at some point the question has to be asked. Oil production going up, oil companies making record profits, and everybody saying Obama, Obama, he has screwed up again. And when I see the numbers over and over again, I have to tell you it gets on my nerves.

But, anyway, let me go back to you, Mr. Weiss. I didn't mean to get upset, but I have seen this all over. When the jobless rate comes down, they say, oh, it would have happened without him, or they will say, oh, it is going too slow. Nobody roots for the Country; they say stuff like this wouldn't have happened. Then sometimes the folks take credit for things that they didn't even do. So, anyway, the data shows that this is not just one year increase, but a sustained multi-year 14 percent increase in overall domestic crude oil production.

Mr. Weiss, what is your response to the argument that the Obama Administration does not deserve credit for those four years because it was reaping the benefit of the previous administration's policies?

Mr. WEISS. Well, first, in response to earlier comments, it reminds me of the story that some people are like this, that when they see Jesus walking on water, the headline in the newspaper would be Jesus can't swim. So I think that is sort of the treatment that the President is getting.

In terms of the—yes, a lot of this production began under the previous administration, but those people who claim that the President is not pursuing an all-of-the-above strategy or is launching a war on oil or a war on coal, when oil production is up, coal mining employment is up compared to the previous administration, it is hard to understand where is the record behind that. Not the rhetoric, but where is the record behind those charges?

Mr. CUMMINGS. In March of this year—this is my last question—the Energy Information Agency issued a report entitled Sales of Fossil Fuels Produced on Federal and Indian Lands FY 2003–2011. According to the report, the two best years for oil production, both offshore and onshore, occurred under the Obama Administration. In 2011, 112 million barrels were produced onshore on Federal lands, and in 2010 618 million barrels were produced offshore on Federal land.

Mr. Weiss, are you aware of that report?

Mr. WEISS. Yes, Mr. Cummings. That was the report that I referred to earlier that demonstrates conclusively that we are producing more oil from our Federal lands and waters in the last three years of this Administration than in the last three years of the previous administration.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. Of course. Thank you all.

We now go to the gentleman from Pennsylvania, Mr. Kelly, who was here at the start.

Mr. KELLY. Thank you, Mr. Chairman.

I am certainly not going to compare anybody to the Lord and their ability to walk on water, but, Secretary Krancer, as you know, I am from Pennsylvania and you are too, and I have been in your presence before. Pennsylvania has done an awful lot as far as the natural gas exploration. Could you just walk us through a little bit the opportunities? I know right now Pennsylvania is called the Saudi Arabia of natural gas. We are talking about at least two centuries of supply; we are talking about coal, two centuries' supply of coal; and we are talking about also our ability to sever our reliance on imported energy. And I wonder about fossils that are so greatly abundant and accessible and affordable, and why, when you look at the current Administration's record, as much as we would like to say that there is a lot more being found, a lot more being produced, a lot of that is coming from the private sector, people who have their own skin in the game, who are actually taking that step forward.

If you could, tell us a little bit about what Pennsylvania has done. And I am trying to understand why anybody inside this Beltway would think that they are more concerned about air and water in Pennsylvania than you are.

Mr. KRANCER. Well, thank you for that. You are exactly right and I mentioned that early on. My job is to protect the environment. That is what we do and that is what my agency does. Your

question is a good one, and let me follow up to what the Chairman said, Chairman Issa. He said that our natural gas production in Pennsylvania, and elsewhere, could provide the key to unlocking the cartels, the oil cartels. It is much broader than that.

Right in our State now we are seeing a renaissance, and it was spoken about earlier in the testimony, of petrochemical industry in America, right here in Pennsylvania. For the first time in my lifetime, maybe in all of your lifetimes as well, the United States of America could potentially enjoy a cost advantage overseas in petrochemical, ethane to ethylene. We are seeing what has happened right now with respect to Shell and possibly Shell—and I mean possibly because we are only in the first inning of that situation—building a cracker facility in Beaver County. We are seeing the same thing in Southeastern PA, which is my backyard. We are seeing the potential petrochemical renaissance in one of our oil refineries that had been shut down. We are seeking the Bakken crude, for example, providing the economic turnaround for another one of our oil refineries in the southeast.

So the potential here is gargantuan on my side of the ledger. And I can talk about the economics all day because I have an economics degree. I am an amateur compared to Mr. Perry, but I do know economics. The clean air potential, which I discussed earlier, in cities like mine, Philadelphia, cities like the governor's, Pittsburgh, and when you have clean air you have healthier people, you have more business opportunities and so forth. So the immense possibility for economic revival, environmental cleanup, environmental improvement and health improvement, they are all there and they are all there right under our footprints in Pennsylvania, in Ohio, in Oklahoma, and in many other States.

Mr. KELLY. If you could, what advice would you give Federal regulators right now? When I am back home in Northwest Pennsylvania, I get a chance to talk to all these folks who are involved in this industry. They tell me how difficult it is to navigate the permitting process and the length of time that it takes to get these online. If you could, what kind of advice could we give the Feds?

Mr. KRANCER. Well, my prime advice would be to back off, because the States, including mine, including Oklahoma, including West Virginia, including Texas, Louisiana, you name it—and I don't mean to leave anybody out—are doing a good job regulating hydraulic fracturing—I will point to that—in their States where it takes place. The Federal Government, all of a sudden, out of the blue, despite the history—and I can go through the legal history about this—all of a sudden is showing an interest in hydraulic fracturing and regulating hydraulic fracturing. Never before had the Federal Government at any level, regardless of the administration, shown any such interest in doing so.

I would also encourage the other branches of the Federal Government. It is not just about the EPA. The Army Corps, for example, with respect to developing infrastructure, is overstepping its review of projects and treating projects today differently, pipelines, than they ever had in the past.

So my advice would be trust the States. The States in which this is happening know exactly what they are doing; they have been at it for generations and we are on top of it.

Mr. KELLY. The length of the permitting is the thing that bothers me because, with the exception of something that the Federal Government would do, time is of the essence for those in the private sector, and it is the waiting and the not knowing and the uncertainty if you are even going to get your permit. And to think that you can keep crews on the sideline, you can keep equipment on the sideline and just keep it warm until they are ready to get in the game once they get a permit, it is absolutely stifling these folks; it is causing them great losses of income; and it is also keeping this Country from reaching the energy independence that we have been seeking since the early 1970s.

Length of time. Just real quick, what is the length of time, do you think, for a permit, a guy who is going to do coal?

Mr. KRANCER. It varies, but let me just say this to sum it up. What I see is Federal overlay, which is adding no environmental protection on the ground, which is causing delay. Just look at the Environmental Protection Agency, the Federal Environmental Protection Agency. They have an unbelievable fast track on regulations. They produce more regulations in air, in NAAQS, in three and a half years than I think the total of 16 years of prior two administrations. When you get to permitting, that is the snail track.

Chairman ISSA. I ask unanimous consent the gentleman have an additional minute. Without objection.

Would the gentleman yield?

Mr. KELLY. Because I think the critical aspect of this we are not seeing, and I was—earlier in the spring we were talking about there was no relationship between supply and demand, that no matter what there was no way we could control the price of gas because it was just going to go off the charts because of all these people that gamed the situation. But is a basic economic belief that supply and demand are the drivers of the cost of energy.

Chairman ISSA. I agree with the gentleman. Would the gentleman yield?

Mr. KELLY. Yes, I will.

Chairman ISSA. Following up on the gentleman's question, Mr. Perry, since it is widely considered accurate on both sides of the aisle that it takes as much as 10 years from the beginning of a drilling process to a productive well, when the folks on the dais keep talking about the last three years of President Bush and the first three years of President Obama, how would that 10 years work from the standpoint of when product would come online, thus giving that increase? When would you have to begin in order to get a benefit, let's say, this year? What administration, what year?

Mr. PERRY. Mr. Chairman, I am not really an expert on the permitting process, but I do know that——

Chairman ISSA. The chart is up on the board showing the lease/sale ratio. Oh, I am sorry. Why don't you explain your chart? And that will end the questioning on it.

Ms. SGAMMA. Great. I appreciate that. Right now we are seeing permitting times taking, on average, 298 days. But before you even get to where you can drill a well and where you can permit that well, you have to go through the environmental analysis process. We are right now seeing environmental analysis taking over 7 years, and that is the study I cited in my testimony, where we have

just 20 projects in the West, 3100 wells a year. The projects are over 10 to 15 years. Those 20 projects could generate 21,000 jobs and $27.5 billion in economic activity every year, except that they are now sitting in the environmental analysis phase.

So what we are seeing—one of the long points on that time line is the environmental analysis. So you start with you get your lease, there is some exploratory work done, you drill an exploratory well that might take you three years to get that environmental analysis done; and that is not the operating doing that, that is the Federal Government. So even a small project, even a 9-well project can take 4 years to get that environmental analysis done. So let's say your well is successful. Then you need to go and maybe do a larger project, maybe it is 100 or 1,000 wells. That environmental analysis is now taking over 7 years in many cases. So that is the long pole in the tent, so to speak, where it can take you over 10 years until you are actually fully producing on the lease; not because it can't be done by the operator, but because of government delays.

We see on corresponding State and private lands where it can take a matter of months to a year to start producing.

Chairman ISSA. So it is fair to say that President Clinton, his oil production was—in fact, the Reagan-Bush years. President Bush, the son, his oil production was the Bill Clinton years; and, in fact, Obama's are the W. Bush years. Essentially every president in four or, preferably, eight years for most, they are in fact the period of time that the next enjoys in that roughly 8 to 10 years.

Ms. SGAMMA. Exactly. It is a minimum 3 to 5 years before you can start operating on Federal lands, compared to a year for private or State lands.

Chairman ISSA. Thank you.

We now go to the gentleman from Massachusetts, Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. You know, I don't want to spend a lot of time going back and forth on this political stuff. I just note that the facts are somewhat clear. Since 2008, total U.S. crude oil productions climbed 14 percent. In 2010, the United States natural gas production reached a record of 26.9 trillion cubic feet, which was a 5 percent increase from 2008 and the highest level in more than 30 years. The two best years since 2003 for the production of natural gas on onshore Federal lands occurred in 2009 and 2010. In 2011, the Department of the Interior offered approximately 21 million additional acres for offshore oil and gas development. In 2012, an additional 38 million acres will be offered as part of a lease sale in the central Gulf of Mexico and in the area estimated to hold close to 31 billion barrels of oil and 134 trillion cubic feet of natural gas. So on and so forth on the public lands.

So I think this debate or trying to make the President look bad or something like that is a little silly, but I want to go to another aspect of this.

Mr. Weiss, the oil and gas industry has been around for about 100 years, would you agree? Been in operation?

Mr. WEISS. [Remarks made off microphone.]

Mr. TIERNEY. And oil and gas, I don't think you could call them an emerging technology any longer. Do you think so?

Mr. WEISS. No, sir. I believe the first oil was produced in Pennsylvania in the 1850s. I would defer to Mr. Krancer on that one.

Mr. TIERNEY. So the first quarter of 2012, the top five oil companies, earned $30 billion.

Mr. WEISS. Actually, $33.5 billion, that is correct.

Mr. TIERNEY. And over the last 10 years, the top five oil companies garnered more than $850 billion in profits, is that about right?

Mr. WEISS. Yes. And we estimate it is over a trillion dollars if you use 2011 dollars, just for inflation.

Mr. TIERNEY. So Exxon alone made $80 billion last year, which is about $5 million an hour.

Mr. WEISS. Yes, about that.

Mr. TIERNEY. So my point on all of this is that the Congressional Research Service tells us that in the fiscal year 2013 budget, they will be getting $39 billion in taxpayer subsidies. And if subsidies are for helping emerging technologies, would you agree with me it seems we are beyond that point and this is taxpayer money just thrown out the window?

Mr. WEISS. Yes. In fact, one of the tax breaks that applies only to the oil industry dates back to 1916. Meanwhile, the tax incentives that go for wind, power, expires at the end of this year.

Mr. TIERNEY. Since 1918 to 2009, the oil and gas average subsidy is $4.86 billion a year, taxpayer money to an incredibly profitable industry on that basis. From 1994 to 2009, renewable energies got about $370 million a year. So it was quite a disparity. So we have the emerging industry, which is the renewables, getting a fraction of what this mature, extremely profitable industry is getting. Can you explain any public policy rationale behind that?

Mr. WEISS. Well, I couldn't explain it on a policy rationale. My guess is you could guess the political rationale for that. And I think it is important to note that although some from the oil industry will say don't take away these tax breaks because that is like a tax increase on it. In fact, a number of Republican leaders, including a chief economist for Ronald Reagan, have all said that these tax breaks are just the same as government spending, just done through the tax code rather than a direct grant. And it is important to remember that when we are looking at these huge tax expenditures.

Mr. TIERNEY. Well, I also know, look, between 2004 and 2008, the top five oil companies spent an average of 42 percent of their profits on stock repurchases. So they are just buying back their own stock and making themselves more valuable on that. So I guess the policy question would be why, Mr. Weiss, should the United States taxpayers be forced to subsidize stock repurchases from oil and gas companies.

Mr. WEISS. To me, there is no apparent policy goal that is being served by that, particularly when the amount of money is trivial compared to the amount of profits that this industry is making. The big five oil companies will get about $2.4 billion in tax breaks for this year and they are on track to make around $120 billion in profits. They buy back their own stock with about a third of that money and they are sitting on about $60 billion in cash reserves. They don't need the $2.5 billion a year in tax breaks, especially when we are cutting money for wind, for Pell grants, for other very important needs. It seems to me not a good——

Mr. TIERNEY. Or, I might note for keeping the need-based interest on student loans at 3.4 percent instead of 6.8 percent. That is just a personal interest. My bill would pay for it by taking away just one of those subsidies.

Let me ask you a little bit about the nuclear industry. That is also a mature industry, would you agree?

Mr. WEISS. Yes. It first began in 1947 is when we first began subsidizing the nuclear industry.

Mr. TIERNEY. And yet the American taxpayer continues to absorb the risk for that because they can't find private insurers, is that correct?

Mr. WEISS. Well, that is under the Price Anderson Act. But in addition we are giving them a loan guarantee to build the two new reactors in Georgia that were the first approved in 30 years, and it was approved by this President.

Mr. TIERNEY. So it seems to me, Mr. Chairman, rather than sitting around here playing politics with the President did this or didn't do that, maybe we ought to be talking about the policy going forward for the American taxpayer, spending their money on the things that are going to build this Country and build our foundation for future jobs, as opposed to loading up on the oil and gas industry——

Chairman ISSA. I don't have any question that that could be valuable. I would also suggest that perhaps your witness could tell us all how much taxes those oil companies paid.

Mr. TIERNEY. Well, I would suggest that is sort of irrelevant. I hope they are paying their fair share of taxes. But I also hope they are not getting our tax money to buy back their own stock when they are making tremendous profits. That would be a good hearing to have here today, instead of loading up five to one.

Mr. Weiss, what do you think?

Mr. WEISS. Well, in fact, Reuters just did an analysis of this and found that Exxon Mobil paid 13 percent of its U.S. income in Federal taxes after deductions and benefits in 2011, and that compares to the typical business rate of 35 percent. ConocoPhillips and Chevron were at about 18 and 19 percent last year, according to Reuters News Service.

Mr. TIERNEY. So, Mr. Chairman, let's have that hearing.

Chairman ISSA. Mr. Drevna, you want to elaborate on that to fill out the answer?

Mr. DREVNA. Well, at the risk, at the severe risk, when in this Country has it become wrong to employ 9.2 million people——

Mr. TIERNEY. Let me——

Mr. DREVNA. No——

Mr. TIERNEY. I reclaim my time.

Chairman ISSA. The gentleman's time has expired.

Mr. TIERNEY. The issue is whether or not they are paying their fair share of taxes, whether they are getting subsidized by taxpayers when they needn't be subsidized——

Mr. DREVNA. There are no subsidies——

Mr. TIERNEY. Of course they are hiring people. They are in business; they have to get people to extract their product and produce it so they can make their product. Every company does that. But a lot of companies pay their fair share and a lot of companies don't

get subsidized to buy back their own stock when they are extremely profitable. So that was the issue and that was the question, not whether they are employing X amount of people.

Chairman ISSA. The gentleman may complete his answer.

Mr. DREVNA. And the answer is no, sir, they are not getting subsidies. There are no subsidies. If your desire is to change the tax code, fine, change the tax code; make it fair. Make it fair for everyone. But don't pick on oil companies and natural gas companies and refiners, who pay their fair share to the tune of $86 million a day in taxes. We are the most heavily taxed industry in this Country, and we do provide those jobs and you can't snuff off the jobs. You can't snuff off the jobs, the taxes that those 9.2 million people pay. And I would suggest, Congressman, that I think we would do better in this Country with a lot more Exxon Mobils, Chevrons, and ConocoPhillips, and a few less Solyndras, and maybe this Country would be moving forward in a better way. Thank you.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Oklahoma, a place in which we receive a lot of tax revenue, for five minutes, Mr. Lankford.

Mr. LANKFORD. There are a lot of companies in Oklahoma that do provide a lot of revenue to the Federal Government.

Let me just mention a couple things that I find ironic in this conversation. One is to talk about Chevron only pays 18 percent tax after everything else, when GE pays zero. And if you look at the top five energy companies in America on the new Fortune 500 list and compare them to the top five technology companies, guess who makes more profit? That would be the technology companies, not the energy companies. But I hear scant from anyone saying we need to go after that Apple, we need to go after Microsoft, we need to go after Intel; they make too much money. Instead, it is a pet project to try to diminish fossil fuels in traditional energy and to go after them. This is not about tax dollars; this is about a political process to say we want to try to wipe out traditional energies to try to benefit solar and wind and such.

Now, if we are going to have all of the above, let's do all of the above. Let's stop trying to pick on one industry and to say the way we will benefit solar and wind is by trying to destroy another industry.

Let me hit on just a couple things.

Mr. Perry, economically, what would happen if the United States became energy independent? What would happen to our economy if we really were truly energy independent?

Mr. PERRY. Well, I think we could look to what some people call the economic miracle state of North Dakota and see what happens when we have abundant energy that is actually produced. North Dakota has an unemployment rate of 3 percent. In the heart of the Bakken, Williston, North Dakota, Williams County have unemployment rates less than 1 percent. The State has a budget surplus. In terms of State income growth, personal income growth, they lead the Country in terms of prosperity. So I think in addition to being energy independent, I think producing energy within the United States, using the treasures beneath the lands that we have, I think we can look to what is happening in North Dakota and in Pennsyl-

vania, and now in Oklahoma and Eagle Ford in Texas, and places like that, to see the economic stimulus that it would have in addition to helping in terms of energy independence.

Mr. LANKFORD. We are currently on a model that the Federal Government has to fund new energy sources versus what can we do to unleash the energy that we have and unleash our economy. So I am astounded by the fact that if we were to really become energy independent, to really go after the energy that we have, to produce that and to use it ourselves, the job creation, the tax revenue that would be the least money that we would acquire from Federal lands, the royalties and such, it is unbelievable the amount of money that is sitting on the sidelines, literally under our feet, that we are restrained from being able to go after on that.

Ms. Sgamma, I want to ask you about this private versus public lands. You mentioned that a couple times. We understand now current production that is happening on public lands was permitted in previous administrations and is now occurring. What is the permitting process right now? How many permits are going out? How many new projects are starting or being permitted on public lands right now?

Ms. SGAMMA. Well, if you look at the NEPA, which is really the long period of time that it takes to get a project through, we are seeing NEPA taking over 7 years. So this Interior Department has approved just two large projects in——

Mr. LANKFORD. Two?

Ms. SGAMMA. Just two, right. And there are 20 projects that have been proposed that could create 121,000 jobs.

Mr. LANKFORD. So out of 20 projects proposed, two have been approved. So talking 10 years from now, what happens in production on Federal lands?

Ms. SGAMMA. Well, exactly. That is pushing out into the future. That means we are going to have much less production in the future because of the long lead times on Federal lands.

Mr. LANKFORD. The President and the Administration talk often about production and how production has increased. Can anyone identify an element that this Administration has done to increase production; that they can point to and say because the Administration did that, this Administration, because this Administration did that action, we have increased production?

Ms. SGAMMA. I can only see a lot of obstacles that have been put in place by producers on Federal lands, both from the EPA, from the Interior Department, regulations that are making it more difficult, time-consuming, costly. The Interior Department admits to 298 days to process a permit——

Mr. LANKFORD. That is a long time to do a permit.

Ms. SGAMMA. It is, considering that States get it done in about 30 days.

Mr. LANKFORD. Okay.

Mr. Weiss, it sounds like you want to be able to jump in.

Mr. WEISS. Yes. I believe that Shell is going to be exploring in the Arctic Ocean, in the Chukchi Sea off the Northern Coast of Alaska this summer, which was approved under this Administration.

Mr. LANKFORD. Okay, but that is something that will actually be done years from now. I was talking about current production. You mentioned often that this Administration has more production than the previous administration. What has this Administration done proactively to create that? Can anyone name anything?

[No response.]

Mr. LANKFORD. See, this is a product of the actions of the previous administration and of the free market and of drilling on private lands. This Administration is taking credit for increased production, when this Administration proactively has done nothing to do that. It is as if the train is moving and they ran and jumped in the engineer's position and said, hey, look, I'm at the front of the train. And I have to tell you I am glad that we are increasing production, but it is always tough for me when someone in politics takes credit for something they didn't do.

With that, I yield back.

Chairman ISSA. Would the gentleman yield? I'm sorry, the gentleman's has expired.

We now go to the gentleman from Illinois, Mr. Davis, for five minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman. I must note that unfortunately for much too long my State has been sending more revenue to Washington than it has been getting back. I also have to note that we have one county that has more people than half the States in America in it. So those are interesting comparisons relative to employment statistics and opportunities that do in fact exist.

But it seems to me that the premise of this hearing appears to be that the Obama Administration is not doing enough to encourage development of all sectors of the energy economy, and I would like to understand how natural gas production has faired under the Administration as compared to the previous administration.

According to the Energy Information Administration, in 2008, President Bush's last year in office, about 25.6 trillion cubic feet of natural gas was produced. In 2009, the first year of the Obama Administration, this figure increased to 26 trillion cubic feet produced. This trend has continued and in 2011 almost 29 trillion cubic feet were produced.

Mr. Weiss, let me ask you. Based on this data from the Energy Information Administration, it appears that natural gas production has hit record levels during the Obama Administration. Is that accurate?

Mr. WEISS. I believe so, that it is, sir, yes.

Mr. DAVIS. Well, critics have argued that President Obama wanted to curtail natural gas production, but these statistics suggest otherwise. These figures suggest that President Obama has continued many of the same policies as his predecessor in terms of natural gas production. Is that right?

Mr. WEISS. When it comes to onshore, yes. With offshore, they are making sure, like with the oil rigs, that the natural gas rigs are produced in a much more safe manner so that way it protects the workers on the rigs and reduces the prospects of another oil disaster. In fact, even though they put in tighter rules, we expect, by the end of the year, I think Bloomberg reported that there will

be as many rigs operating in deepwater in the Gulf of Mexico, but more safely than before the BP deepwater disaster; and those rigs, most of them, will produce both oil and gas.

Mr. DAVIS. Well, let me ask you are there any significant differences between the policies of President Obama and the policies of President Bush as it relates to natural gas production?

Mr. WEISS. There is one, which is that under the Clean Air Act the Administration was required by law to produce standards for the release of air pollution from oil and natural gas production, and so the President has implemented those laws and proposed final standards that would protect humans from some of those emissions from those facilities.

Mr. DAVIS. Well, Mr. Drevna, let me ask you doesn't this relatively steady trend of production suggest that there are minimal differences between how the two administrations have managed natural gas production?

Mr. DREVNA. I am sorry, Mr. Davis, the difference being, as has been said before, it has been innovation and ingenuity by entrepreneurs on State and private lands and on Federal lands that have increased dramatically the numbers that you so rightfully suggested. If you look at the percent of natural gas developed on Federal lands, it is down 14 percent over that time frame. So let's not sit and say this versus that; let's say what are we going to do going forward. What are we going to do to make this Country energy secure and nationally secure? The best way to do it is, again, the all-of-the-above approach, which includes all the above and all the below, as we said before. Going forward, that is what we need to do.

Mr. DAVIS. And I can agree with that, but I also can agree that in order to determine how you need to go and where you need to go, it is good to look at where you have been and to look at where you are.

Mr. DREVNA. You are absolutely right, Mr. Davis. And the question is, then, did all this production start on January 20th of 2009? No. It was in the pipeline, going forward. When we developed the horizontal drilling with a combination of hydraulic fracturing, it opened up vast new reserves throughout the Country, as Secretary Krancer has said. Let's go forward. Let's see how we are going to do it. Let's open up these lands and let's give the American people and the consumer what they deserve.

Mr. DAVIS. Well, thank you very much. I just simply have to agree with Mr. Cummings that it seems as though President Obama gets no credit for the massive increases in oil and gas production during his administration and President Bush gets no blame for the oil and gas reductions during his administration.

Thank you very much, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Texas, Mr. Farenthold. And I would ask if you would yield just for one quick point.

Mr. FARENTHOLD. I would be happy to yield, Mr. Chairman.

Chairman ISSA. Mr. Drevna, is there any appreciable—I will put it that way to make sure we don't leave a little what if—any likelihood that there is any Federal lands producing new oil or natural gas that was begun during the last three and a half years?

Mr. DREVNA. I can't see how.

Chairman ISSA. So with zero coming online during the Obama Administration, it is reasonable to say 100 percent of the gain comes from the previous administration.

Mr. DREVNA. Or previous administrations.

Chairman ISSA. Or even previous administrations. Thank you.

I thank the gentleman. Yield back.

Mr. FARENTHOLD. Following up on that same line of questions, Ms. Sgamma, my family has been in the oil and gas business since my great-grandfather was an independent producer, and even back when I was practicing law 20 or so years ago, we would give leases with 90-day primary terms; drill a well within 90 days or it is gone. Even today my friend, Michael Bergsama, just leased some property that we owned about a year ago; we gave him a two year lease. And on private lands we are able to get that done in two years with no significant environmental—can you just go down a laundry list—I mean, it has taken 7 plus 10 years on Federal. How can we fix that?

Ms. SGAMMA. Well, I think just having the government do its job. Right now we are seeing—we don't even get our leases issued within 90 days; sometimes we are waiting years. In fact, Western Energy Alliance had to sue the government because it was holding leases for two to five years. We are still appealing that because we didn't get a full victory on that one.

We are seeing, then, environmental analysis for even small projects taking three, four years. You can't even go and submit your permit to drill until you have gotten through that environmental analysis; and for larger projects that is taking seven years to eight years.

So once you get through that, then you have to submit for a permit to drill, and that averages 298 days, but it is not uncommon for a permit to take two to three years.

Mr. FARENTHOLD. Let's talk about unemployment rates now. We were talking about North Dakota, where we are down to one percent unemployment. I know in Victoria, which is in the Eagle Ford, I was told by an economic development folks, though nominally in the six percents, they are at full employment. If you can pass a drug test and are willing to work, there is a job for you. We are hearing they are having to import people into the Dakotas to work. I know in Corpus Christi, our hotels are full of workers that are working in the Eagle Ford shale in Victoria, a Best Western Hotel, $230 a night housing oilfield workers. I mean, this is a huge, huge economic boom.

I guess, Mr. Drevna, can you talk about some of the jobs that are coming out of that, what type of jobs and what kind of salary levels we are looking at? To me, these are good, high-paying, middle to upper middle class jobs.

Mr. DREVNA. Absolutely, Congressman. These are jobs that you don't really need a college education for. You need some skills, and we can train; that is what we do. You can have a great middle class life, get paid very well, send your kids to school, take vacations. These are the kinds of opportunities the U.S. oil and natural gas and refining businesses provide.

And going back to my old hometown, with all deference to Philadelphia and Cleveland, back in Pittsburgh, you go back to my old hometown, where Shell is proposing to build that ethylene cracker up the Ohio Valley there, it is unbelievable——

Mr. FARENTHOLD. Do you think they are going to actually build that? I am hearing a lot about decreased refining capacity in the United Stats and the inability to permit new refineries or large increases in capacity in refining. And that also, our refining capacity, has a direct impact on gasoline prices, does it not?

Mr. DREVNA. Oh, it does. And not only the refining capacity, but the regulations, including the renewable fuel standard that year after year after year takes away more and more of the market of refiners, and little or absolutely no benefit to the economy and no benefit to the environment.

But you are right, and I think the secretary mentioned it briefly before. We are in step one of many, many steps——

Mr. FARENTHOLD. All right, I am running out of time. It looks like we have a war on additional refining capacities, or at least a very difficult.

And it looks like, Mr. Glaser, we have an issue with a war on coal. I know there was a county just south of Houston that was talking about building a coal plant, which escapes me with the price of gas what it is, but they believe in diversity of fuels, and the EPA basically descended on that town, threatening to put them in noncompliance in air quality, despite the fact they were basically upwind from Houston. Are we seeing that all over?

Mr. GLASER. Yes. As I mentioned in my testimony, the Administration has one rule in place, the MATS or UMACT rule; another rule proposed, the greenhouse and New Source Performance Standards rule, under which you can't build a coal plant. You just can't build a coal plant. That is a policy that is inconsistent with the notion of an all-of-the-above energy policy; it is reflective of what we are seeing throughout the Administration's, and particularly EPA's, policies; and they are having an effect.

Contrary to what Mr. Weiss said, that implies that coal employment is at an all-time high, I would simply suggest that looking at 2011 figures is a little disingenuous because all of these policies are just coming into effect right now. The pollution rules that the Administration has adopted have begun this year, and if you look at what is going on in the marketplace right now, you would be hard pressed to say that coal employment was up.

Mr. FARENTHOLD. Thank you very much.

I see my time has expired.

Chairman ISSA. I thank the gentleman.

I now ask unanimous consent that the Committee report of May 23rd, 2011, be inserted at this time. Without objection, so ordered. And particularly take note of the portion of this report that related to the $2.1 billion that Shell had spent from 2008 on the very project that Mr. Weiss now takes credit for in an election year, three and a half years in, for the permit being granted, a permit that was delayed for those three and a half years.

With that, we recognize the gentleman from Vermont for his five minutes.

Mr. WELCH. Thank you, Mr. Chairman.

Mr. Krancer, you are from Pennsylvania. Mr. Kelly, I listened to his questions. My understanding is that there is this explosion in energy development because of gas. That is a real competitive advantage for us and you are leading the way in Pennsylvania, is that your view?

Mr. KRANCER. Well, that is certainly part of the story. Natural gas is now accessible, it wasn't accessible before, and, as I said, the production in Pennsylvania has quadrupled since 2009.

And by the way, referring to, I think it was Representative Davis, the Federal Government has absolutely nothing to do with the fact that production in Pennsylvania of natural gas quadrupled. As a matter of fact, by definition, because the Federal Government was not involved, that is what happened.

Mr. WELCH. Well, there has been discoveries across the Country of this huge reservoir of natural gas and that fracking is a device by which that can be extracted.

Mr. KRANCER. Well, more accurately, there have been discoveries of ways to access and obtain the gas in a much more efficient manner, by the way——

Mr. WELCH. Right. And you have a lot of responsibility to make sure that that is done in a way that doesn't degrade the environment, particularly water quality, correct?

Mr. KRANCER. Water quality, air quality——

Mr. WELCH. Right.

Mr. KRANCER. The whole——

Mr. WELCH. And my understanding of what you were recommending was not that there be no regulatory oversight, but you believe that that regulatory oversight is better done at the State, rather than the Federal level. Is that more or less——

Mr. KRANCER. Oh, I not only believe it; I see it every single day.

Mr. WELCH. Right. So you don't have an opposition, in fact, you believe in appropriate regulatory behavior to protect air and water quality, is that right?

Mr. KRANCER. I am the Secretary of the Department of Environmental Protection.

Mr. WELCH. Right.

Mr. KRANCER. I believe in adherence to rules——

Mr. WELCH. So we are not having a debate about whether there has to be some degree of regulation. There is always room for improvement and you get to an answer sooner rather than later.

Would the members of the panel more or less agree with that? Mr. Drevna, how about you?

Mr. DREVNA. I agree with the secretary that we take these things seriously——

Mr. WELCH. Okay, let me go to Mr. Glaser. How about you? Coal obviously has some side effects, or is that not anything you agree with?

Mr. GLASER. No, we absolutely believe that coal is compatible with good environmental protection. No doubt about it.

Mr. WELCH. Is there any mercury contamination that is affected by the downwind on places from the coal plants?

Mr. GLASER. There is no question that power plants in the United States emit relatively minute amounts of mercury, particu-

larly compared with the amount of mercury blowing in from overseas. There is also no question that mercury can be controlled.

Mr. WELCH. So——

Mr. GLASER. There is, finally, no question that the rule that the Administration adopted to control mercury in fact doesn't really do that.

Mr. WELCH. Hold on. Let's stay—let me ask the questions, all right? So you are acknowledging that there is some mercury pollution from coal plants, correct?

Mr. GLASER. There is, as I said, relatively——

Mr. WELCH. Is that a yes?

Mr. GLASER.—relatively minute——

Mr. WELCH. Wow.

Mr. GLASER. Yes, but there are relatively minute amounts. And the coal industry—and, again, I am speaking for myself now. But there is no doubt that reasonable regulation is a good thing throughout American energy production, and I would include coal. There is no dispute with that whatsoever.

Mr. WELCH. And you would acknowledge that mercury contamination, as it gets into the food chain, as it gets into soil, is hazardous to the health, hazardous to air quality?

Mr. GLASER. I would point to the regulatory impact analysis that EPA did in support of the rule and conclude that those benefits are vanishingly small.

Mr. WELCH. So you won't answer my question.

Mr. GLASER. I think I just did.

Mr. WELCH. Okay.

How about you, Ms. Sgamma. Do you believe that there has to be some appropriate level of regulation to look out for the interest of air and water quality?

Ms. SGAMMA. Absolutely. The oil and gas industry is one of the most heavily regulated industries. It is when that new regulation is not in balance with economic and job growth, and when it is not well thought out, it is too much, too fast, excessive, and that is killing jobs in my industry.

Mr. WELCH. Well, see, I am actually sympathetic to the concern of the regulated community that the regulatory process be straightforward, clear, that you can get an answer and you get a reasonable turnaround. I think that is a reasonable thing. What is not reasonable is to believe that we can waive away the necessity to protect air and water quality when there are processes that have an impact on it.

Ms. SGAMMA. I don't know anyone in my industry who is calling for waiving regulation. We are calling for it to be done more at the State level, though.

Mr. WELCH. Well, here would be my suggestion. This is something we did in Vermont. We asked—and, actually, you did this, Mr. Chairman, and I thought it was okay. You get specific examples of what you think can be improvements, where it is about the process working better as opposed to trying to do away with the underlying obligation, my view that the government has to protect the air and water quality. That is something I would be interested in, and I think you asked some of those questions and I thought that was a fair question in the beginning. But this back and forth

about who is the better is the better president and whose policy, my view is it doesn't really get us anywhere.

I want to go on to another topic. We are having huge debates here about whether those of us, and I am one of them, that thinks that we should be trying to give a boost to alternative energies. It is local; it is renewable; it is jobs. This is my view. That does not mean that we have to tear apart other traditional sources of fuel. You are not going to be able to turn the lights off by going to solar overnight, let's say.

So the other thing is that a lot of us believe that whatever fuel source you believe in, whether it is gas or oil or coal, energy efficiency should be a major component of American energy policy, and it is an area where, presumably, there could be some agreement.

We had a bipartisan bill last year that was going to give a boost to homeowners and, to some extent, building owners if they put some of their own money into retrofitting their buildings, and they would get some taxpayer money to help out. No big bureaucracy, because if you own a home and you can save some money, and you put some of your money in, get some government money, you are going to want to get the best deal on that.

I am curious to know whether all of you would favor an approach that would allow for retrofitting of our residential and commercial buildings with some taxpayer help.

Mr. KRANCER. Representative, could I take a shot at that?

Mr. WELCH. Yes, go ahead.

Mr. KRANCER. Because the electricity business used to be a business I had been in. Energy efficiency is already a part of the way we are implementing energy policy, and commercially. It is not from the government, by the way; it is by the way of the competitive markets. And energy efficiency is something that clears a market in what we call PJM. PJM is the grid operator that spans from I think it is New Jersey all the way over to Illinois, Michigan; 50 million people. It is the biggest grid operator in the Country. So energy efficiency is already a part of the way competitive markets are thinking.

And let me just say one thing, and I know Representative Tierney mentioned it with wind and solar, so on and so forth. Wind has been something that has been part of the power mix since 1870, so I am not sure that that is a brand new technology either. And I don't want to get into the PTC, because I know that is not what this is about, but if we are getting into subsidies of one, it, by definition, impacts the other, because when you have other resources that generate power, nuclear, coal, gas, whatever it is, but you have a subsidized wind component, and especially at certain hours of the day, that wind farm can actually bid into the market at less than zero.

Mr. WELCH. Right. I am over my time, but the question I did ask——

Chairman ISSA. Just a wee bit.

Mr. WELCH. Well, it was the answer more than the question, all right? But answer the question I didn't ask. What I was curious about, Mr. Chairman, was whether there would be general support for an efficiency program that doesn't require us to pick winners and lowers; where, if you are a homeowner and using coal or you

are a homeowner and using gas, you get some opportunity to make your home or your commercial building more energy efficient, so you use less fuel, save money, and the people who do the retrofit are local, out-of-work contractors.

Chairman ISSA. I certainly would agree with the gentleman that we need to figure out ways to do it. My State, unlike your State, is fairly not terribly hot or cold for most of it, but we actually have done that for a generation. All of our electric providers have annual programs, sometimes supplemented by State money for just that; a little more pink, a fan, better sealing of windows, and so on. I certainly agree with the gentleman that that is a component. I think today a lot of our hearing was on the time to market, the idea that on private lands you can get a permit in Texas in 90 days on an existing site, while it can take you 10 years if you want to go to Federal lands; and, of course, you pay for a lease for that whole 10 years.

But I do think the gentleman's point is good and I would love to explore it further.

Mr. WELCH. Thank you.

Chairman ISSA. And with that we go to an important and patient witness, the gentleman from Michigan, Mr. Walberg, for five minutes.

Mr. WALBERG. Thank you, Mr. Chairman. Before I ask Mr. Glaser to expand on the answer you started when Congressman Farenthold offered you the chance to talk about the regulations from the Federal Government, especially Utility MACT.

Let me preface it by saying I had the opportunity as part of my responsibility of chairing the Subcommittee on Workforce Protections, looking at MSHA, the mine industry and the coal mine operations, to go out to North Dakota this past August and to see the surface mining operations taking place there. Revolutionary in my mind to see what was being done; the reclamation of land, the enhancement of land, the opportunities for agriculture expanded as a result of that, the clean coal technologies that were taking place, the expansion of coal-fired plants that provided necessary energy not only for North Dakota, but for Minnesota as well. Amazing job opportunities for people, stable employment. People coming from other States to work there. And then having a chance to look at the Bakken Reserve and the oil exploration going on there as well was amazing. The unemployment level that was there, that is the right direction for unemployment, as opposed to what I experienced for too long back in Michigan.

And then just recently to hold a town hall meeting in Coldwater, Michigan, and to have a lady pop up and say, you know, Congressman, I have a husband that is working out there in the Bakken Reserve. He is out there because he can't have a job here in Michigan. He doesn't want us to move out there because he wants to ultimately come back to Michigan to work, but he is doing what is necessary and he has a good paying job out there and there is an opportunity for us.

And then to find out—and I don't know if we have this chart available—that the EPA regulations have already forced 25 gigawatts of generating capacity off the grid. In my State alone, over 1200 megawatts have been forced off through energy regula-

tion, excessive regulation, unreal regulation that is going on. In my own district, 345 gigawatts alone that makes it more difficult when we see a turnaround taking place in Michigan in the auto industry that requires energy, that requires fuel sources. And this lady, who wants her husband back in Michigan working, when we see now a capacity necessary to deal with the increased job opportunities that are taking place in manufacturing finally again in the auto industry and supplier industries, the need for more energy to have things like we are going to talk about and I want you to expand upon, isn't it true that new coal-fired electric generating units, which are able to install the newest technologies, are unable to comply with Utility MACT rule?

Mr. GLASER. Yes, that is exactly the case. And you don't have to take my word for it; the major association of pollution equipment vendors went to EPA and they told EPA that they, frankly, could not guarantee that their equipment would meet the level of EPA standards; it was so low as to be beyond the ability of the equipment to actually measure that level of emissions. And we have the same thing with the greenhouse gas New Source Performance Standard. EPA has said, well, in order to build a new coal plant in the United States, you have to meet a level of CO2 emissions that EPA says coal plants, frankly, can't meet.

So that, to me, is something that I don't understand, again, how you can say that you have an all-of-the-above energy policy that includes coal and at the same time say——

Mr. WALBERG. So there is a Catch-22 going on here that says commence construction and cease construction.

Mr. GLASER. Yes. The Catch-22 that EPA has put out there is they have said, well, under our greenhouse gas rule we recognize that there are about 15 plants out there that have spent a great deal of money and a great deal of time trying to get—and have received permits and they are just about ready to go with construction. So what we will do in recognition of that huge investment, we will say you all have a year, and if you can get built, if you can start construction in a year, then you won't be subject to this requirement that you can't meet as to your CO2 emissions.

Yet at the same time they have finalized a rule, the MATS rule or MACT rule, that these companies can't meet because the emissions are so low because the pollution control vendors won't guarantee performance of the equipment. So these 15 contracts are effectively being strangled because, on the one hand, EPA says you have a year to get into construction, but on the other hand they have a rule that prevents them from getting it to construction, and that is the concern.

Mr. WALBERG. Well, I appreciate that testimony.

Mr. Chairman, just this past week I had the opportunity to fly over and be in China, India, South Korea, and I saw stacks, I saw emissions taking place there. Nothing like I have seen in Monroe, Michigan or Jackson, Michigan with Consumers Energy, Detroit Energy, coal-fired plants that are being put in this Catch-22 situation right now, if they have not already been put out of production, because of the untenable regulatory climate that goes beyond the necessity and goes beyond reality and rationality of what is nec-

essary to move our economy forward, and do it in a sustainable and quality environmental fashion as well.

Thank you. I yield back my time.

Mr. ROSS. [Presiding.] Forgive me for just walking in; I have been going back and to from other hearings. But I want to make sure I understand that probably one of the biggest obstacles has been the permitting process for environmental impact studies. Is that correct, Mr. Krancer?

Mr. KRANCER. Well, I think it has been discussed before that certainly at the Federal level the NEPA process takes a very, very long time.

Mr. ROSS. And actually you say process, but there is no procedure in NEPA, is there? In other words, what one agency may start, another agency may ignore, and it could last forever.

Mr. KRANCER. My experience in the private sector is that it could last a very long time and the outcome was often unpredictable.

Mr. ROSS. Mr. Drevna, would you agree that a procedure should be in place in order for the process under NEPA to be followed in a timely manner?

Mr. DREVNA. Absolutely, Mr. Ross. Not only the process under NEPA, but the entire process, where at every turn there is another lawsuit or litigation that tries to stop—and they are not concurrent or consecutive.

Mr. ROSS. And so would standing also be an issue that something should be addressed?

Mr. DREVNA. Absolutely. I think everybody wants to do it right. No one is saying not to do it right. It is just when you create the uncertainty, when you have these interminable time delays, what are you going to do with your profits? You can't put them back in; you have to take them somewhere else.

Mr. ROSS. And, Mr. Weiss, are you familiar with the fact that there has been a delay even in the permitting of green energy programs?

Mr. WEISS. Yes, I am, and I think that one way to address that would make sure that the people who are responsible for reviewing these analyses and issuing the permits have adequate resources and adequate staff to do that, particularly at a time when we are expanding the number of permit requests. We need to make sure that we provide them with the resources they need.

Mr. ROSS. I agree with you, and I think that what you hit on there is when you have sequential evaluation, when you have sequential review of the permitting process, you have what I consider to be a disparate allocation of resources. So would you not agree that it would be more in line with having a concurrent review process, as opposed to a sequential review process with agencies?

Mr. WEISS. Certainly we have proposed, when it comes to the citing of transmission lines, that the process be telescoped down in the way that you suggest, which is to make it sort of get everyone together and do it all together; local, Federal, and State.

Mr. ROSS. Correct.

Mr. WEISS. You speed up the time that it takes to permit transmission lines.

Mr. ROSS. And, further, would you not say that that is a fault in NEPA, is that there is no procedure in place for concurrent review in the permitting process?

Mr. WEISS. I am not qualified to answer that.

Mr. ROSS. Mr. Krancer?

Mr. KRANCER. NEPA—it is a great question, and if there is one thing I could leave with this Committee, and this is at the Federal level, of course, not the State level, is take another look at NEPA and redo it.

Mr. ROSS. Would it also be advantageous to have a procedure in place that would allow for a time period by which those agencies who feel they are affected or have a need to be involved, get involved, concurrent review of the permitting process, and let's say in four and a half years the permit must either be issued or not?

Mr. KRANCER. I would say four and a half years is a very long time. I would also say that some of these—and these folks on the panel might have a better sense for this, but to the extent there have been increased in production, I bet you donuts to dollars those must have come from private lands, not public lands.

Ms. SGAMMA. Right. I represent producers on public lands in the West, so, because the West is so predominated by public lands, we are affected by those NEPA delays more than anything else. We are seeing 20 projects held up that could create 121,000 jobs, but the NEPA is taking seven years or more.

Mr. ROSS. Correct.

Ms. SGAMMA. NEPA should be taking two years. And we would love to see something where the government gets so much time and then the project is presumed complete.

Mr. ROSS. Even this President has suggested that we do some sort of expediting of the process under NEPA.

Ms. SGAMMA. And our producers pay for contractors to do the NEPA, and government still can't get it done.

Mr. ROSS. Mr. Weiss?

Mr. WEISS. It is important to note that the lands that Ms. Sgamma is talking about are owned by all Americans and, under the law, they are there for multiple use; not just for oil production, not just for coal production or whatever.

Ms. SGAMMA. And taxpayers own the energy under those lands.

Mr. WEISS. Therefore, we need to make sure that we know what the impacts are——

Mr. ROSS. I agree.

Mr. WEISS.—for all Americans, not just on their companies.

Mr. ROSS. And would it not be better to have an economy of scale, a centralization of review, and an expedited process by which those who are involved in these, whether they be on private lands or public lands, know that the investment of their dollars is going to have an outcome where they are going to have—and a time certain. I mean, we all agree that that is good.

Yes, sir, Mr. Drevna.

Mr. DREVNA. I think it would be an interesting exercise to look at what would happen, interpose NEPA and all the other requirements that you have to do on Federal lands, interpose those on the development with what we have seen in Pennsylvania, Ohio, West

Virginia, and see if that production would be there today as it is now. I would suggest absolutely not.

Mr. ROSS. Okay. I see my time has expired and I am the last questioner, so we will stand adjourned.

Thank you all for your time. I appreciate you being here.

[Whereupon, at 11:30 a.m., the committee was adjourned.]

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

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Opening Statement
Ranking Member Elijah E. Cummings

"Rhetoric vs. Reality: Does President Obama Really Support an 'All of the Above' Energy Strategy?"

May 31, 2012

The title of today's hearing poses the following question: "Does President Obama Really Support an 'All of the Above' Energy Strategy?" In my opinion, the answer is clear, resounding, and obvious: "yes."

Under President Obama, total domestic oil production in the United States has increased by 14% since the final year of the Bush Administration. Every year since Mr. Obama became President, total U.S. crude oil production has increased. In 2011, over two billion barrels of oil were produced in the United States. This is the highest rate of domestic oil production since 2003.

In 2011, onshore oil production on federal lands was the most productive year since 2003, with 112 million barrels produced. Offshore oil production had its most productive year in 2010, with 618 million barrels produced.

As part of this "all of the above" strategy, natural gas production is also now at record levels. In fact, it is at its highest level in 30 years, with more than 28 trillion cubic feet produced in 2011.

The Administration has also pursued nuclear power. It approved an $8.3 billion conditional loan guarantee for nuclear reactors in Burke County, Georgia, which is the first nuclear plant to receive a construction license in more than three decades.

After touring the facility, Energy Secretary Steven Chu stated: "Nuclear energy is a critical part of President Obama's 'all of the above' energy strategy." The President has also requested an additional $770 million for nuclear programs in his budget for 2013.

In a stark difference from the previous Administration, the Obama Administration has also invested significantly in the clean energy technologies of the future that promote our global competitiveness and enhance our energy independence.

Because of investments in solar, biofuel, wind, geothermal, and electric vehicle technologies that were included in the Recovery Act, the United States is now home to the world's largest photovoltaic generation facility, one of the world's largest wind farms, and the world's largest concentrated solar power plant.

In addition to taking these steps, the Administration's new fuel economy standards will reduce oil consumption by 2.2 million barrels a day, saving American families an average of $8,000 at the pump.

I understand that many of the witnesses invited by the Chairman today will express their desire to drill for even more oil and to remove existing health and safety protections to allow them to do so. They will also argue that the Administration is somehow blocking their efforts.

To the contrary, arguments that the Administration has been refusing to approve drilling permits in the Gulf are a complete myth. Following the monumental BP disaster, the Administration worked quickly with industry to develop and implement new offshore drilling rules to reduce the chances that such a catastrophe would ever happen again. Since enacting these rules, the Administration has issued more than 400 deepwater drilling permits, and Gulf operations have resumed more safely as a result.

In addition, in 2011, the Administration offered 21 million acres for new offshore oil and gas development. And next month, an additional 38 million acres will be offered as part of a lease sale in the Gulf of Mexico—an area estimated to hold close to 31 billion barrels of oil and 134 trillion cubic feet of natural gas.

This record is clear. President Obama has pursued an aggressive strategy to significantly boost domestic energy production from all sources—oil, natural gas, nuclear, and clean energy—and he deserves an enormous amount of credit for this accomplishment.

Congressman Mike Quigley
Statement for OGR: Hearing on President Obama's All-Of-The-Above Energy Strategy
May 31, 2012

Mister Chairman, Ranking Member Cummings, thank you for convening today's hearing.

We've come together to discuss President Obama's all-of-the-above energy plan, or as some would have you believe, his lack-thereof.

It's true, my beliefs differ wildly from many on this Committee, that is a fact I do not dispute.

I have said on the House floor and I'll say it again that there's no such thing as clean coal, that natural gas is not a panacea –

And that I'm not quite convinced that nuclear energy should be a part of any sort of national energy plan or solution.

But, I do understand that in order to lessen our dependence on foreign oil and fossil fuels –

That a patchwork approach of these lesser-polluting resources must be on the table.

I understand that we cannot let perfect be the enemy of the good.

Still, I'm not sure what we're debating here.

I'm pretty positive the answer to my question would be that this wolf in sheep's clothing, claiming to harangue the President for precluding extraction and energy production –

Is just another opportunity to berate the President and his Administration's decision to leave authority within the sphere of the EPA when it comes to the Keystone Tarsands Pipeline.

But, I'm not afraid to support the President on that one.

A litany of inadequate environmental assessments have been produced on the topic, as well as reports that this environmentally devastating pipeline would *NOT* decrease energy costs over the course of the next years.

I guarantee we'll also hear complaints about this Administration's unwillingness to allow our oceans to be accessed, our mountains, our lands.

Let's contend that we do have unfettered access to the aforementioned.

Even if we did, we Americans consume 19 million barrels of petroleum A DAY, according to the Energy Information Administration.

Even those who believe that extraction in the North Slope in the Arctic National Wildlife Reserve, or ANWR, would lower domestic gasoline prices, fail to note that oil is beholden to an international market.

In 2030, ANWR production would only provide for point-four-percent to one-point-two-percent of world oil consumption.

And, these resources would reduce the world price of low-sulfur crude by merely forty-one-cents per barrel to a-dollar-and-forty-four-cents per barrel in 2026.

Soon thereafter, the resource would be tapped.

For a group of people very concerned with an economic bottom line, I'm not sure this investment is worth it.

So, let's have a discussion about a national energy plan.

Let's talk about closing loopholes for big oil, let's talk about ending subsidies for rich industries like ethanol, and let's talk about competing with China and India when it comes to the international market for green industrial goods.

But, let's not pretend that where we're at when it comes to expensive energy costs is the fault of this Administration.

Now is as crucial a time as ever for us to step up as a Congress and pass a Renewable Energy Standard, to encourage Corporate Average Fuel Economy standard increases –

To provide research and development tax credits and incentives for green jobs and industry and to end wasteful price-supports for oil execs.

We can't afford to wait.

U.S. House of Representatives

Committee on Oversight and Government Reform

Darrell Issa (CA-49), Chairman

RISING ENERGY COSTS:
AN INTENTIONAL RESULT OF GOVERNMENT ACTION

STAFF REPORT
U.S. HOUSE OF REPRESENTATIVES
112TH CONGRESS
MAY 23, 2011

Findings

1. Key Obama Administration figures have expressed a belief that Americans should pay more for energy – a pattern of actions shows the Administration is, in fact, pursuing an agenda to raise the price Americans pay for energy.

   President Obama, Energy Secretary Chu and others have stated that American consumers should pay more for energy, including electricity and gasoline. From a political perspective, increasing the price of energy (by whatever means) helps them make the case for "green" energy. Even beyond the effort to raise energy prices through "cap and trade" legislation that Congress rejected, a pattern of increased enforcement, regulatory delay and new hurdles can be seen across numerous agencies and approval processes. The result of this government action is less production, higher costs for producers, and more expensive energy.

2. While the Administration touts nascent "green" energy technologies, U.S. domestic energy resources are currently the largest on earth—greater than Saudi Arabia, China and Canada combined.

   New developments in drilling and extraction technology have dramatically expanded the amount of total recoverable reserves of oil and natural gas. Much of this, however, may be put off-limits by the government.

3. Still trying to capitalize on domestic energy resources, U.S. firms are nevertheless investing billions of dollars to tap newly recoverable resources in California, Texas, Colorado and North Dakota, among others.

   By 2015, fields in these areas could yield more daily oil than the Gulf of Mexico produces today, boosting domestic production by 20-40 percent and increasing our energy independence if government action does not severely restrict development and yields.

4. Recent Administration action has already led to significant cost and regulatory barriers that have limited domestic production of oil.

   Even before the Gulf oil spill, the Department of the Interior had undertaken significant steps to restrict access to much of the energy resources located in the outer continental shelf: Alaska, the Gulf of Mexico, and along the Atlantic and Pacific coasts.

5. Other agencies have stepped up their efforts to indirectly curtail energy production through environmental regulations.

   The U.S. Fish and Wildlife Service has proposed placing the dunes sagebrush lizard that lives in New Mexico and Texas on the Endangered Species list—designation that would severely restrict production activity in a resource-rich part of Texas.

6. EPA has collaborated with environmental groups to target independent energy producers for environmental concerns not related to their operations.

   In an email message reviewed by the Committee, environmental advocates and EPA's Texas-based regional director exchanged celebratory accolades for efforts that create barriers to energy production. One exchange concluded: "Yee haw! Hats off to the new Sheriff and his deputies!"

7. President Obama's proposal to increase taxes on the energy industry will cost American jobs and hamper economic recovery.

   Independent operators are responsible for 95 percent of domestic oil and gas wells and they currently invest 150% of their domestic cash flow back into future projects development. Tax increases proposed by President Obama, some of which would be transferred to "green" energy producers, would cost energy producing firms a combined $12 billion in the first year.

8. Some green energy sources the Administration is promoting at the expense of expanded domestic oil, gas, and coal supplies create unintended environmental, security and economic consequences.

   Green energy technology like batteries, turbines, hybrid power systems and similar technologies require "rare earth" commodities. China has a "near monopoly" on this market controlling between 95-100 percent of the market. Further, China derives 71 percent of its own energy needs from coal. Ethanol, for example, also requires large amounts of corn to deliver fuel. "[T]he entire U.S. corn crop would supply only 3.7 percent of our auto and truck transport needs while using 300 million acres of U.S. cropland."

INTRODUCTION

In his 2010 State of the Union address, President Obama declared, "the nation that leads the clean energy economy will be the nation that leads the global economy…America must be that nation."[1] Yet today, more than 80% of the United States' primary energy comes from carbon-based resources that cannot easily, cheaply, or quickly be replaced.[2] Even so, the Administration is aggressively suppressing the use of carbon-based energy sources in the United States. To do so, it is pursuing a broad array of measures to block carbon-based energy extraction, to tax, and to otherwise increase the costs of its use, and to subsidize wherever possible the development and use of so-called "clean energy." The economic and geopolitical implications of such a policy, if it is successful, are not good for the United States. It will make the United States poorer and more susceptible to the pressures of countries that now control a large share of the world's oil—countries, which for the most part, do not share America's goals or ideals.

The Obama Administration has advanced an agenda that discourages development of domestic carbon-based energy resources. Administration actions include the threat of new federal regulation of hydraulic fracturing, withdrawal of federal lands, both on and offshore, from energy production, increasingly burdensome requirements for oil shale research and development leases, and a de facto moratorium on drilling permits. This strategy has added to permitting delays, created additional layers of review, and prolonged study periods. In addition, other laws such as the Endangered Species Act and the Clean Air Act have been used to further suppress domestic oil and gas production, leading to higher gasoline prices and growing dependence on foreign oil. The Administration has also proposed a series of discriminatory tax increases targeting oil and gas producers in order to subsidize its favorite industry: so-called "clean energy" (primarily wind and solar).

The Administration's bias against carbon-based fuels should come as no surprise. The President ran on an agenda that anticipated higher energy costs:

> 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.[3]

Some of his key cabinet officials have expressed similar views. Prior to his confirmation as Secretary of Energy, Steven Chu, then director of the Department of Energy's Lawrence Berkeley National Lab, advocated raising gas taxes--and therefore prices--to encourage the sale

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[1] President Barack Obama, Remarks by the President in the State of the Union Address (Jan. 27, 2010) *available at* http://www.whitehouse.gov/the-press-office/remarks-president-state-union-address.

[2] Energy Information Administration, *Energy in Brief*, "What are the major sources and users of energy in the United States?" (Updated: Oct. 28, 2010) *available at* http://www.eia.doe.gov/energy_in_brief/major_energy_sources_and_users.cfm

[3] Deroy Murdock, *Obama Declares War on Coal*, NAT'L REVIEW (Nov. 3, 2008) Original source: audio/video of Obama's appearance before the San Francisco Chronicle's editorial board in Jan. 2008.

of more-efficient cars: "[s]omehow we have to figure out how to boost the price of gasoline to the levels in Europe."[4]

This report will examine specific Obama Administration policies targeting oil and gas production from both a regional and national perspective. Additionally, it will take a close look at the regional and local impacts of the growing web of laws, regulations, policies and tactics aimed at suppressing the development and production of domestic, carbon-based energy reserves that the President has labeled "yesterday's energy."[5]

President Obama's policy bias against fossil fuels

The Obama Administration is promoting a clean energy agenda at the expense of domestic oil and gas production. Administration officials, including the President, have publicly stated that increasing domestic oil and gas production is important to stabilize gasoline prices. However, a review of their actions reveals a systemic effort to prevent, obstruct, stall, and discourage development of carbon-based resources. This strategy is articulated by Secretary Geithner and is observable in actions by Administrator Jackson and Secretary Salazar. Unfortunately for Americans struggling with higher gas prices, Administration rhetoric will provide no relief. However, the Administration's actions can inflict more pain.

In March 2009, Treasury Secretary Timothy Geithner explained to Senator John Cornyn (R-Texas) that the Obama Administration planned to increase taxes on domestic oil and gas producers even though this policy will decrease domestic oil production and increase America's dependence on foreign oil and gas:

> Senator, as you know, and I think it's clear in the proposal, we don't believe it makes sense to significantly subsidize the production and use of sources of energy that are dramatically going to add to our climate change imperative.
>
> . . . But as I said, the overall objective is not to be providing ongoing subsidies to forms of energy production that are going to add to this critical long-term imperative of climate change. (emphasis added)
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> ...And I think this is a reasonable policy, given the overall objective of again making sure we're not providing artificial

[4] Neil King Jr. and Stephen Power, *Times Tough for Energy Overhaul*, WALL STREET J. (Dec. 12, 2008), *available at* http://online.wsj.com/article/SB122904040307499791.html.

[5] President Barack Obama, Remarks by the President in the State of the Union Address (Jan. 25, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address.

> incentives, to produce and use energy that's going to make our broader climate-change imperatives worse.[6] (emphasis added)

Translation: in order to achieve the President's vision of a carbon free economy, the production and development of fossil fuels would be punished.

Phase One: Cap-and-Trade

Since his first day in office President Obama has worked to advance his "green energy agenda." This agenda was originally manifested in the Presidents cap-and-trade scheme, which was summarily rejected by Congress. Cap-and-trade legislation, "a combination of energy taxes and carbon controls"[7] failed to garner enough support to pass both houses of Congress. "Realistically, the cap-and-trade bills in the House and the Senate are going nowhere," said Senator Lindsey Graham (R-SC), who was trying to fashion a bipartisan package of climate and energy measures. "They're not business-friendly enough, and they don't lead to meaningful energy independence. . . . What is dead is some massive cap-and-trade system that regulates carbon in a fashion that drives up energy costs."[8] Some view the massive failure of cap-and trade as the impetus for the President's renewed focus on clean energy: "cap and trade by another name."[9] Failing to pass cap-and-trade, the Administration turned to regulation to do what it couldn't via Congress. Namely, EPA issued the controversial endangerment finding for CO_2 and other greenhouse gases (GHGs). This finding put in motion the onerous mechanisms of the Clean Air Act which imposes enormous costs on consumers of carbon-based fuel.

Before EPA issued the Endangerment Finding for Greenhouse Gasses under the Clean Air Act (CAA), the White House and the agency had been warned by economists, legislators, and their own advisors that the GHG regulations would impose a high cost on the economy via higher energy prices and increased uncertainty. Former Energy and Commerce Chairman Dingell famously stated in April 2008 that regulating GHGs under the CAA would result in a "glorious mess"[10] that would wreak havoc on the economy. In March 2009, then-Ranking Member Issa warned EPA that, . . . the immediate result of issuing an endangerment finding is that thousands of American small businesses, already struggling in one of the toughest economic [climates] our generation has ever seen, will be thrown into a sea of legal uncertainty, further depressing their ability to stay viable.[11] Bottom line: the Administration knew that the implementation of EPA's GHG regulations would have a large economic impact. During consideration of cap-and-trade legislation, a top White House economic official warned that, "if you don't pass this [cap-and-trade] legislation then...the EPA is going to have to regulate in this area. And it is not going to

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[6] *The President's Fiscal Year 2010 Budget Proposal, Part One: Hearing Before S. Comm. on Finance,* 111th Cong. (2009).

[7] Iain Murray and William Yeatman, *Cap and Trade*, NAT'L REVIEW ONLINE, March 12, 2010.

[8] John M. Broder and Clifford Krauss, *Advocates of Climate Bills Scale Down Their Goals*, NEW YORK TIMES, Jan. 26, 2010.

[9] Kimberley A. Strassel, *Cap and Trade Returns from the Grave*, WALL STREET J. ONLINE, Jan. 28, 2011, *available at* http://online.wsj.com/article_email/SB10001424052748703893104576108501552298070-lMyQjAxMTAxMDIwODEyNDgyWj.html.

[10] *A Glorious Mess,* WALL STREET J. (Apr. 12, 2008).

[11] Letter from the Hon. Darrell E. Issa, Ranking Member, Oversight Committee to the Hon. Lisa P. Jackson, Administrator, U.S. EPA (Jan. 13, 2010).

be able to regulate in a market-based way, so it's going to have to regulate in a command-and-control way, which will probably generate even more uncertainty."[12]

Phase Two: Promote "New Energy;" Discourage "Yesterday's Energy"

The Administration remains steadfast in its efforts to force a shift from oil and gas to so-called "clean energy." In its recent report on energy policy,[13] the Administration pays lip service to the proposition that America needs to expand domestic oil and gas production, but offers no serious plan to accomplish the expansion. Instead, it promotes "clean energy" policies that would decrease domestic oil and gas production, ignoring the evidence that such policies would contribute to higher gasoline prices and increase America's dependence on foreign oil, as well as contribute to the further loss of American jobs. In his 2011 State of the Union address, the President stated "none of us can predict with certainty what the next big industry will be or where the new jobs will come from," yet only a few moments later he predicted that the next big industry will be clean energy: ". . . clean energy breakthroughs will only translate into clean energy jobs if businesses know there will be a market for what they're selling. So tonight, I challenge you to join me in setting a new goal: By 2035, 80 percent of America's electricity will come from clean energy sources."[14]

The President's push for clean energy tomorrow comes at the expense of affordable energy today. The United States has an abundance of carbon-based fuels; yet, restricted use will artificially and unnecessarily raise the cost of energy for U.S. consumers. America's combined energy resources are the largest on earth. They eclipse Saudi Arabia (3rd), China (4th) and Canada (6th) combined – and that's without including America's shale oil deposits.[15] U.S. proven reserves of oil total 19.1 billion barrels, reserves of natural gas total 244.7 trillion cubic feet, and natural gas liquids reserves of 9.3 billion barrels.[16] "That's enough oil to maintain America's current rates of production and replace imports from the Persian Gulf for more than 50 years."[17] Undiscovered technically recoverable oil in the United States is 145.5 billion barrels, and undiscovered technically recoverable natural gas is 1,162.7 trillion cubic feet.[18]

Alternative Energy: Is it Really Green?

Converting from a carbon-based economy towards "greener" energy would be costly in more ways than one. "In its headlong rush to go 'green,' the United States may simply be trading reliance on one type of import for reliance on another."[19] To convert to clean energy the United

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[12] Jonah Goldberg, *Dirty Moves Behind Pitch for Cleaner Air*, BOSTON HERALD (Dec. 13, 2009).

[13] *Blueprint for a Secure Energy Future* (Mar. 30, 2011), *available at* http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf.

[14] President Barack Obama, Remarks by the President in the State of the Union Address (Jan. 25, 2011) *available at* http://www.whitehouse.gov/the-press-office/2011/01/25/remarks-president-state-union-address.

[15] Peter C. Glover, *U.S. Has Earth's Largest Energy Resources*, ENERGY TRIBUNE (Mar. 24, 2011), *available at* http://www.energytribune.com/articles.cfm/6933/US-Has-Earths-Largest-Energy-Resources.

[16] Gene Whitney, et al, *U.S. Fossil Fuel Resources: Terminology, Reporting, and Summary*, CRS REPORT TO CONGRESS, Nov. 30, 2010.

[17] Press Release, U.S. Senate Committee on Environment and Public Works, *Government Report: America's Combined Energy Resources Largest on Earth* (Mar. 11, 2011).

[18] *Id.*

[19] Robert Bryce, POWER HUNGRY (Public Affairs) (2010).

States "will need rare earth commodities produced by the Chinese as well as lithium mined by a handful of foreign countries."[20] China has a near-monopoly on rare earths, controlling between 95-100 percent of the elements essential to most clean energy technologies including wind turbines, hybrid cars, solar panels, computers, and batteries.[21] Instead of importing foreign oil from multiple countries, adopting clean energy technologies would require the United States to become reliant on the Chinese to provide these essential elements.

Besides all the other problems with becoming dependent on China for the sole supply of rare earth elements necessary to increase America's use of so-called clean energy, increasing the demand for these elements would only add to China's coal and oil consumption. China is the world's second largest energy consumer. Coal supplied the vast majority (71 percent) of China's total energy consumption of 85 quadrillion British thermal units (Btu) in 2008. Oil is the second-largest source, accounting for 19 percent of the country's total energy consumption. While China has made an effort to diversify its energy supplies, new sources of renewable energy account for only 4.2 percent of China's energy consumption.[22] EIA estimates that China's absolute coal consumption should nearly double to 112 quadrillion Btu by 2020.[23] The logic of using more carbon-based fuels in China to create more clean energy in the United States is flawed. CO_2 is highly diffuse in the atmosphere such that emissions in China impact the United States as much as emissions originating in California. It is also a fallacy that a conversion to clean energy would create new jobs in the United States. In addition to the jobs that will be lost in the oil and gas production industry to subsidize the Obama Administration's conversion to so-called clean energy, "China's near-monopoly control of the green elements likely means that more of the new manufacturing jobs related to "green" energy products will be created in China, not the United States."[24]

In addition to solar and wind, biofuels intended to reduce or replace U.S. gasoline consumption are already costing taxpayers and are not a long-term practical solution[25] for replacing carbon-based fuels. Total agriculture-based biofuels production accounted for only about 5% of total U.S. transportation fuel consumption (on a gasoline-equivalent basis) in 2010. Federal biofuels policies have had costs, including unintended market and environmental consequences and large federal outlays (estimated at over $7 billion in 2010).[26] In a 2010 study, the Congressional Budget Office estimated "taxpayers incur a cost of $1.78 for replacing 125,000 Btus of energy supplied by petroleum fuels with 125,000 Btus supplied by ethanol."[27] This year, the corn-ethanol sector will produce about 13.8 billion gallons of ethanol, the energy equivalent of about 9.1 billion gallons of gasoline . . . the domestic-drilling sector provides about

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[20] *Id.*
[21] *Id.*
[22] Energy Information Administration, Country Analysis Briefs: China (Nov. 2010), *available at* http://www.eia.doe.gov/EMEU/cabs/China/pdf.
[23] *Id.*
[24] *Id.*
[25] James Jordan and James Powell, *The False Hope of Biofuels*, WASHINGTON POST, July 2, 2006.
[26] Randy Schnepf, *Agriculture-Based Biofuels: Overviews and Emerging Issues*, CRS REPORT FOR CONGRESS, Jan. 11, 2011.
[27] USING BIOFUEL TAX CREDITS TO ACHIEVE ENERGY AND ENVIRONMENTAL POLICY GOALS, A CBO Study (July 2010)

36 times as much energy to the U.S. economy.[28] Thus the entire U.S. corn crop would supply only 3.7 percent of our auto and truck transport demands. Using the entire 300 million acres of U.S. cropland for corn-based ethanol production would meet only about 15 percent of the demand.[29] Tim Searchinger, a research scholar at Princeton University's Woodrow Wilson School, says that biofuels don't make much sense because it "takes a huge amount of land to produce a modest amount of energy." The key issue, says Searchinger, is scale. He points out that even if we used "every piece of wood on the planet, every piece of grass eaten by livestock, and all food crops, that much biomass could only provide about 30 percent of the world's total energy needs."[30]

Regardless, the Obama Administration continues to emphasize unaffordable clean energy policies at the expense of domestic carbon-based resources. A recent post on the White House blog summarizes the President's position.[31] The post and the accompanying graphic[32] demonstrate that the Obama Administration's true position with domestic oil and gas production is to increase that industry's taxes in order to provide subsidies for clean energy including electric cars and public transportation.[33]

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[28] Robert Bryce, *Obama's Happy Talk on Energy*, NATL. REVIEW (May 10, 2011).

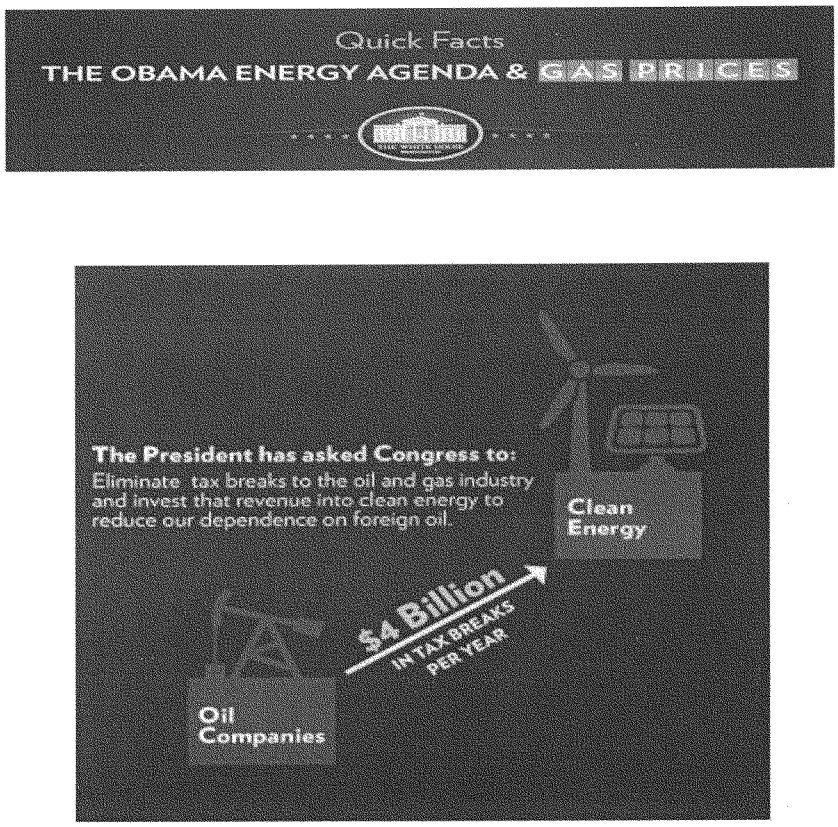
[29] *Id.*

[30] Robert Bryce, *Biofuel Delusions*, COUNTERPUNCH (Dec. 31, 2010).

[31] The President on Jobs & Gas Prices, White House blog (May 6, 2011) *available at* http://www.whitehouse.gov/blog/2011/05/06/president-jobs-gas-prices-read-his-remarks-download-graphic.

[32] http://www.whitehouse.gov/sites/default/files/gas_graphic_blogsize.jpg

[33] The White House blogger encouraged everyone to "check it out below, or download it, print it, send it to your family, or hang it on your wall to add a splash of color."



Source: The President on Jobs & Gas Prices, White House blog (May 6, 2011) *available at* http://www.whitehouse.gov/blog/2011/05/06/president-jobs-gas-prices-read-his-remarks-download-graphic.

Punitive Tax Increases

The Obama Administration wants to tax American oil and gas production to subsidize its clean energy agenda. Higher taxes will disproportionately and negatively impact American job creators in the independent oil and gas production market. Over the long run it will decrease domestic production and make the United States more vulnerable to world events.

In its FY2012 budget, the Obama Administration requests over $60 billion in direct tax and fee increases (over ten years) on American energy production. Some of the most substantial energy tax and fee proposals in the President's FY 2012 budget include: [34]

- Repeal Domestic Manufacturing Tax Deduction for oil and natural gas ($18.2 billion)
- Repeal expensing for intangible drilling costs ($12.4 billion)
- Repeal percentage depletion for oil and natural gas wells ($11.2 billion)
- Repeal percentage depletion tax on oil, gas and mineral properties ($4.9 billion for corporations, $890 million for individuals)

The Administration plans to use these tax increases to subsidize and promote the electric vehicle industry and other clean energy projects. Jack Lew, director of the Office of Management and Budget, describes the Obama Administration's philosophy behind the tax increases requested in the FY2012 budget:

> To invest in the industries and jobs of tomorrow, we invest $148 billion overall in research and development. And this supports our goal of putting a million electric vehicles on the road by 2015, doubling our share of electricity from clean energy by 2035, and reducing energy use in buildings by 20 percent by 2020.
>
> In part, we pay for this by eliminating 12 tax breaks that now go to oil, gas and coal companies, which will raise $46 billion over 10 years.[35] (emphasis added)

The Administration characterizes the deductions and credits slated for elimination as "tax preferences," or "oil and gas subsidies" that are costly to U.S. taxpayers and do little to either provide incentives for increased production or reduce prices to consumers.[36] The President refers to them as "special" and "unwarranted"[37] "giveaways."[38] This characterization is inaccurate: the vast majority of these deductions and credits are widely available to all manufacturers. For example, the President's proposal to eliminate the expensing of intangible drilling costs would single out the oil and gas industry for discriminatory tax treatment. Intangible drilling costs

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[34] Press Release, U.S. House of Representatives, Committee on Natural Resources, *Budget Watch* (Feb. 14, 2011), *available at* http://naturalresources.house.gov/News/DocumentSingle.aspx?DocumentID=225077.

[35] Jack Lew, Office of Management and Budget, White House Press Briefing, (Feb. 14, 2011) *available at* http://www.whitehouse.gov/the-press-office/2011/02/14/press-briefing-omb-director-jack-lew-and-cea-chairman-austan-goolsbee-bu.

[36] FY2012 federal budget request, Terminations, Reductions, and Savings, Dept. of Energy, p. 52.

[37] Letter from President Barrack Obama to Rep. John Boehner, Rep. Nancy Pelosi, Senator Harry Reid, and Senator Mitch McConnell (April 26, 2011) (on file with author).

[38] Press Release, White House, Weekly Address, *Taxpayer Subsidies for Oil Companies are Neither Right, nor Smart, and They Should End* (Apr. 30, 2011), *available at* http://www.whitehouse.gov/the-press-office/2011/04/30/weekly-address-taxpayer-subsidies-oil-companies-are-neither-right-nor-sm.

(IDCs) are non-salvageable items that can be expensed in the year that they were incurred.[39] This tax treatment applies equally to shoe salesman as it applies to the oil and gas industry. For example, if a shoe salesman buys a shoe for $10 and sells it for $20, he doesn't depreciate the shoe over 7 years, he expenses it. Similarly, there are a host of temporary, non-salvageable items called IDCs that some oil and gas companies can expense such as drilling services, mud, cement, testing services, things that are done before a well is completed and producing any oil or gas.[40]

Moreover, the oil and gas industry receives $2.8 billion in targeted tax incentives, less than 3 percent of all incentives, and far less than its smaller rivals in energy production, the renewable energy sector which receives $11.3 billion.[41] The non-profit Tax Foundation questions why the Administration is penalizing the oil and gas industry by attempting to repeal tax deductions that are widely available to many other manufacturing sectors and warns that other manufacturing sectors may soon be penalized as well if they fall out of favor with the Administration:

> Why, suddenly, should companies that produce t-shirts, hamburgers, toys, software, or rap music be qualified to receive the tax benefit but oil companies should not be? According to the explanation in Treasury's Green Book, environmental politics account for this distortion of sound tax and economic policy. The President promised during the G-20 Summit in Pittsburgh, to "phase out subsidies for fossil fuels so that the United States can transition to a 21st century energy economy."[42] (emphasis added)

Former Democratic Congressman Harold Ford, Jr., also questions the need for tax increases and why the Administration wrongly labels tax credits as subsidies:

> Why, when gas prices are climbing, would any elected official call for new taxes on energy? And characterizing legitimate tax credits as "subsidies" or "loopholes" only distracts from substantive treatment of these issues. Lawmakers misrepresent the facts when they call the manufacturing deduction known as Section 199—passed by Congress in 2004 to spur domestic job growth—a "subsidy" for oil and gas firms. The truth is that all U.S. manufacturers, from software producers to filmmakers and coffee roasters, are eligible for this deduction.[43](emphasis added)

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[39] *Pathways to Energy Independence: Hydraulic Fracturing and Other New Technologies: Field Hearing before H. Comm. on Oversight and Government Reform*, 112th Cong. (2011) (statement of Rock Zierman, CEO, California Independent Petroleum Association, *available at http://oversight.house.gov/images/stories/Testimony/5-6-11_Zierman_Testimony.pdf.*

[40] *Id.*

[41] Sean A. Hodge, *Putting Corporate Tax "Loopholes" in Perspective*, TAX FOUNDATION SPECIAL REPORT (Aug. 2010) (No. 184).

[42] *Id.*

[43] Harold Ford, Jr., *Washington vs. Energy Security*, WALL STREET J., May 11, 2011.

Many of these proposed tax changes, including repealing the expensing of intangible drilling costs, have the effect of removing incentives available only to non-integrated companies (also referred to as "independents").[44] Independent oil producers—those who get oil and natural gas out of the ground and do not refine, transport, market, or have retail sales of petroleum products—develop 95 percent of domestic oil and gas wells.[45] Independents produce 68 percent of domestic oil and produce 82 percent of domestic natural gas.[46] While integrated companies (i.e. Chevron, Shell, BP) with vastly more capital may survive these tax increases in the short run, the independents will essentially be killed[47] and good jobs will be lost.

For those lucky enough to survive, eliminating tax credits and deductions for independents will certainly decrease capital investment and thus domestic exploration and production. Independents currently invest 150% of their domestic cash flow back into development.[48] In 2010, upstream independents are estimated to have spent $62.6 billion on capital expenditures (capex).[49] This translates to the creation of six direct and 33 total upstream jobs for every $1 million dollars of capex. In value added terms, every $1 million dollars of capital expenditure results in $2.4 million of direct and $5.1 million of overall contribution to GDP.[50] In terms of taxes, every $1 million dollars of capex results in $1.1 million of total tax revenue generated in the upstream sector.[51] According to Rock Zierman of California Independent Petroleum Producers, "only independent producers can fully expense IDC on American production. Therefore, if you eliminate IDC expensing, there would be less capital available in the current year to reinvest in new drilling operations. This equals less production, period."[52] Even though the entire domestic natural gas and oil sector claimed only $2 billion in deductions in 2010, independent producers could lose as much as $12 billion in the first year after this deduction was repealed.[53] Devon Energy, an independent producer in Oklahoma, estimates that eliminating IDC expensing could cost it $1 billion in the first year. "That would equate to our complete drilling program in the Barnett Shale. . . . That looks to us like it's a totally wrongheaded policy that would penalize companies that are most efficient at producing resources that power the nation."[54] Higher taxes equal less investment and more dependence on

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[44] Robert Pirog, CONGRESSIONAL RESEARCH SERVICE, OIL AND NATURAL GAS INDUSTRY TAX ISSUES IN THE FY2012 BUDGET PROPOSAL (Mar. 3, 2011).

[45] Independent Petroleum Association of America, *Fact Sheet: Increasing Taxes on America's Independent Natural Gas and Oil* (2011), *available at* http://www.ipaa.org/news/docs/Tax_Issue_Talking_Points_02-2011.pdf.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] IHS GLOBAL INSIGHT (USA) INC., THE ECONOMIC CONTRIBUTION OF THE ONSHORE INDEPENDENT OIL AND NATURAL GAS PRODUCERS TO THE U.S. ECONOMY (April 2011), *available at* http://www.ipaa.org/news/docs/IHSFinalReport.pdf.

[50] *Id.*

[51] *Id.*

[52] *Pathways to Energy Independence: Hydraulic Fracturing and Other New Technologies: Field Hearing before H. Comm. on Oversight and Government Reform*, 112th Cong. (2011) (statement of Rock Zierman, Chief Executive Officer, California Independent Petroleum Association), *available at* http://oversight.house.gov/images/stories/Testimony/5-6-11_Zierman_Testimony.pdf.

[53] Telephone Interview with Chip Minty, Devon Energy (May 11, 2011).

[54] *Pathways to Energy Independence: Hydraulic Fracturing and Other New Technologies: Field Hearing before H. Comm. on Oversight and Government Reform*, 112th Cong. (2011) (statement of William A. Whitsitt, Executive Vice President, Devon Energy), *available at* http://oversight.house.gov/images/stories/Testimony/5-6-11_Whitsitt_Testimony_FINAL.pdf

foreign sources of oil. Less capital investment will lead to more dependence on foreign oil.

Repealing these tax credits and deductions will not only decrease capital investment and domestic exploration and production, but it will also eliminate good-paying jobs. The exploration and production portion of the industry employs about 500,000 workers at a wage rate over 50 percent higher than the average of all manufacturing.[55] With unemployment rising to 9% in April 2011,[56] America needs to create more jobs, not eliminate existing jobs by increasing taxes to subsidize clean energy technologies that are not capable of filling the void:

> Annually raising taxes on the industry by billions of dollars would reduce investment in American oil and natural gas development, cost thousands of U.S. jobs, and, over time, reduce both energy production and the taxes and royalties generated from it. It would also increase imports. We wouldn't reduce the deficit, and necessary government investments could be adversely affected. Those advocating tax increases, therefore, would be cutting off their nose to spite their face. Those who want more revenue should work to increase access to available U.S. oil and natural gas reserves, which have a long-term government revenue potential approaching $2 trillion. That could reduce the deficit and help finance critical government programs without raising energy costs and reducing supplies.[57]

While removal of these tax credits and deductions may be appropriate in conjunction with broad-based tax reform that reduces net tax rates, eliminates unnecessary burdens on job creators, and simplifies tax compliance, simply removing these provisions without tax relief elsewhere would have the effect of discouraging oil and gas exploration and development even more. Far from seeking tax code simplification, or even additional revenues to reduce our deficits, the Administration is quite openly seeking ways of paying for the subsidies it would like to provide to "green energy" while at the same time making carbon-based energy more expensive.

Unfair tax treatment is just one piece of evidence in a two-year pattern of Administration policies that discriminate against oil and gas development in the United States. This discrimination hurts not only the energy independence of the country but local economies across the nation. The remainder of this report will provide examples of some of those policies in each of five geographic regions most likely to feel the repercussions: Appalachia, the Rocky Mountains, the Gulf, Alaska, and Texas.

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[55] Independent Petroleum Association of America, *Fact Sheet: Increasing Taxes on America's Independent Natural Gas and Oil* (2011), *available at* http://www.ipaa.org/news/docs/Tax_Issue_Talking_Points_02-2011.pdf.

[56] BUREAU OF LABOR STATISTICS, EMPLOYMENT SITUATION SUMMARY (May 6, 2011).

[57] Press Release, American Petroleum Institute, *Joint Committee study ignores harm of raising taxes* (May 13, 2011), *available at* http://www.api.org/Newsroom/jcomm-ignores-harm.cfm.

I. APPALACHIAN REGION

The shale gas reserves of Appalachia are a game changer for the future of American energy security. The United States has 2,552 trillion cubic feet (TCf) of potential natural gas resources, enough to last 110 years at current usage rates. Almost one-third of these resources are from shale gas -- considered uneconomical to extract until just a few years ago.[58] Newly recoverable shale reserves, both oil and gas, have revitalized the oil and gas industry in Appalachia and across the United States – from North Dakota to south Texas to California. The Marcellus Shale formation lies below many of the Appalachian states and extends up to New York. In 2002, the U.S. Geological Survey estimated the Marcellus held 1.9 TCF of natural gas.[59] In 2009, the Department of Energy estimated the Marcellus holds 262 TCF of recoverable natural gas.[60]

The key to unlocking these additional reserves is a new application of a proven technology called hydraulic fracturing ("fracking"). Fracking has the potential to reposition America from a country beholden to the Middle East for energy to a nation that has used ingenuity to utilize domestic resource exhaustion, but the Administration is threatening to kill the technology with unnecessary federal regulation. Advancements in fracking, coupled with the ability to drill horizontally, allow producers to access more gas with fewer wells. After drilling vertically downward to a shale formation, the producer can turn the drill bit and drill horizontally through the formation. After drilling, a mixture of water, sand, and chemicals can be injected into the well to open up small cracks within the shale formation to allow the gas to travel to the well. The Energy Information Administration says that "without horizontal drilling and hydraulic fracturing, shale gas production would not be economically feasible because the natural gas would not flow from the formation at high enough rates to justify the cost of drilling."[61] Fracking and horizontal drilling also reduce the environmental footprint necessary to tap this natural gas.[62]

The combination of fracking with horizontal drilling is making shale oil recoverable as well, greatly increasing our recoverable oil reserves around the country. The Bakken Shale in North Dakota is a stunning example. As a result of horizontal drilling, coupled with fracking, Bakken production increased from less than 3,000 bbl/d in 2005 to over 230,000 bbl/d in 2010. The Bakken's share of total North Dakota oil production rose from 3% to 75% over those five years.[63] Thanks in part to fracking, unemployment in North Dakota is now the lowest in the country – just 3.8%.[64]

North Dakota is not alone. Companies are investing billions of dollars to tap into oil deposits in Colorado, Texas, California, Oklahoma, and Louisiana as well. By 2015, these fields

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[58] Energy Information Administration, *What is shale gas and why is it important?* (Apr. 4, 2011), *available at* http://www.eia.doe.gov/energy_in_brief/about_shale_gas.cfm.

[59] NATIONAL PARK SERVICE, POTENTIAL DEVELOPMENT OF THE NATURAL GAS RESOURCES IN THE MARCELLUS SHALE 2 (Dec. 2008).

[60] DEPARTMENT OF ENERGY, MODERN SHALE GAS DEVELOPMENT IN THE UNITED STATES: A PRIMER (April 2009).

[61] *Id.*

[62] Press Release, America's Natural Gas Alliance, *Safe, Responsible Drilling*, *available at* http://www.anga.us/media/41084/safe%20responsible%20drilling.pdf.

[63] *Id.*

[64] Jonathan Fahey, *New Drilling Method Opens vast oil fields in US,* THE ASSOC. PRESS (Feb 9, 2011).

could yield as much as 2 million barrels of oil per day – more than the Gulf of Mexico produces today -- boosting domestic oil production by 20 to 40%.[65] According to Credit Suisse, development of these fields could reduce oil imports by 60% by 2020.[66]

Despite the success of fracking, federal agencies appear to be in a race to see which one can regulate it first. The Department of Interior announced last November that it will consider regulating fracking on federal lands.[67] The EPA, which concluded seven years ago that fracking "poses little or no threat" to drinking water supplies,[68] is revisiting the issue. Having found no evidence that fracking chemicals reach drinking water, EPA now wants to study the entire lifecycle of the water used. In addition, DOE has convened a study group to review the fracking process. In a written statement, DOE Secretary Steven Chu stated, "I am looking forward to hearing from this diverse, respected group of experts on best practices for safe and responsible natural gas production."[69] Although the study groups members are certainly highly respected, a survey of their biographies indicates none has recent industry experience with the advancements in the technology.[70]

As Chairman Fred Upton of the Energy and Commerce Committee pointed out,[71] the duplicative efforts of DOI, DOE, and EPA run contrary to the Administration's pledge to eliminate government waste and streamline processes. It mirrors the President's favorite example of the headache caused by agency jurisdiction, "The Interior Department is in charge of salmon while they're in fresh water, but the Commerce Department handles them when they're in saltwater. I hear it gets even more complicated once they're smoked."[72] Federal regulation by EPA, DOE, and DOI would cause needless delay and uncertainty along with multiple additional layers of red tape. Ultimately, federal intervention will chill investment and decrease energy independence.

Additional regulation of fracking is unnecessary because, as EPA Administrator Lisa Jackson pointed out, fracking is not an unregulated activity.[73] Quite the opposite - the states, not the federal government, have always regulated the process and have done so with a solid track record. Officials in state after state have gone on the record to say that fracking has not caused

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[65] *Id.*

[66] *Id.*

[67] Ben Geman, *Interior mulls policy on disclosure of gas 'fracking' fluids*, THE HILL E^2 WIRE (Nov. 30, 2010).

[68] ENVIRONMENTAL PROTECTION AGENCY, EVALUATION OF IMPACTS TO UNDERGROUND SOURCES OF DRINKING WATER BY HYDRAULIC FRACTURING OF COALBED METHANE RESERVOIRS STUDY (2004), *available at* http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/wells_coalbedmethanestudy.cfm.

[69] Press Release, Department of Energy, Secretary Chu Tasks Environmental, *Industry and State Leaders to Recommend Best Practices for Safe, Responsible Development of America's Onshore Natural Gas Resources* (May 5, 2011).

[70] *Id.*

[71] Press Release, House Energy and Commerce Committee, *Administration's Inefficiencies Exposed: Plans for Yet Another Study on Fracking Wastes Federal Funds on Duplicative* (May 5, 2011).

[72] Colin Sullivan, *STATE OF THE UNION: Obama quip on salmon oversight fails to amuse Earthjustice*, E & E DAILY, Jan. 26, 2011.

[73] *Oversight Hearing on Public Health and Drinking Water Issues: Hearing before S. Comm. on Environment & Public Works*, 112th Cong. (2011) (testimony of Lisa Jackson, Administrator, U.S. Environmental Protection Agency), *available at*: http://epw.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=c8713cf7-802a-23ad-4d51-bd8e2c8a7bd3&Witness_ID=d9783076-0a81-4f6a-895a-c34d7f21cc4d.

any problems and any reports to the contrary are inaccurate.[74] As evidence, consider the following examples:

- David Neslin, Director of the Colorado Oil and Gas Conservation Commission: "There has been no verified instance of harm to groundwater caused by hydraulic fracturing."[75]

- Jennifer Means, Pennsylvania Dept. of Environmental Protection: "So far it has not been our experience that the fracking process has caused any water-supply issues."[76]

- James Welsh, Commissioner of Conservation, Louisiana Dept. of Natural Resources: "The Louisiana Office of Conservation is unaware of any instance of harm to groundwater in the State of Louisiana caused by the practice of hydraulic fracturing."[77]

- Harold Fitch, Director of the Office of Geological Survey, Michigan Department of Environmental Quality: "Hydraulic fracturing has been utilized extensively for many years in Michigan, in both deep formations and in the relatively shallow Antrim Shale formation. There are about 9,900 Antrim[78] wells in Michigan producing natural gas at depths of 500 to 2000 feet. Hydraulic fracturing has been used in virtually every Antrim well. There is no indication that hydraulic fracturing has ever caused damage to ground water or other resources in Michigan."[79]

The Obama Administration itself has even conceded that it has no evidence of fracking ever contaminating groundwater.[80] Nevertheless, fracking has become a political football.

Those opposed to fracking have twisted the results of recent scientific studies to support their argument. The most recent example is a study published by Duke University researchers entitled, "Research and Policy Recommendations for Hydraulic Fracturing and Shale-Gas Extraction" which supposedly "shows one downside of fracking."[81] A close examination of the

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[74] Lee Fuller, *March Madness: Small Group in Congress Renews Efforts That Could Cost Jobs, Undercut American Energy Security,* ENERGY IN DEPTH, Mar. 17, 2011.

[75] INTERSTATE OIL AND GAS COMPACT COMMISSION, REGULATORY STATEMENTS ON HYDRAULIC FRACTURING SUBMITTED BY THE STATES, June 2009, *available at* http://www.iogcc.state.ok.us/Websites/iogcc/Images/2009StateRegulatoryStatementsonHydraulic%20Fracturing.pdf

[76] Dennis J. O'Malley, *Gas drilling forum offers hope, dispels myths*, TIMES TRIBUNE, Oct. 20, 2010, *available at* http://thetimes-tribune.com/news/gas-drilling-forum-offers-hope-dispels-myths-1.1051387.

[77] INTERSTATE OIL AND GAS COMPACT COMMISSION, REGULATORY STATEMENTS ON HYDRAULIC FRACTURING SUBMITTED BY THE STATES (June 2009), *available at* http://www.iogcc.state.ok.us/Websites/iogcc/Images/2009StateRegulatoryStatementsonHydraulic%20Fracturing.pd.

[78] The Antrim Shale is a formation in the Michigan Basin.

[79] *Id.*

[80] *Federal Drinking Water Programs: Hearing Before the Environment and Public Works Committee*, 111th Cong (2009) (testimony of Peter Silva, Assist. Admin. For Water), see also, Press Release, U.S. Senate Committee on Environment and Public Works (Dec. 8, 2009), *available at* http://epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=70289be8-802a-23ad-479d-ca2d6f6b36cd&Region_id=&Issue_id=.

[81] Robert B. Jackson et al, *Research and Policy Recommendations for Hydraulic Fracturing and Shale-Gas Extraction*, Duke University Center on Global Change (May 2011) *available at*

research, however, reveals that the study does not in any way support the conclusion that fracking is responsible for the contamination of the ground water tested by the researchers. In fact, the author concedes that, "the study found no evidence of contamination from hydraulic fracturing fluids or saline produced waters."[82] Moreover, in an interview with Bloomberg TV Today on May 10, 2011, Robert Jackson, one of the primary authors of the study, stated clearly that the study "should not be taken as proof that the process [hydraulic fracturing] is dangerous."

Interestingly, despite the Administration's concerns about the safety of fracking here in the United States, it promotes the technology abroad. The State Department has a program called the Global Shale Gas Initiative which started "in April 2010 in order to help countries seeking to utilize their unconventional natural gas resources to identify and develop them safely and economically."[83] While threatening to make production of the resources here at home uneconomical, the Administration hypocritically encourages others to seize the fracking revolution as a path to energy independence.

II. GULF OF MEXICO

Regulations relating to Outer Continental Shelf (OCS) drilling are promulgated under the Outer Continental Shelf Lands Act (OCSLA). It is the basis for most federal regulation affecting exploration and drilling in the waters off the U.S. coast.[84] OCSLA establishes broad five-year planning periods for offshore leasing across the OCS, as well as other processes for leasing, development, and production of natural resources. The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), formerly known as the Minerals Management Service (MMS), administers this Act.

For nearly 30 years, the vast majority of U.S. waters were under a federal moratorium, which prohibited exploration and development of much of the OCS. In the summer of 2008, gas prices rose to over $150 a barrel, and the price at the pump exceeded $4 a gallon, creating immense pressure to open up new domestic sources of oil. In response, President Bush and a Democratically controlled Congress allowed a legislative moratorium to expire on September 30, 2008.[85] This opened 500 million additional acres for new energy production that contain an estimated 14 billion barrels of oil and 55 trillion cubic feet of natural gas.[86] However, the promise of expanded access to the OCS and the accompanying increase in domestic supplies of energy was short lived.

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http://nicholasinstitute.duke.edu/climate/policydesign/researchandpolicyrecommendationsforhydraulic-fracturingandshale2010gasextraction/at_download/paper.

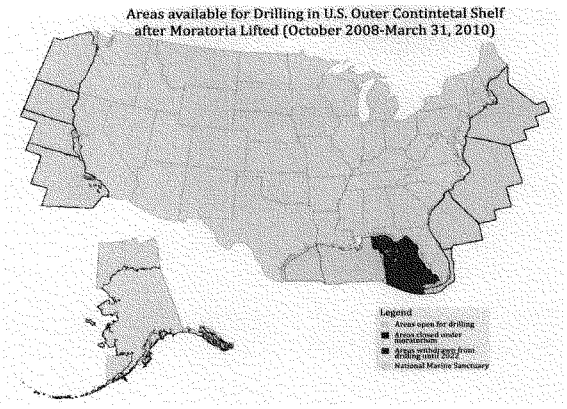
[82] *Id.*

[83] GLOBAL SHALE GAS INITIATIVE, U.S. DEPARTMENT OF STATE, (last visited May 20, 2011) *available at* http://www.state.gov/s/ciea/gsgi/index.htm

[84] 43 U.S.C. § 1331 et seq.

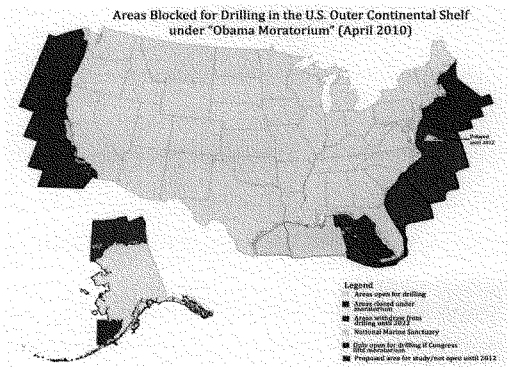
[85] CURRY L. HAGERTY, OUTER CONTINENTAL SHELF MORATORIUM ON OIL AND GAS DEVELOPMENT 7 (CRS 2011).

[86] Press Release, U.S. House of Representatives Committee on Natural Resources, *The New Obama Plan Has Americans Seeing Red*, (Dec. 1, 2010)



Source: Press Release, U.S. House of Representatives Committee on Natural Resources, *The New Obama Plan Has Americans Seeing Red*, (Dec. 1, 2010)

On March 31, 2010, President Obama announced a revised plan for the exploration and development of oil reserves in U.S. waters.[87] While White House officials framed the changes as a way to reduce U.S. reliance on foreign oil and create jobs, in reality, it was a significant retraction from the 2008 decision to lift the moratorium. Under the Obama plan, the majority of the areas open for drilling were once again closed, cutting off access to all of the Pacific Coast, the Northeastern Atlantic and Bristol Bay in Alaska, which put 13.14 billion barrels of oil and 41.49 trillion cubic feet of natural gas back under lock and key.[88]



87 *Id.*
88 *Id.*

Source: Press Release, U.S. House of Representatives Committee on Natural Resources, *The New Obama Plan Has Americans Seeing Red*, (Dec. 1, 2010)

Tragedy in the Gulf

Within weeks of the President's announcement, an explosion aboard the *Deepwater Horizon* on April 20, 2010, further changed the course of events for offshore development. A series of human and system failures on the part of BP p.l.c. and their subcontractors made the created a devastating reality for the people on the Gulf Coast.[89] As the post incident investigations revealed, a series of avoidable errors, sometimes as basic as changing the batteries on a back up device, or observing red flags, such as the unsafe escalation of pressure readings, could have prevented the ecologic disaster and the spilling of 4.1 million barrels of oil into the Gulf of Mexico.[90]

Gulf Moratorium

In the aftermath of the explosion aboard the *Deepwater Horizon,* Department of Interior Secretary Ken Salazar twice ordered a six month moratorium on deepwater drilling in U.S. waters.[91] The Secretary's orders effectively banned much of the economic activity that sustains the Gulf states, particularly Louisiana. At that time, many residents of Louisiana expressed their fear that the moratorium had the potential to inflict more pain on the region than the spill itself, and it was imposed over the vehement objections of local leaders and their constituents.[92] Moreover, Department of Interior executed this sweeping decision without consulting with safety experts on the wisdom of imposing an outright ban on all drilling activity in the Gulf, and without conducting an economic analysis of the impact his decision would have on the economy and the nation.[93]

First Moratorium

On June 15, 2010, President Obama announced a far reaching six-month moratorium on nearly all drilling in the Gulf.[94] The moratorium applied to new drilling in water depths greater

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[89] NATIONAL COMMISSION ON BP DEEPWATER HORIZON OIL SPILL AND OFFSHORE DRILLING REPORT TO THE PRESIDENT: THE GULF OIL DISASTER AND THE FUTURE OF OFFSHORE DRILLING 155-22 (Jan. 2011), *available at* http://www.oilspillcommission.gov/sites/default/files/documents/FinalReportChapter4.pdf.

[90] DEEPWATER HORIZON ACCIDENT INVESTIGATION REPORT 21-29 (2010), *available at* http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/incident_response/STAGING/local_assets/downloads_pdfs/Deepwater_Horizon_Accident_Investigation_Report.pdf.

[91] *Costing American Jobs, Increasing Energy Prices*, U.S. House Committee on Natural Resources, *available at* http://naturalresources.house.gov/Issues/Issue/?IssueID=15410.

[92] RANKING MEMBER DARRELL ISSA, OVERSIGHT & GOV'T REFORM COMM., HOW THE WHITE HOUSE PUBLIC RELATIONS CAMPAIGN ON THE OIL SPILL IS HARMING THE ACTUAL CLEANUP 12-14 (2010), *available at* http://oversight.house.gov/images/stories/Reports/7-1-10_OGR_Report_-_How_the_White_House_Public_Relations_Campaign_on_the_Oil_Spill_is_Harming_the_Actual_Clean-up.pdf.

[93] *The Economic Effects of the Offshore Drilling Moratorium, S. Comm. On Small Business*, 111th Cong (2010) (testimony of the Honorable Rebecca M. Blank, Under Secretary for U.S. Economic Affairs, Department of Commerce).

[94] Remarks by the President to the Nation on the BP Oil Spill, June 15, 2010, *available at* http://www.whitehouse.gov/the-press-office/remarks-president-nation-bp-oil-spill.

than 500 feet, and suspended drilling on 33 wells currently under construction.[95] The President's action is based on a recommendation from Secretary Salazar, contained in a May 27, 2010, report on "Increased Safety Measures for Energy Development on the Outer Continental Shelf."[96] According to a report issued by the Inspector General for the Department of Interior, the Secretary's recommendation to impose a moratorium was not peer reviewed and was not supported by the scientists and industry experts who had otherwise been cooperating with the Administration.[97]

The moratorium was immediately challenged by providers of support services to offshore oil and gas operations, who argued the decision to impose a moratorium was arbitrary and capricious.[98] On June 22, 2010, a federal court ruled that the plaintiffs were likely to succeed on their claim and preliminarily enjoined enforcement of the suspension.[99] This decision was affirmed by the 5th Circuit Court of Appeals.[100]

In the order blocking the Department of Interior from enforcing the moratorium, Judge Feldman specifically cited his belief that the Department actively sought to distort the opinions and advice of "five of the National Academy experts and three of the other experts," which publically stated that they do not agree with the six month moratorium on drilling, because the moratorium actually increases the risk of an oil spill once drilling is resumed.[101] Moreover, the Judge pointed to the adverse economic impact of a broad based moratorium, stating that:

> "It is only a matter of time before more business and jobs and livelihoods will be lost. The defendants trivialize such losses by characterizing them as merely a small percentage of the drilling rigs affected, but it does not follow that this will somehow reduce the convincing harm suffered. The effect on employment, jobs, loss of domestic energy supplies caused by the moratorium as the plaintiffs (and other suppliers, and the rigs themselves) lose business, and the movement of the rigs to other sites around the world will clearly ripple throughout the economy in this region."[102]

Second Moratorium

Despite the judicial decision to invalidate the original moratorium, Secretary Salazar announced a nearly identical moratorium on July 12, 2010. Billed as "a temporary pause on deepwater drilling to provide time to implement safety reforms,"[103] the second moratorium

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[95] Memorandum from Upstream Insight on Moratorium Halts US Deepwater Drilling For Six Months (June 3, 2010).

[96] DEPT. OF INTERIOR, INCREASED SAFETY MEASURES FOR ENERGY DEVELOPMENT ON THE OUTER CONTINENTAL SHELF, May 27, 2010.

[97] OFFICE OF THE INSPECTOR GENERAL, DEPT. OF INTERIOR, FEDERAL MORATORIUM ON DEEPWATER DRILLING (2010).

[98] *Hornbeck Offshore Services v. Salazar*, No. 10-1663 (E.D.La, 2010).

[99] *Id.*

[100] *Hornbeck Offshore Services v. Salazar, No.* 10-30585 (5th Cir., 2011).

[101] *Hornbeck Offshore Services v. Salazar*, No. 10-1663 (E.D.La, 2010).

[102] *Id.* at 22.

[103] Press Release, Department of the Interior, *Sec. Salazar Issues New Suspensions to Guide Safe Pause on Deepwater Drilling* (July 12, 2010), *available at* http://www.doi.gov/news/doinews/Secretary-Salazar-Issues-New-Suspensions-to-Guide-Safe-Pause-on-Deepwater-Drilling.cfm.

appears to merely be a post hoc rationalization of the original moratorium. The new moratorium did nothing to address the economic concerns of the community or the safety concerns raised by experts. In fact, a *New York Times* editorial stated that the second ban is "as strong as the first ban."[104] According to Dan Juneau, President of the Louisiana Association of Business and Industry:

> "[The new moratorium] seems to be geared toward rigs with blowout preventers which everyone in the deep waters have and many in the shallow waters do as well. It is a reaffirmation that the Obama administration is going to keep things shut down, in spite of the 5th Circuit's ruling."[105]

It appears that the economic impact of the moratorium was never considered by the Administration. A decision memorandum authored by BOEMRE Director Michael Bromwich to Secretary Salazar states that "economic effects may be considered in determining the scope of any suspension of drilling activity."[106] However, according to testimony of Rebecca M. Blank, Under Secretary for U.S. Economic Affairs at the Department of Commerce, the Administration never once conducted a study of the economic impact the moratorium would have on the Gulf Coast economy and on oil production.[107] Charlotte Randolph, President of Lafourche Parish in Thibodaux, Louisiana, expressed her concern to Committee staff that "nine out of her top ten" taxpayers are employed in the oil and gas industry, which will be directly impacted by the moratorium.[108] In Louisiana coastal communities such as Houma, Morgan City and Lafayette, one out of every three jobs is related to the oil and gas industry; these jobs are now in jeopardy along with the $12.7 billion in total wages earned by employees working in the Gulf Coast oil and gas industry. Their unemployment would result in decreased tax receipts and additional budget restrictions for a Parish that is already experiencing a very lean year.[109] According to an analysis performed by the Gulf Economic Survival Team, Louisiana and its Parishes stand to lose $150 million to $700 million in state and local sales tax revenue due to the moratorium, thereby negatively impacting all government services, from police and fire protection, to schools and hospitals.[110]

Former Democratic Senator Bob Graham and William K. Reilly, who were appointed to head the President's Commission to investigate the BP oil spill, have expressed criticism over the nature and duration of the moratorium. After hearing testimony from a variety of local

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[104] Editorial, *A New, and Necessary, Moratorium*, NY TIMES, July 13, 2010, *available at* http://www.nytimes.com/2010/07/14/opinion/14wed1.html.

[105] Email from Dan Juneau, President, La Assoc. of Bus. & Indus. to Committee Staff (July 15, 2010).

[106] Memorandum from Director Bromwich on Options Regarding the Suspension of Certain Offshore Permitting and Drilling Activities on the Outer Continental Shelf (July 10, 2010).

[107] *The Economic Effects of the Offshore Drilling Moratorium, S. Comm. On Small Business*, 111th Cong (2010) (testimony of the Honorable Rebecca M. Blank, Under Secretary for U.S. Economic Affairs, Department of Commerce).

[108] Interview with Charlotte Randolph, President, Lafourche Parish, in Thibodaux, LA (June 15, 2010).

[109] *Id.*

[110] Louisiana Mid-Continent Oil & Gas Association, *Impacts of President Obama's Order Halting Work on 33 Exploratory Wells in the Deepwater Gulf of Mexico* (May 28, 2010) available at http://www.gulfeconomicsurvival.org/facts-and-figures.

officials, Mr. Reilly stated that, "It's not clear to me why it should take so long."[111] Former Senator Graham echoed these concerns, reportedly saying that the moratorium was a burden on the economic life of the Gulf Coast.[112] He said the federal government has had nearly three months to inspect the rigs in the Gulf and wondered why it was taking so long to determine whether they can safely restart operations.[113]

The Permitorium

Secretary Salazar announced the end of the moratorium on October 13, 2010. According to many in the industry, this declaration provided little relief. The moratorium in the Gulf of Mexico was replaced by a "permitorium" – whereby drilling activity remained at a standstill not by operation of law – but because of inaction on the part of BOEMRE. Prior to the disaster, Mineral Management Service (MMS) processed and issued permits to drill in two weeks.[114] However, not a single deepwater permit was issued by BOEMRE until U.S. District Judge Martin Feldman ordered the agency to take action on five permits by March 19, 2011, and by March 31, 2011, on two additional permits.[115]

On February 28, 2011, BOEMRE finally issued the first deepwater drilling permit since the explosion aboard the *Deepwater Horizon*.[116] The permit was issued to Noble Energy, and allows them to resume drilling which they had started before April 20, 2010. Specifically, the permit allows Noble Energy to drill a by-pass well in Mississippi Canyon Block 519, approximately 70 miles south east of Venice, La. An operator drills a bypass well in order to drill around a mechanical problem in the original hole to the original target from the existing wellbore. In this case, Noble Energy will be drilling around the plugs set in the original well when drilling was suspended in order to complete the long delayed project.

Since February, BOEMRE has approved 13 additional deepwater permits – 11 of which simply allow operations to resume on a previously approved well. Only one permit has been issued for a well that had not been previously approved.[117] On May 10, 2011, Judge Feldman issued an additional order requiring BOEMRE to act on six additional applications within 30 days. In his decision, Judge Feldman determined that, "the government has presented no credible assurances that the permitting process will return to one marked by predictability and certainty."[118] (emphasis added) He went on to say that "Processing a scant few applications is at

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[111] John M. Broder, *Offshore Drilling: To Pause or Not to Pause*, NYTIMES, July 13, 2010, *available at* http://green.blogs.nytimes.com/2010/07/13/offshore-drilling-to-pause-or-not-to-pause/.

[112] *Id.*

[113] *Id.*

[114] Mary Romano, Peter Blumberg, *U.S. Appeals for Delay in 30-Day Order on Drill Permits*, BLOOMBERG BUSINESS WEEK, March 13, 2011.

[115] *Ensco Offshore Co., et. al. v Kenneth Lee "Ken" Salazar*, 2011 WL 692029 (E.D. La. 2011).

[116] Press Release, Bureau of Ocean Energy Management, Regulation and Enforcement, *BOEMRE Approves First Deepwater Drilling Permit To Meet Important New Safety Standards in Gulf of Mexico* (Feb. 28, 2011), *available at* http://www.boemre.gov/ooc/press/2011/press0228.htm.

[117] Status of Drilling Permits & Plans Subject to Enhanced Safety and Environmental Requirements in the Gulf of Mexico, Bureau of Ocean Energy Management, Regulation and Enforcement (last visited May 19, 2011), *available at* http://www.gomr.boemre.gov/homepg/offshore/safety/well_permits.html.

[118] *Ensco Offshore Co., et. al. v Kenneth Lee "Ken" Salazar*, 2011 WL 692029 (E.D. La. 2011).

best a tactical ploy in a real world setting."[119] Moreover, it has severe implications for the future productivity of the region. It generally takes five to ten years once a permit is issued to bring the oil to market.[120]

In addition to the immediate impact on the residents of the Gulf Coast, the year long pause in drilling operations will probably mean a decline in domestic output of crude oil according to analysts.[121] Deep-water drilling in the Gulf accounts for about 1.25 million barrels of oil a day – or about one-quarter of America's domestic crude oil production. The Gulf contribution is expected to drop by about 180,000 barrels a day, in 2011, according to the U.S. Energy Information Administration.[122]

Regulations Following the Spill

As a result of the BP Oil Spill, BOEMRE promulgated a series of regulations that coincided with the entire reorganization of the agency from the former MMS. These reforms are some of the most aggressive changes to offshore oil and gas production in U.S. history and range from new rules covering safety, oversight, and environmental protection for permitting, drilling, and development processes for oil and gas operations. In some cases, these new regulations apply to both offshore operations themselves as well as the businesses that deal directly with offshore rigs – many of which are small businesses. The regulated community, state officials, and even BOEMRE staff have raised concerns about the feasibility and practicality of these new regulations. After *Deepwater Horizon*, it is clear that a new, safer system is necessary for drilling in the Gulf of Mexico; however, the focus of any regulatory changes must be on continuing safe drilling in the Gulf. The latest regulations promulgated by BOEMRE do not appear to promote this goal of drilling and instead create a significant amount of uncertainty and confusion within the offshore oil and gas community.

Archaeological Requirements on Operators

One of the most perplexing regulations promulgated by BOEMRE is the requirement that operators perform an Archaeological Assessment Report as part of National Environmental Policy Act analysis and in conjunction with the National Historic Preservation Act.[123] Under this new rule, any permitting applications that will propose bottom-disturbing activities require analysis of data and information about the potential existence of archaeological resources and the affect that proposed operations will have on these shipwrecks.[124]

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[119] *Id.*

[120] Ayesha Rascoe, *U.S. Set to 'Reopen' Offshore Drilling Sector; 'Significant Permits'; Upward Pressure on Oil Prices the Impetus*, National Post's Financial Post & FP Investing, March 3, 2011, available at http://www.nationalpost.com/todays-paper/setto+reopen+offshore+drilling+sector/4375547/story.html.

[121] Mark Guarino, *Stricter Deep-Water Drilling Regulations Mean Gulf Coast Waters Are Likely to Yield Less Oil this Year; Energy Firms May Shift Attention Abroad,* CHRISTIAN SCIENCE MONITOR (Jan. 11, 2011).

[122] *Id.*

[123] Gulf of Mexico Archaeological Information, Bureau of Ocean Energy Management, Regulation and Enforcement (last visited May 20, 2011), *available at* http://www.gomr.boemre.gov/homepg/regulate/environ/archaeological/introduction.html.

[124] *Id.*

The application of this rule requires that operators literally become underwater archaeologists, entering a field where they have little experience. Operators must conduct ocean floor analyses with specialized equipment to determine if anomalies are shipwrecks with the potential to be impacted by exploration or drilling.[125] Furthermore, operators will be required to employ an underwater archaeologist to assist in the analysis of this data and to provide BOEMRE with survey data. When asked about how to implement this new rule, and more specifically if operators would need to hire an underwater archaeologist, BOEMRE representatives responded that they would have to make this hire and that the profession was not uncommon.[126] The archaeological assessment requirements are a prime example of the seemingly absurd and arbitrary nature of the new regulations placed on offshore drilling operations.

"Should-to-Must" Requirements

A new Workplace Safety Rule is another BOEMRE regulation intended to improve safety practices for offshore drilling operations. Unfortunately, its implementation has proven to be challenging in practice. This regulation requires that operators develop and maintain a Safety and Environmental Management System (SEMS).[127] A SEMS is a "comprehensive management program for indentifying, addressing and managing operational safety hazards and impacts, with the goal of promoting both human safety and environmental protection."[128] In addition, the Workplace Safety Rule makes mandatory the practices in the American Petroleum Institute's (API) Recommended Practice 75 (API RP 75).[129] The API RP 75 is a collection of best practices created by API as suggestions for operators to implement. BOEMRE issued a direct final rule, without the public's input, making all aspects of the API guidance mandatory. The recommendations vary depending on the type of operation. They were not designed to be mandatory directives, and certainly not designed to be executed simultaneously. This fact was seemingly lost on BOEMRE, as the agency carelessly changed all "should" instructions to "must."

After industry and affected states voiced strong objections based on the purpose and feasibility of the regulations, BOEMRE initiated a guidance document entitled "Supplemental Information Regarding Approval Requirements for Activities that Involve the Use of a Subsea Blowout Preventer (BOP) or a Surface BOP on a Floating Facility," with the goal of displacing fear of the careless "should-to-must" change. In the guidance document, BOEMRE recognized that the incorporation of the API documents required that any "should" would be interpreted as "must" for purposes of the Code of Federal Regulations.[130] BOEMRE has indicated that it recognizes that some degree of flexibility is important for the feasible implementation of the API

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[125] *Id.*

[126] Bureau of Ocean Energy Management, Regulation and Enforcement Industry Workshop (March 23, 2011).

[127] Bureau of Ocean Energy Management, Regulation and Enforcement, *Fact Sheet on the Workplace Safety Rule On Safety and Environmental Management Systems (SEMS), available at* http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=45791.

[128] *Id.*

[129] *Id.*

[130] Supplemental Information Regarding Approval Requirements for Activities that Involve the Use of a Subsea Blowout Preventer (BOP) or a Surface BOP on a Floating Facility, Bureau of Ocean Energy, Management, Regulation and Enforcement (last visited May 20, 2011), *available at* http://www.boemre.gov/ooc/pdfs/DeepwaterGuidanceSupplement.pdf.

incorporated documents.[131] To this end, BOEMRE is willing to consider, based on agency approval, other practices that may accomplish similar goals as those contained in the API document.[132] Despite these changes, uncertainty remains regarding the "should" to "must" regulations because the guidance document does not go far enough in relieving the burden of implementing regulations whose original intentions were merely industry-wide best practices. Due to the vague nature of the guidance document, the drilling community's uncertainty is augmented because of concerns about whether in application BOEMRE will actually back off the "should-to-must" requirement.

A concern of small business involves the implementation of SEMS Workplace Rules. BOEMRE recognizes in its Workplace Safety Rule Fact Sheet that many large operators have already established SEMS programs; however, it does not mention the smaller operators or those businesses who work closely with operators. Small businesses that have contact with operators' rigs will also be required to establish their own SEMS programs at the request of the large operators.[133] Small businesses are not situated to perform the same level of SEMS analysis that large-multinational corporations can – many of these small businesses that service large operators may be forced out of business if they cannot implement a SEMS program.[134] BOEMRE has not addressed the concerns of small business owners who work closely with large operators on the SEMS issue.

Industry Strives to Make Drilling Safer

The explosion aboard the Deepwater Horizon and the confusion in the subsequent days and months clearly demonstrated that MMS and BP had failed to adhere to rigorous safety standards. Moreover, there is agreement that changes needed to be made to the flawed system that allowed the disaster to occur. However, evidence suggests the regulations promulgated by BOEMRE do not promote the revitalization of a safe oil and gas industry in the Gulf; instead, they hinder production even when operators have made significant strides to become safer. For example, the oil industry made a substantial investment in safety by creating a rapid-response system to prevent another disaster like the BP Oil Spill.[135] BOEMRE's regulations do not appear to take this into account.

In July 2010, in order to quell concerns regarding the safety of deepwater drilling, four of the largest oil companies, Exxon-Mobil, Shell, Chevron, and Conoco Philips, committed $1 billion to create a rapid-response system to deal with future potential oil spills.[136] This rapid response system includes the creation of modular containment equipment that would be available for use and could contain spills as deep as 10,000 feet and capture up to 100,000 barrels of oil a day.[137] A nonprofit organization known as the Marine Well Containment Company operates and maintains the emergency capability mechanism. Industry executives feel that this measure is

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131 *Id.*

132 *Id.*

133 *The Workplace Safety Rule on Safety and Environmental Management Systems (SEMS)*, Bureau of Ocean Energy Management, Regulation and Enforcement, *available at* http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=45791.

134 Interview with Lori Davis, President, Rig Chem (March 24, 2011).

135 Jad Mouawad, *3 Oil Firms Commit $1 Billion for Gulf Rapid-Response Plan*, N.Y. TIMES, Jul. 21, 2010.

136 *Id.*

137 *Id.*

sufficient to respond to the impact of any future blowout or spill that may affect the Gulf region, and it will restore the government and the citizens' confidence in the oil industry to operate with the proper safety precautions in place.[138] This unsolicited action demonstrates the industry's commitment to operate responsibly. However, BOEMRE's policies do not recognize the necessary and important contributions that industry has made.

III. ALASKA

Alaska holds enormous oil and gas resources for the United States and development of those resources is critical for U.S. energy independence. A National Energy Technology Laboratory study estimates that this region has the potential for the exploration and development of as much as 28 billion barrels of economically recoverable oil and 125 trillion cubic feet of economically recoverable gas through 2050.[139]

An independent assessment of the potential for development of Alaska's Beaufort and Chukchi Sea OCS found that sufficient oil could be produced to completely eliminate the need for imports from one of the United States' largest foreign suppliers.[140] Average production from the OCS for the next 40 years could be 700,000 barrels per day, with a maximum of 1.45 million per day in 2030. In perspective, 700,000 barrels is more than the amount of oil the United States imported from Iraq (506,000 bbl/day) and Russia (137,000 bbl/day) combined in 2010.[141] Saudi Arabia, Mexico, Venezuela, and Nigeria each exported approximately one million barrels or less to the United States.[142]

Despite the enormous oil and gas potential, production in Alaska has steeply declined over the past few decades. In 1988, oil and natural gas liquid from Alaska's North Slope constituted 25 percent of total domestic production, 2.2 million barrels per day.[143] By 2007, production had dropped to 720,000 barrels per day, representing only 14 percent of domestic production.[144] The current Administration is largely to blame for Alaska's continued stagnation. Alaska Democratic Senator Mark Begich described the situation as "regulatory 'whack a mole' for developers in Alaska" as he introduced a bill intended to streamline offshore oil and gas development. "Each time we have one mole beat down, another one pops up and derails the progress. But this isn't a game. It's about the future of Alaska and the energy security of our country."[145]

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138 *Id.*
139 *Id.*
140 *The American Energy Initiative: Jobs and Energy Permitting Act: Hearing before the H. Comm. On Energy and Commerce*, 112th Cong. (2011) (statement of David Lawrence, Executive Vice President, Shell), *available at* http://republicans.energycommerce.house.gov/Media/file/Hearings/Energy/041311/Lawrence.pdf.
141 *Id.*
142 *Id.*
143 *Id.*
144 *Id.*
145 S. 843, 112th Cong. § (2011).

Moratorium Confusion

The BP spill in the Gulf of Mexico has created great uncertainty for companies seeking to drill thousands of miles away in Alaska. Prior to the spill, the Administration made statements supportive of further exploitation of oil and gas resources in the Arctic Outer Continental Shelf as well as elsewhere offshore.[146] After the spill, however, Secretary Salazar announced a 30-day review of offshore safety and put a hold on new permits until the review was completed. Soon after that, Interior announced a six-month moratorium on all deepwater drilling and suspended Shell's proposed drilling in the Beaufort and Chukchi seas, and imposed additional other restrictions on drilling and leasing in other regions.[147] All of these policy changes have created new uncertainties.

The moratorium on deepwater drilling, announced on June 15, 2010, and discussed in the previous section, did not specifically refer to Alaska. Yet this moratorium, and the subsequent moratorium, imposed on July 12, 2010, created significant uncertainty for companies attempting to drill in Alaskan waters. The second moratorium also did not mention Alaska, but a fair reading of the order appeared to prohibit the work Shell had planned for the Beaufort and Chukchi seas. The state of Alaska responded by suing Interior for violating the Outer Continental Shelf Lands Act and the Administrative Procedure Act.[148] In late November 2010, after the July moratorium had been lifted, the Department filed a motion explaining that the original moratorium did not cover Alaska and attributing permitting delays to "cautious" regulators.[149]

$3 billion and Still No Permit

The moratorium confusion following the BP oil spill was only the latest in a long series of delays for Shell's Alaskan project. Shell has been ready to commence exploring for oil and gas in the Alaskan OCS for four years. The company expects to create 54,700 jobs per year, generating $145 billion in payroll income, and $193 billion in government revenue by 2057 – all while reducing U.S. dependence on foreign oil.[150] Unfortunately for the American people, none of this has come to fruition because after five years, EPA still has not issued several of the 35 permits Shell needs to drill even a single exploratory well.[151]

Shell has spent more than $3 billion on leases, environmental analyses, and permitting so far with no return on their investment.[152] The company holds 137 leases in the Beaufort Sea and 275 leases in the Chukchi Sea.[153] The federal government received $2.2 billion in bonus bids for Shell's leases in the Chukchi Sea alone.[154] Initially, Shell planned to begin drilling in 2007 in the Beaufort Sea, just north and east of the North Slope and the Trans-Alaska Pipeline and

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146 President Obama, Remarks on Energy Security at Andrews Air Force Base (Mar. 31, 2010).
147 Eric Lidji, *Alaska Offshore Special Report*, PETROLEUM NEWS (January 21, 2011).
148 *Id.*
149 *Id.*
150 *Potential National-Level Benefits of Alaska OCS Development*, Northern Economics (February 2011), *available at* http://www.northerneconomics.com/pdfs/ShellOCS/National%20Effects%20Report%20FINAL.pdf.
151 *Id.*
152 Tim Bradner, *Shell expands Arctic exploration plans*, ALASKA J. OF COMMERCE, (May 6, 2011).
153 *Id.*
154 *Id.*

associated infrastructure.[155] Because of regulatory and legal challenges, its schedule slipped to 2010, and then 2011, and now 2012.

One of the principal obstacles to drilling is EPA's failure to issue an air pollution permit for the project. Since most new offshore drilling has occurred in the Gulf of Mexico under Interior jurisdiction, EPA has little experience with offshore permitting. That inexperience seems to be amounting to incompetence. Alaska Senator Lisa Murkowski testified before the House Energy and Commerce Committee, "If EPA cannot demonstrate some competency ... then EPA should not expect to keep its authority for long."[156] After years of studying the issue, EPA granted an air permit last summer only to have it remanded by the EPA's Environmental Appeals Board in January for not adequately reviewing the potential health effects on people living on shore.[157] The closest village, located 70 miles from the proposed drill site and occupying one square mile, is home to 245 people. EPA Administrator Lisa Jackson told the Senate Energy Committee, "I believe that the analysis will clearly show that there is no public health concern here."[158] Shell continues to wait for the rest of EPA to conclude what its Administrator already has.

National Petroleum Reserve Goes Unused

On May 14, 2011, during his Weekly Address, President Obama announced that he intended to direct Secretary Salazar to conduct annual lease sales in Alaska's National Petroleum Reserve (NPR-A).[159] Given ConocoPhillips' experience so far trying to utilize a lease it already has in the NPR-A, those new leases may be worthless.

Despite nearly three million acres of the NPR-A already under lease, no one has yet to drill a single commercial well.[160] ConocoPhillips is trying to be the first with a project it says will produce up to 18,000 barrels of oil per day.[161] In February 2010, the Army Corps of Engineers rejected the company's plan to access the NPR-A by building a bridge over the Colville River, saying that drilling underneath the river and airlifting supplies would cause less environmental harm. The Corps finally decided to reconsider their earlier decision in December 2010, citing "additional evidence" not available at the time of the initial decision and talks with Native Alaskans.[162] Conoco Phillips is still waiting on the Corps to issue a final decision.

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[155] *Id.*

[156] *The American Energy Initiative: Jobs and Energy Permitting Act: Hearing before the H. Comm. On Energy and Commerce*, 112th Cong. (2011) (statement of Senator Lisa Murkowski), *available at* http://republicans.energycommerce.house.gov/Media/file/Hearings/Energy/041311/Murkowski.pdf.

[157] Final Decision to Issue and OCS/PSD Permit to Shell Offshore Inc., for Exploration Drilling Operations in the Beaufort Sea, (last visited May 20, 2011) *available at* http://yosemite.epa.gov/R10/airpage.nsf/Permits/beaufortap/.

[158] *Id.*

[159] Press Release, White House, *Weekly Address: President Obama Announces New Plans to Increase Responsible Domestic Oil Production* (May 14, 2011).

[160] Phil Taylor, *Alaska lawmakers seek swift U.S. reconsideration of petroleum reserve drilling*, GREENWIRE (Dec. 14, 2010).

[161] Phil Taylor, Alaska pols say petroleum reserve leases must be couples with permits, ENVIRONMENT & ENERGY DAILY (May 18, 2011).

[162] Letter from David Hayes, Deputy Secretary, Department of the Interior, to Col. Reinhard Koenig, Army Corps of Engineers Alaska District (May 3, 2011). (on file with author)

A "curious" twist in the quest to develop NPR-A is the related action of other agencies. EPA and the U.S. Fish and Wildlife Service both designated the Colville River Delta as an "Aquatic Resource of National Significance," a decision they made without notice and comment, but one that potentially has great consequences.[163] Sen. Murkowski's spokesman called the move "capricious and done only to interfere with development."[164]

Polar Bears

There may be an even greater obstacle to oil production ahead of Shell and the other companies looking to produce oil and gas in Alaska. What the state and the industry reportedly fear the most is uncertainty related to the protection of the polar bear.[165] In 2008, the U.S. Fish and Wildlife Service (FWS), within Interior, decided to list the polar bear as a threatened species under the Endangered Species Act. That decision could greatly impact the future of oil and gas extraction in Arctic waters because of its broad ramifications.

The first concern is the reason for the polar bear's inclusion on the list[166] – according to FWS, global climate change was causing a loss of sea ice, the polar bear's habitat. On this basis, Interior could potentially have restricted any project, anywhere, by arguing that the project contributed to greenhouse gas emissions and, therefore, degraded the polar bear's habitat. Fortunately, Interior did acknowledge this concern and modified regulations to specify that projects' greenhouse gas emissions could not be linked to endangered species.

To protect the polar bears, in October 2009, FWS instead proposed a critical habitat for the polar bear covering more than 200,000 square miles of land and water.[167] This was later reduced once FWS recognized that Air Force bases and a few other manmade structures and communities would not be an appropriate habitat to protect.[168] The polar bear's proposed critical habitat overlaps with a substantial part of the federal acreage already under lease in Alaska's Arctic waters. FWS has yet to determine exactly how they will act to protect the "critical habitat area."

All of this has provoked numerous lawsuits, from both sides of the issue. Alaska has sued over the critical habitat designation because of the enormous economic impacts to the state, which it estimates to be in the hundreds of millions over just the next 15 years.[169] In its cost analysis, FWS only considered consultation costs and inaccurately concluded that the designation would only cost the state about $669,000 over 29 years.[170] Some members of

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[163] Andrew Jensen, *Pebble next target for EPA Environmental Justice unit?*, ALASKA J. OF COMMERCE (Feb.18, 2011).
[164] *Id.*
[165] Eric Lidji, *Alaska Offshore Special Report*, PETROLEUM NEWS, Jan. 21, 2011.
[166] Endangered Species Program, U.S. Fish & Wildlife Service, (last visited May 20, 2011), *available at* http://www.fws.gov/endangered/index.html.
[167] *Id.*
[168] U.S. Fish & Wildlife Service Polar Bear Information (last visited May 18, 2011), *available at* http://www.fws.gov/home/feature/2008/polarbear012308/polarbearspromo.html.
[169] Press Release, Office of Governor Sean Parnell, *State Announces Intent to Sue*, (Dec. 21, 2010), available at http://gov.alaska.gov/parnell/press-room/full-press-release.html?pr=5603.
[170] *Id.*

Congress have also tried to reverse the decision by proposing legislation that would delist the polar bear, but the bill would not prevent Interior from adding other Arctic species to the list.[171]

IV. ROCKY MOUNTAIN REGION

The Rocky Mountain region has some of the richest resources in the entire country. Domestic production in this region, primarily on federal public lands, accounts for 11 percent of the nation's natural gas supply and five percent of its oil.[172]

Exploration and production in the Rocky Mountain Region is complicated by the vast federal presence, primarily in the form of land ownership. The federal government owns roughly 650 million acres of land in the United States – which equates to more than a quarter of the country's landmass.[173] These lands are primarily located in 12 western states. In the west, the federal government owns more than 50% of the land area.[174] By contrast, in the District of Columbia, established by the Constitution as a federal city, the federal government owns only 25% of the total acreage.[175]

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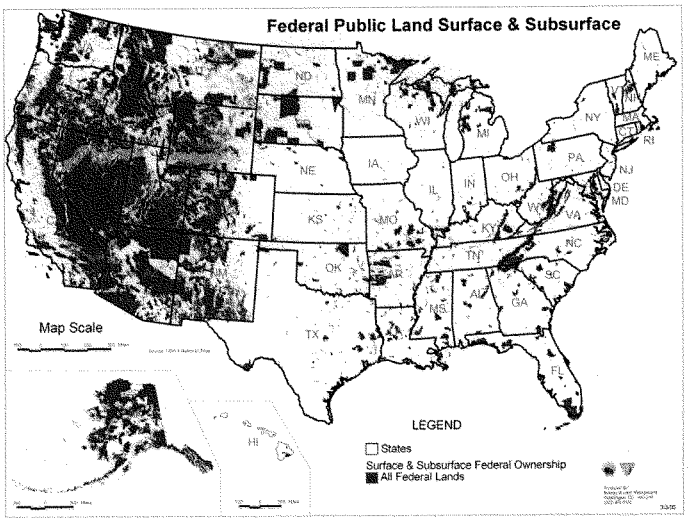
[171] H.R. 39, 112th Cong. § (2011).

[172] Oil and Gas, U.S. Department of the Interior Bureau of Land Management (last visited May 16, 2011), *available at* http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas.html.

[173] Carol Hardy Vincent, *Federal Land Ownership: Current Acquisition and Disposal Authorities*, CRS REPORT TO CONGRESS (Dec. 16, 2010).

[174] *Id.*

[175] Ross W. Gorte et al, *Federal Land Management Agencies: Background on Land Resources and Management*, CRS REPORT TO CONGRESS (Feb. 9, 2009).



Source: Bureau of Land Management

Federal land is owned by taxpayers. Therefore, taxpayers must be compensated for its use. Federal and state treasuries benefit from the development of resources on Western lands. Unfortunately for the American people, the Administration has all but refused this potential revenue stream. Between 2008 and 2010, revenue from onshore federal royalties, rents, and bonuses has decreased 33%, from $4.2 billion to $2.8 billion. In 2008, there were 2,416 new oil and natural gas leases issued[176] on BLM land spanning 2.6 million acres. [177] In 2010, the number of new leases issued dropped nearly 50% to 1,308[178] and acres leased dropped to 1.3 million. [179] Combined with 2009, these acreage numbers are the lowest in over two decades.

Taxpayers would never know about this policy shift based on White House rhetoric. In a blog post at whitehouse.gov, the Administration writes "oil production last year rose to its highest level since 2003."[180] The blog post fails to explain that the vast majority of increased production is occurring on private lands, not public. For example, North Dakota alone produced

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[176] Bureau of Land Management (last visited May 19, 2011) *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/oil___gas_statistics.Par.32507.File.dat/chart_2009_03.pdf.

[177] Bureau of Land Management (last visited May 19, 2011) *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/oil___gas_statistics.Par.24284.File.dat/chart_2009_04.pdf .

[178] *Id.*

[179] *Id.*

[180] *Expanding Safe and Responsible Energy Production*, White House blog, March 8, 2011, *available at* http://www.whitehouse.gov/blog/2011/03/08/expanding-safe-and-responsible-energy-production

almost 120 million barrels of oil in 2010, compared to just over 20 million in 2003.[181] The majority of North Dakota's production is on private land.

A slew of Obama Administration policies are to blame for the decreased production on federal land. The Department of Interior or EPA cause delays at each stage of the process.

Deferred Leases

In order to drill on federal land, the producer must first obtain a lease. Companies make significant investments just to determine which parcels of land they want to lease.[182] The government then considers whether to lease those parcels that are nominated by the companies. Parcels may not be offered for lease for a variety of reasons, but this Administration is using some techniques of questionable legality. One of these techniques is the deferral of lease parcels. Established law dictates that leases be made available if authorized by resource management plans, which are developed with input from the public and the state.[183] If BLM desired to change the policies on which the resource management plans were based, an amendment to the plan is required. Rather than follow the established process, giving the public an opportunity for notice and comment, BLM has unilaterally instituted an additional level of planning and an opportunity to prevent leasing.[184]

The result has been the deferral of lease parcels and the loss of jobs and revenue. Ewing Exploration, a small business with six employees, provides an example of how this policy hurts local communities.[185] Ewing invested a total of $3.5 million to explore the leases it purchased between 2005 and 2010 and nominated the additional ten parcels of federal land it need to fill out its drilling block. The company planned to develop 24 wells. One day before the sale, those ten parcels were withdrawn from the sale because they had to be "reprocessed in conformance with the new leasing reform process."[186] Now, those parcels will not be available until February 2012, a sixteen month delay. This delay has real economic consequences. Ewing's investors are receiving no return on their $3.5 million investment – and may not be as willing to risk their money on public lands in the future. The deferral is also delaying payments of $2.7 million per month in federal royalties and $1.3 million per month in state taxes and royalties once the land is fully developed.

Unissued and Withdrawn Leases

Having the lease actually be put up for sale and winning the bid is just the beginning. The Department of Interior holds hostage millions of dollars in unissued leases.[187] When a company

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[181] North Dakota Industrial Commission Department of Mineral Resources (last visited May 20, 2011), *available at* https://www.dmr.nd.gov/oilgas/stats/stateoilchart.pdf .

[182] Internal Revenue Service (last visited May 20, 2011) *available at* http://www.irs.gov/irm/part4/irm_04-041-001.html.

[183] Adam Vann, *Energy Projects on Federal Lands: Leasing and Authorization*, CRS REPORT FOR CONGRESS (September 8, 2009).

[184] *Id.*

[185] Western Energy Alliance Washington D.C. Call-Up Briefing Book (April 2011), *available at* http://westernenergyalliance.org/wp-content/uploads/2011/04/Briefing-Book_Final.pdf.

[186] *Id.*

[187] Western Energy Alliance, *Top Ten Ways the Federal Government Is Preventing Onshore Oil and Natural Gas Production* (Mar. 30, 2011).

wins a bid, it pays the federal government the amount it bid, which is called the bonus. Yet, the government does not necessarily issue the lease in return for the bonus, as the terms of the Mineral Leasing Act require it to do within sixty days. It is as if a new tenant signed a lease for an apartment, paid the owner a deposit, and was not given a key on the date designated for move-in. A Government Accountability Office report found that the Bureau of Land Management (BLM) failed to issue leases within this allotted time over 91% of the time from FY2007 through FY2009.[188]

Successful bidders also risk cancellation of their valid leases. In February 2009, the Interior Secretary withdrew 77 of the leases sold at the 2008 Utah lease sale because BLM had deviated "in important respects" from its normal oil and gas leasing procedures.[189] Secretary Salazar told reporters at the time of the announcement, "The policy positions of the department over the last eight years have really been driven out of the White House, and we're looking at many of those decisions."[190] Yet the Secretary's decision to withdraw 77 Utah leases was made without any consultation with the Utah BLM office.

Neither an independent investigation nor the federal courts upheld the Secretary's claims. The Department's Inspector General concluded that "no evidence to support the allegation that undue pressure was exerted on BLM personnel to complete the RMPs before the December 2008 sale or to include previously deferred parcels in the lease sale prior to the change in Administration."[191] While the investigation noted that the BLM "contributed to the perception that the sale was rushed prior to a change in White House administration," mere perception would not justify terminating contract rights. Over a year and a half later, a federal district judge issued a decision that confirmed that Secretary Salazar was outside of his legal authority to withdraw the parcels.[192] The Department of Interior later prevailed based on a technicality. The judge determined that the plaintiffs filed their complaint too late.[193]

In January 2011, the Department of Interior did it again. The Forest Service decided to withdraw leases it sold and issued, in 2005 and 2006, in the Bridger-Teton National Forest in Wyoming.[194] Relatively new legislation, the Wyoming Range Legacy Act of 2009, prohibits future lease sales in this region but explicitly protects the rights of those with existing leases. Likely recognizing its actions were on shaky legal ground, the Department of Interior has since decided to reconsider this decision.[195]

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[188] U.S. GOVERNMENT ACCOUNTABILITY OFFICE, ONSHORE OIL AND GAS: BLM'S MANAGEMENT OF PUBLIC PROTESTS TO ITS LEASE SALES NEEDS IMPROVEMENT (July 2010).

[189] *BLM Review of 77 Oil and Gas Lease Parcels Offered in BLM-Utah's December 2008 Lease Sale* (Oct. 7, 2009) *available at* http://www.doi.gov/documents/BLM_Utah77LeaseParcelReport.pdf.

[190] Juliet Epstein, *Salazar Voids Drilling Leases On Public Lands in Utah*, WASHINGTON POST, Feb. 5, 2009.

[191] U.S. DEPARTMENT OF THE INTERIOR OFFICE OF THE INSPECTOR GENERAL, INVESTIGATIVE REPORT: BLM UTAH LEASE Sale (2009).

[192] Impact Energy Res., LLC v. Salazar, 2010 U.S. Dist. LEXIS 91095 (D. Utah 2010).

[193] *Id.*

[194] Press Release, U.S. Department of Agriculture Forest Service, *Bridger-Teton Forest releases final Supplemental Environmental Impact Statement and Record of Decision on Wyoming Range Oil and Gas Leases* (Jan. 25, 2011).

[195] Press Release, U.S. Department of Agriculture Forest Service, *Bridger-Teton Forest Supervisor Withdraws Decision on Wyoming Range Leases* (May 5, 2011).

Even if the Department of Interior issues the lease, the successful bidder may not receive what it bargained for. In many cases, especially in Wyoming where BLM has actually issued leases, new restrictions are added to the leases that were not specified at the time of sale.[196] The severity of these restrictions, also referred to as stipulations, vary. Some, such as preventing drilling during the breeding season of a certain species, are fairly standard in the industry. Others, such as "No Surface Occupancy" which prohibits any surface disturbance on the lease, are so severe that they may render the lease worthless to the producer. Returning to the apartment analogy, these after-the-fact stipulations are akin to a tenant signing an apartment lease, carefully reading the contract to ensure there are no pet restrictions, paying a deposit, and then being told on move-in day that her dog will not be allowed in the building. The owner would essentially have changed the terms of the contract, just like the Department of Interior does when it adds stipulations.

NEPA Analyses and Project Approval Delays

The Administration claims that oil and gas producers are hoarding leases on federal lands because they are using less than one-third of existing leases.[197] This criticism is grossly misleading because the Administration itself is often preventing the leaseholder from drilling on currently leased land. After a company wins a bid, pays the bonus, and is issued the lease, it must submit a project proposal to the Department of Interior, and an environmental analysis in accordance with the National Environmental Policy Act (NEPA) must be performed. The government does not bear the burden of performing this analysis; rather, the project proposer pays an agreed upon third party contractor to perform it.[198] Regardless, the NEPA analysis is taking years to complete, with some projects facing indefinite delays. Small Environmental Assessments regularly require four years, while the more involved Environmental Impact Statements easily take seven years.[199] White House Council on Environmental Quality guidance states these analyses should not take more than three months and twelve months, respectively. NEPA analyses often take more time than the guidance directs, but this Administration appears to be abusing the process. Environmental Impact Statements required just over three years to complete between 1994 and 2005; now the average EIS completion time is just under six years.[200] Projects in the West, for a variety of excuses, face even longer delays with no end in sight.[201]

Wild Lands Policy

One of the most controversial techniques to delay project approval is the newly invented "wild lands" designation. Secretary Salazar issued an order last December directing BLM to

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[196] Press Release, Western Energy Alliance, *Top Ten Ways the Federal Government is Preventing Onshore Oil and Natural Gas Production*, (March 2011), *available at* http://westernenergyalliance.org/wp-content/uploads/2011/03/Western-Energy-Alliance-IPAMS-Position-Paper-Top-10-Ways-Onshore-Production-is-Being-Prevented.pdf.

[197] Exploration and Production (Upstream), American Petroleum Institute, (last visited May 20, 2011), *available at* http://www.api.org/aboutoilgas/sectors/explore/index.cfm.

[198] National Environmental Policy Act (last visited May 20, 2011), *available at* http://www.epa.gov/compliance/nepa/index.html.

[199] *Id.*

[200] *Id.*

[201] *Id.*

redo a recently completed inventory of federal lands that took years to complete the first time around, diverting BLM's already limited resources.[202] Under the Secretary's new policy, the Department of Interior unilaterally determines that an area should be designated as wild lands and considered for wilderness protection. Under the 1964 Wilderness Act, "wilderness" is a designation that can only be made by Congress. To be considered "wilderness," the law says the land (1) must be at least 5000 contiguous acres in size unless a smaller area can be practicably preserved and used in an unimpaired condition, (2) have an appearance of naturalness, and (3) have either outstanding opportunities for solitude or primitive and unconfined recreation.[203] But under the new policy, BLM treats any land it decides to designate as "wild land" as "de facto wilderness," preventing productive uses of the land such as grazing, oil and gas extraction, and motorized recreation – and sidestepping Congress. In some cases, environmentalists have attempted to convince Congress to designate certain lands as "wilderness" for decades, but Congress has consistently and repeatedly declined.[204]

Some of the lands already designated as "wild lands" may confuse the novice nature-lover. It is not uncommon to find roads, active and inactive wells, agricultural improvements, and even air strips on proposed wild lands.[205] If lands visibly subject to multiple uses in the past still possess wilderness characteristics, then it must not be necessary to lock those lands away entirely in order to maintain wilderness characteristics. Locking away public lands is also in contradiction to the Federal Land Policy and Management Act of 1976.[206] FLPMA directs the BLM to manage public lands "on the basis of multiple use and sustained yield."[207] The wild lands policy permits neither. BLM Director Robert Abbey told Congress that he "believe[s] in, and [is] dedicated to, the BLM's multiple-use mission."[208] He also stated that any claims that the new wild lands policy has put a halt to new project and is preventing important economic activity in local communities is false.[209] Companies facing indefinite delays after investing millions of dollars likely disagree. Now, with the stroke of a pen, Secretary Salazar has granted "wild land" designations and effectively instituted an end-run around Congress.

EPA's Contribution to NEPA Delays

EPA is also responsible for delays at the project approval stage. A couple of examples best illustrate the effect of EPA's pressure on land managers conducting NEPA analyses. In one case, involving a large project of 1,250 wells in Wyoming, EPA inexplicably changed the type of air study it required. The companies involved in the EIS for the large project had already spent

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[202] Press Release, U.S. Department of the Interior, Salazar, *Abbey Restore Protections for America's Wild Lands* (Dec. 23, 2010), *available at* http://www.doi.gov/news/pressreleases/Salazar-Abbey-Restore-Protections-for-Americas-Wild-Lands.cfm.

[203] Wilderness Act of 1964 (16 U.S.C. 1131-1136, 78 Stat. 890)

[204] H.R. 1925, 111th Cong. § (2009).

[205] Letter from Public Lands Advocacy to Ken Salazar, Secretary, Department of the Interior (January 31, 2011) (on file with author).

[206] Federal Land Policy and Management Act, Bureau of Land Management (last visited May 20, 2011) *available at* http://www.blm.gov/flpma/.

[207] *Id.*

[208] *The Impact of the Administration's Wild Lands Order on Jobs and Economic Growth: Hearing before the H. Comm. on Natural Resources*, 112th Cong. (2011) Statement of Robert Abbey, Director, Bureau of Land Management)

[209] *Id.*

$2.5 million based on prior guidance from EPA.[210] In a second case, EPA asked a small business operating in Utah, Gasco Energy, to complete three rounds of air modeling for its 1,500 well project. EPA changed its request three times as to what type of air study it required, which resulted in years of delay and hundreds of thousands of dollars in unnecessary expenses.[211] EPA made these requests despite Gasco Energy agreeing to controls and other mitigation measures above and beyond those the law requires.[212]

Permitting Delays and Complications

The Department of Interior's next opportunity to delay production on the land is the permitting process. After receiving project approval, the producer may file an Application for Permit to Drill (APD).[213] Under the Energy Policy Act of 2005, BLM has thirty days to process an APD. However, by its own conservative estimate, BLM averages 206 days to process a permit.[214] In some BLM field offices, permits can take over two years.[215]

Even after a permit is issued, the company that applied for it may not be able to use it. In some cases there may be stipulation periods after the permit is issued. Some permits may be tied up in lawsuits. For others, the permit process might have taken so long that the land is now subject to new planning restrictions that prohibit development. One example of this occurred in the Powder River Basin. Years after applications were submitted, 2,400 permits were released at one time. By then, many companies had abandoned their plans, in part because of changes in the cost of natural gas and in part because of new restrictions associated with sage grouse and produced water. The uncertainty in the process results in companies taking their business elsewhere.[216]

V. TEXAS

As oil and gas producers grow more and more frustrated with the obstacles to drilling on federal land out West, they look to private land in Texas. Texas leads the nation in the production of oil and natural gas. Texas produced 447,076 thousand barrels of crude oil[217] and 7,403,720 million cubic feet of natural gas in 2008. In comparison, Alaska produced 249,874 thousand barrels of crude oil and 398,442 million cubic feet of natural gas in the same year.[218] Texas also has more proved oil reserves (5,496,000 thousand barrels compared to 4,007,000 thousand in the Gulf, and 3,556,000 thousand in Alaska in 2009) and more wet natural gas

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210 *Id.*
211 *Id.*
212 *Id.*
213 Energy Policy Act of 2005: Section by Section, Bureau of Land Management, (last visited May 20, 2011) *available at* http://www.blm.gov/wo/st/en/prog/energy/epca_chart.html.
214 *Id.*
215 *Id.*
216 Powder River Basin Resource Council (last visited May 20, 2011) *available at* http://www.powderriverbasin.org/
217 U.S. Energy Information Administration, State Energy Data 2008: Production, *available at* http://www.eia.doe.gov/emeu/states/sep_prod/P6/PDF/P6_TX.pdf.
218 U.S. Energy Information Administration, State Energy Data 2008: Production, *available at* http://www.eia.doe.gov/emeu/states/sep_prod/P6/PDF/P6_ak.pdf.

proven reserves (85,034 billion cubic feet compared to 12,116 billion cubic feet in the Gulf and 9,183 cubic feet in Alaska) than either the Gulf or Alaska.[219]

Texas has weathered the recession better than most states,[220] due in no small part to a booming oil and gas production, and the state is fighting to keep EPA from interfering with its success. Under Obama, EPA put a spotlight on the state, seemingly assuming that a profitable oil and gas industry is an indication of insufficient regulation.

Last June, the EPA decided to strike down the "flex permit" system Texas has used since 1996, rejecting Texas-issued air-quality permits for refiners and other industrial plants.[221] Then, in December, EPA sent Texas regulators a letter saying it had "no choice" but to seize control of permitting in the state.[222]

EPA Oversteps Texas Regulator

Another high profile example of the EPA overstepping Texas regulators based on false claims of urgency came last December. The issue began when a landowner filed a complaint with the Texas Railroad Commission (RRC), the state oil and gas regulator, on August 6, 2010, stating that methane had contaminated water wells.[223] The RRC commenced a full investigation into the source of the methane within days of the complaint. Over the next several months, the RRC – with full cooperation from Range, the company that owned gas production wells nearby – collected samples, performed tests, and conducted interviews. The investigation found that homeowners in the area had reported gas in their water for decades. Chemical fingerprinting of the gas in the well indicated that it did not come from Range's wells but from a shallow gas formation where wells were drilled in the early 1980s.[224] After finishing its investigation in March 2011, the RRC officially concluded that Range did not cause the water well contamination and that it likely came from the shallow gas formation.[225]

EPA, on the other hand, raced to issue an emergency order in December 2010, assuming the culpability of Range without the benefit of all the facts. EPA did not allow the RRC to finish its investigation,[226] did not discuss the results of independent EPA sampling with the RRC as the

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[219] U.S. Energy Information Administration, U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Proved Reserves, 2009, *available at* http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/crude_oil_natural_gas_reserves/cr.html.

[220] Texas Economy at Glance, Bureau of Labor Statistics, *available at* http://www.bls.gov/eag/eag.tx.htm.

[221] Press Release, U.S. Environmental Protection Agency, *EPA Disapproves Texas Flexible Air Permit Program* (June 30, 2010).

[222] A *Focus on Texas' Economy, Energy Prices and Jobs: Field Hearing before the H. Comm. on Energy and Commerce, Subcomm. on Energy and Power*, 112th Cong. (2011) (statement of Greg Abbott, Attorney General, State of Texas)

[223] Press Release, Railroad Commission of Texas, *Railroad Commission's Active, Ongoing Investigation of Parker County Water Well Complaint* (Dec. 7, 2010), *available at* http://www.rrc.state.tx.us/pressreleases/2010/120810.php.

[224] *Id.*

[225] Press Release, Railroad Commission of Texas, *Railroad Commissioners Find Range Resources' Natural Gas Not Source in Parker County Water Wells* (March 22, 2011), *available at* http://www.rrc.state.tx.us/pressreleases/2011/032211.php.

[226] Press Release, Environmental Protection Agency, *EPA Issues an Imminent and Substantial Endangerment Order to Protect Drinking Water in Southern Parker County* (Dec. 7, 2010), *available at*

organizations had planned,[227] and did not give Range an opportunity to present important objective facts.[228] The Order directed Range to provide drinking water to the residents and to begin taking actions to correct the problem within 48 hours. The Order imposed costly requirements on Range, yet EPA has been unable to provide data indicating Range production activities contributed to the contamination of the wells. In addition to the cost of its voluntary cooperation with the Texas RRC, Range is incurring significant expenses defending itself – between $1.5 million to $1.75 million so far.[229] Such an act was unprecedented in Texas.

The Committee has reviewed documents indicating that this action was coordinated with local environmental activists. EPA Regional Administrator Al Armendariz wrote in an email to his friends at the Environmental Defense Fund and Public Citizen just before issuing the press release, "We're about to make a lot of news [...] [T]ime to Tivo Channel 8."[230] He went on, "Thank you both for helping to educate me on the public's perspective of these issues." "Yee haw! Hats off to the new Sheriff and his deputies!" one activist replied.[231]

After issuing the emergency order, EPA shifted rapidly into spin mode, exaggerating the circumstances and misrepresenting the work already conducted by the RRC. "I believe we've got two people whose houses could explode. So we've got to move," the Administrator told the *Dallas Morning News*,[232] attempting to justify his declaration of an "imminent and substantial endangerment to a public drinking water aquifer through methane contamination" from Range's "fracked" production well.[233] In reality, the emergency basis was false. As the findings of fact attached to the order stated, the threat to the homes had already been evaluated, and one of the water wells had been disconnected from the home months earlier.

EPA also played into environmental rhetoric by highlighting that Range utilized hydraulic fracturing to produce natural gas. The Order did not allege the gas was a consequence of hydraulic fracturing, and EPA technical staff admitted that hydraulic fracturing in the Barnett Shale deep below the well could not be the cause of the gas occurring in the water wells.[234] Despite the well contamination having no connection to hydraulic fracturing, EPA included in their press release announcing the emergency order, "EPA believes that natural gas plays a key

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http://yosemite.epa.gov/opa/admpress.nsf/e8f4ff7f7970934e8525735900400c2e/713f73b4bdceb126852577f3002cb6fb!OpenDocument.

[227] In late October, EPA collected samples as well. EPA shared these results with RRC staff in late November and requested a meeting to discuss them, but on Dec. 1, 2010, the meeting was postponed. *See* Press Release, Environmental Protection Agency, *EPA Issues an Imminent and Substantial Endangerment Order to Protect Drinking Water in Southern Parker County* (December 7, 2010).

[228] Environmental Protection Agency, Findings and Emergency Order, Docket No. SDWA-06-2011-1208 (Dec. 7, 2010).

[229] Jack Z. Smith, *Range Resources calls EPA conclusions 'sheer guesswork,'* STAR-TELEGRAM, May 2, 2010.

[230] Mike Soraghan, *Texas EPA Official's E-Mails Show Federal-State Tension Over Sanctions on Natural Gas Drilling*, NEW YORK TIMES (Feb. 11, 2011), *available at* http://www.nytimes.com/gwire/2011/02/11/11greenwire-texas-epa-officials-e-mails-show-federal-state-63373.html. (*e-mails available at* http://www.eenews.net/assets/2011/02/11/document_gw_03.pdf).

[231] *Id.*

[232] Randy Lee Loftis, *EPA: 2 Parker County homes at risk of explosion after gas from 'fracked' well contaminates aquifer*, DALLAS MORNING NEWS, Dec. 9, 2010.

[233] *Id.*

[234] Letter from Mark D. Whitley, Senior Vice President, Range Resources Corp. to Dr. Alfredo Armendariz, EPA Regional Administrator (Dec. 27, 2010).

role in our nation's clean energy future and the process known as hydraulic fracturing is one way of accessing that vital resource. However, we want to make sure natural gas development is safe."[235] Possibly not so coincidentally, Range is also a very active driller in the Marcellus Shale of Pennsylvania.

EPA has refused to cooperate with either the Range or the RRC to resolve the dispute. In January, the RRC held an open hearing to receive expert testimony on the issue. Several experts explained flaws in EPA's methodology, explaining that deep Barnett Shale had very low levels of nitrogen compared to the shallow Strawn formation.[236] Nitrogen, therefore, was the distinguishing fingerprint. If the well had high levels of nitrogen, then the contamination was not coming from the Barnett Shale where Range had drilled. EPA had failed to conduct this analysis, but RRC took the time to do it. EPA declined to participate in the open hearing. Some critics joked that "EPA had better things to do – like asking the Department of Justice to impose a $16,500-a-day fine on the company for failing to comply with an order that EPA itself has neither the interest nor ability to defend or explain in an open forum."[237]

One Texas Railroad Commissioner called EPA's action "Washington politics of the worst kind. The EPA's act is nothing more than grandstanding in an effort to interject the federal government into Texas business. The Railroad Commission has been on top of this issue from Day 1. We will continue to take all necessary action to protect Texas lakes, rivers and aquifers. Texans have no interest in Washington doing for Texas what it did for Louisiana fishermen."[238]

DOI Threatens Texas with "Endangered" Lizard

The Fish and Wildlife Service (part of the Department of the Interior) has also found the Texas oil and gas industry to be an imminent threat, not to people but to lizards. The Fish and Wildlife Service has proposed placing the dunes sagebrush lizard that lives in New Mexico and west Texas on the Endangered Species List.[239] Endangered Species status would allow the Fish and Wildlife Service to limit oil and gas production in the Permian Basin of west Texas – which currently produces nearly 20% of the country's crude oil.[240] Thousands of acres could potentially be taken out of production as a result of the rule, without an economic analysis ever being performed.[241]

How the Fish and Wildlife Service would use the lizard to stop oil and gas production is not a secret. According to the official notice in the Federal Register: "We believe the following actions may jeopardize this species, and therefore [the Fish and Wildlife Service] would seek to conference with [the Bureau for Land Management] and [NRCS] on these actions: The lease of land for oil and gas drilling, Applications to drill, Applications for infrastructure through dunes (including, but not limited to pipelines and power lines), [Off-Highway Vehicle] activities,

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[235] *Id.*

[236] *EPA MIA in Austin*, ENERGY IN DEPTH (Jan. 20, 2011), *available at* http://www.energyindepth.org/2011/01/epa-mia-in-austin/.

[237] *Id.*

[238] *Id.*

[239] Dunes Sagebrush Lizard, U.S. Fish & Wildlife Services (last visited May 20, 2011) *available at* http://www.fws.gov/southwest/es/DSL.html.

[240] Susan Montoya Bryan, *Small lizard sparks big debate in NM, Texas*, BLOOMBERG BUSINESSWEEK, Apr. 28, 2011.

[241] *Id.*

Seismic exploration, Continued oil and gas operations (release of pollution and routine maintenance)...."[242]

The Fish and Wildlife Service would devastate the local oil and gas industry based on limited data. Locals say the government used a flawed methodology when it estimated the lizard population – it did not spend enough time looking for the lizards and did not know how to find them.[243] Regardless, the Fish and Wildlife Service has alternatives to declaring the lizard endangered. For example, voluntary conservation agreements between the federal government and landowners, like those successfully implemented in New Mexico, would help preserve the lizard's habitat while allowing production to continue.[244] According to the president of the Permian Basin Petroleum Association,"The best way [to protect the lizard] is for land owners and industry actually on the ground where the lizards are, who know how to protect the lizard, to be in charge instead of the feds putting up 'Do Not Enter' signs on every gatepost."[245] The public comment period closed on May 16, accordingly, the rule will most likely be issued by the end of the year.

CONCLUSION

In his 2010 State of the Union address, President Obama declared: "the nation that leads the clean energy economy will be the nation that leads the global economy...America must be that nation."[246] Despite the fact that more than 80 percent of U.S. energy needs are met with carbon-based fuels that cannot be easily, cheaply or quickly replaced, the Obama Administration has been aggressively suppressing the utilization of these carbon-based fuels.

A pattern of evidence, as well as statements from before President Obama and Secretary of Energy Chu took office about the need for Americans to pay higher energy costs, raise alarming concerns about the existence of a campaign, across government agencies. This campaign aims to block carbon-based energy extraction, to tax it, and to otherwise increase its cost of use. The effort is occurring simultaneously with calls to heavily subsidize the development and use of "green energy."

While some may argue that there are benefits of having Americans pay more for gasoline, more for electricity, and more for home heating, the surreptitious implementation of such an agenda without public discussion or announcement appears highly inappropriate and contrary to the Administration's promises of transparency.

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[242] Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Sonoran Population of the Desert Tortoise as Endangered or Threatened, 75 Fed. Reg. 78094 (proposed Dec. 14, 2010).

[243] *Id.*

[244] Press Release, U.S. Department of the Interior, *New Conservation Effort Benefits Rare Species in Southeastern New Mexico* (Dec. 8, 2008), *available at* http://www.doi.gov/archive/news/08_News_Releases/120808.html.

[245] *Mella McEwen,* Could a Three-inch Lizard Collapse the West Texas Oil Industry?, Midland Reporter-Telegram (April 23, 2011) available at http://www.mywesttexas.com/mobile/article_e7f32d45-fab8-5025-afa9-26a00d768910.html.

[246] *Id.*

What President Obama failed to accomplish through the so-called "cap and trade" program, his administration is attempting to accomplish through regulatory roadblocks, energy tax increases, and other targeted efforts to prohibit development of domestic energy resources. This includes actions at the Bureau of Ocean Energy Management, Bureau of Land Management, and U.S. Fish and Wildlife Service that have raised barriers to limit exploration and development of domestic energy resources. This includes moratoriums on offshore oil drilling, blockage/delay of onshore oil and gas leases, and even efforts to list certain lizard species on the endangered list at the expense of 20 percent of the Texas crude oil market, alone.

Thanks to advances in new technology, the U.S. energy industry has the opportunity to experience a renaissance by extracting resource deposits not even known to exist a generation ago. The opportunity to increase domestic oil production by as much as 40% in the next five years is at hand. Congress and the Obama Administration should herald this development, reducing barriers and streamlining processes so these firms can ramp up activity and production in an effort to achieve energy independence. Doing so would stabilize our sources of energy, create well-paying job opportunities for American workers, and improve our standing in the global marketplace by removing the volatile supply chains that currently impact our energy prices and availability.

The ability to utilize our nation's rich natural resources may, however, be out of reach if the Obama Administration continues efforts to hinder domestic development of carbon based energy sources in an attempt to ignite a green energy revolution. While there are clearly needs and opportunities for green energy development, premature implementation of such technologies will come at the price of a premium over more affordable sources of energy. An effort to intentionally raise the costs of traditional energy sources is a dangerous strategy that will harm economic recovery and job growth. If past statements of key administration officials are indeed reflections of the policies they are pursuing, this strategy is playing a quiet but significant role in the higher energy prices Americans are currently paying.

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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