# PAIN AT THE PUMP: POLICIES THAT SUPPRESS DOMESTIC PRODUCTION OF OIL AND GAS

## HEARING

BEFORE THE

## COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

## HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

MAY 24, 2011

**Serial No. 112–54**

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

70–675 PDF WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# PAIN AT THE PUMP: POLICIES THAT SUPPRESS DOMESTIC PRODUCTION OF OIL AND GAS

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**TUESDAY, MAY 24, 2011**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
*Washington, DC.*

The committee met, pursuant to notice, at 9 a.m., in room 2154, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, Platts, McHenry, Jordan, Chaffetz, Mack, Walberg, Lankford, Amash, Buerkle, Labrador, Meehan, DesJarlais, Gowdy, Ross, Guinta, Farenthold, Kelly, Cummings, Norton, Kucinich, Tierney, Connolly, Quigley, Yarmuth, and Speier.

Also present: Representative Gibbs.

Staff present: Ali Ahmad, deputy press secretary; Michael R. Bebeau, assistant clerk; Robert Borden, general counsel; Lawrence J. Brady, staff director; Drew Colliatie and Nadia A. Zahran, staff assistants; Adam P. Fromm, director of Member services and committee operations; Linda Good, chief clerk; Ryan M. Hambleton, professional staff member; Christopher Hixon, deputy chief counsel, oversight; Mark D. Marin, senior professional staff member; Kristina M. Moore, senior counsel; Jeff Solsby, senior communications advisor; Sharon Meredith Utz, research analyst; Krista Boyd, minority counsel; Lisa Cody, minority investigator; Kevin Corbin, minority staff assistant; Ashley Etienne, minority director of communications; Jennifer Hoffman, minority press secretary; Carla Hultberg, minority chief clerk; Chris Knauer, minority senior investigator; Lucinda Lessley, minority policy director; Dave Rapallo, minority staff director; Susanne Sachsman Grooms, minority chief counsel; and Alex Wolf, minority professional staff member.

Chairman ISSA. Good morning, the 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 effective, efficient 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 bureaucracy. This is our mission.

Today's hearing is entitled, "Pain at the Pump." But it goes beyond that; pain at the pump is what the American people see. The American people see an administration who said before they came to Washington that we need European oil prices; we need $8 a barrel gasoline. Although they've only gotten us to $4 a barrel, we are clearly on a pathway to some day soon having European-style cost of energy.

Worse than that, it is likely that energy will be imported. It will represent jobs many miles away and governments that are often hostile to us who profit from high oil prices. Having failed to get cap-and-trade passed, it appears as though this administration is finding alternative ways to achieve the equivalent.

Secretary Chu before joining the Cabinet said, and I'll put it on the screen, somehow we have to figure out how to boost the price of gasoline to the levels of Europe. That is not my statement; that is the administration's statement.

Additionally, the President has repeatedly as a candidate said that there will be pain in transition, that prices will skyrocket. These are not our words; these are the President's words. So as we watch the cost skyrocket, as we watch impediments to job creation here, particularly in onshore—I repeat, onshore—oil and natural gas, we ask the question, are we seeing by regulation what cannot be done by legislation?

Let us not forget, this committee has a long history of going after agencies that fail to do their job on the other side. Our history of going after Minerals Management Service, although good, lacks only one conclusion; having proven that MMS was unable to supervise properly the oil and natural gas industry, that it was in fact an out-of-control entity, we failed to get real reform under the Bush administration. We then failed to get real reform under the Obama administration, and the American people suffered in the Gulf.

This committee will do both, ensure that agencies meet their obligation to allow the production and exploration of minerals here in America while ensuring that they also meet the safety requirements.

With that, I recognize the ranking member for his opening statement.

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

And I would remind the chairman that this is our watch. We are on the earth today, and we have a duty to leave a better environment than the one we found when we were born.

I just want to take a moment to remember why we are here today. We are not here because of a conspiracy theory that the administration is deliberately increasing gas prices. And we are not here because of so-called pre-moratorium or a de facto moratorium on drilling permits, that does not really exist.

We are here because on April 20, 2010, a massive oil explosion in the Gulf of Mexico killed 11 people and launched the worst environmental disaster in the history of our country. We all watched as the oil spewed into the water for days and days and days. And for the entire summer, there was nothing we could do but wait and pray.

Ladies and gentlemen, we are better than that.

Finally, after 87 days, it stopped, but not before releasing 200 million gallons of oil, not before reaching 780 miles along the Gulf, not before devastating the Gulf's commercial and recreational fishing industries, and not before decimating the Gulf's travel and tourism industries, which represent nearly half of the Gulf's economy, generating over $100 billion a year, and are responsible for more than a million jobs. We also represent them by the way. That is why we are here. And we can never, ever, never, ever forget.

So, thank you, Administrator Jackson and Deputy Secretary Hayes, for testifying today about the administration's efforts to prevent this kind of disaster from ever happening again.

We are also here because of recent increases in the price of gas, which has now surpassed $4 per gallon. These increases make it harder for average Americans to get to work and for small businesses to function. I remember—I remind members of this committee that they are our constituents.

Chairman Issa issued a report today that essentially blames the Obama administration for everything, including higher gas prices. In fact, former Alaska Governor Sarah Palin has been espousing this exact same theory for several months now.

The problem is that this theory has been debunked by conservative and industry experts. For example, Michael Canes, the former Chief Economist for the American Petroleum Institute, said this, "It's not credible to blame the Obama administration's drilling policies for today's high prices."

Ken Green, a resident scholar with the American Enterprise Institute, said this, "The world price is the world price; even if we were producing 100 percent of our oil, we probably couldn't produce enough to affect the world price of oil."

Chris Lafakis, an economist at Moody's Analytics, said this, "There is absolutely no merit to this viewpoint whatsoever."

In other words, when you actually talk to experts who know the industry and who know the facts, these arguments are exposed as blatant attempts to score political points with no basis in fact.

I also released a report today, and I ask unanimous consent that it be made a part of the official record of today's hearing.

Chairman ISSA. Without objection, so ordered.

[The information referred to follows:]

# REAL HELP FOR AMERICAN CONSUMERS: WHO'S PROFITING AT THE PUMP?

**Democratic Staff**
**Committee on Oversight and Government Reform**
**U.S. House of Representatives**

**Prepared for Ranking Member Elijah E. Cummings**

**May 23, 2011**

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## EXECUTIVE SUMMARY

With gas prices now at more than $4 per gallon, Rep. Elijah E. Cummings, the Ranking Member of the House Committee on Oversight and Government Reform, asked minority staff to examine the fundamental causes of recent price increases. Staff reviewed the work of ten different congressional committees, including the Oversight Committee, and analyzed data and information from a number of experts, including industry representatives, government officials, and academics. This report presents the results of this review.

The report's chief conclusion is that, in order to make the most significant impact on lowering gas prices, the Committee's primary focus should be on countering the growing impact of excessive speculation, rather than pursuing the oil industry's priorities of increasing domestic drilling or repealing safety measures put in place after the devastating BP oil spill. Experts estimate that excessive oil speculation could be inflating prices by up to 30%, while increasing domestic drilling would impact prices by only about 1%, and then only after a decade or more. Addressing excessive speculation offers the single most significant opportunity to reduce the price of gas for American consumers.

***The oil industry is the most profitable in the world.***

Despite the worst economic crisis since the Great Depression, oil companies have continued to make the highest profits of any industry. The top five oil companies have enjoyed profits of nearly a trillion dollars over the past ten years. They reported profits of more than $31 billion in the first quarter of FY 2011, more than 32% higher than in the first quarter of FY 2010.

Yet oil companies continue to benefit from billions of dollars in tax subsidies, as well as special deals that allow them to drill on federal lands without paying royalties. The Office of Management and Budget estimates that eliminating unnecessary tax subsidies could save more than $43 billion over the next ten years, and the Government Accountability Office reports that U.S. taxpayers may be foregoing up to $53 billion in revenues from oil companies that drill in the Gulf without paying market-rate royalties. Both industry officials and their supporters in the House have expressed support for ending this preferential treatment:

- Former Shell CEO John Hofmeister said in February, "In the face of sustained high oil prices it was not an issue—for large companies—of needing the subsidies to entice us into looking for and producing more oil."
- House Speaker John Boehner said in April, "I don't think the – the big oil companies need to have the oil depletion allowances. ... We certainly oughta take a look at it. ... And they oughta be payin' their fair share."
- House Budget Committee Chairman Paul Ryan, when asked whether he supports ending tax subsidies for oil companies, said in April, "I agree. ... We also want to get rid of corporate welfare. And corporate welfare goes to agribusiness companies, energy companies, financial services companies. So we propose to repeal all that."

- House Oversight Committee Chairman Darrell Issa, when asked whether he supports requiring oil companies to pay fair returns on oil leases in the Gulf, said in March, "there is bipartisan support, still, to try to fix that."

Despite these statements, every legislative effort to address these problems that has come before the House in the 112th Congress has been defeated.

***Countering excessive speculation will have a direct impact on prices at the pump.***

According to the U.S. Energy Information Administration, the price of oil has been hovering around $100 for some time. Industry officials, regulators, and outside experts have determined that these prices are artificially high in part due to the increasing role of energy speculation in the futures market. They estimate that excessive speculation may be inflating prices by up to 30%.

On May 12, Rex Tillerson, the CEO of ExxonMobil, testified before the Senate Finance Committee. When asked by Senator Maria Cantwell how much a barrel of oil would cost without excessive speculation, he responded, "Well it's pretty hard to judge but it would be, you know, when we look at it, it's going to be somewhere in the $60 to $70 range." Similarly, on April 11, Goldman Sachs warned its investment clients that speculators may be inflating the price of oil by as much as $27 a barrel.

On March 15, Bart Chilton, a Commissioner with the U.S. Commodity Futures Trading Commission (CFTC), warned that the impact of speculators is increasing rapidly. He stated: "There are now more speculative positions in commodity markets than ever before. Between June of 2008 and January 2011, futures equivalent contracts held by these types of speculators increased 64 percent in energy contracts."

The Dodd-Frank Act included provisions to counter excessive speculation, including enhanced authority for the CFTC to set position limits and raise margin limits. However, opponents of the Act, including Speaker Boehner and Chairman Issa, have sought to repeal Dodd-Frank in its entirety, cut funding to the CFTC, and delay implementation of these provisions.

Some industry experts warn that these actions could increase gas prices. According to the Executive Director of Gasoline and Automotive Service Dealers of America, "The fastest way to six dollar gasoline is to cut the funding to the CFTC."

***Increasing drilling and repealing safety measures will not lower gas prices.***

In contrast to addressing excessive speculation, which may be inflating prices by up to 30%, experts believe that focusing on the industry's priorities of expanding domestic drilling and repealing safety measures will have a negligible impact on gas prices.

The U.S. Energy Information Administration examined the potential impact of expanding domestic oil exploration and drilling on the outer continental shelf of the Atlantic and Pacific coasts of the United States and the Eastern and Central regions of the Gulf of Mexico. It concluded that there would be no change in prices by the year 2020, and that there would be a decrease of only 3 cents per gallon by the year 2030.

Despite this evidence, some proponents of drilling have blamed the Obama Administration for high gas prices. On April 20, 2011, for example, Chairman Issa argued that the Administration's policy toward offshore drilling "has resulted in higher prices for gas." This echoed several statements by former Alaska Governor Sarah Palin. Numerous industry and other experts have repudiated these claims. For example:

- In January, Ken Green, a resident scholar with the American Enterprise Institute, stated: "The world price is the world price. Even if we were producing 100 percent of our oil, ... [w]e probably couldn't produce enough to affect the world price of oil."
- In March, Michael Canes, the former chief economist for the American Petroleum Institute, stated, "It's not credible to blame the Obama Administration's drilling policies for today's high prices."
- Also in March, Chris Lafakis, an economist at Moody's Analytics, stated: "There is absolutely no merit to this viewpoint whatsoever."

Critics also claim that safety measures put in place after the BP oil spill are harming local economies. These claims disregard the massive economic and environmental devastation caused by oil that gushed unabated into the Gulf for 87 days. The spill devastated the commercial and recreational fishing industries through closures—which at their peak amounted to nearly 37% of all federal waters in the Gulf—and through decreases in consumer demand for Gulf seafood. The spill also decimated the Gulf's travel and tourism industries, which represent 46% of the Gulf's economy, generate over $100 billion annually, and are responsible for more than a million jobs.

Finally, critics have asserted falsely that the Administration has instituted a "permitorium," or a de facto moratorium, on approving drilling permits in the Gulf. This claim appears to have been created by oil industry communications officials and repeated by Members of Congress. In fact, no such "permitorium" exists. The Administration has approved 14 deepwater drilling permits, 55 shallow water permits, and two new exploration plans since the BP oil spill.

Initial delays in obtaining permits were a result of the industry's ongoing efforts to develop an adequate technology to prevent and contain exactly the type of blowout that caused the BP oil spill. On February 17, 2011, the industry announced the completion of a "subsea capping stack" to perform this function. Less than two weeks later, the Administration approved the first of multiple deepwater drilling permits issued since the BP oil spill.

Mr. CUMMINGS. Thank you, Mr. Chairman.

My report analyzed what industry, government, and academic experts accurately believe is causing higher gas prices, and that is excessive speculation by entities that have no consumption interest in the underlying commodities and that profit by doing nothing more than forecasting price trends.

The report's chief conclusion is that in order to make the most significant impact on the lowering gas prices, our primary focus should be on countering the growing impact of energy speculation, rather than simply promoting the oil industry's priorities of increasing domestic drilling.

As the report finds, addressing excessive speculation offers the single, most significant opportunity to reduce gas prices for American consumers. Experts, including oil industry officials and investment firms, estimate that excessive oil speculation could be inflating prices by 30 percent. But increasing domestic drilling would impact prices by only 1 percent and then only after a decade or more.

In my opinion, this committee could have a much more significant and immediate impact on the price of gas if it stopped focusing solely on the oil industry's interest and started focusing on real efforts to help American consumers.

Again I remind our committee, this is our watch. We are on the earth today. We must protect our environment. We must protect the fisherman. We must protect the tourism industry. We must have balance.

And so, Mr. Chairman, I hope that you and I can work together in a bipartisan manner to effectively and efficiently conduct an investigation into these issues so that the American people might have relief.

With that, I yield back.

Chairman ISSA. I thank the ranking member.

I ask unanimous consent that the Politico article of April 26th, entitled "EPA Chief: Gas Prices Not Our Fault," in which the administrator says what appears to be the most important factor at work is our dependence on imported energy, be entered into the record.

Without objection, so ordered.

All Members will have 5 legislative days in which to put their opening statements in, and with that, we move to our panel of witnesses.

The honorable Lisa Jackson is the Administrator of the U.S. Environmental Protection Agency. Our second witness, the honorable David Hayes, is the Deputy Secretary of the Department of the Interior.

As I have told both of our witnesses earlier, we are on an unusually tight schedule. We will adjourn to be with the joint session of Congress at 11 o'clock, and so I am going to execute a very heavy gavel. I don't want to be unfair to anyone, but I would like for everyone to understand that we will end each round at 5 minutes, including each of the opening statements. This is intended to give everyone an opportunity to be heard. It will not be our usual talk until the zero and then expect an answer.

So, pursuant to the committee rules, all witnesses must be sworn before testifying.

Would you please rise to take the oath?

[Witnesses sworn.]

Chairman ISSA. Let the record reflect that both witnesses answered in the affirmative.

Please be seated.

With that, Administrator Jackson is recognized.

## STATEMENTS OF LISA P. JACKSON, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY; AND DAVID J. HAYES, DEPUTY SECRETARY OF THE INTERIOR

### STATEMENT OF LISA P. JACKSON

Ms. JACKSON. Thank you, Chairman Issa.

To you, Ranking Member Cummings and members of the committee, thank you for inviting me to testify.

Americans are again suffering at the pump. Gasoline and diesel cost more today than they did a year ago. As ExxonMobil's CEO recently testified, the prices of those fuels are a function of crude oil prices, which are set by global supply and demand.

As a matter of geology, America will never control more than a tiny fraction of the world's oil supply. Therefore, America cannot prevent gasoline and diesel prices from rising.

Still, all else being equal, buying a barrel of American oil is better than buying a barrel of foreign oil.

Last year, American oil production reached its highest level since 2003, and President Obama recently announced steps that the Interior Department is taking to increase safe and responsible oil production here at home.

Deputy Secretary Hayes will describe those steps today.

For parts of the Outer Continental Shelf, Congress has declared that a company cannot operate drilling equipment that emits large amounts of air pollution without first demonstrating through EPA permitting that the emissions will not harm Americans. That requirement is not simply red tape because a single exploratory drilling operation can emit as much air pollution on a daily basis as a large oil refinery.

In 2007, Shell Oil began seeking from EPA's Region 10 Office air permits for exploratory drilling operations on the Outer Continental Shelf off Alaska. Region 10 has since issued five permits to Shell. An administrative court called the Environmental Appeals Board remanded two of the permits last December after Alaska residents had challenged them.

I am confident that we will give the board the analysis it has called for in time for the permits to be upheld before the start of the next drilling season.

I should note that on average, the board decides air permit appeals in just over 5 months; that only four of the board's more than 100 air permit decisions have ever been appealed to a Federal court; and that none of the board's air permit decisions has ever been overturned.

Currently there are only four pending air permit applications for drilling on the Arctic OCS. That includes the two that I just mentioned. We anticipate many more, though. So, at the President's direction, the White House has formed a team of relevant bureaus at the Department of Interior, the Department of Commerce and EPA to coordinate closely and prevent unnecessary delays.

Thanks to advances in drilling technology, including hydraulic fracturing or fracking, America's potential natural gas resource is nearly 50 percent larger than we believed it was just a few years ago. The price we pay for natural gas is not set on a global market the way the price of oil is, and burning natural gas creates less air pollution than burning other fossil fuels. So increasing America's natural gas production is a good thing.

Fracking involves injecting chemicals underground at high pressure and various substances come back to the surface with the gas. It is not surprising then that Congress has directed EPA to study the relationship between fracking and drinking water. We are doing that with input from technical experts, the public and industry.

In the meantime, EPA will step in, as necessary, to protect local residents if drilling jeopardizes clean water.

With that said, State governments are appropriately the first line of defense again harmful or unsafe drilling practices.

We can mitigate the impact of high fuel prices on American families and businesses by enabling them to travel the same distances and conduct the same commerce on less gasoline and diesel. The fuel efficiency standards that EPA and the Department of Transportation established last year for new cars and light trucks will save the average American driver $3,000 over the life of the car and conserve 1.58 billion barrels of oil.

Additional standards that we will set this summer for heavy-duty trucks will save a tractor trailer rig operator up to $74,000 over the life of the rig and conserve another a half a billion barrels of oil.

The increased biofuel production mandates that EPA set last year will displace 7 percent of America's expected gasoline and diesel consumption in 2022, while decreasing oil imports by $41½ billion.

I am proud of the role EPA played to shield Americans from the harmful economic impact of high gasoline and diesel prices.

EPA's core mission, though, is protecting Americans from harmful pollution. That is what Congress has ordered EPA to do, and that is what the American people expect. Even when gas prices are high and the economy is still recovering, Americans do not like it when their families and livelihoods are harmed by industrial pollution that could have been avoided.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Jackson follows:]

**Opening Statement**
**The Honorable Lisa P. Jackson**
**Administrator, U.S. Environmental Protection Agency**
**May 24, 2011**
**Committee on Oversight and Government Reform**
**U.S. House of Representatives**

Thank you for inviting me to testify.

Americans are again suffering at the pump. Gasoline and diesel cost more today than they did a year ago.[1] As ExxonMobil's CEO recently testified, the prices of those fuels are a function of crude oil prices, which are set by global supply and demand.[2] As a matter of geology, America will never control more than a tiny fraction of the world's oil supply.[3] America cannot prevent gasoline and diesel prices from rising when global supplies are constrained and world demand for oil is steady or increasing.

Still, there are benefits to being less reliant on oil imports. Last year, American oil production reached its highest level since 2003, and this Administration supports increasing safe and responsible oil production here at home.[4] President Obama recently announced steps that the Interior Department is taking to advance that goal.[5] Deputy Secretary Hayes will describe those steps.

For certain portions of the Outer Continental Shelf, Congress has declared that a company cannot operate drilling ships and rigs that emit large amounts of air pollution without first demonstrating through an Environmental Protection Agency permitting process that the emissions will not harm Americans.[6] Requirements like those are not simply red tape, because a single exploratory drilling operation could emit approximately as much air pollution on a daily basis as a large state-of-the-art oil refinery.

In 2007, Shell Oil began seeking from EPA's Region 10 office air permits for a small number of exploratory drilling operations on the Outer Continental Shelf off Alaska. Region 10 has since issued five permits to Shell. After Alaska residents challenged two of those permits, an administrative court within EPA called the Environmental Appeals Board remanded them last December and said that EPA must conduct further analysis before the permits can become actionable. I am confident that we will give the Board the analysis it has called for, in time for the permits to be upheld before the start of the next drilling season. I should note that, on average, the Board decides air permit appeals in just over five months; that only four of the Board's more-than-100 air permit decisions have ever been appealed to a federal court; and that, to date, none of the Board's air permit decisions have ever been overturned. The Board's review provides a meaningful opportunity for communities that might be affected by drilling operations to have their concerns addressed, while providing a process that is almost always faster for the applicant.

Currently, there are only four pending air permit applications for drilling on the Arctic OCS. That includes the two I just mentioned. We anticipate many more, though. So, at the President's direction, the

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[1] http://www.eia.doe.gov/oog/info/gdu/gasdiesel.asp
[2] http://finance.senate.gov/imo/media/doc/Testimony%20of%20Rex%20Tillerson.pdf
[3] http://www.whitehouse.gov/blog/2011/05/06/president-jobs-gas-prices-read-his-remarks-download-graphic; http://www.whitehouse.gov/the-press-office/2011/03/30/remarks-president-americas-energy-security
[4] http://www.whitehouse.gov/the-press-office/2011/05/13/weekly-address-president-obama-announces-new-plans-increase-responsible-
[5] *Id.*
[6] Clean Air Act § 328, 42 U.S.C. § 7627.

White House has formed a team of relevant experts at the Department of the Interior, the Department of Commerce, EPA, and other offices to coordinate closely and find ways to prevent unnecessary delays.[7]

This Administration is also committed to promoting timely and safe domestic natural gas development. Thanks to advances in drilling technology, including hydraulic fracturing – or "fracking" – America's potential natural gas resource is nearly fifty percent larger than we believed it was just a few years ago.[8] The price we pay for natural gas is not set on a global market the way the price of oil is, and burning natural gas creates less air pollution than burning other fossil fuels. So, if done safely, increasing America's extraction of natural gas can have a number of economic benefits.

Fracking involves injecting chemicals underground at high pressure, and various substances come back to the surface with the gas. It is not surprising, then, that Congress has directed EPA to study the relationship between fracking and drinking water. We are doing that with input from the public, industry, and our Science Advisory Board. In the meantime, EPA will use its authorities to protect local residents if a driller endangers water supplies and the state and local authorities have not acted. President Obama has made clear that we need to extract natural gas without polluting our water supplies.[9]

We can mitigate the impact of high fuel prices on American families and businesses by enabling them to travel the same distances and conduct the same commerce on less gasoline and diesel. The fuel efficiency standards that EPA and the Department of Transportation established last year for new cars and light trucks will save the average American driver three thousand dollars over the life of the car and conserve 1.85 billion barrels of oil over the life of vehicles of Model Years 2012 through 2016.[10] The Administration will soon issue similar standards for heavy-duty vehicles of Model Years 2014 through 2018 and is designing ones for cars and light trucks of Model Years 2017 through 2025.

I am proud of the role EPA is playing to shield Americans from the harmful economic impact of high gasoline and diesel prices. EPA's core mission, though, is protecting Americans from harmful pollution. That is what Congress has ordered EPA to do, and that is what the American people expect. EPA will do its part to ensure that oil and gas exploration, production, and use are conducted in a manner that is protective of the environment and the American people.

Thank you, Mr. Chairman.

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[7] http://www.whitehouse.gov/the-press-office/2011/05/13/weekly-address-president-obama-announces-new-plans-increase-responsible-

[8] http://www.eia.doe.gov/energy_in_brief/about_shale_gas.cfm

[9] http://www.whitehouse.gov/the-press-office/2011/04/19/remarks-president-town-hall-annandale-virginia; http://www.whitehouse.gov/the-press-office/2011/03/30/remarks-president-americas-energy-security

[10] 75 Fed. Reg. 25324, 25329, 25347 (May 7, 2010).

Chairman ISSA. Thank you.

Mr. Secretary.

## STATEMENT OF DAVID J. HAYES

Mr. HAYES. Thank you, Mr. Chairman, Ranking Member Cummings, I appreciate the opportunity to give a short oral statement and request that my written statement be submitted for the record.

Chairman ISSA. Without objection, so ordered.

Mr. HAYES. As you know, the President has emphasized the importance of securing our energy future by pursuing a multiprong strategy that includes increased domestic oil and gas production, improved energy efficiency, and the production of alternative fuels.

The President reviewed his comprehensive plan in the energy blueprint document that he released last month. And when discussing this plan, the President emphasized that there is no quick fix to address high gas prices and that rather than "rushing to propose action when gas prices rise, then hitting the snooze button when they fall again, "we need to pursue a comprehensive strategy.

The Department of the Interior has a key role in this regard in addressing today's and tomorrow's energy issues. Our department, for example, is for the first time in history permitting utility scale renewable energy projects on our public lands and in our offshore waters. Last year, we permitted more than 4,000 megawatts of renewable solar, geothermal and wind projects, the equivalent of more than a dozen medium-sized coal-fired power plants. At the same time, however, our department is focused on increasing domestic oil and gas production from our public lands and our offshore waters.

The facts show that our emphasis on responsible oil and gas development combined with the efficiency improvements that the administration has introduced with our transportation fleet and Administrator Jackson just referenced is paying off.

Over the past 3 years, our domestic oil and gas production has gone up, while our imports have gone down. Oil imports in 2008 were 57 percent of the total oil consumed in the United States, today it's less than 50 percent. Oil production is higher in 2010 than it has been in any year since 2003.

Offshore oil production in the last 3 years has gone up by a third, by approximately 200,000 barrels a year—million barrels a year, and production onshore has gone up 5 percent during the same period.

The President is committed to seeing this trend continue. As you know, he has vowed to cut our oil imports by one-third by 2025, down from the 11 million barrels per day that we were importing when he took office.

At the Interior Department, we are taking a number of steps to facilitate responsible oil and gas development in the United States. First, we are providing industry with ample opportunity to develop domestic oil and gas supplies. Offshore, in 2009 and 2010, our department offered 53 million and 37 million acres respectively for leasing. Onshore, we held 29 lease sales in 2010; we have scheduled 33 lease sales for this year.

Notably, industry has not taken full advantage of the lands we have opened up to them for development. Offshore, out of the 53 and 37 million acres offered, industry leaves 2.7 million and 2.4 million acres respectively. And of the total offshore leased average, fully 70 percent of the leased areas are idle. Onshore, out of the 6½ million acres offered for lease during our administration, less than half were leased. And 55 percent of the overall acreage that is leased is idle. That is, 22 million acres are currently available onshore for development, leased and in the hands of domestic oil and gas companies, but there is no exploration or development occurring.

The President has initiated additional actions to further incentivize the oil and gas industry to utilize these available domestic oil and gas resources. He announced that last week in his radio address, and it was amplified earlier this week by the Secretary. Including the fact that leases in the Gulf impacted by the moratorium are being extended by a year, leases in Alaskan waters are being extended, new lease sales will be scheduled for the Gulf of Mexico, with the first one occurring by the end of year and two more before mid next year, the President announced that BLM will have annual lease sales in the National Petroleum Reserve Alaska, and we are looking for ways to encourage industry to invest earlier in their leases by considering financial and lease term incentives for early development.

In our view, it makes no sense to have leased acreage available to oil companies. And if oil companies are not going to develop those leases, they should be put back and made available to other companies who may make those investments. We are confident that our continued focus on responsible oil and gas development will maintain and accelerate the decline of oil imports.

Despite this evidence, some have suggested that domestic oil and gas development is in decline and that high gas prices are due to limited production. Again, the facts tell a different story. Ranking Member Cummings discussed the fact that oil prices set on a global basis.

And let me say that our permitting is also not a constraint. Today we have 7,000 approved permits to drill on onshore resources that are sitting on the shelf and not being used. Again, 22 million of acres have been leased and are available for development.

In the offshore, as I will discuss in the Q and A, after the Macondo well situation and the need to upgrade safety standards, we are back in business in the Gulf, with 55 new permits in the shallow water and 14 new permits in deep water. In the shallow water, we are at approximately the same pace of permitting that we were in 2009. And we are in a strong process that we are strongly processing our deep water permits as well.

My time is up, I would like to just conclude by saying we are increasing our oil and gas production at the same time that we are reforming the former Minerals Management Service.

And Chairman Issa, I know you have had a personal interest in that, and I hope I will have an opportunity to provide a little more information in the Q and A about the pace of our reform effort. Thank you.

[The prepared statement of Mr. Hayes follows:]

**STATEMENT OF**
**DAVID J. HAYES**
**DEPUTY SECRETARY**
**OF THE DEPARTMENT OF THE INTERIOR**
**BEFORE THE**
**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**
**ON**
**FACILITATING THE RESPONSIBLE DEVELOPMENT OF**
**OIL AND GAS ON OUR PUBLIC LANDS AND WATERS**

**May 24, 2011**

Chairman Issa, Ranking Member Cummings, and Members of the Committee, I am happy to appear before you today to discuss the Department of the Interior's role in the Administration's efforts to facilitate the responsible development of oil and gas resources from our public lands and waters.

During the past two years Secretary Salazar and I, and others, have testified on the Department's activities in the wake of the *Deepwater Horizon* event, including the Department's role in containing the leak; restoring the environment; and reforming the offshore energy program. We have also appeared before Congress many times to discuss the President's goals, and the Department's actions, to advance the development of renewable energy resources and to promote the responsible development of conventional resources on our public lands and waters.

**Working for a Secure Energy Future**

President Obama has said that "we cannot keep going from shock to trance on the issue of energy security, rushing to propose action when gas prices rise, then hitting the snooze button when they fall again." At the Department, we are working to expand cleaner sources of energy, including renewables like wind, solar, and geothermal, as well as clean coal and natural gas on public lands.

And we agree that facilitating the efficient, responsible development of our oil and gas resources is a necessary component of energy security. Domestic oil and gas production remains critical to our nation's energy supply and is a part of a broad energy strategy that will protect consumers and reduce our dependence on oil imports.

When President Obama took office, America imported 11 million barrels of oil a day. The President has put forward a plan to cut that by one-third by 2025. We are already making progress towards that goal. Last year, America produced more oil than at any time since 2003. To encourage production, the Administration is taking a series of steps to leverage existing authorities. These initiatives are part of the Administration's overall *Blueprint for a Secure Energy Future,* a broad effort to secure America's energy future and protect consumers by producing more oil at home and reducing our dependence on oil by using cleaner, alternative fuels and improving our energy efficiency.

In recent weeks the Administration has mapped out the next steps in this strategy, highlighting some of the actions that the Administration is taking using existing authorities to expand responsible and safe domestic oil production and calling on Congress to act on a series of legislative principles, highlighted later in this statement.

But we have also devoted considerable effort over the past year, in the wake of the tragic *Deepwater Horizon* oil spill, to putting in place a new – and necessary – set of rigorous standards for safety and responsibility in our offshore development program. Our aggressive reforms to offshore oil and gas regulation and oversight are the most extensive in U.S. history.

These reforms, which are discussed in more detail below, strengthen requirements for everything from well design and workplace safety to corporate accountability, and are helping ensure that the United States can safely and responsibly expand development of its energy resources consistent with our stewardship responsibilities. It is a program with a focus on worker and environmental safety, administered by an agency that has the authorities, resources, and support to provide strong and effective regulation and oversight. We have put industry on notice that they will be held to the highest standards in their oil and gas operations.

And consistent with these rigorous standards, the Department continues to facilitate domestic production by issuing permits. We have continued to issue shallow water permits in every case where the application complies with all of our heightened standards that apply to shallow water operations. To date, 55 new shallow water wells have been permitted since the implementation of new safety and environmental standards on June 8, 2010. Permits have averaged 6 per month since October 2010. Since mid-February when industry first demonstrated subsea containment, we have permitted 14 deepwater wells.

**Additional Measures to Facilitate Development**

Building on these important steps, the President's recent remarks highlight a series of additional measures that the Administration is taking using existing authorities. These include:

- Conducting annual lease sales in Alaska's National Petroleum Reserve, while respecting sensitive areas, and speeding up the evaluation of oil and gas resources in the mid- and south Atlantic Ocean;
- Holding Western and Central Gulf lease sales by mid-2012—including the Western and Central Gulf of Mexico lease sales that were postponed last year—consistent with the strengthened environmental review in light of lessons learned from the Deepwater Horizon oil spill;
- Creating new incentives for industry to develop their unused leases both on and offshore. Today, more than 70 percent of the tens of millions of offshore acres under lease are inactive, including almost 24 million inactive leased acres in the Gulf of Mexico, where an estimated 11.6 billion barrels of oil and 59.2 trillion cubic feet of natural gas of technically recoverable resources are going unused. Onshore, about 57 percent of leased acres – almost 22 million acres in total – are neither being explored nor developed;
- Extending drilling leases in the Gulf of Mexico that were affected by the temporary moratorium, as well as certain leases off the coast of Alaska. These measures will give companies more time to meet the rigorous standards that we have set in place for safe and responsible exploration and development;
- Coordinating an Alaska permitting process with a new, high-level interagency working group. A number of agencies within the federal government have mandates to ensure that Arctic development projects meet health, safety, and environmental standards. Using executive action, the Administration will formalize ongoing interagency collaboration and establish a high-level, cross-agency team to facilitate a more efficient permitting process in Alaska while ensuring that all standards are fully met.

The Administration also recently announced a series of legislative principles intended to provide a framework for the efficient and responsible development of our domestic resources. These include measures to advance three primary objectives: Provide Incentives for the Prompt Development of Oil and Gas Leases; Provide the Tools for the Federal Government to Oversee Offshore Oil and Gas Development Activities on a Timely and Effective Basis; and Ensure a

Fair Return for American Taxpayers and Accountability for Safety Violations and Oil Spills. Specifically, this framework would:

- **Provide Incentives for the Prompt Development of Oil and Gas Leases**
    - Amend the Mineral Leasing Act of 1920 to allow for oil and gas leases that are less than 10 years in length. Current law requires that all onshore oil and gas leases extend for a full 10 years. This removes the Secretary's flexibility to encourage more prompt investment in domestic oil and gas development by issuing leases with shorter terms.
    - Establish incentives for lessees with nonproducing oil and gas leases that will encourage companies to either get their leases into production in a timely manner or relinquish them.
- **Provide the Tools for the Federal Government to Oversee Offshore Oil and Gas Development Activities on a Timely and Effective Basis**
    - Codifying new safety and environmental standards for offshore oil and gas development that have been established through administrative procedures by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE);
    - Statutorily extend exploration plan approval time under the Outer Continental Shelf Lands Act to allow for appropriate environmental review;
    - Formalize existing research collaboration by authorizing an Ocean Energy Safety Institute to connect government, industry, academia, and outside experts devoted to developing cutting-edge safety, containment, and response capabilities;
    - Formalize the reorganization of the Bureau of Ocean Energy Management, Regulation and Enforcement and authorize BOEMRE to hire and maintain an expert workforce by:
        - Statutorily splitting BOEMRE into three entities: (1) Bureau of Ocean Energy Management responsible for managing offshore development; (2) Bureau of Safety and Environmental Enforcement charged with enforcing safety and environmental regulations; and (3) Office of Natural Resource

Revenue (ONRR) responsible for collecting and disbursing revenues from energy production; and

- Authorizing special hiring authorities for BOEMRE that allow the agency to address hiring for critical positions during times of need and at competitive salaries.

- **Ensure a Fair Return for American Taxpayers and Accountability for Safety Violations and Oil Spills**
  - Repeal portions of the Energy Policy Act of 2005 that expanded a now-outdated royalty relief program for offshore drilling operators thereby providing a better return to the American taxpayer;
  - Raise or eliminate the per-incident limit on access to the Oil Spill Liability Trust Fund to ensure that the Federal government can access the resources it needs to clean up an oil spill. The $1 billion per-incident cap on expenditures out of the Fund is insufficient and could constrain the federal government's ability to respond to oil spills;
  - Repeal arbitrary limits on liability for damages resulting from offshore drilling, which have served as an implicit subsidy for the oil and gas industry for two decades; and
  - Increase civil and criminal penalties for companies that fail to comply with the requirements of the Outer Continental Shelf Lands Act and the Department of the Interior's implementing regulations, which include safety and environmental standards.

Some of these principles are being further developed as legislative proposals within the Administration. Still others were proposed or supported by the Administration during the past year, such as the Administration's proposal to return a portion of any obtained civil Clean Water Act penalties collected from the *Deepwater Horizon* spill to the Gulf.

**Offshore Development: Necessary Reforms**

Over the months during and since containment of the spill associated with the *Deepwater Horizon* explosion, multiple reviews and investigations – some still ongoing – have resulted in reports indicating the need for change. Bodies ranging from the President's Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, the Department of the Interior's Inspector General, the Department's own Safety Oversight Board, to multiple Committees of the House and Senate, have indicated the need for reform not only of the way the Department does business but of the way oil and gas operations are carried out on the Outer Continental Shelf.

Many of the recommendations presented in these reports have validated the administrative actions and reforms we have been undertaking here at the Department to promote safety and science in offshore oil and gas operations. These changes were necessary to ensure that industry has the tools available to help prevent an accident like this from happening again.

We have put industry on notice that they will be held to the highest standards in safety and environmental responsibility in their oil and gas operations. As described briefly above, the Department, through the Bureau of Ocean Energy Management, Regulation and Enforcement, has promulgated necessary new regulations to bolster safety and to enhance the evaluation and mitigation of environmental risks. For example, the Drilling Safety Rule, prompted by the *Deepwater Horizon* event, put in place tough new standards for well design, casing and cementing, and well control equipment, including blowout preventers. Under it, operators are required, for the first time, to obtain independent third-party inspection and certification of each stage of the proposed drilling process. In addition, an engineer must certify that blowout preventers meet new standards for testing and maintenance and are capable of severing the drill pipe under anticipated well pressures.

In order to reduce the human and organizational errors that lie at the heart of many accidents and oil spills, BOEMRE has also introduced, for the first time, performance-based standards similar to those used by regulators in the North Sea. The Workplace Safety Rule was in process well before *Deepwater Horizon*, but as described in the Commission's report, it took a major accident to provide the impetus necessary for these standards to be imposed.

As a result of these new regulations, operators are now required to develop a comprehensive safety and environmental management program that identifies the potential hazards and risk-reduction strategies for all phases of activity, from well design and construction, to operation and maintenance, and finally to the decommissioning of platforms.

BOEMRE has also issued Notices to Lessees (NTLs) that provide additional guidance to clarify how operators must comply with existing regulations. NTL-06, issued in June of 2010, clarifies that current regulations require an operator's oil spill response plan to include a well-specific blowout and worst-case discharge scenario. NTL-06 also clarifies that operators provide the assumptions and calculations behind these scenarios. NTL-10, issued in December of 2010, clarifies informational requirements, including a corporate statement from the operator that it will conduct the applied-for drilling operation in compliance with all applicable agency regulations, including the new Drilling Safety Rule. This notice also confirms that BOEMRE will be evaluating whether each operator has submitted adequate information to demonstrate that it has access to, and can deploy, subsea containment resources that would be sufficient to promptly respond to a deepwater blowout or other loss of well control.

Once industry was able to demonstrate the ability to fully comply with these conditions, BOEMRE was able to resume issuing deepwater drilling permits. Since February 28, we have permitted 14 deepwater drilling wells after these applications complied fully with these more rigorous safety and environmental requirements, and demonstrated the ability to contain a subsea spill.

But one of the keystones of our reforms is the reorganization of the former Minerals Management Service into independent entities with distinct missions to oversee the leasing and energy development process, to regulate offshore drilling, and to collect the revenues from federal energy development. Having these three conflicting functions reside within the same bureau (MMS) enhanced the potential for internal conflicts of interest among the objectives of the agency. The process of reorganization began on May 19, 2010, when Secretary Salazar issued Secretarial Order 3299, which dissolved the MMS and called for the establishment of three new entities, including:

- The Bureau of Ocean Energy Management (BOEM), responsible for managing development of the Nation's offshore resources in an environmentally and economically responsible way. Functions carried out by BOEM will include leasing, plan administration, environmental studies, National Environmental Policy Act (NEPA) analysis, resource evaluation, economic analysis and the Renewable Energy Program;
- The Bureau of Safety and Environmental Enforcement (BSEE), which will enforce safety and environmental regulations. Functions to be carried out by BSEE will include

Offshore Regulatory Programs, research, oil spill response, and all field operations including permitting and inspections, which will include newly formed training and environmental compliance functions; and

- The Office of Natural Resources Revenue, the revenue collection arm of the former MMS and which has already become a separate entity within the Office of the Secretary.

By October 1 of this year, the offshore resource management function will be separated from the safety and enforcement function and thus, in BOEMRE's place, we will have the two brand new agencies mentioned above.

These reforms are also supported by the President's fiscal year 2012 budget, which requested additional resources essential to effectively protect our natural resources as well as to address the need for an efficient, effective, transparent, and stable offshore regulatory environment. Most critically, the budget request will provide for an increase in inspection capability, partially funded through higher user fees, that will enable BOEMRE to conduct additional inspections and oversee high risk activities, as well as an investment in permitting to sustain efficient review, processing and approval of permits.

**Onshore Development: Restoring Balance to the Process**

The Department has also moved forward in a safe and responsible manner to promote oil and gas development onshore.

In 2010, conventional energy development from onshore public lands produced 14.1 percent of the Nation's natural gas and 5.7 percent of domestically-produced oil. Onshore oil production from public lands increased 5 percent over the last year, from 109 million barrels in 2009 to 114 million barrels in 2010. And total domestic natural gas production in 2010 was 26.9 trillion cubic feet, a 5 percent increase from 2008 and the highest level in more than 30 years.

There is also no shortage of available federal lands already leased for oil and gas development and permitted for drilling operations. As of January 2011, BLM has leased more than 41 million acres of federal lands for oil and gas development. Industry is currently producing on about 12 million of those federal acres, about 29 percent of leased acreage. BLM also held 29 oil and gas lease sales last year, and will hold 36 sales on public lands this year.

These, and future, sales are benefitting from necessary reforms that the Department has put in place that require adequate planning and analysis to identify potential areas with minimal environmental impacts and to avoid time consuming and costly litigation. The Department's balanced approach to responsible conventional energy development combines these reforms with effective budgeting to provide appropriate planning and support for conventional energy development, which has been the target of increased appeals and protests in recent years.

Of all the oil and gas parcels identified for lease nationwide in 2009, 49 percent were protested and, of those, more than half had to be withdrawn from leasing. In contrast, just over 1 percent of the parcels offered in 1998 were protested.

In response to this broken process, these reforms focus on making oil and gas leasing more predictable, increasing certainty for stakeholders, including industry, and restoring needed balance to the development process. They include:

- engaging the public in the development of Master Leasing Plans prior to leasing in certain areas where significant new oil and gas development is anticipated. The intent is to fully consider other important natural resource values before making a decision on leasing and development in an area;

- ensuring potential lease sales are fully coordinated both internally and externally, including public participation, and interdisciplinary review of available information, as well as on-site visits to parcels prior to leasing when necessary to supplement or validate existing data; and

- requiring an "extraordinary circumstances" review screen before applying the categorical exclusions in the Energy Policy Act of 2005 to oil and gas drilling activities on BLM lands.

We are also making progress processing permits to drill – BLM processed over 5,200 such permits in fiscal year 2010. And BLM continues to strengthen its Oil and Gas Inspection, Enforcement, and Production Accountability program, where it has begun a pilot program that uses risk-based inspection protocols for production inspections. Each case is evaluated on a number of risk factors, including production, history of compliance, and date of last inspection. The BLM plans to expand this risk-based strategy to the other types of inspections it performs with the goal of maximizing the efficient use of inspection staff to better meet the inspection goals and requirements in the future.

**Improving Our Regulatory Programs**

Finally, Mr. Chairman, I want to mention the Department's implementation of President Obama's Executive Order 13563, "Improving Regulation and Regulatory Review," issued in January. In response to that order, the Department asked the public for ways to make its regulations less burdensome and more effective and we facilitated that review by setting up a webpage on which the public could access and review our regulations and could submit suggestions.

The goal was to gather the best ideas from the public on how to fix Interior regulations that need fixing, eliminate those that are no longer needed, and make our programs work better. We have been reviewing the comments received and are finalizing a Department-wide preliminary regulatory review plan that will provide a process for reviewing existing significant regulations and identifying those regulations that can be made more effective or less burdensome while still achieving regulatory objectives.

This process should result in improved regulatory functions to protect the environment, honor our trust obligations, manage our public lands and resources, and promote clean energy independence.

**Conclusion**

Mr. Chairman, we have made significant strides in reforming the way the offshore oil and gas program is carried out here at the Department of the Interior and on the Outer Continental Shelf. We have raised standards and promoted safety and science in offshore oil and gas operations. Our onshore oil and gas leasing reforms restore balance to the process, provide ample opportunity for public input and give the industry greater assurance that when they lease a plot of federal land, that they will be able to drill on that land.

Consistent with the framework presented by the *Blueprint for a Secure Energy Future*, we are working to secure our energy future by ensuring the potential for renewable energy development on our public lands and waters is realized. And we are pursuing the safe and responsible development of our conventional energy resources here at home.

This concludes my statement and I am happy to answer any questions you or other Members of the Committee may have.

Chairman ISSA. Thank you.

I recognize myself for 5 minutes.

I first ask unanimous consent that the majority report be placed in the record since it is exactly the opposite, no surprise, of the minority report.

Without objection, so ordered.

[The information referred to follows:]

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, <u>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.</u> (emphasis added)
>
> ...And I think <u>this is a reasonable policy, given the overall objective</u> 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

[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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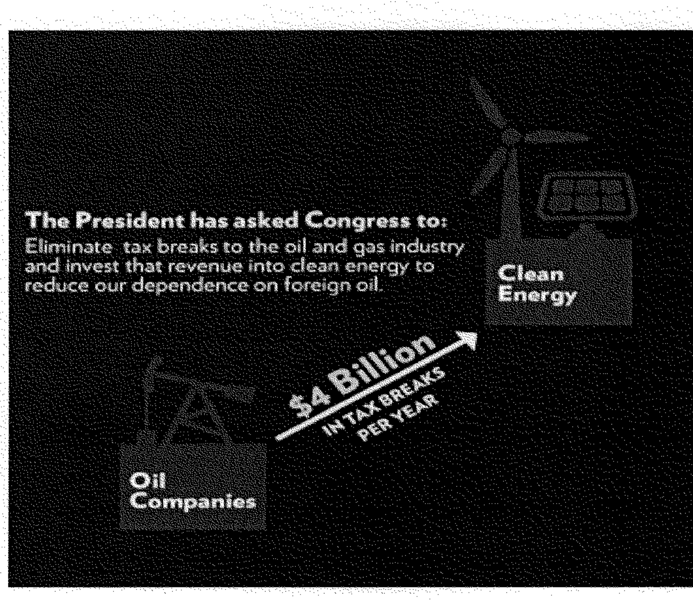
28 Robert Bryce, *Obama's Happy Talk on Energy*, NATL. REVIEW (May 10, 2011).
29 *Id.*
30 Robert Bryce, *Biofuel Delusions*, COUNTERPUNCH (Dec. 31, 2010).
31 The President on Jobs & Gas Prices, White House blog (May 6, 2011) *available at* http://www.whitehouse.gov/blog/2011/05/06/president-jobs-gas-prices-read-his-remarks-download-graphic.
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
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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. <u>GULF OF MEXICO</u>

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.

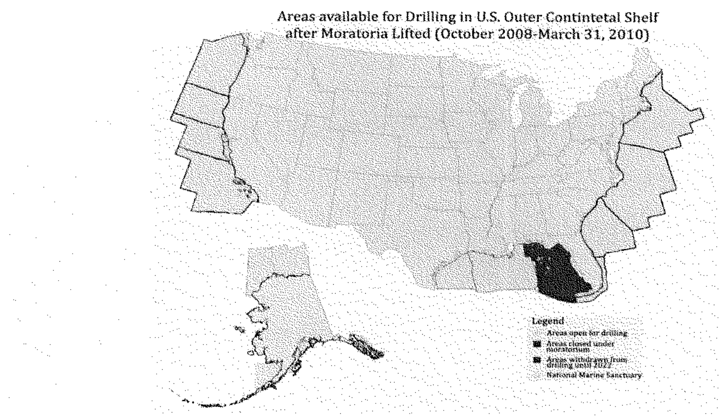
82 *Id.*

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.

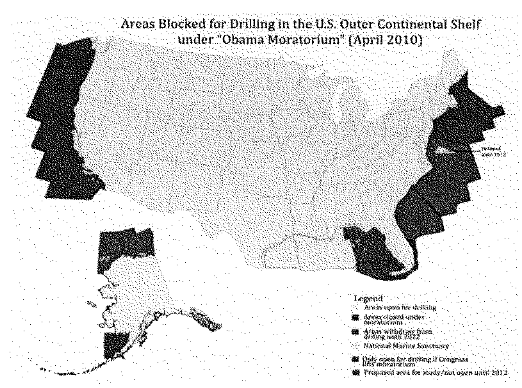
85 CURRY L. HAGERTY, OUTER CONTINENTAL SHELF MORATORIUM ON OIL AND GAS DEVELOPMENT 7 (CRS 2011).

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

[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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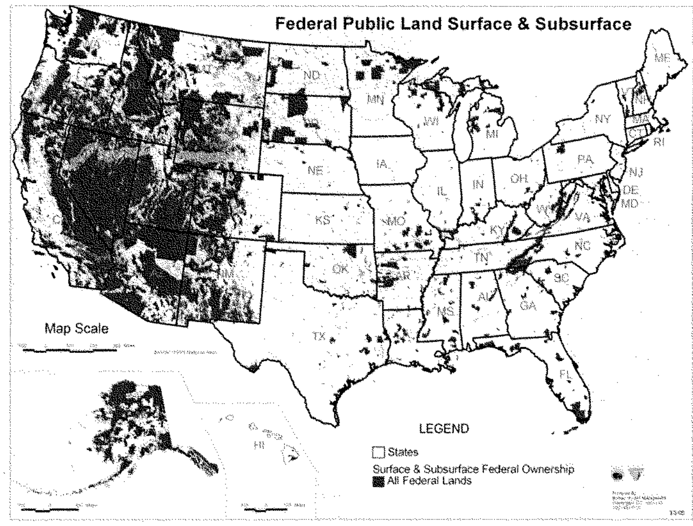
[171] H.R. 39, 112th Cong. § (2011).
[172] Oil and Gas, U.S. Department of the Interior Bureau of Land Management (last visited May 16, 2011), *available at* http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas.html.
[173] Carol Hardy Vincent, *Federal Land Ownership: Current Acquisition and Disposal 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

[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

[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]

<u>Wild Lands Policy</u>

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.

<u>EPA's Contribution to NEPA Delays</u>

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,

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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Chairman ISSA. Mr. Secretary, you know, in this town, everyone is entitled to an opinion, but not facts. Why can you name one reason that in Alaska the Federal Treasury has received $2.2 billion in Federal lease money during your administration and additionally another billion has been invested by the oil companies in exploration, and yet they have gotten nothing back, in no small part because Shell and others have been delayed in actually receiving the permit? So aren't you willing to take at least some responsibility for the fact that a lease is not a permit? And when you call it idle, are you really saying it's idle? And this is the real question, are they idle, or are they not yet producing? Would you please explain yourself on your figures? Isn't it true your figures are what you say idle, not yet producing, and it can well mean that money is being invested?

Mr. HAYES. The term, as described in the report that was provided to the President and I am sure your staff has available, made it clear that by idle, it means that there is no active exploration or production occurring.

Chairman ISSA. Does that mean that there is no permit request or environmental impact being done?

Mr. HAYES. There may be some activity, but there is no exploration activity.

Chairman ISSA. So, again, a lease costing $2.2 billion in Alaska, the stockholders would sue and win if they were—if it was not in the best interest of the company to do everything they could to get a return on their $2.2 billion; isn't that true?

Mr. HAYES. I can't speak to a shareholder's rights. I do know that we are working with Shell very closely to address their interests, and we have just in the last month received exploration plans that we are processing for the potential exploration of those permits next summer.

Chairman ISSA. Right, which is 1 year later than it would have been if they had been processed in a timely fashion.

You know, there is a belief that in fact prices are artificially high because of speculators. I am not going to debunk that. I am going to ask you a simple question. If we got all of the resources, of oil and natural gas, from both Federal and private lands that are estimated to be available, isn't it true that we could be energy self-sufficient for 100 years? Isn't that what all the studies show? I am not saying it is an easy goal, but with fracking and other technology, isn't it true we could raise at least 40 percent, which would put us marginally within self sufficiency, if you include Canada, it would make us self sufficient? Yes or no, isn't that true?

Mr. HAYES. I don't know if you are referring to technically recoverable resources or economically recoverable resources.

Chairman ISSA. Well, at $100 a barrel, isn't it more than an enough to be economically recoverable, not just technically recoverable?

Mr. HAYES. I really don't know the answer to that question.

Chairman ISSA. OK, well, if you would answer for the record I would appreciate it.

Mr. HAYES. Certainly will.

Chairman ISSA. For the administrator, I have just a very simple question. Both sides will have other questions that will probably be more thoughtful in some ways. But in your opening statement, you talked about the requirement to make sure that these drilling rigs that were, "as much pollution as a refinery." Isn't it true that when China is drilling just south of our border in Cuban waters, isn't it true that they do just as much polluting or more than anybody producing just slightly north of that in U.S. waters? Isn't it true that the amount of global pollution will actually be higher if it is produced outside the United States than if it is produced inside the United States, yes or no?

Ms. JACKSON. That is certainly possible. I don't know what emissions come from Chinese rigs. What I can say is——

Chairman ISSA. Oh, yes you do. You know that we have some of the highest standards of emissions in the world, isn't that true?

Ms. JACKSON. Our standards are high because under the Clean Air Act, passed by Congress, we are told to protect the health of Americans, including from pollutants that are not global pollutants; they can be quite local, like SO2, particulate matter and smog, which can affect everyone from those on a cruise ship in Alaskan waters to recreational——

Chairman ISSA. I appreciate that, but isn't it true that the primary pollutants, especially those that you were talking about earlier in fact are global pollutants?

Ms. JACKSON. They are certainly admitted globally, sir, but have local impacts.

Chairman ISSA. Last but not least, isn't it true that more oil has been spilled in the Pacific by importation than by actual drilling over the last 30 years?

Ms. JACKSON. I don't have the figures.

Chairman ISSA. I do. It has been.

I now recognize the ranking member.

Mr. CUMMINGS. Let me make it clear, Administrator Jackson, I want us to have high standards. I want us to set a model for the world. We are—this is the United States of America, and we are better than that.

On May 12, 2010, Rex Tillerson, the CEO of ExxonMobil, testified before the Senate Finance Committee along with CEOs of five other major oil companies. During this testimony, he estimated that without excessive speculation, oil would be adding—trading at $60 to $70 a barrel instead of roughly $100 a barrel. Are either of you familiar with these comments, Ms. Jackson?

Ms. JACKSON. Yes, sir.

Mr. CUMMINGS. And you, Mr. Hayes?

Mr. HAYES. Yes, I recognize.

Mr. CUMMINGS. Well, he is not alone. On April 11th, Goldman Sachs issued a warning to its investment clients—now this is Goldman Sachs—that says speculators may be inflating the price of oil by as much as $27 a barrel, so that is very close to Mr. Tillerson's estimate of about 30 percent.

Mr. Hayes, are you aware of that estimate by Goldman Sachs? And are you aware, Administrator Jackson?

Mr. HAYES. I am, I am, Mr. Ranking Member. And I also note that your staff paper laid this out in quite a bit of persuasive detail.

Mr. CUMMINGS. And you, Ms. Jackson?

Ms. JACKSON. Yes, sir.

Mr. CUMMINGS. U.S. Energy—let me turn to a different estimate. The U.S. Energy Information Administration [EIA], is the Nation's foremost independent—independent—source of energy analysis. In 2009, EIA examined the potential impact of expanding domestic oil drilling to the Outer Continental Shelf of the Atlantic and Pacific Coasts and the eastern and central regions of the Gulf of Mexico. EIA issued a report concluding that there would be no, and I emphasize, no changes in gas prices by the year 2020 and that there would be a decrease of only 3 cents per gallon by the year 2030.

Mr. Hayes, are you familiar with the EIA estimate?

And Administrator Jackson, are you familiar?

Mr. HAYES. I am.

Ms. JACKSON. Yes, sir.

Mr. CUMMINGS. Well, let me put all of this together. On one hand, you have oil company CEOs and investment banks saying that excessive speculation may be inflating prices by 30 percent. Now that is the oil company CEOs and investment banks. On the other hand, you have the Energy Information Administration saying that opening up vast portions of the Outer Continental Shelf will result in only a 3 cent difference 20 years from now.

So the question is, let me ask you both and let me ask you as drivers and consumers, if you could save a dollar per gallon or only 3 cents per gallon, you would save the dollar, wouldn't you?

Ms. JACKSON. Yes, sir.

Mr. HAYES. Yes, sir.

Mr. CUMMINGS. Here is my point, this committee has a tremendous and awesome opportunity to really help everyday Americans, like the ones I saw going to work this morning in Baltimore, getting up at 5:30 and filling up their tanks and it costing them more. It is our duty to help them.

But we have limited resources, so we have to prioritize. It seems to me that addressing excessive speculation offers a much, much better opportunity to help lower gas prices rather than focusing our efforts on expanding domestic drilling, which will help oil company profits but will make little difference on the price of gas as people try to get to work every day, try to get to church on Sunday, try to take their kids to the baseball game, they try just to go out, not go out to Disney World from Baltimore but just go to the local Arby's and have a lunch.

Even if these estimates are half of what the experts predict, they still dwarf any conceivable cost benefit we get from additional drilling.

Let me just close by quoting CFTC commissioner Bart Chilton, on April 20, 2011, he said this, "this is a Wall Street premium on gas prices."

He went on to say, every time folks fill up their tanks, they can expect that several dollars are due to speculation.

I didn't say that; he said that.

And so I hope that we have a chance to investigate this issue more in detail in the future. And I will say it until the day I die: We have a duty as Members of this Congress to leave our children with a better environment than the one we found on the day we were born.

With that, I yield back.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Utah, Mr. Chaffetz, for 5 minutes.

Mr. CHAFFETZ. My understanding is the Department of Energy was created on April 1, 1977. I remember as a small child being with my dad when we would go to the gas lines and couldn't get gas. So we created this Department of Energy, but over the course of time, when we were importing roughly, and it is very rough numbers, 40 percent of our oil needs were being imported, that number moved closer to 60 percent.

The Federal Government has failed under two different types—very different types of administrations to wean our way off of the need to import oil from overseas. And yet what I find now is every time I turn around and you see companies willing and wanting to invest heavily with the hope and the idea and the speculation that they are going to be able to actually produce some energy resources, and not just oil, but natural gas, coal, those types of things, that it is the EPA and the BLM, the Department of the Interior, that are putting up so many road blocks that we can't extract the resources that we have in our own very back yard.

Now one of my core questions here is particularly for the BLM—I am from Utah; I am a Representative from Utah—is that it appears that the administration in its frustration and in its inability to actually have legislation passed is going to go ahead and use its rulemaking authority and just bypass the Congress and put up some rules and roadblocks and implement things that would never pass this body. Even when the Democrats had the House, the Senate and the Presidency, they couldn't pass cap and trade.

The Red Rock Wilderness Act is something that has been introduced many times here in Congress, it has never even come close to being implemented. And then the Wild Lands Policy, which kind of 2 days before Christmas was implemented, that should be a flashing red light to the American public that something was wrong when that was introduced.

My question for the Deputy Secretary here, in citing those, isn't it the policy of the BLM to just go ahead and implement this stuff anyway? I mean, at what point does the BLM say, OK, we are going to use this information, and we are just going to go with it anyway?

Mr. HAYES. Congressman, the intent of the reform efforts that BLM has had is to provide more clarity for industry and for other interests in how the public lands——

Mr. CHAFFETZ. But that clarity should by based on what is passed in the U.S. Congress.

Mr. HAYES. Absolutely. Section 202 of the Federal Lands Management Policy Act provides the authority and responsibility for BLM to make the——

Mr. CHAFFETZ. But not before it becomes law, correct?

Mr. HAYES. It is law already.

Mr. CHAFFETZ. No, if something hasn't become law, if something hasn't become law, then you are not supposed to be doing it, right? Let's put up—let me deal with this first slide here. This is the official map from the BLM, severe lake tracks map, and it goes through with the number. In one of those designations, if you look over at the right, it talks about as one of the things the Red Rock proposal. Why does the BLM issue an official map with the Red Rock proposal designated on it when it has yet to become law?

Mr. HAYES. There is simply a map. There is no regulatory implication to the Red Rock wilderness area at all, Congressman. What we are trying to do is reduce the problem that has developed in the last several years, when prior administrations essentially leased whatever industry nominated wherever, and the protest——

Mr. CHAFFETZ. You cannot—that is not true, that is such a miscalculation. That is such a gross exaggeration of the reality. You can you not sit here and say, they just leased whatever. That is not true. There are rules and regulations and they abided by those. It wasn't just sign up and you get it.

Mr. HAYES. The facts are——

Mr. CHAFFETZ. You are losing total credibility when you make a statement like that.

Mr. HAYES. The facts are, Congressman, that in 1998, 1 percent of the leases nominated and in fact leased to industry were protested. When we came into office, 48 percent of all leases were being protested because of broadscale concerns that BLM was not taking into account its multiple-use mission and leasing in areas that made sense. We want to reduce the——

Mr. CHAFFETZ. My time—I have just a few seconds here, I am sorry. On December 22, 2010, Secretary Salazar issued Special Order 3310, which created the wildlands, but it was also the policy of the Department of the Interior, it seems to have actually implemented that even though when we pass the CR, there is no funding for the wildlands. Is it the policy, yes or no, to implement the wildlands? Is it the policy of the BLM to actually implement——

Mr. HAYES. We will not implement the wildlands policy. We will honor the congressional rider.

Mr. CHAFFETZ. Thank you. My time——

Chairman ISSA. Would the gentleman yield? Should we on the dais consider the amount of environmental leftists who sue and protest is the basis for whether or not these are valid leases or not? So a growth in lawsuits exponentially is in fact simply a growth and a difference between the Clinton administration and the Bush administration as far as who decides to sue, right?

Mr. HAYES. I would say, Congressman, that it is indicative of an additional challenge for industry and for other parties to develop their oil and gas resources in an economic and timely manner. No one wants that sort of litigation.

Chairman ISSA. OK, my time has expired. The gentleman from Illinois, Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman.

Mr. Secretary, the world seems to be focus on just one spill, the Horizon spill. Could you give some quick summary of how much—how many spills take place in a routine year, not just in water, but in Alaska, the degree of these, the incident that took place in Prudhoe and the fact that this isn't just an isolated incident as bad as it was.

Mr. HAYES. I would be happy, Congressman, to give you those statistics for the record. I don't have them offhand. There are a number of spills. Obviously, the Macondo Well was enormously anomalous in its size, but there are routine spills that occur.

Mr. QUIGLEY. In the ocean?

Mr. HAYES. Yes.

Mr. QUIGLEY. And in Alaska, the same—hundreds in the course of the year, correct.

Mr. HAYES. I am not sure there are hundreds that occur in Alaska.

Mr. QUIGLEY. I promise you, you will find that when you give us these numbers. And the significant spills which have taken place already, including Prudhoe Bay, you would pass that on as well?

Mr. HAYES. Certainly will, Congressman.

Mr. QUIGLEY. Ms. Jackson, I know you had limited time at the beginning of your introduction, could you elaborate to a certain degree on the issues with fracking and the concerns that you have from your initial analysis of the issues?

Ms. JACKSON. Certainly, sir.

First, let me start by saying that in general, States have been regulating various aspects of oil and gas exploration and recovery and are on the front lines of that.

EPA has certain authorities under the Clean Water Act and the Clean Air Act. One of the things we are doing in addition to our authorities as mandated by Congress is a study of fracking to determine its impacts on drinking water.

That is very much in the minds of the American people and I assume Congress, which is why they asked us to do it. So as we do that study, the other thing we have said, because we will not see initial results from that study until the end of next calendar year, is that we will, when asked or when we become aware of an issue that may be a violation of the Clean Water Act, the Safe Drinking Water Act or the Clean Air Act, respond, and we will provide guidance on those areas that are becoming areas of concern or challenges for the regulated community as we see our country move into fracking in new areas such as the Marcellus Shale.

Mr. QUIGLEY. It is not just the contamination of the water; it is the amount, right? This is a country that is facing water shortages in many areas, correct? The amount, the volume that is used in this process.

Ms. JACKSON. That is correct, sir. It takes millions of gallons to frack a well. And what happens is that water is injected. Oftentimes that is not a regulated activity at the Federal level, but then the water has to come back. It is flowback water, and that water and the disposal of that water is an enormous amount of water as well as it can bring up contamination, such as radiation, in low levels that may be in the formation. That is part of what the study is looking at as well in addition to quantity.

Mr. QUIGLEY. Currently, to the limits of your knowledge at this point, what happens to that water that comes back up?

Ms. JACKSON. Well, a mixture of things, depending on the area of the country, there are some places where there are just enormous pools where this water is stored and where there is some amount of concern about whether that will be regulated and how those pools will be closed. In other areas, we learn that recently—until recently, when the State of Pennsylvania asked them to voluntary cease, that producers were sending the water to publicly owned treatment works. That is a regulated activity under the Clean Water Act. And so we have concerns and are working with the State of Pennsylvania to ensure that is being done according to law and to protect citizens, because those publicly owned treatment works eventually discharge into surface water, which can be drinking water. And in other cases, it is put back down the hole in an underground injection disposal or recycled and reused.

Mr. QUIGLEY. Thank you.

I yield back.

Mr. CHAFFETZ. Will the gentleman from Illinois yield?

Mr. QUIGLEY. Yes.

Mr. CHAFFETZ. Going back to Deputy Secretary Hayes, Beverly Gorney, who is the spokeswoman for the Wyoming BLM State office, who said this on April 21st, when asked why BLM pulled six oil and gas drilling leases new Adobe Town, Wyoming, "They have everything to do with the secretarial order on wildlands." Was she wrong or right?

Mr. HAYES. I don't know the specifics. All I do know is that we have informed everyone in the department that we are complying with the congressional rider dealing with wildlands.

Mr. CHAFFETZ. So there should be absolutely no activity in any way, shape, or form anywhere within the BLM to try to implement the wildlands.

Mr. HAYES. No designation of wildlands will occur while that rider is effective, Congressman.

Mr. CHAFFETZ. And there should be no preliminary work on putting that in place, correct?

Mr. HAYES. The order's focus is on the designation of land as wildlands. The authority to inventory lands with wilderness characteristics is clearly continuing under the Federal Land Management Policy Act, but I repeat and to your point, we will not designate any lands as wildlands in respect and compliance with the congressional direction.

Mr. CHAFFETZ. Thank you.

Thanks to the gentleman from Illinois.

Chairman ISSA. Thank you. We now go to the gentleman from Pennsylvania, Mr. Meehan, for 5 minutes.

Mr. MEEHAN. Thank you, Mr. Chairman.

Administrator Jackson, thank you for taking the time to appear before us today. I am not aware that we really had an opportunity to speak with you before. In my district of southeastern Pennsylvania, a big issue related to energy relates to refineries. I have some 7,000 jobs that are tied to the two refineries in my district, which is a good thing, because according to your own report, the number of U.S. refineries declined by almost half since the 1980's here in the United States. And employment in the refining segment has declined by 13 percent in the last decade. Now, most of those refining opportunities have actually moved over to places like India and China and Nigeria, where they are building new refining capacity.

In fact, the refineries, as you point to health, and I think that is an appropriate concern, are facing huge regulatory challenges. One of my refineries has spent 20 percent of its total value in regulatory compliance. That is, a $5 billion capitalized company spent $1.3 billion on compliance just in the last recent, recent history. And I understand the health, but what point in time, while health is an issue with respect to people, at what point in time do the welfare of fish start to take precedence over the creation of jobs?

Within one of my refineries, there is now a regulation called clean water cooling water intake structures under 316(b), in which this one refinery is now being asked to put in a cooling tower at the cost of $350 million, the effect of which will be so that they can return the water back to the Delaware River at a 2 percent or 2 degree warmer texture or cooler temperature, because apparently the fish are thrown off by the warmer water of 2 degrees.

The impact of that $350 million additional cost, may will put that refinery that employs close to 2,000 people in my district on the line at a point in time where jobs are at stake and at risk of going overseas, would you please tell me specifically how does the EPA decide whether the loss or creation of jobs directly as a result of a regulation should be part of a thorough economic analysis?

Ms. JACKSON. Sir, thank you. I would just like to point out that while the number of refineries has declined, refining capacity in this country has actually increased. So we have fewer refineries refining more and more product.

Mr. MEEHAN. Capacity here, but those jobs are going overseas, so tell that to the people in my district.

Ms. JACKSON. My point, sir, is there is as much oil returning from refineries or more than 20 years ago. So what is actually happening is that technologically, they are becoming less employee-intensive and yet able to process more oil, and that is not as a result of——

Mr. MEEHAN. Those are refineries in the Gulf Coast, I am aware of that. I have refineries that have been operating for 50 years that are struggling to continue to compete, and most of the struggle comes at virtue of the regulations. I am not arguing with regard to—I am not making that point here today because most of it relates to health. I am talking about the welfare of fish.

Ms. JACKSON. Well, sir, let me speak to that issue directly. We recently proposed a rule—it hasn't been final—on intake structures, not only for refineries but for power plants. That rule relies heavily on the States. The States are delegated authorities for implementation of the majority of Clean Water Act permits. So although I don't know the specifics of the permit that has been proffered by——

Mr. MEEHAN. You are saying this is a State of Pennsylvania responsible for this?

Ms. JACKSON. Sir, I will double-check those facts, but my belief is that, having run a State program, States proffer proposed permits based on their analysis of requirements.

I would offer this as well. It is not simply the welfare of fish, as you put it, but the ecosystem health that the Clean Water Act intends to restore.

Mr. MEEHAN. Where does the ecosystem of the health of the 7,000 jobs in my district come into play. I asked you a specific question, whether the loss of creation of jobs directly as a result of regulation is part of a thorough economic analysis. I need a specific answer because, just on May 4th, your deputy assistant, Mathy Stanislaus, specifically said, we do not take a look at jobs. So I want to know the answer; do you directly take a look at jobs?

Ms. JACKSON. We have done it, sir, although we have not done it in every example. Let me explain a little bit about that.

We do an economic analysis if it is mandated by law. We also do it in compliance with executive orders issued by the President Clinton that have survived through three administrations. Because of the times we are in, we have leaned heavily into jobs analysis around the rules that have been proposed under the Obama administration.

Chairman ISSA. The gentleman's time has expired.

We now go to Mr. Yarmuth, if he is ready, for 5 minutes.

Mr. YARMUTH. Thank you, Mr. Chairman.

Welcome, Administrator Jackson and Deputy Secretary Hayes.

I have a question about in relation to oil supplies. Is there to your knowledge a serious shortage of oil supplies in the world right now?

Ms. JACKSON. There is an increasing world demand for oil, and certainly, in this country, I think as the deputy secretary said, demand is down over the last year.

Mr. YARMUTH. And isn't it true that domestic production under the Obama administration has actually increased?

Mr. HAYES. Yes, Congressman, it has. It has increased substantially, and oil imports have declined by 7 percent in the last 3 years.

Mr. YARMUTH. So, in fact, whereas we heard a lot about "drill, baby, drill" under prior administrations, the actual evidence shows that production has expanded under this administration where it actually hadn't under previous administrations.

Mr. HAYES. That is correct, Congressman.

Mr. YARMUTH. When we are talking about prices at the pump, and there are a lot of contributors to pricing in oil companies—I know in my district, my attorney general, Jack Conway, has on two separate occasions taken on refiners and distributors, so that when we talk about gouging, and people say, is there any evidence of gouging from big oil companies, that is not the only aspect of gas pricing that we need to be concerned about in terms of questionable activities; is that right?

Mr. HAYES. That is correct, Congressman. As you know, Attorney General Holder has a task force looking into all of these issues.

Mr. YARMUTH. The other question—I don't want to belabor oil pricing too much, but I did want to get that one point on the record about domestic production. But on another subject that the administrator and I have talked about a number of times, in my State, a State that is a large producer of coal, we are constantly informed by the industry that the EPA through its actions is actually threatening employment in our State. There are ads being run now in Kentucky that say, there are 18,000 good coal-mining jobs in Kentucky, and the EPA is threatening those jobs.

Administrator Jackson, would you like to comment on the question of EPA activity vis-à-vis the coal industry and employment?

Ms. JACKSON. Yes, thank you. I certainly can't answer for those ads, but I do believe they are misleading.

What EPA is doing in Appalachia in particular is addressing the water pollution issues associated with a practice known as mountain top surface mining, mountain top mining, mountain top removal mining. And in that practice, because of the way that spoils, the remains of the noncoal portions of the mountain top are disposed there are increases in solids in the water that—selenium and other metals that peer-reviewed science and literature continues to show over and over again are quite problematic for the health of those ecosystems. And because they are headwaters, it can become a problem for communities downstream.

EPA has worked under draft guidance that we are about to finalize after rounds of public comment to give clear guidance to mining companies, to State officials, as to how we will implement our authorities under the Clean Water Act to try to minimize that pollution.

Mr. YARMUTH. And in terms of employment, you may not know the figures, but 30 years ago, before mountain top removal became a widespread practice in Appalachia, there were 55,000 coal-mining jobs in Kentucky. And in fact, going from 55,000 to 18,000 was not the result of any EPA action because EPA was largely, until your administration, was largely basically apathetic toward that process.

One of the things that I am constantly impressed with, with regard to the mountain top removal issue, is that the citizens of eastern Kentucky come to my office and bring water that they took from wells on their property and so forth and out of their tap, and it is water that no one would want to drink or want their children to drink.

And so while I know that there has been a number of initiatives before this House and before this committee to basically incapacitate EPA in its ability to protect the citizens of my State and their children, I would like to say that if House Republicans or if anyone has a problem with our environmental laws, they ought to make—take the initiative to change the law. If they want to move to eliminate the Clean Water Act or Clean Air Act, they ought to do that, instead of taking the cop off the beat, which have been the steps recommended by this House.

With that, I yield back.

Chairman ISSA. The gentleman's time has expired.

We go to the gentleman from Texas, Mr. Farenthold, for 5 minutes.

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

I did have a couple of questions. I would like to start with Administrator Jackson. There are a lot of folks in Texas who are kind of getting the impression the EPA has it out for us.

We have had a pretty good system in place under the Clinton administration; came up with a flex permitting system for various refineries. Under that system, we saw a decrease over a 9-year period of 27 percent in total air emissions.

Now the EPA is stepping in and saying that flex permitting system isn't good enough, and it is creating all sorts of regulatory problems with the EPA trying to redo what we have been doing pretty well for about 10 years.

I kind of subscribe to if it ain't broke, don't fix it. Can you tell me why the EPA is unhappy with Texas and convince me it is just something more than you guys don't like us very much.

Ms. JACKSON. No, sir, I certainly like Texas very much. I have family members there.

Let me just go over a couple of things. It was actually the George W. Bush administration that made the determination that the flexible permits in the State of Texas did not comply with the Clean Air Act. And it was then left to us in the Obama administration to try to find a way out of that morass.

We have worked with the largest flexible permit holders. And I was just briefed on this yesterday. And I believe, with one notable exception, which we are still working on, we have worked them to a place where their permits are now compliant with the Clean Air Act.

It took work on their part, and so I want to commend the regulated industry for that. And I think we are in a better place. Because where that leaves us is with permits that are enforceable under law, are transparent and also that give industry the ability to do their job.

Mr. FARENTHOLD. And now you all are also looking at it permitting greenhouse gas emissions under Title V. It seems the last Congress specifically said we really weren't interested in doing that right now under cap and trade. Why are you all pursuing that considering that even the last Congress wasn't able to pass that out?

Ms. JACKSON. Well, two things. First, we are not pursuing cap and trade under the Clean Air Act. And it is my opinion, I have said this before, that we cannot, and we will not.

We are pursuing regulation of greenhouse gas emissions under the Clean Air Act because of a Supreme Court decision that essentially found in 2007 that greenhouse gases were covered under the Clean Air Act and that EPA needed to make a determination as to whether or not greenhouse gasses cause a threat to public health and welfare, which is the statutory threshold for——

Mr. FARENTHOLD. I apologize for cutting you off. I only have a couple of minutes, and I wanted to go on to Mr. Hayes for a second and talk about drilling in the Gulf of Mexico.

There has been a whole lot of hoopla on that. We are spending a whole lot of time arguing about whether permits are coming out at all and how fast they are coming out and all. Isn't it true that Mexico has some drilling going on in the Gulf of Mexico; China is undergoing—issuing leases just right off our coast, basically, in the Gulf of Mexico, for various oil companies to drill on Chinese and Mexican lands.

Mr. HAYES. Congressman, Mexico is looking at potential deepwater drilling. The Secretary and I were in Mexico City about a month ago meeting with the energy minister, and we are actually working with them. And the President has indicated his interest in applying the same safety standards that we are applying in the United States.

Mr. FARENTHOLD. And Cuba, as well, is doing it. I don't think we are working as well with Cuba as Mexico.

Mr. HAYES. That is a fair point, Congressman. Cuba apparently is considering oil drilling off the coast——

Mr. FARENTHOLD. Wouldn't we be better off, rather than spending all this time and money with the complicated permitting process, focusing our efforts on spill response and technologies to train people and get the equipment and knowledge in place, so if there were something that happened, be it in foreign waters or domestic waters, we could respond to it and protect our coast? Wouldn't that be a better use of our time and resources?

Mr. HAYES. Congressman, it certainly spill response is a very, very important focus. But I think the primary lesson out of the Presidential commission and other—the National Academy of Engineering is that we have the capacity and should prevent these occurrences from happening in the first place. And our safety upgrades focus on that, and industry has responded. Industry is able to meet the higher safety standards. And frankly, they have not objected to the higher safety standards.

Mr. FARENTHOLD. All right, well, I see I have only got about 10 seconds left.

Chairman ISSA. Would the gentleman yield?

Mr. FARENTHOLD. Absolutely.

Chairman ISSA. Earlier, you took credit for this high level—the highest level since 2003. Aren't there two truths about that, though? First of all, it takes about 5 years at best case to get from the beginning of the process to drilling production, so isn't all the credit for this new peak in the previous administration; simply you haven't been here long enough for anything you have done in the way of new leasing to have any yield? Isn't that absolutely true that not one new lease that you put out is today producing?

Mr. HAYES. I would say it differently, Congressman. There has been a lot of focus suggesting the Obama administration has been holding up permits, which are the last, the last event to occur before the production occurs. The fact that production has increased demonstrates the fact that we have in fact been permitting both onshore and offshore.

Chairman ISSA. The time I borrowed has expired.

The gentleman from Massachusetts, Mr. Tierney, is recognized for 5 minutes.

Mr. TIERNEY. Thank you so much. I thank our witnesses for being here.

I know that the chairman started off by talking about speculation being what he thought was a belief that he wasn't going to debunk, but in fact, as the chairman said before, we are entitled to our own beliefs or opinions maybe but not entitled to our own facts.

And I think when you have experts from outside, you have industry officials and you have regulators all understanding that speculation is about $27 on a barrel of oil, it is a serious matter. And this casino of future speculators is perhaps where I had hoped this hearing would have gone. And I sent a letter to the chairman asking that he would do that, and I hope he does get down to the real businesses of what is going to make a difference of prices at the pump.

Now looking at this drilling idea, from what I see in the U.S. Energy Information Administration, they say that if we were to permit the Outer Continental Shelf of the Atlantic Pacific Coast and eastern central regions of the Gulf of Mexico, the resulting difference in gas prices at the pump would probably be about 3 cents by 2030. I watched prices go up and down about 10 cents of late on that. So 3 cents by the year 2030 seems pretty tiny.

Mr. Hayes, do you concur with that finding?

Mr. HAYES. Yes, Congressman, and it is due to the simple fact that the U.S. production cannot affect the global oil price in a meaningful way.

Mr. TIERNEY. I think those experts have said you are absolutely right; there is a glut currently on oil. I think the CEO of ExxonMobil stated as recently as last month that there is no shortage of supply on the market. And so I guess increased drilling really wouldn't lower the prices of oil and gas; is that correct?

Mr. HAYES. That is correct. I will say, though, that it is our policy to increase domestic oil and gas production responsibly, because it is better to have a barrel produced here in the United States than to import it.

Mr. TIERNEY. Well, let's talk about that for a second.

Interior Secretary Salazar just testified in front of the Senate that about 70 percent of the tens of millions of offshore acres currently leased to oil companies are inactive. That includes about 24 million inactive leased acres in the Gulf of Mexico, where I guess there is an estimated 11.6 billion barrels of oil and 59.2 trillion cubic feet of natural gas that are technically recoverable, and they're going unused. Why is the industry just sitting on those leases, Mr. Secretary?

Mr. HAYES. It is not clear. The President has indicated an interest in encouraging companies to utilize those leases, and that was the subject of his radio address a week ago Saturday.

Mr. TIERNEY. Well, you know, the Secretary also testified about onshore, that 57 percent of the leased acres—that is about 22 million acres in total—are not being explored nor developed. So what can the President do, what can the department do, to encourage these companies to start using what they have?

Mr. HAYES. One of the recommendations that the administration has made is to change the lease term of the Mineral Leasing Act of 1920. Now onshore, every lease is leased for a full 10 years. It does not take 10 years to make a decision of whether to invest or not. We would prefer to have that lease term reduced. And thus, if a company does not, decides not to invest, have the leases returned, so another company that might be more willing to invest will do so.

Mr. TIERNEY. I look at this even more. And the Interior Department as a report on oil and gas utilization. So they say about 53 million acres were offered for sale in 2009. Under this, administration 53 million acres—37 million acres, I am sorry; 2.4 million acres were bid on and sold, so 5 percent. In the central Gulf, 37 million acres were offered in 2010. Again, this administration, 37 million acres; 2.4 million acres were bid on and sold, so 6½ percent. Can you explain why these companies aren't bidding on those leases and we have to listen to "drill, baby, drill" and this administration won't this or won't that in terms of 5 percent in one instance, 6½ percent in the other; what is the explanation for that?

Mr. HAYES. I can't explain why companies are not bidding. I think our primary point, Congressman, is that our administration is providing the opportunity, a robust opportunity for domestic oil and gas production, and I think those numbers make that point.

Mr. TIERNEY. Well, according to the EIA administrator, there are already open to Federal and gas leasing about 95 percent of the technically recoverable oil and gas in the Outer Continental Shelf; is that right?

Mr. HAYES. I am not familiar with the exact report, but I assume so.

Mr. TIERNEY. Well, I guess I am having some difficulty understanding why the oil and gas industry believes they don't have enough of the taxpayers' land to work on already and were given those numbers. Let me ask you this: What more can we do about speculation. That seems to be the real problem and the one that I hope the chairman will have a hearing on. If it is $27 or $30 of every barrel, what can we do or what aren't we doing about really focusing on the real problem?

Mr. HAYES. Well, Congressman, as you know, the President has indicated a strong interest in addressing this issue and has asked the Attorney General to set up a special strike force to investigate potential speculation, and I know that group is under way.

Mr. TIERNEY. All right. Thank you.

Chairman ISSA. Sorry, that was not for you.

The gentleman from Tennessee, Dr. DesJarlais.

Mr. DESJARLAIS. Good morning, Administrator Jackson and Deputy Secretary Hayes. I really appreciate your being here today.

There are an awful lot of folks in Tennessee Four that are obviously excited about you being here as well because obviously, I had several calls back from the district, and we have questions that were sent in on Facebook and other medium to ask you, so we do really appreciate you being here.

One of the reasons I was sent to Congress was to help create jobs. And as part of our Oversight Committee, I have traveled Tennessee's Fourth District over the past several months visiting businesses and industries and asking them, what is standing in the way of job growth?

And almost unanimously the No. 1 thing that people were telling me was to get government out of the way. And not surprisingly, Administrator Jackson, the EPA often comes up, that they feel that there are burdensome regulations that are preventing job creation.

Now, when we started here earlier today, the ranking member cited the Gulf oil spill, which was obviously very tragic. And he said that it was our job and your job to never ever, ever, never, never, ever allow that to happen again. Do you feel if you had unlimited power and resources that you could prevent that from never, ever happening again?

Ms. JACKSON. No, sir, I can't guarantee that.

Mr. DESJARLAIS. How good are you guys? Because there is an awful lot of power and rules and regulations that are being levied on our businesses here that seem to be prohibiting job growth. Do you feel like the EPA is doing a good job?

Ms. JACKSON. In general, yes. One of the reasons I don't believe I could guarantee that is because EPA does not primarily regulate the safety of offshore drilling, so there is nothing within EPA's authority that speaks to whether or not those regs are safe. I think the deputy secretary has spoken to that this morning.

Mr. DESJARLAIS. Just out of curiosity, because we had the Secretary of Labor here on an earlier hearing, and they were citing the mining accident in West Virginia that took so many lives, and I had asked over the past 10 years, if they could show me an improved safety record because of their inspections and the fines that they levied, because they do go into these mines and levy fines for any number of things, and then when they leave, I assume that they are satisfied that the mine is safe. But then there is a disaster, and it is always the mine's fault; it is not the MSHA's fault. If there is a disaster within the environment, does the EPA take responsibility? Do they feel accountable for that?

Ms. JACKSON. No, in general, in this country, the belief is that the polluter is responsible, and it is the job of the regulatory agency to set the rules of the game, if you will, and to enforce them so there is a level playing field.

Mr. DESJARLAIS. I get the impression from the folks that I am talking to that if you are going to wield that much power, then maybe you ought to take some responsibility as well, so that is just the opinion that I get. But the folks that are engaged in calling— and I did want to get a couple of their questions in. The Oversight Committee chairman reads our mission statement before each hearing, and our goal is to work with citizen watch dogs to deliver more efficient, effective government that works for taxpayers, businesses and their families. Many Americans are concerned that the EPA's mission seems to be pitted against efficiency and effectiveness. We invited you here today and we will invite you back to give you a chance to show the taxpayers otherwise. This is your chance.

Ellen Wetherill, one of our citizen watchdogs from Facebook, wants to know, is the goal of EPA to protect the environment or to drive up fuel costs in order to force Americans to modify their behavior?

Ms. JACKSON. Our mission is to protect human health and the environment, sir.

Mr. DESJARLAIS. OK. I hope she is satisfied with that answer.

Not only does EPA regulation attempt to enact a cap-and-trade scheme that couldn't even pass both Democrat-controlled Houses of Congress, preventing the private sector from creating good jobs, but no U.S. cap-and-trade plan would solve the massive pollution generated by growing industrial countries. This fact is not lost on America. Citizen watchdog Gary Delong from Facebook wants to know, why is cap and trade viable when in a few short years, India and China will produce significantly more air pollution and cannot and will not be held accountable, despite anything done by America?

Ms. JACKSON. Well, please assure your constituents that EPA is not implementing a cap-and-trade program.

But you might also, and I am happy to speak to him as well, mention to him that market-based programs have been used successfully in this country to control other pollutants, such as SO2, the prime contributor to acid rain.

Mr. DESJARLAIS. And I want to get in one more. I am trying to help these folks out. Citizen and watchdog Melody McMahon Worthington from Facebook wants to know, why do we support the subsidizing of drilling in Brazil and hamstring our companies here at home?

Ms. JACKSON. I do not know that we support the subsidizing of drilling in Brazil. That is outside of my area of expertise.

Mr. DESJARLAIS. The President mentioned that he was looking forward to being a major importer.

And I am about out of time, so I will go ahead and yield back. Thank you for answering those questions.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Northern Virginia, Mr. Connolly, for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman.

And welcome both to Ms. Jackson and Mr. Hayes. I assume, by the way, picking up on that last question, Administrator Jackson, your silence, your—you ran out of time, you weren't conceding that EPA hamstrings production domestically.

Ms. JACKSON. Absolutely not, sir.

Mr. CONNOLLY. And I assume from your previous answer in terms of the mission of EPA, neither were you implying or allowing an inference to be drawn that the choice you were presented is in fact the choice. I mean, surely we can both drill and produce and do it in an environmentally safe way. It is a false choice to say it is one or the other, I would think. What do you think?

Ms. JACKSON. It is indeed a false choice. And in terms of responsibility for our actions, I would point out to Dr. DesJarlais that EPA is responsible for the fact that air pollution is down 60 percent in this country over 40 years, while our GDP has gone up 207 percent. So, by that metric, I think we are effectively delivering for the American people.

Mr. CONNOLLY. You know, listening to my friends sometimes on the other side of the aisle, they want the narrative to be that this administration is so environmentally conscious that it has hamstrung the ability of domestic producers both in oil and gas to produce.

So, Deputy Secretary Hayes, I just wonder if I could run through some statistics with you and have you confirm or correct them.

My understanding is that actually in the Bush administration, production, domestic production actually fell from 7.6 million barrels per day to 6.7 million. Is that correct?

Mr. HAYES. I don't have those numbers handy, but I would certainly be happy to confirm that, Congressman.

Mr. CONNOLLY. And conversely, under the Obama administration, production actually increased. It went from 6.7 million to 7½ million, essentially reversing the 1 million barrels per day loss that occurred in the Bush administration.

Mr. HAYES. That is correct that production has increased during the Obama administration.

Mr. CONNOLLY. Now, we heard the chairman, for example, which I want to applaud him for pointing out, that there is a time lag between the issuance of permits and the actual bringing on of product to the market, something many on our side of the aisle have actually been trying to point out to our friends on the other side of the aisle when they say, drill here, drill now, allowing the impression with the public that somehow it is magically going to change the price of oil, and of course it isn't.

However, dealing with permit applications, it is my understanding that in the last year of the Bush administration, there were 5,000 applications listed, and under the Obama administration last year, that went from 5,000 to 7,200. So the permit applications actually went up significantly, is that correct?

Mr. HAYES. I think you are referring to the applications for permits to drill on BLM lands.

Mr. CONNOLLY. That is right.

Mr. HAYES. And correct, the applications have gone up, and we have actually—there was a significant backlog that we have cut down significantly in the last 2 years.

Mr. CONNOLLY. Now, also part of this narrative is that President Obama has just caused an absolute moratorium after the worst deepwater oil spill in American history and that there is this de facto moratorium on Gulf Coast oil drilling. Now, it is my understanding that actually Outer Continental Shelf production has increased from 446 million barrels in 2008 to 600 million barrels last year. Is that correct?

Mr. HAYES. That is correct.

Mr. CONNOLLY. So much for moratorium. Switching subjects just a little bit, Ms. Jackson, there is a lot of talk and promise about hydraulic fracture. Is there any evidence that hydraulic fracturing, however, can affect aquifers and water supplies?

Ms. JACKSON. There is evidence that it can certainly affect them. I am not aware of any proven case where the fracking process itself has affected water, although there are investigations ongoing and concerns——

Mr. CONNOLLY. What kinds of chemicals are we concerned about in terms of possible pollutants to water supply in the fracking process?

Ms. JACKSON. Well, you know, the actual—the contaminants are not public in terms of the mixtures. But we do know that they include things like benzene and toluylene, ethylbenzene, xylene, compounds like that.

Mr. CONNOLLY. And what is the problem with those chemicals?

Ms. JACKSON. Well, those are listed hazardous waste primarily because, for most of them, it is the effect on the central nervous system, either to a baby in utero, meaning birth defects or problems with the nervous system, developmental disorders primarily.

Mr. CONNOLLY. Is benzene a carcinogen?

Ms. JACKSON. It is indeed, sir.

Mr. CONNOLLY. And final question, the Marcellus Shale formation that we are looking at, is it near any major urban water supplies?

Chairman ISSA. You can answer that briefly. The time is up.

Ms. JACKSON. Yes, sir. New York City is concerned about it. Obviously, it is upstream even of Washington, DC, supply.

Mr. CONNOLLY. Thank you.

Chairman ISSA. The gentleman from North Carolina, Mr. McHenry, for 5 minutes.

Mr. MCHENRY. Thank you, Mr. Chairman. I certainly appreciate it.

Now, there has been this discussion with restricting access to domestic oil supplies that when policymakers on Capitol Hill are trying to open up a greater amount of supply here in the United States, that somehow that is supportive of big oil. But really, the economic reality is counter to that. The economic reality is that when you open up a greater amount of supply, it is the small guy that benefits. It is the small business owner. It is the small trucking firm. It is the mom taking the kids to school. It is the small guy that benefits when we have more production, greater supply, which will lower the cost. And those two things are inextricably linked.

Now, when we restrict supply, like administration policy, especially this administration's policies have been, that increases the profits for the big oil companies because they have a smaller quantity of precious resource to access, and therefore, they can charge more at the pumps. It seems to me that the rhetoric coming out of this administration, while they are saying they are increasing supply, is run counter to that; the restrictions, the higher regulations.

You know, we all care about clean water and clean air, but we also want to be able to drive our kids to school. We also want to be able to have a job to go to so that we can make the mortgage payment so we can provide for our families. And it seems like this President, this administration, simply does not get it.

And with that, I yield the balance of my time to the chairman.

Chairman ISSA. I thank the gentleman.

Mr. Secretary, on your Web site, the BLM Web site, it says, "BLM are working with local communities, State regulators and industry and other Federal agencies in building a clean energy future by providing sites for environmentally sound development of renewable energy on public lands." Are you familiar with that?

Mr. HAYES. Yes, sir.

Chairman ISSA. Why is it I can't—and it goes on about solar and wind—I can't find anything about BLM represents the greatest amount of resources of natural gas and oil of any land owner, and in fact, it is the second largest revenue to the U.S. Treasury. Why is it that what we are talking about here today, the access to Federal lands, which I know you are saying it is going up—our figures and our studies show maybe not so much—why isn't it anywhere on your Web site? Are you not proud of the availability of BLM land for natural resource exploration and development and delivery?

Mr. HAYES. We are absolutely proud of it, Congressman, and Mr. Chairman.

Chairman ISSA. Well, why is it not on your Web site?

Mr. HAYES. Well, it is probably more importantly in our budget. We are spending at least 80 percent of our BLM budget on conventional oil and gas compared to renewable energy.

Chairman ISSA. That is because that is what pays. The revenue that the taxpayers are receiving far exceeds your budget, and it is coming from oil and natural gas. It is not coming from windmills.

Mr. HAYES. We are proud of both things, Mr. Chairman. We are proud of the fact that until this administration, there was no large-scale renewable development on the public lands. And we have responded to the market demand, particularly in California, and have provided siting opportunities for thousands of megawatts of utility scale, so we are proud of that.

Chairman ISSA. We look forward to seeing if those sitings actually turn into production in California. So far, we are not doing so well, as California has been watching our attempt to get to the 2020 plan.

Earlier, the ranking member was talking about various figures. I have one that concerns me. EIA, earlier recognized as an authority, has downgraded production in the Gulf of Mexico by 250 barrels per day over each—or 250,000 barrels per day for each of the next 2 years. Are you concerned about that precipitous drop in production in the Gulf.

Mr. HAYES. I should say, Mr. Chairman, there is no question that because of the Deepwater Horizon disaster, the oil spill, and the need to upgrade our safety standards, which the Congress, Presidential commissions and others agreed needed to happen, that there has——

Chairman ISSA. Just to weigh in, hasn't a Federal judge said that your moratorium was wrong? And after that was forced to be lifted by Federal action, didn't you then go to Alaska and do the same thing so that it requires Federal action again?

Mr. HAYES. No, sir. A Federal judge in Alaska confirmed, there was no moratorium in Alaska.

Chairman ISSA. Well, let's talk about the Gulf. You had to be ordered to undo a moratorium that was overly broad and held at.

Mr. HAYES. No, sir.

Chairman ISSA. Well, we will consider the record. I don't want to have you say anything that ultimately would be bad, considering you are under oath.

With that, we go to the gentlelady from California, Ms. Speier, for 5 minutes.

Mr. TIERNEY. Mr. Chairman, if I might, just a personal point of privilege, if you are going to make an assertion that a witness may not be telling the truth, the least you could do as a matter of decency is allow him to respond.

Chairman ISSA. To the gentleman, I cut him off because in fact the record of the court action speaks for itself. And if he is going to say that somehow what they were ordered as unreasonable and overly broad isn't part of the problem, I didn't want to have him go any further in that.

Mr. TIERNEY. He is an adult and he is quite conscious. If you want to cut someone off to save them, then don't editorialize. In fairness to the concept——

Chairman ISSA. The gentleman is no longer recognized.

The gentlelady from California, it is your time. The gentlelady controls the time.

Mr. CUMMINGS. A point of order, Mr. Chairman.

Chairman ISSA. State your point of order.

Mr. CUMMINGS. Mr. Chairman, you have basically implied that this gentleman may be lying.

Chairman ISSA. No, I did not.

Mr. CUMMINGS. Yes, you did. You should give him an opportunity to answer the question. I mean, let me tell you something. This is about the integrity of this committee.

Chairman ISSA. The gentlelady's time is now running.

Mr. CUMMINGS. And I said it from the beginning, I am not going to allow people to come in here to be called all kinds of things and not being treated fairly. Now, this man has to go home. He is got people watching this. And I ask you to give him an answer—give him an opportunity to answer the question you asked him.

Chairman ISSA. It is not a point of order.

The gentlelady's time is running.

Ms. SPEIER. Mr. Chairman—Mr. Hayes, would you like to continue your comments, please?

Mr. HAYES. Thank you, Congresswoman.

The moratorium was lifted on October 10th by the Secretary of the Interior after a series of public meetings in which we concluded that the basis for the moratorium were satisfied. And as the chairman said, the litigation record speaks for itself.

Ms. SPEIER. Do you have anything further to say?

Mr. HAYES. No. Thank you.

Ms. SPEIER. All right.

You know, for all the talk about expanding the drilling opportunities in this country, if we were to do everything in the fantasies of every oil executive's mind, we are still looking at oil production that wouldn't be on line until 2020–2030, is that correct?

Mr. HAYES. Certainly some oil production is in the out years.

Ms. SPEIER. And having that oil drilled would actually have the effect of lowering the cost of gas at the pump by 1 percent, is that correct?

Mr. HAYES. The EIA study indicated, that was quoted earlier, suggested that.

Ms. SPEIER. So for all this hyperbole going on in this hearing room today, it would suggest that if we allowed every CEO of every oil company in this country to drill everywhere they wanted to drill, that the most that consumers would see would be in my State, which is about $4 a gallon, a 4 cent reduction, and that would be in out years. It wouldn't be this year. It wouldn't be this month. It wouldn't be tomorrow. Correct?

Mr. HAYES. That is correct, Congresswoman.

And that is why the President has focused on the importance of looking forward and having an energy economy that doesn't just focus on oil and gas production domestically, although we will focus on that, but also focuses on efficiency, alternative fuels and a clean energy future.

Ms. SPEIER. So I have the, I guess, audacity when I first got elected to Congress to introduce my very first bill, which was to lower the national speed limit in this country by 5 miles, except in rural areas. So, in rural areas, it could continue to be at the higher speed, but lower it to 65 in other areas. It would, if I am recalling correctly, reduce the actual cost of gas to the consumers today as much as 40 cents or 50 cents on the gallon, is that true?

Mr. HAYES. I am not familiar. I know that going slower saves gas.

Ms. SPEIER. And also, if I recall correctly, it would save maybe 3,000 to 4,000 lives a year, is that correct?

Mr. HAYES. It sounds plausible. And I defer to Administrator Jackson, who says yes.

Ms. SPEIER. Ms. Jackson, would you like to respond?

Ms. JACKSON. Well, I can certainly respond on the savings. One easy way for people to save money is by slowing down. On EPA's Web site, there is a page that talks about things you can do, including maintenance on your car, the speed you drive, how you drive, that can actually have a total effect, if I am recalling correctly, of around 50 or so cents a gallon.

Ms. SPEIER. All right. Mr. Chairman, I would like to submit for the record a letter signed by 54 of my colleagues and myself asking both Attorney General Holder and Chairman Gensler to immediately start an investigation of price speculation. I don't necessarily think we need a strike force or a study or another evaluation; I think it is time for an investigation. I would like to submit this for the record.

Chairman ISSA. Without objection, so ordered.

[The information referred to follows:]

[NOTE.—The information referred to was not provided to the committee.]

Ms. SPEIER. And let me just see if there is any other questions I might—I guess I would like to have Mr. Hayes speak to us about what is being done to streamline the royalty process.

Mr. HAYES. Thank you for asking that question.

We have had a very vigorous reform effort on the royalty collection side. This is an area that has been of special interest to the chairman, and I appreciate his leadership in this area. Two main reforms: No. 1, we eliminated the royalty-in-kind program that we believed provided potential abuse in terms of nontransparent collection of royalties. And then, second, we are announcing today an initiative on royalty simplification. We are asking for comment on a proposal that would involve using market-based pricing for the basis of royalty calculations, rather than the current system that looks at transaction-by-transaction, case-by-case evaluation of transportation and processing costs, a lot more potential for expense by industry and the agency and also potential abuse, so we are announcing that today.

Chairman ISSA. Thank you.

The gentlelady's time has expired.

The gentleman from Pennsylvania Mr. Kelly, for 5 minutes.

Mr. KELLY. Thank you, Mr. Chairman.

Ms. Jackson, and also Mr. Hayes, thanks for being here today. I know it is not always comfortable to sit here and try to answer questions that we throw at you. But coming from Western Pennsylvania, Marcellus Shale was obviously a great opportunity for Pennsylvania and for the country. My concern is right now DEP is sitting on a lot of permitting.

And the big question is the water, the fracking water. Now, fracking is 60 years old; it is not new. We know that Marcellus Shale is 5,000 to 7,000 feet below the surface. It really doesn't affect some of the water tables in the aquifers.

However, I know there is a question about wastewater and what happens with it. A lot of it has to do with DEP-approved regulations for wastewater people to do the treating, and they make a lot of money doing that. If you were to check DEP, all the rivers in Western Pennsylvania, everybody is right at where they should be; there has been no substantial change in it. My question is, why all of a sudden is the EPA interested in what is happening in Pennsylvania with the DEP? Because there really isn't an instance there to question has there been any water contamination, or am I wrong on that?

Ms. JACKSON. I am not aware of any water contamination associated with the recent drilling. There has certainly been issues I am aware of in Western Pennsylvania around surface water contamination and other issues like mining, especially in West Virginia on the Monongahela.

EPA is involved for two reasons, sir: One, because the State is a delegated authority under the Clean Water Act. They run most aspects of the water program in Pennsylvania but not all. For example, EPA runs the industrial pre-treatment program in the State of Pennsylvania, which is the program that regulates what drillers are allowed to send to wastewater treatment plants. So it is a shared jurisdiction; although my understanding is that the staff are working together and that EPA staff in general believe that the State should be the frontline agency.

Mr. KELLY. But they haven't found any examples of any real dangers right now, and they are working well within DEP regulations. It is just all of a sudden EPA is involved. And I have to tell you, when I am back home in the district, the EPA doesn't really sit well with a lot of those folks. And it is about job creation. It is about opportunity.

We are really looking at things that are kind of crazy. And I noticed today that the talk is about, are we getting gouged? Are we getting gouged? And I think most would go to oil. But nobody questions gold and silver commodities and why they are rising in prices, and are we getting gouged there. I think a little bit is disingenuous as to what it is that we are trying to regulate, who makes too much money, who is making too much money in such and such. We do have a tendency to demonize others and we really don't get to the problems that are at hand.

I will tell you this, at 4.16 in Mcf, and that is on NYMEX on natural gas futures right now, there is a great opportunity; it is a great buy right now. I know permits are available. But I got to tell you, for investors, it is the uncertainty of what is happening with regulation that keeps people from going forward. And I think we all know that. Because the only people that don't worry about a positive return on investment is the U.S. Government. All the rest of us really are driven by the fact that we actually have to have a positive return on it. And I understand why we have regulations, so that is fine.

But I do want to ask you this. The NPDES, or the National Pollutant Discharge Elimination System, right now backlog in their office, the PA DEP has sent 75 draft permits to the EPA's Philly region office, OK? As of May 2nd, 22 permits have been issued; 53 are pending some sort of review. According to the DEP, EPA's intervention has increased the DEP's workload and has extended an already lengthy burdensome process. So what is the end game, and how can we speed up this permitting?

Ms. JACKSON. Well, sir, we are happy to work with the State to ensure efficient oversight and review of permits. I am not aware of exactly which permits you are referring to.

Let me simply say to you and your constituents. As EPA administrator, I see the incredible potential in natural gas. I think it is important for our country. And I look at it through the lens of my job and duties, which is its potential to decrease pollution.

So the only thing that I see as our job is to work with the State, with regulators, with communities, to respond to their concerns, because public acceptance of safe and responsible exploitation of resource, in a good way—exploitation in a good way—is key to having it happen.

Mr. KELLY. Excuse me for interrupting. There is a very highly motivated and very mobile group that show up at these different community meetings. It isn't always the people that live in those communities. They are highly motivated; they are highly organized, and they are very vocal. They are addressing problems that really don't exist right now. And in fact, if you were to go back and look at what Mr. Krancer says and other people in Pennsylvania, they are more concerned with facts than they are with fear. But what it is doing is it is driving a market perception or a public perception out there that Marcellus is dangerous and is affecting drinking water. It simply is not true.

And with that, I yield back my time, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Florida, Mr. Mack, for 5 minutes.

Mr. MACK. Thank you, Mr. Chairman.

And I also want to thank the witnesses for being here today. And I know it can be uncomfortable and difficult at times, and we do respect and value your time for being here.

That being said, uh-oh. I listened to—Mr. Hayes, I listened to your opening statement, opening testimony, and I got to tell you that I am positive that if there are people in my district who listened to that, they would be quite angry. Because in your statement, basically what you said is that everything is so rosy and it is really the oil company's fault. They have the potential to drill; they are just not doing it. They have the potential to drill for oil and natural gas; they are just not doing it. No one believes that. Absolutely no one believes that.

Now, you can get creative in the way that you present the information and you can sugarcoat it and present it in a way that may support your position, but no one believes it.

Let me ask you this question. You keep talking about that under the current administration there is more opportunities to drill, more leases, all that kind of stuff. So would you say that, on average, the Obama administration has had more leases or less leases than the Bush administration?

Mr. HAYES. I don't have the exact number of leases. I know that in terms of the number of acres that have been leased, that the numbers are quite similar, both administrations.

Mr. MACK. So, on average, in a year between the Obama administration and the Bush administration, the average acres is similar?

Mr. HAYES. That is certainly true, I believe, Congressman. I want to check the numbers, but it is certainly true on the offshore.

Mr. MACK. Let me just tell you the figures that I have.

Mr. HAYES. Sure.

Mr. MACK. Under the Obama administration, the average acres leased per year is 1.63 million; under the Bush administration, it is 3.66 million. I don't think those are close.

But that being said, again, I think that just points to the fact that on one hand, you are taking credit for the past administration's work, and then, on the other hand, you are saying that it is the oil company's fault that they haven't drilled or they haven't done what they need to do, that somehow there is this, all of these acres out there for them to drill and that they own leases to and that they are ready to go, but they just haven't done it. Isn't that not true?

Mr. HAYES. If I can please explain. Thank you for raising this issue.

0the primary reason why we are laying out these facts on how much acreage has been made available and how many permits we have processed is to respond to the argument that our administration somehow has inappropriately restricted the areas for oil and gas leasing and that we have been the cause for what is perceived to be but is not in fact the case a decline in domestic oil and gas production. With regard to the reasons why oil companies and gas companies may or may not drill, that is largely a business issue.

Mr. MACK. My time is limited, so let me ask you this, do the oil companies have the ability to go find where the oil reserves are, apply for a lease and a permit to drill in that area, or is it the administration sets the areas in which they can explore to see if there is any oil, which one of the two?

Mr. HAYES. It varies in the offshore. Traditionally the entire central and western Gulf have been made available.

Mr. MACK. Isn't it true, though, that there are areas in which are available for exploration of oil and there are some areas that are off limits? In other words——

Mr. HAYES. Certainly, certainly.

Mr. MACK. So here is my point. If you say to the oil companies that—basically if you offer them crap, you get crap, and that is just the way it is. If you say to them, you can drill in these areas that there is no oil to drill for and then blame them for not drilling, that is the problem. And that is the picture that you are painting. That is what people back home are hearing. It is why they are frustrated with government.

Chairman ISSA. The gentleman's time has expired.

The gentleman from Oklahoma, Mr. Lankford, is recognized for 5 minutes.

Mr. HAYES. May I respond, Mr. Chairman?

Chairman ISSA. If you want to respond. I didn't see a question there, but if you have a response, please.

Mr. HAYES. I would just like to make a point that there are certain areas that we believe are not appropriate for drilling, very close to national parks, for example, other sensitive areas.

But the fact that we have 40 million acres onshore, many of which are in prime oil and gas territory—Wyoming, Utah, etc.—areas with history and infrastructure, suggest—and the Gulf experience—suggests that we are offering industry prime areas for production. Thank you.

Chairman ISSA. I thank the gentleman.

Mr. Lankford.

Mr. LANKFORD. Thank you, Mr. Chairman.

This is one of those areas apparently we are not going to solve today. I would like to request, Deputy Secretary Hayes, that you would sit down with some of the folks from oil companies and we try to resolve this together at a table, and that we have a hearing saying, we don't understand why these companies aren't drilling in these areas and what the permit and the process. It might be a very informative conversation for us to get everybody together and all get under oath and all start trying to talk this out and be able to resolve it and get everybody together. Would you be open to that kind of conversation?

Mr. HAYES. We would be delighted to do that. We have had a number of conversations in the Interior Department with CEOs of oil companies. And in fact, the President's suggestions on how to facilitate more production have come out of the kinds of discussions we have had with CEOs.

Mr. LANKFORD. You mentioned several times about production being at this highest level since 2003. Can you name a specific action that Interior or EPA took in 2008 and 2009 to give us this large production in 2010? Which specific action would you point to and say because we did that in 2008 and 2009, now we have this great production.

Mr. HAYES. I think I can point to probably thousands of actions. The fact that we processed at least more than 5,000 APDs in——

Mr. LANKFORD. So those came on line within a year and they were out producing revenue?

Mr. HAYES. Typically they do, yes. Typically those are the onshore productions that come on line.

Mr. LANKFORD. It seems to me the market has driven this. When oil went to about $100 a barrel, it is amazing how much production suddenly occurred. And it seems to be that Interior is taking credit for a hundred bucks a barrel what really happened when the market drove that up.

Mr. HAYES. No, that is a very fair point, Congressman.

Mr. LANKFORD. Well, that is why it is frustrating for me to keep hearing, you know, we have this great production. We have this great production; we didn't have it in the Bush administration. We have a $100 barrel of oil. Every marginal well that is out there is now pumping oil. And we seem to be confusing apples and oranges here. When we start talking about production, our production is at an all-time high. Production is not the issue at this point. Great, I am glad we have production, but a lot of those are marginal wells. Those are other wells that are already drilled. We need to talk about future exploration, and a lot of this conversation seems to be future exploration we are talking about; you are responding with production. And so that's two different things in that. We need to talk about what happens 5 years from now, 10 years from now. What is coming on line with that.

Let me ask you a question to both of you on this. The President put out Executive Order 13563, which deals with regulation and regulatory review, looking backward on it. Both of your agencies, have you already submitted your paperwork for that? That should be coming out in the next week and a half, those public documents as preliminary. Do both of you have those reviews complete?

Ms. JACKSON. EPA has.

Mr. HAYES. Yes.

Mr. LANKFORD. Great. Terrific. Look forward to getting a chance to go through that. A major part of that statement, which was a great statement from the president, is talking about all the regulations need to promote predictability and reduce uncertainty in our regulatory environment. If there is any area that I can tell you from energy companies that I talk to and I interact with in my district, it is the sense of uncertainty. We don't know what the regulations are going to be. The rumors run wild.

And while you can say we haven't done that, there is the perception. Let me give you a "for instance."

And Administrator Jackson, you mentioned multiple times about natural gas is terrific. But if you talk to natural gas companies, they have no idea what is happening in this frack study. And there is a large sense of founded fear that natural gas fracking is about to be crushed, and they can't seem to find any response back on it. Since 1949 in Oklahoma, we have been doing natural gas fracking and oil fracking. This is a long-term use process. And I would invite anyone to come to Oklahoma and drink our water and look at our beautiful land and breath our air and see it as a terrific State. And as you mentioned before, these State-preferenced permits seem to being pulled back somewhat, and it is creating a sense of uncertainty in it.

My colleague Mr. Meehan earlier mentioned about the 316(b) permits, and you deferred that immediately to the States and said that is a State issue. I can tell you in my State, for the energy companies in my State, they are struggling with EPA right now over 316(b) because there are minnows, there are bait minnows being killed in one of their cooling ponds, and they are being pushed toward creating a cooling tower, costing millions of dollars, which will be passed onto ratepayers for their own cooling pond. It is not creating certainty in what prices are going to be, where they can invest and what they can do.

So, on the other side of that, dealing with the State preference is not consistent with the actual actions on the field and doing a 316(b) with regional Haze requirements. My own State has put up a proposal for dealing with regional Haze; it is being rejected by EPA. And so those dynamics don't practice out in real life. It is coming out in your testimony, but in real-life examples in my district and in my State, those things don't actually occur.

So I have a significant I guess issue with some of your testimony and what is actually happening on the field.

Ms. JACKSON. Well, sir, I am happy to answer some of those factually. First, with respect to the natural gas companies and their concerns about the study, which again was asked for by Congress—they asked us to do it—that study has been publicly scoped. We had several listening sessions and meetings and hearings to hear input on how the study should be scoped. We have gone through peer review of the scope of the study in a very public forum to do it. In fact, the scope is not yet set for that very reason. So I am perplexed as to how they could not know what this study is about, because we have gone to great pains to make it a very transparent process.

Chairman ISSA. The gentleman's time has expired.

Mr. LANKFORD. I apologize. That is fine.

Chairman ISSA. And I know—you can answer for the record if you don't mind. I realize he had a lot of good questions there.

The gentlelady from the District of Columbia, Ms. Holmes Norton, is recognized for 5 minutes.

Ms. NORTON. Well, some of us value the seafood from the Gulf region. I think it is the very best, so I am particularly interested in the effect of the Gulf's oil spill on that part of the economy, which I understand is almost half of the economy, a million jobs or so.

In your view, has the tourism industry, for example, fully recovered from the oil spill?

Ms. JACKSON. I think as we enter this summer season, we will find out. So far, I hear bookings are up. I think if you speak to business owners along the coast, though, they feel as though last summer put them, because things were so depressed, last summer has put them in a place where they may never be able to recoup those losses, and some businesses are still potentially marginal.

Ms. NORTON. What has the effect—when you see these merchants who used to go out for lobsters and the rest on TV, you hear a kind of pessimism in them, a sense that the rest of the country thinks they are not recovered, that they may never get back to where they were. What is the continuing effect of the oil spill regarding the safety of that seafood around the country?

Ms. JACKSON. The seafood in the Gulf has been tested, is widely tested. And FDA and NOAA both agree that seafood is safe. The Gulf fishermen and shrimpers still struggle with a bit of a stigma. And of course, the most recent issue that is affecting their livelihood is the horrible flooding throughout our country. That has meant a lot of fresh water in their oyster beds, which may threaten them. It has nothing to do with the spill, but it is certainly another blow to their livelihood.

Ms. NORTON. Well, poor Louisiana, they have two big industries; one is seafood, and the other is oil, all in the same spot.

Chairman ISSA. Would the gentlelady yield for just a second?

Ms. NORTON. I will be glad to, Mr. Chairman.

Chairman ISSA. Just so you know in advance, next Thursday, we will be having a hearing as a result of all our trips to the Gulf, so we will provide you with additional information that is going to be very focused on the plight of the Gulf.

Ms. NORTON. That is very important to know, because I think we need some statistics on, are they selling as much in seafood? Are people coming to this great tourist region as much as possible?

Do you think—let's go through like the oil industry, the other part of that economy—do you think that the oil spill has, because of its mammoth nature, has damaged the reputation of the oil industry in the Gulf, or as a whole, have they recovered?

Mr. HAYES. If I can speak to that. I think the oil industry has shown significant resilience and commitment to meet the higher safety and environmental requirements that were put in place after the Gulf disaster and is committed for the long term to continue to develop the——

Ms. NORTON. But what about its reputation? In that area, is this industry trusted once again?

Mr. HAYES. I can't speak to that.

Ms. NORTON. Mr. Chairman, I hope that when you say the next hearing, we will have some sense of these two industries, how they are perceived in the region and how they are perceived in the country, since we have this anomaly that these two industries dominate the Gulf Coast, and we would need some perception of what the biggest oil spill, loss of 11 lives in our history——

Chairman ISSA. And we will send you an advance memo before the end of the week so that you can have additional input into it.

Ms. NORTON. I appreciate that, Mr. Chairman.

I yield to the ranking member.

Mr. CUMMINGS. Just one question. Thank you, gentlelady, for yielding.

Chairman Issa and the oil industry lobbying groups have asserted that the administration intensely delayed the permitting process to discourage offshore drilling. Mr. Hayes, can you just address that concern directly. Did you or the current administration intentionally delay any permits in order to discourage offshore drilling?

Mr. HAYES. No, sir, we did not.

Mr. CUMMINGS. I see my time is up.

Chairman ISSA. The gentleman from Florida, Mr. Ross, is recognized for 5 minutes.

Mr. ROSS. Thank you, Mr. Chairman.

Ms. Jackson, thank you very much for being here.

I appreciate your testimony. It is an opportunity for me being from central Florida, where we have quite an involvement of the EPA—we have a phosphate industry, a lot of agricultural industry—and to ask a self-serving question. We have had some situations where EPA has been there, of course, doing radon studies, flyovers, and my office has tried to get some cooperation and find out what is going on. So I would just ask you personally if you will cooperate with me so that I might respond to my constituents back home as to what is going on with regard to EPA's investigation, not only of radon but also of water quality studies.

Mr. HAYES. Sir, I am happy to meet with you or to get you whatever information you are looking for.

Mr. ROSS. Thank you.

The other thing I want to talk to you about briefly, because I notice in your bio, you talk about that you and your staff of more than 17,000 professionals are working across the Nation to usher in a green economy. And I think that is pretty important as we are talking about oil and gas exploration, our dependence on such and the production of such from within our domestic borders. But more importantly to me is that if we are going to usher in a green economy, it has been my feeling that we need to do so by way of competition, market forces, as opposed to mandates, meaning that I don't think that it is appropriate that we force a green economy on people that are neither prepared to accept it or able to pay for it.

Again, I talk to you about my district coming from a strong agricultural area. In an area where we have farmers that are looking at alternative crops, such as grasses, algae, crops that make up biofuels, my concern is that we have, you know, from a regulatory standpoint, choked so much of our industry. Is there anything that the EPA is doing to incentivize or encourage a green economy by way of alternative fuel sources that are biofuels and not edible fuel sources either?

Ms. JACKSON. Absolutely, sir. Under the Energy Independence and Security Act, EPA is required to develop renewable fuel standards for the country, and we have done that and will do it as called for by law. Those standards mandate certain amounts of biofuels to be mixed in with our fuel supply. And of course, that displaces gasoline in our fuel supply. In addition, EPA has again by law required to review an application for a waiver to increase the amount of ethanol and gasoline.

Mr. ROSS. But why is it just ethanol? I mean, why aren't we looking—really, I mean, are we not affecting other market forces, food crops, food sources and supplies when we are using anedible fuel crop for a fuel source? I mean, is the EPA doing anything to look at other alternative green fuels that are biofuels?

Ms. JACKSON. Well, certainly EPA is working to, in addition to their renewable fuels work at our Ann Arbor laboratory, which works quite closely with vehicles, we are looking at the impacts of various fuels. We have quite an extensive scientific arm that looks at and supports private sector research on biofuels. And I believe that biofuels for the ag sector is a huge area of potential economic growth, yes.

Mr. ROSS. The other question, and I will pose this to both of you, is that being from Florida and 90 miles away from our southernmost border city there, Cuba, and Cuba, as we talked about earlier, is starting to look at offshore oil exploration. That will be just as close as the Deepwater Horizon was to Florida. Are we doing—do we know how far along Cuba is, Mr. Hayes, Secretary Hayes?

Mr. HAYES. The company that may go first in terms of drilling off of Cuba is a Spanish company called Repsol that also does business in the United States. And they have been in and talked to our department about their plans. And my understanding is that they are potentially planning to drill later this year.

Mr. ROSS. Is there anything that we can do in terms of remediation or at least enforcement of regulation to make sure that what is being done there is in accordance with what we require in our offshore drilling?

Mr. HAYES. This is a matter, Congressman, that is really in the province of the Department of State and not the Interior Department, so, unfortunately, I am not sure of the answer to that question. I do know that the Department of State is involved in this issue and following it closely.

Mr. ROSS. Would it be safe to say that the only hope that we have now is just a strong remediation program that will be located somewhere off the coast of Florida in the event of a spill?

Mr. HAYES. Well, our hope is that Repsol in particular, which knows and follows our own safety requirements, would do the same if they were to drill in Cuban waters.

Mr. ROSS. Thank you. I'll yield back.

Chairman ISSA. Would the gentleman yield?

Mr. ROSS. Yes, sir.

Chairman ISSA. For the administrator, if I had the Department of Energy here, I would have three agencies, all of whom are studying fracking and its effects on water, wouldn't you agree when the President said we should eliminate duplication, that the three agencies that are all studying fracking right now should consolidate behind one of you, rather than three redundant studies?

Ms. JACKSON. No, because I don't agree that the studies are redundant. And rather than consolidate, I would agree that we should coordinate, which is what we are doing.

Chairman ISSA. I hope so.

I recognize the gentlelady from New York, Ms. Buerkle.

Ms. BUERKLE. Thank you, Mr. Chairman, and thank you to both of our guests this morning for your being willing to sit here and take this, answer our questions.

I had some prepared questions, but I first want to just refer to some of the comments you just made.

Ms. Jackson, I heard you say that the polluter is responsible, it was in response to Mr.—or Dr. DesJarlais' question. And I am concerned that you are looking at coal industry and the oil industry and natural gas as a polluter rather than a job creator and someone who—these industries are the backbone of this country. They employ millions of people. They are a great source of revenue, great source of tax revenue for the Federal Government. They are not the enemy. And my sense is, and when I talk to the small businesses and the larger businesses in my district, that the EPA has moved from being someone who advises and helps and helps a business get on track and comply with all of these, just a whole host of regulations; now their sense is that the EPA views this business as the enemy. And that is a concern, because now we move from being helpful to that business in making them be compliant to being punitive. And that is the feeling that is out there in this country. And that is—we, many of us here, came to Congress, came to Washington, because of our concern regarding jobs in the economy in this Nation. The last thing we need to do is to be discouraging to the job creators.

And my sense is when the EPA takes on this aura of being punitive rather than being helpful, and I heard you mention about, well, we want to work with the community, we want to work with the businesses, that is not the sense I am getting out there from these people who are right on the front lines. So I would like you to comment on that and your sense of whether the EPA has moved from being let's help people versus we are just going to be punitive.

Ms. JACKSON. Well, two points, Congresswoman. First, I believe you might be taking my comments a bit out of context. The question from Dr. DesJarlais was about who was responsible for pollution. And so my answer referred to polluters because the question was in the context of when pollution happens.

Please don't take that to mean that I believe that all businesses are polluters, far from it. The vast majority of businesses in this country comply with our environmental laws. They are good stewards. They want to be great stewards. Oftentimes many of them that I have met with, and I have met with dozens and dozens of CEOs of large and small companies, come in and want to comply.

And I do not believe that EPA has moved into a place of being punitive.

However, we have very much so set ourselves on the path of doing our job. What I said when I became administrator is that EPA was once again going to protect the health of the American people, not look the other way if there is pollution or if there is an opportunity to ensure that pollution doesn't happen.

Ms. BUERKLE. Well, then what is the problem? Is it a PR problem? Or when I hear from these businesses that the EPA, and we were fortunate enough to have in-district hearings from Oversight and Government Reform. We talked to members of the agriculture community, dairy farmers. And their biggest problem was with the EPA. So maybe it is a PR problem. But my sense from the folks in the district is that it is more than that.

I also want to talk about Deputy Secretary Jackson, you mentioned—or Hayes, I am sorry—you mentioned about businesses, and it is really a business decision whether or not they drill or whether or not to produce oil. But I want to emphasize that uncertainty is the enemy of growth, uncertainty. When these businesses don't know what regulation or what tax is coming down the pike, that is the problem. So they hunker down and they won't take a risk. And so my message to both of you is for the economic recovery of this country, for job creation, send a message to our businesses of certainty that you are not there to penalize them or to punish them. You want to encourage them because this Nation needs to create jobs. We need to get the American people back working. And with that, I yield back my time.

Chairman ISSA. I thank the gentlelady.

The gentleman from Idaho, Mr. Labrador, is recognized.

Mr. LABRADOR. Thank you, Mr. Chairman.

Administrator Jackson, I—last—I think it was Friday, Thursday or Friday, I received a Google alert that surprised me a little bit. In the newspaper "The Hill," they quoted you as saying that—apparently you were on "The Daily Show." And on "The Daily Show," you responded to a largely GOP claim that the EPA is overzealously pursuing regulation. And your response was as follows: It is definitely an inside the Beltway line of reasoning, she said, and Washington is a place where industry interests pedal a narrative that transforms the Beltway into a fact-free zone. And then you said, outside Washington, and this is what made me laugh a little or maybe you were just joking because you were on "The Daily Show": 95 percent of the American people say they want government; they see one of the roles of government is protecting the air and their water, she said in the interview.

So do you really believe that the problems with the EPA are inside the Beltway line of reasoning, or were you just cracking a joke because you were on "The Daily Show?"

Ms. JACKSON. Well, you should watch it, rather than read about it.

Yes, I believe that 95 percent of the American people, as I stated during that show, believe that it is a role of government to protect them, to keep their air and water clean, to protect their health.

Mr. LABRADOR. Do you also believe that it is only inside the Beltway where people are concerned about the EPA?

Ms. JACKSON. No, I believe people have concerns, and I believe it is my job and EPA's job to try to address those people where they are.

But I also believe that progress is made when we get outside of Washington, as I did when I visited your fine State and spoke to people directly about what is really happening—no, we are not regulating cow flatulence. No, we are not regulating milk—versus the myths that are spun up by professional special interests inside this Beltway to scare people.

Mr. LABRADOR. The irony of that moment for me is that I went into a meeting right after I received the Google alert, and the first thing that the gentleman, who was a businessman, not a politician—he is not a career politician. He is not a regulator. He is just a regular businessman. The first thing he said is, can we get rid of the EPA? I am sick and tired of the EPA destroying jobs in America and destroying this country.

So how is it that you can say on a show that it is an inside the Beltway mentality, where it doesn't matter who I talk to in Idaho, whether it is Republican, Democrat, Independent, they have a problem with the overzealous regulation of the EPA?

Ms. JACKSON. First, let me correct an error in the record, I thought you said Iowa. If you are from Idaho, I haven't visited your State. So I am very sorry for that. That is a mistake.

Mr. LABRADOR. That is what I thought. That is OK.

Chairman ISSA. You should visit, not just read about it.

Ms. JACKSON. I am happy to go. I have actually been, but I haven't been recently, so that would have been an inaccurate statement in the record.

Mr. LABRADOR. That is OK.

Ms. JACKSON. I am happy to visit.

You know, I am happy to speak to this gentleman and happy to speak to constituents.

What I would say is, I would like it understand the reasoning behind that, because there are constituents in your State who preserve and protect air quality or water quality, clean up Superfund sites. We are quite busy on a range of issues. And so although I do not doubt that people have concerns about our agency, and as I also said on that same show, we can certainly do our jobs better and more effectively—we look for opportunities to do so—the poll shows that 95 percent of the American people think that the reason the EPA is there, which is to protect their health, is a function of government that should happen, that no one——

Mr. LABRADOR. And I think I would agree with you that it is a function of government that should happen, but the problem is the overzealous regulation. And the overzealous interpretation of regulation, that is killing our jobs and killing our industry and killing our economy.

And I think I would invite you to come to Idaho, and I would invite you to talk to the businessmen, to the mayors, the Republicans, Democrats, Independents. The first thing I talk to every mayor about in Idaho, it doesn't matter what party they belong to or whether they are nonpartisan, is about the EPA and about how much money it is going to cost them, the issues with phosphorus, the issues with the water. We have cities in Idaho that are concerned that over the next 10 years, it is going to cost them over a billion dollars to remediate some of the things that is only going to improve the water by 1 percent or half of a percent.

So these are concerns that we really have that are going to cost jobs, that are going to cost the economy. And I think that you need to be maybe more concerned about what is happening outside of the Beltway, because it seems to me that inside the Beltway, all of your friends are telling you that nobody is concerned about the EPA.

Now Deputy Secretary Hayes, just a quick question, you keep mentioning that we have actually increased production of oil. What is the reality about what happened after Macondo in the Outer Continental Shelf, has production of oil increased or decreased in that area?

Mr. HAYES. In the Gulf, it has remained about steady at about 50 million barrels per month. In November 2008, the production I believe was 48 million barrels per month. The last year we have monthly records is December of last year; it was 49 million barrels a month. It is anticipated, as was discussed before, that there will be a slight erosion, potentially later this year or next year, in terms of production because of the delay in permitting that was necessary because of the disaster. We hope to make up for that however with new discoveries that are now being drilled.

Chairman ISSA. The gentleman's time has expired, and I thank the gentleman.

Mr. Gibbs, I thank you for your presence here.

If you will have all of your questions, if you want to ask one question before we go sine die, I will certainly allow it. I just want to be respectful that the House Rule is once the joint session starts, we must adjourn.

Please.

Mr. GIBBS. Thank you, Mr. Chairman.

I will try to be quick.

Talk about the markets and the price, one thing I would like to just comment on that, uncertainty leads to the futures market with the people in the market. The market is functioning, because this administration is putting out a lot of uncertainty. And one area I want to key on is a week and a half ago, my committee, the Water Resource and Environment, your subordinate Ms. Nancy Stoner testified, Administrator Jackson. And it is appalling to me that here we had a coal operation in West Virginia that went through 10 years of environmental impact study, went far beyond what they needed do, got their permit in 2007 from the Army Corps of Engineers. And the EPA was working in concert with them. This administration came in in 2010 and revoked that permit after they spent $100 million in investment. She testified, when I asked the question, was State EPA in West Virginia, were they in support of the revocation; she said, no. Did the Army Corps of Engineers give any new evidence that they were in permit violation or there's any problems? The Army Corps did not supply any of that evidence. What basis does your administration have to go forward to revoke that permit under law?

Ms. JACKSON. The Clean Water Act, sir, and protection of water quality. And let me say for the record that permit had been issued by the Corps of Engineers over EPA's strong comments that we believed that it did not comply with the Clean Water Act.

Mr. GIBBS. I think currently under the Clean Water Act, when the Corps issued that permit, the EPA if they had objections, they could have vetoed that permit at that time, and they did not do that. Is that correct?

Ms. JACKSON. EPA did not at that time, but that it was during the Bush administration. After President Obama was elected and we were called on by the courts to defend that permit——

Mr. GIBBS [continuing]. Time here. This sets a very dangerous precedent, because this was 3 years after the permit was given, so you are creating huge uncertainty across all sectors of the economy because who is going to come in and risk capital? And what banks are going to loan money knowing that at the whim of an administration, any administration can come in and revoke a permit? Who is going to take that risk? So you are creating more uncertainty. If you want to bring down gas prices, you need to put certainty out in the market. And you can't have actions like what happened at the Spruce Mine in West Virginia. That is creating uncertainty. I have other examples; the permit that has been delayed, delayed and delayed up in Alaska, for a large oil company to get to the lease lands that they have leased. They have been stopped by the EPA and the Corps to build an 8-mile road that the State of Alaska wants. The oil company is going to pay for it and no taxpayer expense, and this administration has put a roadblock.

So I continually hear in my committee of road blocks, barriers put up against the industry to develop these natural resources responsibly, because clearly there is an attempt by this administration to not want to develop these natural resources.

Chairman ISSA. I thank the gentleman.

Pursuant to the House Rules, the gentlelady can answer briefly. We are going to have to recess, and the balance of both his questions and answers, I would appreciate you answering for the record.

So, please.

Ms. JACKSON. And I will submit a longer answer for the record.

Let me simply just make three statements. This administration has not any intent to increase uncertainty in the market. In fact, many of the rules we have done have been intended to finally answer questions, many of them long overdue.

With respect to the Spruce Mine case, this administration was forced with a decision either to defend a permit in court that EPA had never agreed was given properly or to exercise its right under the Clean Water Act to veto it.

And finally, happy to give some answers on Alaska for the record.

Chairman ISSA. I appreciate it. And I appreciate all the Members' time, and you really went past the hour and 45 that we said; it is a little over 2. As the Prime Minister takes the floor, we are going to stand adjourned, and I appreciate your answering questions for the record.

[Whereupon, at 11:10 a.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]

**Questions for the Record and Opening Statement from Congressman Blake Farenthold**

**Full Committee hearing entitled, "Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas."**

**Tuesday May 24, 2011**

**Opening Statement**

Administrator Jackson and Deputy Secretary Hayes, thank you both for taking the time to come to this hearing and answer questions on how the Environmental Protection Agency and the Department of the Interior impact domestic oil and gas production.

This hearing is especially important to the State of Texas and the South Texas district I represent, as oil and gas production and refining play an important role in our economies and employ thousands of people.

I have grave concern about both the Department of the Interior, through BOEMRE, and the Environmental Protection Agency's rulemaking processes and how those agencies negatively impact the energy industry and our recovering economy. Reports from businesses back home indicate that the EPA and the DOI's ever changing demands send mix signals, change goal posts and impose a climate of uncertainty on the future of companies and industry.

Industry needs to have clarity and certainty about what is required to obtain permits and what the approval timeframe is in order to effectively plan business operations and create much needed jobs.

**TCEQ's is highly effective in managing environmental issues in the State of Texas.**

The EPA's unexpected and unprecedented changes in permitting and back door cap and trade implementation have a negative and unacceptable impact on industry. Long term planning is a pillar of the refining industry. As the EPA changes goal posts and milestones, companies' lead time for expansion and upgrade projects are impacted. For example, every five years a refinery upgrades its facilities to operate at a cleaner and more efficient capacity. Parts are sourced from around the world and approximately two years of lead time is required to implement these change. The EPA, with duplicative and unchecked rulemaking, imposes permitting demands that extend refineries' lead time by two to three years for expansion and upgrade activities. With the uncertainty and liability these regulations impose, many companies cancel projects and divert millions of dollars of capital from operation, production and expansion activities, that create jobs, to legal and consulting fees.

In Texas alone, we can report the following aborted projects that are directly related to EPA's unchecked rulemaking and inconsistency that negatively impacts business, stymies job growth, and hurts our economic recovery:

- One major refinery spent no less than $4 M to "de flex" operations, related to EPA's Sip Gap issue with the TCEQ in regard to flex permit issues

- Major refinery to produce low sulfur diesel $2.2 B capital investment and an additional 440 jobs created
- Major refinery expansion, worth $17 B in local economic impact and 6600 refinery jobs in Port Arthur, Texas

**Questions for the EPA:**

*Administrator Jackson:*

1. Could you please provide a list of all pending permits for refineries and Greenfield energy centers in the state of Texas?

2. Could you please provide me with the economic impact these pending permits would have on the local economy of the proposed sites?

3. Could you please provide the date the permit applications were received by the EPA and what date do you expect the EPA to produce a decision on permitting?

4. While answering a question I posed in last week's hearing, you stated that EPA was not implementing a back door cap and trade policy, but that the agency was pursuing an initiative to monitor and control green house gas emissions. What authority, statutory or administrative, gives the EPA the power to regulate and monitor green house gas emissions?

5. My understanding is that EPA has sent a draft of the final regulations for the Clean Air Transport Rule to OMB. EPA has said that a final rule should be released to the public by the end of June. I understand EPA did not include Texas for sulfur dioxide reductions in the proposed rule, but accepted comment on whether to include Texas in the final rule for SO2 reductions. Can you please tell me if Texas was specifically included for sulfur dioxide reductions in this rule?

6. In the event Texas is included in a state specific sulfur dioxide rule, wouldn't it be necessary to allow notice and comment on such a rule?

7. Does the EPA apply cost benefit analysis to proposed regulation, especially those associated with air quality in green house gas issues in 2011?

**Questions for the Department of the Interior**

*Deputy Secretary Hayes:*

1. Could you please explain what gives BOEMRE the authority to use the notice to lessee vehicle as a mechanism for rulemaking?

2. Do you believe that BOEMRE has the authority to impose a permitorium in the Gulf of Mexico?

3. Could you please provide a list of permits for offshore drilling in the Gulf of Mexico?

4. Could you please provide the date those permit applications were received by BOEMRE and the proposed decision date on permitting?

5. Could you please provide information on the proposed depth of each proposed drilling project in the Gulf of Mexico with a permit currently pending? Please provide the length of time these permits have been pending, or in review process.

6. Many businesses indicated that the Department of the Interior, via BOEMRE, is changing the rules mid stream or have no firm guidelines as to what criteria must be met for a permit to be issued. How would you respond this comment by business in the Texas Gulf Coast?

## EPA chief: Gas prices not our fault

By: Robin Bravender
April 26, 2011 10:41 AM EDT

The EPA is getting blamed for a lot of things these days, but Lisa Jackson says rising gasoline prices are not her agency's fault.

The EPA administrator insisted Tuesday that upward pressure on gas prices "is not coming from any environmental or health regulation."

"The standards that we set to protect our health are so often and so inaccurately blamed for increasing prices and economic challenges that I want to make clear that that's not what is happening right now," she told a conference hosted by the Energy Information Administration.

Nor is increasing demand for fuel in nations such as China and India to blame for cost spikes, Jackson added — at least not yet.

"What appears to be the most important factor at work is our dependence on imported energy," she said. "This is what leaves us vulnerable to jumps in prices. When something changes thousands of miles away, the American people pay for it at the pump."

Jackson said the White House is working to fix that, with President Barack Obama's plan to slash oil imports by one-third by 2025 by increasing domestic production, encouraging energy efficiency and supporting the development of cleaner fuels.

*This article first appeared on POLITICO Pro at 10:16 a.m. on April 26, 2011*