AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

H.R.__: "AMERICAN-MADE ENERGY AND INFRASTRUCTURE JOBS ACT"; H.R.__: "ALASKAN ENERGY FOR AMERICAN JOBS ACT"; H.R.__: "PROTECTING INVESTMENT IN OIL SHALE: THE NEXT GENERATION OF ENVIRONMENTAL, ENERGY, AND RESOURCE SECURITY ACT" (PIONEERS ACT); AND H.R. __: COAL MINER EMPLOYMENT AND DOMESTIC ENERGY INFRASTRUCTURE PROTECTION ACT."

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

Friday, November 18, 2011

Serial No. 112-85

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.fdsys.gov
or
Committee address: http://naturalresources.house.gov

U.S. GOVERNMENT PRINTING OFFICE

71-539 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON NATURAL RESOURCES

DOC HASTINGS, WA, *Chairman*
EDWARD J. MARKEY, MA, *Ranking Democratic Member*

Don Young, AK
John J. Duncan, Jr., TN
Louie Gohmert, TX
Rob Bishop, UT
Doug Lamborn, CO
Robert J. Wittman, VA
Paul C. Broun, GA
John Fleming, LA
Mike Coffman, CO
Tom McClintock, CA
Glenn Thompson, PA
Jeff Denham, CA
Dan Benishek, MI
David Rivera, FL
Jeff Duncan, SC
Scott R. Tipton, CO
Paul A. Gosar, AZ
Raúl R. Labrador, ID
Kristi L. Noem, SD
Steve Southerland II, FL
Bill Flores, TX
Andy Harris, MD
Jeffrey M. Landry, LA
Jon Runyan, NJ
Bill Johnson, OH
Mark Amodei, NV

Dale E. Kildee, MI
Peter A. DeFazio, OR
Eni F.H. Faleomavaega, AS
Frank Pallone, Jr., NJ
Grace F. Napolitano, CA
Rush D. Holt, NJ
Raúl M. Grijalva, AZ
Madeleine Z. Bordallo, GU
Jim Costa, CA
Dan Boren, OK
Gregorio Kilili Camacho Sablan, CNMI
Martin Heinrich, NM
Ben Ray Luján, NM
John P. Sarbanes, MD
Betty Sutton, OH
Niki Tsongas, MA
Pedro R. Pierluisi, PR
John Garamendi, CA
Colleen W. Hanabusa, HI
Vacancy

Todd Young, *Chief of Staff*
Lisa Pittman, *Chief Legislative Counsel*
Jeffrey Duncan, *Democratic Staff Director*
David Watkins, *Democratic Chief Counsel*

SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

DOUG LAMBORN, CO, *Chairman*
RUSH D. HOLT, NJ, *Ranking Democratic Member*

Louie Gohmert, TX
Paul C. Broun, GA
John Fleming, LA
Mike Coffman, CO
Glenn Thompson, PA
Dan Benishek, MI
David Rivera, FL
Jeff Duncan, SC
Paul A. Gosar, AZ
Bill Flores, TX
Jeffrey M. Landry, LA
Bill Johnson, OH
Mark Amodei, NV
Doc Hastings, WA, *ex officio*

Peter A. DeFazio, OR
Madeleine Z. Bordallo, GU
Jim Costa, CA
Dan Boren, OK
Gregorio Kilili Camacho Sablan, CNMI
Martin Heinrich, NM
John P. Sarbanes, MD
Betty Sutton, OH
Niki Tsongas, MA
Vacancy
Edward J. Markey, MA, *ex officio*

CONTENTS

	Page
Hearing held on Friday, November 18, 2011	1
Statement of Members:	
Hastings, Hon. Doc, a Representative in Congress from the State of Washington	7
Prepared statement of	8
Johnson, Hon. Bill, a Representative in Congress from the State of Ohio	9
Lamborn, Hon. Doug, a Representative in Congress from the State of Colorado	2
Prepared statement of	3
Markey, Hon. Edward J., a Representative in Congress from the State of Massachusetts	5
Prepared statement of	6
Young, Hon. Don, the Representative in Congress for the State of Alaska	37
Statement of Witnesses:	
Alexander, Ryan, President, Taxpayers for Common Sense	32
Prepared statement on H.R. 3410	34
Dana, Todd, Chairman and CEO, Uintah Resources, Inc.	54
Prepared statement on H.R. 3408	56
Eikenberry, Bill, Rancher, and Former Wyoming State Associate Director, Bureau of Land Management, U.S. Department of the Interior	59
Prepared statement on H.R. 3408	61
Gardner, J. Steven, P.E., President and CEO, ECSI, LLC	64
Prepared statement on H.R. 3409	66
Helmericks, Mark, Founder of Colville, Inc., Colville Village, Alaska	15
Prepared statement on H.R. 3407	16
McGinley, Patrick C., Professor of Law, West Virginia University College of Law	72
Prepared statement on H.R. 3409	73
Milito, Erik, Upstream Director, American Petroleum Institute	27
Prepared statement on H.R. 3410	29
Sweeney, Tara M., Senior Vice President, External Affairs, Arctic Slope Regional Corporation	11
Prepared statement on H.R. 3407	12
Van Tuyn, Peter, Alaska Conservationist and Environmental Attorney, Bessenyey & Van Tuyn, LLC, on behalf of the Alaska Wilderness League	17
Prepared statement on H.R. 3407	18
Wagner, Hon. Frank W., Senator, The General Assembly of Virginia	25
Prepared statement on H.R. 3410	26
Zaluski, Joseph J., Executive Vice-President, ECSI, LLC	68
Prepared statement on H.R. 3409	70
Additional materials supplied:	
Hrenko, Rikki, CEO, Enefit American Oil Company, Statement submitted for the record	102
U.S. Department of the Interior, Statement submitted for the record	98

LEGISLATIVE HEARING ON H.R.__: (STIVERS) "AMERICAN-MADE ENERGY AND INFRASTRUCTURE JOBS ACT"; H.R.__: (HASTINGS OF WA AND YOUNG OF AK) "ALASKAN ENERGY FOR AMERICAN JOBS ACT"; H.R.__: (LAMBORN) "PROTECTING INVESTMENT IN OIL SHALE: THE NEXT GENERATION OF ENVIRONMENTAL, ENERGY, AND RESOURCE SECURITY ACT" (PIONEERS ACT); AND H.R.__: (JOHNSON OF OH) "COAL MINER EMPLOYMENT AND DOMESTIC ENERGY INFRASTRUCTURE PROTECTION ACT."

Friday, November 18, 2011
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 9:34 a.m., in Room 1324, Longworth House Office Building, Hon. Doug Lamborn [Chairman of the Subcommittee] presiding.

Present: Representatives Lamborn, Hastings, Fleming, Flores, Landry, Johnson, Thompson, Duncan of South Carolina, Amodei, Rivera, Young, Southerland, and Markey.

Mr. LAMBORN. The Committee will come to order, there being present a quorum, which under Committee Rule 3(e), is two Members.

The Subcommittee on Energy and Mineral Resources is meeting today to hear testimony on four bills. The first one is the American Made Energy and Infrastructure Jobs Act, H.R. 3410. There is also Alaskan Energy for America Jobs Act, H.R. 3407; Protecting Investment in Oil Shale the Next Generation of Environmental Energy and Resources Security Act, H.R. 3408; and Coal Miner Employment and Domestic Energy Infrastructure Protection Act, H.R. 3409.

Mr. LAMBORN. Under Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member of the Subcommittee. However, it is my intention to recognize the Full Committee Chairman and Ranking Member as well as the author of one of the pieces of legislation.

I ask unanimous consent to include any other Member's opening statement in the hearing record if submitted to the clerk by close of business today.

Hearing no objection, so ordered.

STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. LAMBORN. I now recognize myself for 5 minutes. Today the Subcommittee is considering a package of bills designed to create and save jobs, open American lands for energy development, and generate new revenue for the American Treasury. Combined, these bills provide one of the largest single actions Congress could take to promote American energy security. Using our Federal lands for energy production is critical to our national security. These resources are the property of the American people, and it is only the opening of these lands and promoting their development that will bring forth the value of the minerals on these lands.

Among the bills before the Committee today is the Protecting Investment in Oil Shale the Next Generation of Environmental Energy and Resource Security Act, or PIONEERS Act, that will facilitate the development of our oil shale resources in the United States. Our Nation is blessed with some of the largest, richest deposits of oil shale in the entire world. According to the U.S. Geological Survey, the Western United States may hold more than 1.5 trillion, with a T, barrels of oil, six times Saudi Arabia's proven resources and enough to provide the United States with energy for the next 200 years. Furthermore, it is estimated that hundreds of thousands of American jobs could be created by the development of our oil shale.

Unfortunately, the policies of this Administration have actively harmed both research and development of oil shale. After changing oil shale lease terms, making them so limited that there was practically no interest in the land offered by the Bureau of Land Management and announcing they would be re-reviewing the current rules for commercial leasing, the Administration has stifled oil shale development and research.

At a field hearing held this year by this Subcommittee in Grand Junction, Colorado, we heard testimony from numerous witnesses stating that consistent policies and regulatory certainty were greatly needed in order to advance oil shale in the United States. My legislation aims to open up land for both research and commercial development of oil shale and to create stable policies that the industry can rely on. This will create good-paying jobs for Americans, contribute to our energy security, and decrease our dependency on foreign oil.

Just Wednesday, Secretary Salazar said there were many questions still surrounding oil shale development. I agree. However, the Secretary's response has been to inject confusion and to restrict research. This bill takes a different tack. Instead, it will provide certainty and promote research. Companies were planning large investments in Colorado. However, many are now working with and investing in other nations, like Estonia and Jordan.

Another bill before us today is the Coal Miner Employment and Domestic Energy Infrastructure Protection Act. The bill limits the authority of the Secretary of the Interior to issue new burdensome regulations under the Surface Mining Control and Reclamation Act of 1977 until December 31, 2011. This will stop the reckless rush of rulemaking by the Office of Surface Mining that has resulted in

millions of wasted dollars and confusion by all parties as to the real impacts of the ongoing rulemaking by the OSM.

Instead, this timeout will give OSM time to meet the requirements of a National Environmental Policy Act and generate a legally defensible regulation and to hear and address the concerns raised by the cooperating agencies, coal-mining States, citizens, and industry. These are concerns that were raised in the April Budget oversight hearing for the Office of Surface Mining and subsequent oversight hearings on the Obama Administration's rewrite of the stream buffer zone rule, including a field hearing by this Subcommittee held in Charleston, West Virginia.

Broad concern was raised after chapters of the draft environmental impact statement showed potential job losses in the neighborhood of 7,000 coal mine jobs and a reduction in coal production in 22 States. The Administration has backed away from their job loss estimates and begun to publicly criticize the contractor hired by OSM to prepare the EIS. Eventually OSM and the contractor, Polu Kai, came to a mutual agreement to terminate the contract. As one might imagine, while OSM blames the contractor for problems with the EIS, the contractor has raised concerns with OSM's management of the process.

In particular, the numerous changes to the scope of the rule the EIS was to support. This may be a classic case of shooting the messenger when the message of massive job loss is too uncomfortable.

Today we will hear from two of the subcontractors, Steven Gardner and Joe Zaluski, who worked for Polu Kai Services, on the Administration's rewrite of the stream buffer zone rule. I look forward to their testimony and hearing a different perspective on the rulemaking process.

I know Chairman Hastings is here today, and I expect he will talk more about the other two bills before the Committee, so I will end my comments with just one last thought: Americans are desperate for new jobs, and blue-collar workers in our trades have been particularly hard hit by the economic downturn. Critics will say these bills are a give-away to the oil industry. Nothing could be further from the truth. These bills are designed to open lands to create opportunity, opportunity for Federal and local governments to receive revenues without having to borrow them, opportunity for companies to pay billions of dollars to the Treasury for the right to hire millions of new workers to explore, discover, and develop these resources, workers who are experts in the skilled trades, craftsmen, pipefitters, electricians, workers who will have good paying jobs with benefits to feed and support their working families. I look forward to hearing from the witnesses today.

In lieu of the Ranking Member of the Subcommittee not being here, I would like to recognize the Ranking Member of the Full Committee for 5 minutes.

[The prepared statement of Mr. Lamborn follows:]

Statement of The Honorable Doug Lamborn, Chairman, Subcommittee on Energy and Mineral Resources

Today the Subcommittee is considering a package of bills designed to create and save jobs, open American lands for energy development, allow for the continued production of privately owned coal resources and generate revenue for the American

treasury. Combined these bills provide one of the largest single actions Congress could take to promote domestic energy security.

Using our federal lands for energy production is critical to our national security. These resources are the property of the American people and it is only by opening these lands and promote their development will bring forth the value of the minerals on these lands.

While there are a number of bills before the Committee today, I would like to begin with the Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act—or PIONEERS Act—will facilitate the development of our oil shale resources in the United States.

In the United States we are blessed with some of the largest, richest deposits of oil shale in the entire world. According to the U.S. Geological Survey, the Western United States may hold more than 1.5 trillion barrels of oil—six times Saudi Arabia's proven resources, and enough to provide the United States with energy for the next 200 years. Furthermore, it is estimated that 350,000 domestic jobs could be created by the development of our oil shale.

Unfortunately, the policies of this Administration have actively harmed both research and development of oil shale. After changing oil shale lease terms, making them so limited that there was practically no interest in the land offered by the Bureau of Land Management, and announcing they would be re-reviewing the current rules for commercial leasing, the Administration has stifled oil shale development and research.

At a field hearing this held by our Subcommittee in Grand Junction, Colorado, we heard testimony from numerous witnesses stating that consistent policies and regulatory certainty were greatly needed in order to advance oil shale in the United States. My legislation aims to open up land for both research and commercial development of oil shale and create stable policies that the industry can rely on to create good-paying jobs for Americans, contribute to our energy security, and decrease our dependency on foreign oil. Just Wednesday, Secretary Salazar said there were many questions still surrounding oil shale development. I agree, however, the Secretary's response has been to inject confusion and restrict research. Companies were planning large investments in Colorado; however, due to the Secretary's actions many are now working with and investing in other nations like Estonia and Jordan. This bill takes a different tack; it will provide certainty and create an environment to foster research and development of this important domestic resource.

Another bill before us today is the Coal Miner Employment and Domestic Energy Infrastructure Protection Act. The bill limits the authority of the Secretary of the Interior to issue new burdensome regulations under the Surface Mining Control and Reclamation Act of 1977 until December 31, 2011. This will stop the reckless rush of rulemaking by the Office of Surface Mining that has resulted in millions of wasted dollars and confusion by all parties regarding the real impacts of the ongoing rulemaking by the OSM. Instead this time out will give OSM time to meet the requirements of the National Environmental Policy Act and generate a legally defensible regulation and to hear and address the concerns raised by the cooperating agencies, coal mining states, citizens and industry. Concerns that were raised in the April Budget oversight hearing for the Office of Surface Mining and subsequent oversight hearings on the Obama Administration's re-write of the Stream Buffer Zone Rule.

Broad concern was raised after chapters of the draft environmental impact statement showed potential job losses in the neighborhood of 7000 coal mine jobs, and a reduction in coal production in 22 states. The Administration has backed away from their job loss estimates and began to publically criticize the contractor hired by OSM to prepare the EIS. Eventually OSM and the contractor, Polu Kai, came to a mutual agreement to terminate the contract. As one might imagine while OSM blames the contractor for problems with the EIS the contractor has raised concerns with OSM's management of the process in particular the numerous changes to the scope of the rule the EIS was to support.

Today we will hear from two of the subcontractors, Steven Gardner and Joe Zaluski, who worked for Polu Kai Services on the Administration's rewrite of the Stream Buffer Zone Rule. I look forward to their testimony and hearing a different perspective on the rule making process.

I know Chairman Hastings is here today and I expect he will talk more about the other two bills before the Committee, so I will end my comments with just one last thought.

Americans are desperate for new jobs and blue collar workers in our trades have been particularly hard hit by the economic downturn. Critics will say that these bills are a give away to the oil industry. Nothing could be further from the truth, these bills are designed to open lands to create opportunity. Opportunity for compa-

nies to pay billions of dollars to the treasury, for the right to hire millions of new workers to explore, discover and develop these resources. Workers who are experts in the skilled trades: craftsmen, pipefitters, electricians. Workers who will have good paying jobs, with benefits, to feed and support their families. I look forward to hearing from the witnesses today.

STATEMENT OF THE HON. EDWARD J. MARKEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

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

Yesterday, the Republican leadership unveiled what they deemed to be a new plan to fund construction projects for our Nation's roads and bridges.

Unfortunately, the majority's drilling bills would barely get us started down the road of paying for a transportation bill. The four bills we are considering today would only generate 1/15th of the revenue that we would need to fund transportation projects for the next 6 years. These bills would leave us $70 billion short of funding our transportation projects over that time.

Even the Ranking Member of the Senate Environment and Public Works Committee, Senator Inhofe, acknowledged this week that increased drilling would not be able to fund a transportation bill, stating, quote, there is no money in expanded energy production.

Now, Senator Inhofe and I seldom see eye-to-eye, but on this issue I have to agree with him. We should leave no stone unturned as we look to get our Nation's fiscal house in order and get our economy moving again, but we don't need to drill under every single rock to do it. Just increasing the number of drill holes won't allow us to eliminate our Nation's potholes.

In reality, the Republican plan to pay for our transportation projects is nothing more than the same drilling proposals they have offered time and time again. These bills would once again place drill rigs off our beaches, up and down the East and West Coast. These bills would once again open our Nation's most pristine wildlife refuge to drilling, and just because the majority now wants to use any drilling revenue to fund transportation projects doesn't mean that we haven't been down this road before.

On the debt deal, the Republicans said it was my way or the highway. On the continuing resolution, they said it was my way or the highway. And now when it comes to funding the transportation bill, they are saying my way or our highways; we can't fix our roads unless big oil gets its fix.

But there is a better way. This week Democrats on the Natural Resources Committee introduced legislation that would generate nearly four times as much revenue as these drilling bills through ensuring that oil, gas, and mining companies are paying their fair share. Our legislation would generate more than $19 billion in all over the next 10 years by closing loopholes that allow these companies, some of the most profitable companies in the history of the world, to drill and mine resources without paying a dime to the American people. Our bill would raise roughly $1 billion by encouraging companies to begin drilling on the leases they already have, just offshore. Oil companies are currently sitting on leases that hold more than 11.5 billion barrels of oil. The legislation would raise more than $9 billion by ending free drilling by big oil compa-

nies on public lands offshore in the Gulf of Mexico. It would raise more than $6 billion over the next 10 years by updating the 1872 Mining Law that allows mining companies to extract gold, silver, uranium, and other minerals without paying taxpayers any royalties, and through ensuring that companies pay to clean up their abandoned mine sites.

Big oil has recorded $101 billion in profits through the first 9 months of this year. These companies aren't just the 1 percent. They are the 1 percent plus. But the majority still wants to allow these oil companies to stage an occupy movement off our Nation's beaches.

As we look to fund our Nation's highways, we don't need more drilling gimmicks. We need a concrete plan. We can pave the way for a transportation bill by ensuring that the American people get a proper return on the resources below public lands. We are at an intersection for our Nation's economic well-being. As we are looking to put American families back to work by funding transportation projects, the clear place to start is by ending the free ride for oil and mining companies on public lands.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Markey follows:]

Statement of The Honorable Edward J. Markey, Ranking Member, Committee on Natural Resources

Yesterday, the Republican leadership unveiled what they deemed to be a new plan to fund construction projects for our nation's roads and bridges. Unfortunately, the Majority's drilling bills would barely get us started down the road of paying for a transportation bill. The four bills we are considering today would only generate one-fifteenth of the revenue that we would need to fund transportation projects for the next six years. These bills would leave us $70 billion short of funding our transportation projects over that time.

Even the Ranking Member on the Senate Environment and Public Works Committee, Senator Inhofe, acknowledged this week that increased drilling would not be able to fund a transportation bill, stating "there is no money in expanded energy production." Senator Inhofe and I don't always see eye to eye, but on this issue I have to agree with him. We should leave no stone unturned as we look to get our nation's fiscal house in order and get our economy moving again but we don't need to drill under every single rock to do it. Just increasing the number of drill holes won't allow us to eliminate our nation's pot holes.

In reality, the Republican plan to pay for our transportation projects is nothing more than the same drilling proposals they has offered time and time again. These bills would once again place drill rigs off our beaches up and down the East and West Coasts. These bills would once again open our nation's most pristine wildlife refuge to drilling. Just because the Majority now wants to use any drilling revenue to fund transportation projects doesn't mean that we haven't been down this road before.

On the debt deal, the Republicans said it was "my way or the highway." On the Continuing Resolution they said it was "my way or the highway." Now when it comes to funding the transportation bill, they are saying "my way or OUR HIGHWAYS." We can't fix our roads unless Big Oil gets its fix. But there's a better way.

This week, Democrats on the Natural Resources Committee introduced legislation that would generate nearly four times as much revenue as these drilling bills through ensuring that oil, gas and mining companies are paying their fair. Our legislation would generate more than $19 billion in all over the next 10 years by closing loopholes that allow these companies—some of the most profitable companies in the history of the world—to drill and mine our resources without paying a dime to the American people.

Our bill would raise roughly $1 billion by encouraging companies to begin drilling on the leases they already have—just offshore, oil companies are currently sitting on leases that hold more than 11.5 billion barrels of oil. The legislation would raise more than $9 billion by ending free drilling by Big Oil companies on public lands offshore in the Gulf of Mexico. It would raise more than $6 billion over the next

10 years by updating the 1872 mining law that allows mining companies to extract gold, silver, uranium and other minerals without paying taxpayers any royalties and through ensuring that companies pay to clean up their abandoned mine sites.

Big Oil has recorded $101 billion in profits through the first 9 months of this year. These companies aren't just the 1 percent, they're the one-plus percent. But the Majority still wants to allow these oil companies to stage an occupy movement off our nation's beaches.

As we look to fund our nation's highways, we don't need more drilling gimmicks, we need a concrete plan. We can pave the way for a transportation bill by ensuring that the American people get a proper return on the resources below public lands.

We are at an intersection for our nation's economic well being. As we are looking to put American families back to work by funding transportation projects, the clear place to start is by ending the free ride for oil and mining companies on public lands.

Mr. LAMBORN. I now recognize the Chairman of the Full Committee, Representative Hastings, for 5 minutes for his opening statement.

STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

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

Thank you for the courtesy of having me here. Earlier this month, Speaker Boehner outlined plans for an energy and infrastructure jobs bill that would link expanded American energy production with initiatives to repair and improve infrastructure. This would promote long-term private-sector job growth and remove barriers that stand in the way of American energy production. The Natural Resources Committee is doing its part to advance this effort by moving forward with consideration of measures under its jurisdiction that will be included in the Speaker's bill.

The bills before us today are not just energy bills; they are job bills. Increased energy production is one of the best ways to help jump start our economy. It will create over a million energy jobs and thousands of indirect jobs in a variety of sectors in every State throughout our country. Increased energy production is one of the easiest ways to generate new Federal revenue. Through lease sales, bonus bids, and royalties the Federal Government can raise billions of dollars by allowing new production on Federal lands and in Federal waters.

Given the tremendous economic benefits, not to mention the national security implications, there is no reason why we should not provide access to our own energy resources here.

In contrast to the actions taken by the Obama Administration with its new 5-year plan, the bill introduced by Mr. Stivers of Ohio would open new offshore areas for energy production. These are areas with vast energy resources that are currently blocked from development.

A majority of Americans support increased offshore drilling, and the bill includes proposals that have already received bipartisan support in the House. We should move forward with a smart plan that allows new drilling to occur in areas with the greatest energy potential.

And it is well past time to open a small portion, less than 3 percent, of the Arctic National Wildlife Refuge to responsible energy production. Mr. Young of Alaska and I have introduced a bill that

would do just that. ANWR is the single greatest opportunity for new energy production on Federal land, and it was specifically set aside for energy production by President Carter and Congress in 1980. This Committee has heard from a bipartisan group of community leaders and elected officials who all spoke about jobs and economic growth that ANWR production would provide.

Finally, the PIONEER Act by Chairman Lamborn will allow for the increased production of our U.S. oil shale resources in the West. It is estimated that the U.S. has over 1.5 trillion barrels of shale oil in shale, six times Saudi Arabia's proven resources. We should develop that potential. These proposals to allow new offshore and onshore energy production will generate substantial revenues because these proposals open new areas that are currently closed to energy production.

As this legislation moves through the regular legislative process, from hearing today, through markup and so forth, the exact CBO score will be known. One thing that is certain, doing nothing will not create any new jobs or generate any new revenue.

During these difficult economic times, with soaring debts, soaring debts and deficits, and a highway trust fund that needs to be replenished, Congress should not pass up this opportunity to create jobs and generate billions of dollars in new revenue. The revenue from these projects will make significant contribution to help fund America's roads and bridges. That is why it makes sense to link these two issues of energy production and infrastructure. By increasing energy production, we create new American energy jobs and also generate revenue that will help create infrastructure jobs. In short, this creates jobs and provides important funding without having to raise taxes on American families and businesses.

So I thank the Subcommittee Chairman Lamborn for holding this hearing and look forward to working with you as this process moves forward.

[The prepared statement of Mr. Hastings follows:]

Statement of The Honorable Doc Hastings, Chairman, Committee on Natural Resources

Earlier this month, Speaker Boehner outlined plans for an energy and infrastructure jobs bill that would link expanded American energy production with initiatives to repair and improve infrastructure. This would promote long-term, private sector job growth and remove barriers that stand in the way of American energy production.

The Natural Resources Committee is doing its part to advance this effort by moving forward with consideration of measures under our jurisdiction that will be included in the Speaker's bill.

The bills before us today are not just energy bills, they are job bills. Increased American energy production is one of the best ways to help jumpstart our economy. It will create over a million energy jobs and thousands of indirect jobs in a variety of sectors in every state throughout the country.

Increased American energy production is also one of the easiest ways to generate new federal revenue. Through lease sales, bonus bids and royalties, the federal government can raise billions in revenue by allowing new production on federal lands and in federal water.

Given the tremendous economic benefits—not to mention the national security implications—there is no reason why we should not provide access to our own energy resources located here at home.

In contrast to the actions taken by the Obama Administration with its new five year plan, the bill introduced by Rep. Stivers would open new offshore areas for energy production. These are areas with vast energy resources that are currently blocked from development. A majority of Americans support increased offshore drill-

ing and the bill includes proposals that have already received bipartisan support in the House. We should move forward with a smart plan that allows new drilling to occur in areas with the greatest energy potential.

And, it's also well past the time to open a small portion—less than 3 percent—of the Arctic National Wildlife Refuge to responsible energy production. Rep. Don Young and I have introduced a bill that would do just that. ANWR is the single greatest opportunity for new energy production on federal land and it was specifically set aside for energy production by President Carter and Congress in 1980. This Committee has heard from a bipartisan group of community leaders and elected officials who all spoke about the jobs and economic growth that ANWR production would provide.

Finally, the PIONEER Act by Subcommittee Chairman Lamborn will allow for the increased production of our U.S. oil shale resources in the West. It is estimated that the U.S. has over 1.5 trillion barrels of oil in shale—six times Saudi Arabia's proven resources. We should develop that potential.

These proposals to allow new offshore and onshore energy production will generate substantial revenues –because these proposals open new areas that are currently closed to energy production. As this legislation moves through the regular legislative process, from hearing to markup to the floor, the exact score from CBO will be known.

One thing that's certain, doing nothing will not create any new jobs or generate any new revenue. During these difficult economic times, with soaring debts and deficits and a highway fund that needs to be replenished, Congress should not pass up an opportunity to create jobs and generate billions in new revenue.

The revenue from these projects will make a significant contribution to help fund America's road and bridges.

That's why it makes sense to link the two issues of energy production and infrastructure. By increasing energy production we create new American energy jobs and also generate revenue that can help create infrastructure jobs. In short, this creates jobs and provides important funding without having to raise taxes on American families and businesses.

I thank Subcommittee Chairman Lamborn for holding this hearing and look forward to hearing from the witnesses.

Mr. LAMBORN. Thank you, Mr. Chairman.

And I now recognize the author of the Coal Miner Protection Act, a member of this Subcommittee, Mr. Johnson of Ohio, for his opening statement.

STATEMENT OF THE HON. BILL JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. JOHNSON. Thank you, Mr. Chairman.

On Monday, I introduced H.R. 3409, the Coal Miner Employment and Domestic Energy Infrastructure Protection Act. As we all know, thousands of hard-working coal miners go to work every day to put food on their families' tables and keep millions of American families supplied with reliable, low-cost electricity. The Obama Administration has actively sought ways to put an end to the coal industry through onerous regulations and activist rulemaking.

My legislation is short and simple. It would stop the Secretary of the Interior from issuing any proposed or final rule that does one of five of the following things: Adversely impact employment in coal mines in the United States, cause a reduction in revenue received by the Federal Government by reducing through regulation the amount of coal in the United States that is available for mining, reduce the amount of coal available for domestic consumption or for export, designate any area as unsuitable for surface coal mining and reclamation operations or expose the United States to liability for taking the value of privately owned coal through regulation.

Now, I wish I didn't have to introduce this legislation, but it is necessary to stop one aspect of the Administration's continued war on coal. This legislation is in direct response to a rewrite of a 2008 rule that the Department of the Interior's Office of Surface Mining and Reclamation and Enforcement is currently undertaking.

The rule, commonly referred to as the stream buffer zone rule, was finalized in 2008 after a 5-year process that included 40,000 public comments, 2 proposed rules, and 5,000 pages of environmental analysis from 5 agencies. The final rule clarified and codified coal surface mining practices that had been in effect for over 30 years.

However, on January 20, 2009, the Obama Administration decided to reopen the carefully crafted rule. This proposed sweeping regulatory action would radically alter the definition of a stream as well as how the agency measures material damage outside of the permit area.

To date, the Administration has provided no written studies, data, or support to justify these radical changes. Additionally, several States have expressed serious concerns about the need and justification for the proposal. According to the Obama Administration's own independent analysis, the rewrite of the rule could eliminate up to 27,000 direct and indirect jobs associated with the coal industry, cut coal mining production by 50 percent, and increase the cost of electricity for families and small businesses.

I look forward to the testimony of the gentlemen on the second panel who were involved in the current rulemaking process so that they can hopefully shed some light on this flawed process. I thank the Chairman for having this hearing today on this very important piece of legislation, and with that, I yield back the balance of my time.

Mr. LAMBORN. Thank you, Mr. Johnson.

I ask unanimous consent that for today's hearing members of the Full Committee be allowed to sit at the dais and participate in the hearing.

Hearing no objection, so ordered.

I would like to now invite our witnesses forward, and the first panel will be Ms. Tara Sweeney, Senior Vice President For External Affairs, Arctic Slope Regional Corporation; Mr. Mark Helmericks, founder of Colville, Inc.; Mr. Peter Van Tuyn, Alaska Wilderness League; The Honorable Frank Wagner, Senator from the Virginia General Assembly; Mr. Erik Milito, Upstream Director, American Petroleum Institute; and Ms. Ryan Alexander, President of Taxpayers for Common Sense.

Like all witnesses, your written testimony will appear in full in the hearing record, so I ask that you keep your oral statements to 5 minutes, as outlined in our invitation letter and under Committee rules. Our microphones are not automatic, so you have to push the button to start. The green light comes on at the beginning of your 5 minutes. A yellow light comes on after 4 minutes, and a red light when your 5 minutes are over.

And Ms. Sweeney, you may begin.

STATEMENT OF TARA SWEENEY, SENIOR VICE PRESIDENT FOR EXTERNAL AFFAIRS, ARCTIC SLOPE REGIONAL CORPORATION

Ms. SWEENEY. [speaking Native American language.]

Honorable Chairman Lamborn and distinguished members of the Subcommittee, my name is Tara Sweeney, I am an Inupiaq Eskimo from Barrow, Alaska. I grew up on the cusp of oil discovery and development in Alaska's Arctic. I remember what it was like to melt ice blocks just to take a bath because we didn't have running water. I was 16 years old when we finally had a flush toilet installed in our house.

Advocating for responsible development of the Coastal Plain is a second-generation issue for my family. Today, I serve as the senior vice president of external affairs for Arctic Slope Regional Corporation or ASRC, owned by 11,000 Inupiaq shareholders.

ASRC was formed pursuant to the Alaskan Native Claims Settlement Act of 1971 or ANCSA for the area that encompasses the entire North Slope of Alaska. ASRC and Kaktovik Inupiat Corporation, the native corporation for the village of Kaktovik, own more than 92,000 subsurface and surface acres respectively in the Coastal Plain. These lands hold significant potential for onshore oil and gas development. We remain committed to developing the resources from our land in a manner that respects our Inupiat subsistence values, protects our culture, and ensures proper care of the environment, habitat, and wildlife.

However, as a result of Section 1003 of ANILCA, these important economic resources remain off limits until further act of Congress, which is why ASRC supports the Alaskan Energy for American Jobs Act.

Development of natural resources within wildlife refuges is not uncommon. For example, the Kenai National Wildlife Refuge hosted one of Alaska's first oil and gas discoveries and fields, and exploration and development continues today. We question the differing standard applied to northern Alaska. This legislation is aligned with ASRC's mission to enhance Inupiaq economic opportunities while protecting our cultural and subsistence freedoms through responsible stewardship of our natural environment.

The Arctic is an unforgiving climate, home to the Inupiat and the only village within the boundaries of ANWR, Kaktovik. Our people subsist off the land and the sea. We would not support development of the Coastal Plain if it meant or had an adverse impact on our ability to feed our families with the nourishment of caribou, fish, fowl, Dall sheep, moose, musk oxen or marine mammals. No one would suffer greater harm than our people in the event of mismanagement of our lands.

Today it is possible to develop the Coastal Plain's oil and gas reserves and allow access to much-needed energy resources with minimal footprint in the refuge and without any significant disturbance to wildlife. There are several key provisions in this legislation that ASRC supports, and I would like to highlight them:

First, the development and implementation of a competitive oil and gas leasing program within the Coastal Plain; second, the repeal of Section 1003 of ANILCA; third, finalizing the land selections for ASRC and KIC; and, finally, ASRC supports the provi-

sions included in the legislation that address the recovery of legal expenses underneath the Equal Access to Justice Act. We are advocating for equitable accountability for all parties who choose to exercise litigious options to delay meaningful energy projects.

It is incumbent upon Congress to take a leadership role in developing sound energy policy for our Nation. Responsible oil and gas development of the Coastal Plain could provide safe and secure sources of energy for the Nation, create important jobs for Alaskan natives and the country, and help ensure future flows through the Trans-Alaska pipeline, which is now operating at only one-third of its capacity. Now is the time for Congress to act in the best interests of Americans with respect to domestic energy supply. ASRC stands ready to be part of the domestic energy solution for Congress.

As I close, let me be very clear: The Coastal Plain is the place that our people have called home for over 10,000 years. ASRC would not support development of the Coastal Plain if it had an adverse impact on our ability to subsist off of the land. Today, without development in our region, our communities simply will not survive. Thank you for your time.

[The prepared statement of Ms. Sweeney follows:]

Statement of Tara M. Sweeney, Senior Vice President, External Affairs, Arctic Slope Regional Corporation

Honorable Chairman Lamborn and distinguished members of the subcommittee, my name is Tara Sweeney and I am an Iñupiaq Eskimo from Barrow, Alaska. I grew up on the cusp of oil discovery and development in Alaska's Arctic—I remember what it was like as a child to melt ice blocks just to take a bath because we didn't have running water. I was 16 years old when we finally had a flush toilet installed in our house. Advocating for responsible development of the Coastal Plain of ANWR is a second-generation issue for my family.

Today, I serve as the senior vice president of External Affairs for Arctic Slope Regional Corporation, or ASRC, and I am here representing the interests of over 11,000 Iñupiaq shareholders of ASRC.

ASRC is an Alaska Native corporation formed pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) for the area that encompasses the entire North Slope of Alaska. Shareholders of ASRC include nearly all residents of eight villages on the North Slope, Point Hope, Point Lay, Wainwright, Atqasuk, Barrow, Nuiqsut, Kaktovik and Anaktuvuk Pass.

We are committed to increasing the economic and individual development opportunities within our region, and to preserving the Iñupiat culture and traditions. By adhering to the traditional values of protecting the land, the environment, and the culture of the Iñupiat, ASRC has successfully adapted and prospered in an extremely challenging economic climate.

ASRC owns approximately five million acres of land on Alaska's North Slope, conveyed to the corporation under ANCSA, as a settlement of aboriginal land claims. Under the terms of both ANCSA and the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the unique character of these lands, founded in federal Indian law and the most significant Native claims settlement in U.S. history, must be recognized by Congress and the Federal government in making any land management decisions. ASRC lands are located in areas that either have known resources or are highly prospective for oil, gas, coal, and base minerals. We remain committed to developing these resources and bringing them to market in a manner that respects Iñupiat subsistence values and ensures proper care of the environment, habitat and wildlife.

ASRC and Kaktovik Iñupiat Corporation ("KIC"), the Native Corporation for the Village of Kaktovik, own more than 92,000 subsurface and surface acres, respectively, in the Coastal Plain of the Arctic National Wildlife Refuge, also commonly known as the 1002 Area. These lands hold significant potential for onshore oil and gas development. However, as a result of Section 1003 of ANILCA, these important economic resources remain off limits until further act of Congress, which is why ASRC supports the Alaskan Energy for American Jobs Act.

This important piece of legislation asserts Congressional authority to open the Coastal Plain for responsible oil and gas exploration and development, while protecting our Arctic environment. Development of natural resources within wildlife refuges is not uncommon within the United States, even in Alaska.

The Kenai National Wildlife Refuge hosted one of Alaska's first oil and gas discoveries and fields, the Swanson River oilfield, discovered in 1959 and produced in 1961. Since the Swanson River field development, there has been a continuous program of exploration and development within the Kenai National Wildlife Refuge. Most recently on November 12, 2011, NordAq Energy announced discovery of a huge gas field in the Kenai National Wildlife Refuge and plans for development are to begin in 2012. NordAq's exploration activities took place on leases from another Alaska Native corporation and occurred within the Kenai National Wildlife Refuge.

Section 1110(b) of ANILCA allows for access to the subsurface in-holdings of another Alaska Native corporation within the Kenai National Wildlife Refuge for exploration, testing and development of hydrocarbons. ASRC has been denied access to our subsurface in-holdings within the Coastal Plain of ANWR, and we desire parity. This legislation aims to afford those same opportunities to ASRC through the repeal of Section 1103 of ANILCA. Further, other national wildlife refuges around the country contain roads, power lines and other infrastructure. We question the differing standard applied to Northern Alaska.

The Alaskan Energy for American Jobs Act is aligned with ASRC's mission to enhance Iñupiaq economic opportunities while protecting our cultural and subsistence freedoms through responsible stewardship of our natural environment.

The Arctic is an unforgiving climate, home to the Iñupiat, and the only village within the boundaries of ANWR, Kaktovik. The people of Kaktovik, or Qaaktugvigmiut, and the broader North Slope Iñupiat community subsist off the land and the sea. We would not support development of the Coastal Plain if it had an adverse impact on our ability to feed our families the nourishment of caribou, fish, fowl, Dall sheep, musk oxen, moose, or marine mammals.

Some have suggested designating the Coastal Plain as "wilderness", but Iñupiat have called the Coastal Plain home for thousands of years, and we can hardly be considered a "visitor" there. As stated earlier, the area is clearly not one without human habitation. To say that our homelands, where we have lived and that have sustained us for thousands of years, are absent of permanent residents, as if we do not exist—is insulting.

Responsible oil and gas development of the Coastal Plain of ANWR would provide a safe and secure source of energy to the nation, create important jobs for Alaska Natives and throughout the country, and help ensure future flows through the Trans-Alaska Pipeline System, which is now operating at only one-third of its original capacity. With advances in technology, it is possible to develop the Coastal Plain's oil and gas reserves and allow access to much-needed energy resources with minimal land disturbance in the Refuge and without any significant disturbance to wildlife. Technological advances have significantly reduced the "footprint" of oil and gas development. Generally speaking, caribou and other wildlife populations have shown themselves to be highly adaptive to, and have not been adversely affected by, people, machines, and appropriate development (including oil and gas development) in the Refuge or nearby areas.

While we support the Alaskan Energy for American Jobs Act, there are several key provisions that ASRC would like to highlight. First, the development and implementation of a competitive oil and gas leasing program within the Coastal Plain. The federal government has taken a bipolar approach to responsible energy development in this country. Elsewhere on the North Slope in the NPR–A, for example, lands are leased for exploration and never permitted for development, held in limbo by regulatory agency delay. The implementation of a competitive oil and gas leasing program on the Coastal Plain of ANWR is a step closer to increasing domestic oil supply for the benefit of all Americans.

Second, the repeal of Section 1003 ANILCA, which declares that oil and gas leasing program to be compatible with the purposes of ANWR. This is especially important because without this, both ASRC and KIC as private landholders are refugees on our own lands, with no opportunity to responsibly develop resources for the benefit of the North Slope, state of Alaska and the Nation.

Third, we believe it is important under this legislation to maximize Federal revenues by removing any cloud on title and to clarify land ownership with respect to remaining conveyances to ASRC and KIC. It is equally important for ASRC and KIC finalize our lands selections as provided for under PLO 6969 and the 1983 Agreement between ASRC and the United States. We applaud this language to finally fulfill our land selections.

ASRC supports the provisions included in the legislation that address recovery of legal expenses under the Equal Access to Justice Act. While the language targets energy legislation, we would support taking it a step further and support including this provision in any legislation regarding energy development, not just energy development in Alaska. Over the past several years we have participated, to various degrees, in efforts to advance exploration and development of energy resources in Alaska. Our experience is that energy development anywhere—not just limited to Alaska—is almost always hindered by the threat of litigation and the ability of third parties to challenge such projects—either administratively or in the courts—regardless of whether the challenges are merited. Unfortunately, in many of these cases third parties can actually recover their costs, including legal fees, even if the challenge is not ultimately successful.

We are concerned that there does not appear to be any mechanism that currently exists to ensure that only legitimate challenges are prosecuted. As a consequence, significant damages can and do occur as a result of delays in the process, even when claims in litigation are ultimately rejected by a court. This currently happens all the time with respect to development in Alaska, and we expect that it will happen even more frequently as efforts continue to develop resources in ANWR, NPR–A, and on the Outer Continental Shelf (OCS).

We urge Congress to consider adopting provisions to ensure that plaintiffs consider the merits of their arguments before they pursue an administrative or judicial challenge to an energy development project. Options could include requiring that such plaintiffs post a bond as part of a challenge to an energy development project, and that they forfeit the bond if their challenge is ultimately unsuccessful. Another option would be legislation that precludes third parties from recovering costs or legal fees—under the Equal Access to Justice Act or otherwise—that such third party incurs in bringing a judicial challenge to an energy development project. We are advocating for equitable accountability for all parties who choose to exercise litigious options to delay meaningful energy projects. Project delays of responsible oil and gas development in the Arctic have real-life implications for our people, like threatening the sustainability of providing running water and flush toilets in our communities, local education for our children, or health care facilities, and police and fire protection for our residents.

Finally, in addition to the provisions we support in the Alaskan Energy for American Jobs Act, we would like to raise the issue of the necessity of acquiring new seismic data for Coastal Plain resources. Under the Act, future lease sales in the Coastal Plain would necessitate seismic exploration activity to identify areas most promising for recovery of hydrocarbons. While we advocate the opening of the Coastal Plain for leasing we also advocate keeping surface impacts to a minimum. We believe the interest in the hydrocarbon potential under the Coastal Plain could lead to multiple seismic programs in order for companies to collect current data using current technologies for evaluation. We would propose that single seismic be conducted prior to leasing in a manner that allows for community stewardship combined with equipment and procedures focused on assessment with minimal impact of such a program.

It is important to remember that the Coastal Plain of ANWR is the very place that our people have called home since time immemorial, and it continues to provide the resources that support our survival. In addition to the substantial potential value that responsible development of the area's natural resources holds for our people, the land and its resources are essential to our subsistence way of life. It bears repeating that ASRC would not support development of the Coastal Plain if it had an adverse impact on our ability to subsist off the land.

It is incumbent upon Congress to take a leadership role in developing sound energy policy for our nation. The federal government continues to send mixed messages about domestic energy production, and now is the time for Congress to act in the best interests of Americans with respect to domestic energy and energy supply. ASRC stands ready to be part of the domestic energy supply solution for Congress. Thank you for allowing ASRC to comment on this legislation.

Mr. LAMBORN. Thank you for your testimony, and I stand corrected on the pronunciation of your name, Tara.

Next I would like to invite to speak Mr. Helmericks.

STATEMENT OF MARK HELMERICKS,
FOUNDER OF COLVILLE, INC., COLVILLE VILLAGE

Mr. HELMERICKS. Chairman, Ranking Member Markey, members of the Committee, for the record my name is Mark Helmericks. I am a resident of the North Slope Borough of Alaska. I can't quite trace my roots back 10,000 years, but I can trace my roots back to 1947, when my father canoed down the Colville River and established a homestead on the edge of the Arctic Ocean.

In my written testimony, I wrote that I was born, raised, homeschooled and worked my entire life there. I need to clarify that I was not quite born there, but almost. My parents were living in a snow-walled tent on the edge of the ocean when my mother went into labor. My father, being a bush pilot, put her in the airplane and started flying her south to the nearest hospital, but since that was 500 miles away and it was winter in May, when my mother was in labor, and it was springtime/summer in Fairbanks, so my father, whose airplane was on skis, he had to not only load his pregnant wife in the airplane but also a change of landing gear. So he flew halfway to Fairbanks, landed on a glacier, took the skis off, put the wheels on, flew to Fairbanks, had the baby, spent about 10 days in Fairbanks. Meanwhile, spring arrived on the North Slope, the snow melted, so my father then had to take the wheels off, put the airplane on pontoons, and fly home, so in my father's log book for my birth, it records: 1,000 miles flown, three changes of landing gear, one baby delivered, mission accomplished.

So I have been there for a long time, 53 years. I grew up eating caribou meat. I have spent a lot of time in ANWR. It is a gorgeous place. It is worthy of our serious and careful consideration. I climbed Mount Chamberlin for my 40th birthday. That is the highest peak in ANWR. And I consider Lake Schrader, that big hourglass lake in ANWR, my favorite place to go fishing.

This bill is about American jobs and American energy, and I have worked many jobs in Alaska. I have been a subsistence hunter, a commercial fisherman, a logger, a truck driver, a bush pilot. I now own a solid waste and industrial supply company. That is the Colville that is before you right now. I could tell you that the jobs in the oil industry are by far the best. They pay over twice the average of Alaskan jobs. They are safe. They are long term. They are progressive.

I have two children, a boy and a girl, and the oil industry is a career choice that I can recommend to my son, and it is also a career choice I can recommend to my daughter.

Alaska has a world class oil infrastructure in place. We are fretting a little bit about losing our place in the competitive league, you know, in the world, and there is a few things where America still stands head and shoulders. And oil is one of them, and Alaska is one of the best of the best. It is not perfect, but we have really worked very hard to do it right. And I am proud of the record that we have established up there.

But we are only running at one-third capacity. Right now we have a lot of unemployed people. We have this industry in Alaska that is only one-third utilized. If you take a look at Prudhoe Bay, it is a State enclave, and it is landlocked by Federal properties. If you go to the west, there is NPRA. If you go to the north, there

is Outer Continental Shelf. If you go to the east, there is ANWR. So we really need a State-Federal partnership to proceed from this point forward, and I think that is why we are respectfully here asking for your assistance.

In short, to keep the industry from slowly dying on the vine from under capacity, we need Federal oil. And by giving the Alaskan industry access to Federal oil, we also create excellent jobs, really good, blue-collar jobs. We also create a good stream of money into the Federal Treasury, and taking a look at the Federal deficit, I think a little bit of positive cash flow into the Treasury would be welcome.

I thank you for the opportunity to appear here today, and I welcome any questions that you might have.

[The prepared statement of Mr. Helmericks follows:]

Statement of Mark Helmericks, Founder of Colville, Inc., Colville Village, Alaska

Dear Chairman Hastings, Ranking Member Markey, and Members of the Committee,

For the record, my name is Mark Helmericks. I am a resident of the North Slope Borough of Alaska.

Thank you for the invitation to appear before your Committee and offer testimony on H.R. 3470. Our country is experiencing a bit a slump, and with people needing good jobs, I am glad to assist in wise and effective actions that help bring work to our citizens. Making oil Federal oil reserves available for Alaska's petroleum industry is one of the best such actions I know of.

First, a bit of background on myself. You will hear many statistics, studies, and positions from well qualified specialists and experts. I do not have these abilities. Today, I'm only going to speak of things I have seen with my own eyes, or done with my own hands. Politically speaking, I'm non-partisan and philosophically consider myself an environmentalist.

I have been a resident of Alaska's North Slope for 53 years. In short, my entire life. I was born, raised, home schooled, and have worked nearly my whole career in this region. I grew up eating caribou meat. My family traces its roots back even farther, into the 1940's, when my father canoed down the Colville River and homesteaded land at the edge of the Arctic Ocean. I have spent many days in the Arctic National Wildlife Refuge. In fact, I climbed Mt Chamberlain, the highest peak, for my 40th birthday, and Lake Schrader remains my favorite place to go fishing. I have seen that care of the environment and oil production can, and do, co-exist.

I have worked a number of different jobs, including being a subsistence hunter, a commercial fisherman, a logger, a truck driver, a bush pilot. I now own a solid waste and industrial supply company. The work in the oil industry has been the best, by far. It is well paid, at nearly twice the average wage in Alaska, stable, and safe. Staff is trained continuously throughout their career. It is progressive. As a father with twin children, it a place I can recommend as a career choice for my son. And for my daughter.

Alaska has a world-class oil industry infrastructure. But it is only running a 1/3 capacity. We could literally ship another million barrels a day if there was access to the resource. Due to the circumstances of land ownership in Alaska, the overwhelming majority of new reserves are under Federal control. Nearly all the Arctic oil development to date has been with State reserves. But to keep the investment from dying from undercapacity, and bring benefits to America like well paying long term jobs, we are respectfully asking for access to Federal oil.

I thank you for the honor of appearing before you today, and I welcome any questions you have.

Mr. LAMBORN. All right, thank you.

Mr. Van Tuyn.

STATEMENT OF PETER VAN TUYN, ALASKA CONSERVATIONIST AND ENVIRONMENTAL ATTORNEY, BESSENYEY & VAN TUYN

Mr. VAN TUYN. Mr. Chairman, thank you for inviting me to testify on H.R. 3407, the latest in a long line of bills to drill the Arctic National Wildlife Refuge.

For over 50 years, the Arctic Refuge has embodied the heart of the public land legacy that leaders from both political parties have provided for present and future generations. These leaders recognized the importance of balancing the responsible development of public lands with the protection of places that are simply too special and sensitive to develop.

H.R. 3407 would break this legacy. I oppose it and ask instead that you join the nearly 1 million people from every State in this union who just this past week expressed to our government that no oil drilling should take place in the Arctic Refuge and that, instead, it should be protected as designated wilderness.

One of the most misleading claims made about previous Arctic Refuge drill bills was that impacts would be limited to 2,000 acres of the Coastal Plain. This loophole-ridden provision did not mean much because it would have opened the entire 1.5 million acre Coastal Plain to leasing and exploration, and wells could have been drilled anywhere on that Coastal Plain.

Twenty oil field developments and all their road and pipeline connections could be spread like a web across the entire area and still comply with the bills that included this provision.

Nevertheless, the sponsors of those bills pointed to that provision to assert that they were at least somewhat sensitive to the impact of industrial sprawl on the land.

H.R. 3407 gives up any pretense of such sensitivity. Like previous drill bills, it opens the entire Coastal Plain to oil activities. Doing away with the 2,000 acre provision, it would allow coverage of as much as 10,000 acres for every 100,000 acres leased or 150,000 of the Coastal Plain's 1.5 million acres. The bill would thus allow for vast year-round industrial complexes on the refuge.

The bill also contains numerous provisions that exempt or otherwise limit the application of environmental laws and the check on executive decisions provided by the judiciary. Taken as a whole, H.R. 3407 would subject our Nation's wildest refuge to the weakest program of drilling regulation on Federal lands in the United States.

And what do the experts say about the impact that oil drilling would have on the refuge? Over 1,000 scientists wrote and said the Coastal Plain is uniquely sensitive to disturbance, making it virtually impossible to mitigate the effects of oil development. If oil development proceeds, much of the wildlife, water, and cultural resources for which the Arctic Refuge was established would be severely diminished or lost.

And those impacts occur under the best of situations. This was the headline in the Anchorage Daily News 2 days ago, "Prosecutors Aim to Revoke BP Probation." In the article the prosecutors are quoted as saying that BP's choices have been reckless, and further violations of State and Federal law are the result.

Unfortunately, we also take reckless actions as a government. Recently, Interior approved Shell's Beaufort Sea exploration plan, and appears poised to do so in the Chukchi. In its recent leasing program decision, Interior chose not to offer leases off the Atlantic, due in part to a lack of oil-spill-response infrastructure there, a prudent decision given the BP spill in the heavily industrialized Gulf of Mexico. Yet the Arctic has an absolute desert of infrastructure compared to the Eastern seaboard, and we think it is OK to drill there without addressing that problem?

H.R. 3407 would expand such recklessness to the Arctic Refuge, and for what benefit? Job claims for the Refuge are way overblown. Our current industry employs less than 17,000 people while drilling proponents claim 60,000 jobs from drilling the Refuge. The reality is that despite record profits and more development of oil and gas in the U.S. than at any other time in our history, the oil industry has discarded 12,000 workers in recent years.

Benefits to the Treasury are also based on wildly speculative numbers, a fictional 33 percent tax rate, which in reality is under 16 percent, and assume a 50/50 split of revenue with the State of Alaska, something which Alaska politicians say should be 90/10 in favor of Alaska and which they would sue over.

No, the real answer to our economic and energy challenges lies not in the past but in the future. Since we know oil will run out, why don't we seize the opportunity to think big and deliver even bigger? Think the Manhattan Project for alternative energy. The United States is an incredible country made up of inventive and intelligent people. Why are we so pessimistic that we cannot solve our energy challenges, put people to work, and benefit the economy at the same time? Rather than pass the buck to future generations, let us seize the day. And what better way to express optimism for this result than to lay aside this tired Refuge drilling debate and protect America's wildest refuge for generations to come.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Van Tuyn follows:]

Statement of Peter Van Tuyn on behalf of the Alaska Wilderness League

Thank you for the opportunity to testify to the Subcommittee on Energy and Mineral Resources on H.R. 3407, the "Alaskan Energy for American Jobs Act," which would open the Coastal Plain of the Arctic National Wildlife Refuge to oil and gas leasing and development. Drilling the Arctic Refuge is not a meaningful solution to economic or energy challenges facing the United States, and serves as a distraction to real solutions. Rather than revisit the failed efforts of the past, the subcommittee should reject this effort to drill the Arctic Refuge, and instead should pass legislation designating the Coastal Plain as formal Wilderness.

The Arctic National Wildlife Refuge is our nation's wildest Refuge, and for over 50 years has embodied the heart of the public land legacy our forefathers have provided for this and future generations. The Arctic Refuge holds its iconic place atop our public lands for good reason. As the Interior Department states, the "Arctic National Wildlife Refuge supports the greatest variety of plant and animal life of any Park or Refuge in the circumpolar arctic"[i] and the Coastal Plain of the Arctic Refuge is the "most biologically productive part of the Arctic Refuge for wildlife and is the center for wildlife activity."[ii] The Coastal Plain also has "outstanding wilder-

[i] FWS, Arctic Refuge, Wildlife And Habitats, http://www.fws.gov/refuges/profiles/WildHabitat.cfm?ID=75600.

[ii] U.S. Department of the Interior, Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment, Report and Recommendation to Congress and Final Legislative Environmental Impact Statement (1987) (FLEIS) at 46. This 1987 report came about due to Section 1002 of ANILCA, which mandated that the Interior Department conduct a "comprehensive and

ness qualities" and important scientific values, especially in the age of global warming.[iii]

For thousands of years the Inupiat Eskimo and Gwich'in Athabaskan people of the Arctic have relied for subsistence on resources from the Arctic Refuge, including caribou and other mammals and birds.[iv] Notably, the Gwich'in rely physically, culturally and spiritually on the Porcupine Caribou Herd, and consider the Coastal Plain of the Arctic Refuge—which serves as the calving ground for this herd—as "the sacred place where life begins." [v]

Just three days ago, nearly one million people submitted comments to the U.S. Fish and Wildlife Service asking that the Coastal Plain be kept off-limits from oil and gas development. These included people from every State in the country, including in Alaska, nearly 75 Members of Congress from both chambers, faith communities, scientists, birders, and well over 1,000 businesses.

Oil drilling on the Coastal Plain of the Arctic Refuge would irreparably damage the unparalleled wildlife values and wilderness character of the Refuge.[vi] The impacts of oil drilling may also deprive the Gwich'in people of their means of subsistence, resulting in economic, social, and cultural impacts in violation of fundamental human rights. The drilling program in H.R. 3407 proves no exception to this general point. And as is discussed below, H.R. 3407 abandons the hollow "environmentally sound" drilling promise of prior Arctic Refuge drill bills. It opens the door to what could be direct development on tens if not hundreds of thousands of acres of the coastal plain, and does away with fundamental checks and balances so important in our system of government by exempting or severely limiting the application of environmental and judicial review laws.

As is also detailed below, H.R. 3407's justification for drilling the Refuge—that the United States needs to drill the Refuge for the oil it may contain, the money it may bring in, and the jobs it may support—are not supported in fact. The United States would be better served by investing in alternative energy programs, which can address economic, jobs and energy issues, without sacrificing our public lands legacy.

Again, the subcommittee should reject this bill, and instead support designated Wilderness for the Coastal Plain.

The Values of the Arctic Refuge

Any discussion of the Arctic Refuge Coastal Plain must start with its incredible values. It is in the Arctic National Wildlife Refuge that the tallest peaks of the Brooks Range exist; rising from the Arctic Ocean across a 15 to 40 mile wide coastal plain to 9,000 feet. Snow melt that flows north down these mountains through the spring and summer feeds rivers that move from the mountains, across the coastal plain, to the Arctic Ocean's Beaufort Sea.[vii] The coastal plain itself is tundra, with communities of mosses, lichens, dwarf shrubs, berry plants and wildflowers.

The Arctic Refuge hosts a huge range of wildlife species, including 36 species of fish, 36 species of land mammals, nine species of marine mammals, and over 160 different species of birds.[viii] Perhaps the most celebrated coastal plain wildlife are the caribou of the Porcupine herd.

The Porcupine Caribou herd is named for the Porcupine River, which the herd crosses on its annual migration from wintering grounds in the United States and Canada south of the Brooks Range to its summer grounds on the coastal plain of

---

continuing inventory and assessment of the fish and wildlife resources of the coastal plain of the Arctic National Wildlife Refuge." 16 U.S.C. 3142(a).

[iii] FLEIS at 46.

[iv] Committee On Resources, U.S. House Of Representatives, H.R. 39, Arctic Coastal Plain Domestic Energy Security Act Of 2003; And H.R. 770, Morris K. Udall Arctic Wilderness Act, Legislative Field Hearing, Kaktovik, Alaska, Serial No. 108–13, 108th Congress, 1st Sess. (April 5, 2003) (testimony of Robert Thompson).

[v] Gwich'in Steering Committee, et al., A Moral Choice for the United States; The Human Rights Implications for the Gwich'in of Drilling in the Arctic National Wildlife Refuge at iii (2005), http://www.gwichinsteeringcommittee.org/GSChumanrightsreport.pdf; see also Arctic National Wildlife Refuge, Alaska: Hearings Before the Committee on Energy & Natural Resources of the United States Senate, 100th Cong. at 313 (1987) (Tanana Chiefs Conference, Inc., Resolution No. 87–65) (noting that Arctic Village, Venetie, and Old Crow "are extremely dependent upon the population and distribution of the Porcupine Caribou herd as a matter of economics, nutrition, and cultural heritage[.]")..

[vi] *See,* e.g., Arctic Refuge Coastal Plain Terrestrial Wildlife Research Summaries, Biological Science Report, USGS/BRD/BSR –2002–0001 (detailing impacts on wildlife); FLEIS at 46, 144.

[vii] See U.S. Fish and Wildlife Service, Arctic National Wildlife Refuge, http://www.fws.gov/refuges/profiles/index.cfm?id=75600; http://arctic.fws.gov/.

[viii] FWS, Arctic Refuge, Wildlife, http://arctic.fws.gov/wildlife.htm.

the Arctic Refuge 400 miles away.[ix] Some individual caribou travel as much as 3,000 miles during this round-trip migration, thus making the largest migration of any land mammal in the world. This herd moves to the coastal plain for calving and post-calving habitat. Giving birth to tens of thousands of calves in a two week period—most within a few days—the herd uses the coastal plain for its nutritious protein-rich plants, and as insect-relief habitat.[x] During calving on the coastal plain, "[a]dult females are at the lowest ebb of their physical condition" and "no alternative habitats are apparently available."[xi] Mid-summer Porcupine herd congregations on the coastal plain can total tens of thousands of individual animals.[xii]

Millions of birds from throughout the world also come to the coastal plain of the Arctic Refuge in the summer. Here they nest, rest, feed, or raise their young. Some of the remarkable bird species of the coastal plain are the golden plover, which migrates to the coastal plain from Hawaii, the Arctic tern, which coming to the arctic from Antarctica has the longest migration in the animal world, and literally dozens of waterfowl.[xiii]

During the short but intense summer, wildlife is ever-present on the coastal plain, yet it is not devoid of wildlife in other seasons. For example, muskoxen spend time year-round on the coastal plain.[xiv] Muskoxen, once extinct in America's Arctic, were re-introduced in the Arctic Refuge in 1969. Renowned for their prehistoric look and long, soft, fur called quivut, muskoxen also have a dramatic defense technique against predation; they form a tight circle with their sharp horns facing outward.

Historically, the "Arctic Refuge is the only national conservation area where polar bears regularly den and [it is] the most consistently used polar bear land denning area in Alaska."[xv] As such, the coastal strip of the Arctic Refuge is the most important land denning area for polar bears in Alaska.[xvi] And polar bears are also increasingly using the Refuge's coast in seasons other than winter. One recent survey found as many as 200 polar bears on land from Point Barrow to the Canadian border to the east, most within the Arctic Refuge, during the ice-free season.[xvii]

All of this led the Interior Department to state that the "Arctic National Wildlife Refuge supports the greatest variety of plant and animal life of any Park or Refuge in the circumpolar arctic"[xviii] and the coastal plain of the Arctic Refuge is the "most biologically productive part of the Arctic Refuge for wildlife and is the center for wildlife activity."[xix] Stating the obvious, the Interior Department has also found that nearly the entire coastal plain area meets the wilderness criteria under the 1964 Wilderness Act.[xx]

Though primarily marine mammal hunters, the Inupiat people of the Arctic—especially those in Kaktovik which is on the northern border of the Refuge—also use resources from the Arctic Refuge, including caribou and other mammals and

---

[ix] State of Alaska Department of Fish and Game, http://www.adfg.alaska.gov/index.cfm?adfg=caribou.main; http://www.taiga.net/top/caribou.html; United States Geological Survey, http://alaska.usgs.gov/BSR–2002/pdf/usgs-brd-bsr-2002–0001-sec03.pdf (including map of range of Porcupine Caribou Herd).

[x] USGS, http://alaska.usgs.gov/BSR–2002/pdf/usgs-brd-bsr-2002–0001-sec03.pdf. In years when the Porcupine herd did not make it to the coastal plain to calve (prevented, for example, by high water river crossings or deep snows), they subsist on less nutritious plants. *See id.; see also* http://arctic.fws.gov/caribou.htm.

[xi] International Porcupine Caribou Management Board, Sensitive Habitats Of The Porcupine Caribou Herd 14 (January 1993).

[xii] FWS, Arctic Refuge, Caribou, http://arctic.fws.gov/caribou.htm.

[xiii] FWS, Arctic Refuge, birds, http://arctic.fws.gov/birdlist.htm ; Audubon, From the Arctic to your backyard, http://www.protectthearctic.com/history_migrate.html; Encyclopedia Britannica Online, golden plover, .htm http://www.britannica.com/eb/topic-237742/golden-plover; About.com, Arctic Tern, http://birding.about.com/library/weekly/aa020700a.htm.

[xiv] FWS, Arctic Refuge, Musk Ox, http://arctic.fws.gov/muskox.htm.

[xv] FWS, Arctic Refuge, Bears, http://arctic.fws.gov/bears.htm; Amstrup, S.C. 2002. Movements and population dynamics of polar bears. Pages 65–70 *in* D.C. Douglas, P.E. Reynolds, and E.B. Rhode, editors. Arctic Refuge coastal plain terrestrial wildlife research summaries. U.S. Geological Survey, Biological Resources Division, Biological Science Report USGS/BRD/BSR–2002–0001; *see also* FWS, Arctic Refuge, Polar Bear Denning (maps of denning sites), http://arctic.fws.gov/pbdenning.htm.

[xvi] U.S. Fish and Wildlife Service, A Preliminary Review of the Arctic National Wildlife Refuge, Alaska Coastal Plain Resource Assessment: Report and Recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement at 7 (1995).

[xvii] Jim Carlton, *Is Global Warming Killing the Polar Bears?,* Wall Street Journal (December 14, 2005), http://www.stopglobalwarming.org/news/is-global-warming-killing-the-polar-bears/.

[xviii] FWS, Arctic Refuge, Wildlife And Habitats, http://www.fws.gov/refuges/profiles/WildHabitat.cfm?ID=75600.

[xix] FLEIS at 46.

[xx] FLEIS at 46.

birds.[xxi] Living in villages along the migratory path of the Porcupine Caribou herd, the Gwich'in people of northeastern Alaska and northwestern Canada rely physically, culturally and spiritually on the Porcupine herd.[xxii] Because of their deep reliance on the Porcupine herd, the Gwich'in consider the coastal plain the "Sacred Place Where Life Begins."

The Arctic Refuge, encompassing as it does both arctic and sub-arctic ecosystems, also offers an unparalleled opportunity for scientific research. This is an especially critical role, as oil and gas activities in other parts of America's Arctic impact that habitat, and as global warming causes changes throughout the arctic. As the experts state, without an environmental baseline such as that provided by the Arctic Refuge it is difficult to gauge the effects on the Arctic of various human or environmentally-caused changes.[xxiii]

H.R. 3407—A Drilling Disaster for the Arctic Refuge

One of the most fundamental, and misleading, claims made about previous Arctic Refuge drill bills was that they would only allow oil and gas development on 2,000 acres of the Coastal Plain. This provision did not mean much because all the bills would have opened the entire 1.5 million acre Coastal Plain to leasing and exploration, and exploration and production wells could be drilled anywhere on the Coastal Plain.[xxiv] For example, 20 Alpine-size developments and all their connections, spread across the coastal plain, could fit through the loopholes in that provision. Nevertheless, the sponsors of those bills pointed to that provision to assert that they were at least somewhat sensitive to the impact of industrial sprawl on the land.

H.R. 3407, on the other hand, gives up any pretense of such sensitivity. Like previous drill bills, it opens the entire Coastal Plain to leasing and exploration, and exploration and production wells could be drilled anywhere on the Coastal Plain. Section 4. Yet it does away with the 2,000 acre provision in favor of one that would allow coverage of as much as 150,000 acres of the Coastal Plain under the same loophole-ridden standard. Section 7(a)(3). To put this in context, the existing oil industry on the State lands of the North Slope consists of a web of development the size of Rhode Island that can be seen from space, and directly covered approximately 17,500 acres in 2001. National Academy of Sciences North Slope Report (2003).

And it does not stop there. Any bill that allows leasing and oil production on the Coastal Plain of the Arctic Refuge could potentially open over 92,000 acres of subsurface land within the Coastal Plain of Arctic Refuge to which Arctic Slope Regional Corporation ("ASRC") obtained the subsurface rights.[xxv] While these lands are currently—and have always been—closed to oil and gas leasing and development, in the event that Congress passes an Arctic Refuge drill bill these lands will also be opened. ASRC acquired the rights to this subsurface estate in a controversial Watt-era land exchange, pursuant to which it traded its surface rights in Gates of the Arctic National Park for subsurface rights to 92,160 acres under the Arctic Refuge. This land trade occurred behind closed doors and flew in the face of the Alaska Native Claims Settlement Act's ("ANCSA") intent to prohibit subsurface selection within National Wildlife Refuges.[xxvi] In 1989, the General Accounting Office found, after the fact, that this land exchange was not in the interest of the United States. The terms of this transfer specifically prohibited leasing and development of these

---

[xxi] Committee On Resources, U.S. House Of Representatives, H.R. 39, Arctic Coastal Plain Domestic Energy Security Act Of 2003; And H.R. 770, Morris K. Udall Arctic Wilderness Act, Legislative Field Hearing, Kaktovik, Alaska, Serial No. 108–13, 108th Congress, 1st Sess. (April 5, 2003) (testimony of Robert Thompson), http://bulk.resource.org/gpo.gov/hearings/108h/86329.pdf.

[xxii] Gwich'in Steering Committee, et al., A Moral Choice for the United States; The Human Rights Implications for the Gwich'in of Drilling in the Arctic National Wildlife Refuge at iii (2005), http://www.gwichinsteeringcommittee.org/GSChumanrightsreport.pdf; see also Arctic National Wildlife Refuge, Alaska: Hearings Before the Committee on Energy & Natural Resources of the United States Senate, 100th Cong. at 313 (1987) (Tanana Chiefs Conference, Inc., Resolution No. 87–65) (noting that Arctic Village, Venetie, and Old Crow "are extremely dependent upon the population and distribution of the Porcupine Caribou herd as a matter of economics, nutrition, and cultural heritage[.]")..

[xxiii] Arctic Council Report, Impacts on Porcupine caribou herd graph (Graphset 3 at 4); U.S. Geological Survey, *Arctic Refuge Coastal Plain, Terrestrial Wildlife Research Summaries,* USGS/BRD/BSR–2002–0001 at 11–15 (Reston, Virginia: 2002); International Porcupine Caribou Management Board, Sensitive Habitats of the Porcupine Caribou Herd at 14 (January 1993).

[xxiv] *See e.g.,* Section 7(a)(3), H.R. 5429 (109th Congress).

[xxv] For more information about ASRC lands with the Arctic Refuge, *see* Pamela Baldwin, CRS Memorandum re: Arctic Slope Regional Corporation Lands and Interests within the Arctic National Wildlife Refuge (April 22, 2002).

[xxvi] *See* Pamela Baldwin, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge (ANWR),* CRS Report RL31115 at 15 (May 4, 2005).

lands for oil and gas unless the Federal government authorizes leasing or development in the Coastal Plain, on these lands, or both.[xxvii] Consequently, opening up the Coastal Plain to oil and gas leasing and development also allows leasing and development of nearly 100,000 acres of ASRC lands within the Coastal Plain.[xxviii]

Therefore, H.R. 3407, if passed into law, would allow for vast industrial complexes along and within the borders of the Arctic Refuge, including production sites, airports, permanent gravel roads, and pipelines. These facilities operate year-round, with vehicle traffic, production plant noise, helicopter and airplane traffic, and air and water pollution.

And, as we know, oil production is preceded by exploration. Seismic exploration activities are conducted using convoys of bulldozers and "thumper trucks" that travel over extensive areas of the tundra. Newer 3–D seismic surveys on the North Slope deploy more vehicles than older 2–D seismic surveys, including heavy vehicles used for "cat-train" camp hauling, and make a tighter grid profile than 2–D seismic surveys.[xxix] Exploratory oil drilling uses large drill rigs, convoys and aircraft. Not only are these activities intrusive, but surface exploration activities—which are employed year after year throughout the life of the oil field—can cause severe and long lasting damage to the land.[xxx]

Even if exploration activities are only conducted in the winter—something not required by H.R. 3407 (see Section 6)—the activities still pose many threats. The Coastal Plain is the most important land denning area for U.S. populations of polar bears, which are now listed as a threatened species under the Endangered Species Act ("ESA"),[xxxi] and much of the Coastal Plain was recently designated as Critical Habitat under the ESA for this northern bruin.[xxxii] Winter exploration activities can disturb polar bears from their maternity dens, as was witnessed at the Alpine oil field in March of 2006[xxxiii] and this spring at the Nikaitchuq field,[xxxiv] which may expose cubs to increased abandonment and mortality.[xxxv] These exploration activities can also impact other year-round Coastal Plain residents such as muskoxen.

These are the realities that led the National Academy of Sciences to conclude its 2003 review of existing data concerning the cumulative effects of oil and gas activities on Alaska's North Slope with a section titled "The Essential Trade-Off." In that section the NAS addressed whether oil drilling and a pristine environment can coexist, and concluded that the answer is no:

> The effects of North Slope industrial development on the physical and biotic environments and on the human societies that live there have accumulated, despite considerable efforts by the petroleum industry and regulatory agencies to minimize them. . .. Continued expansion is certain to exacerbate some existing effects and to generate new ones. . ..[xxxvi]

All of these facts demonstrate that oil and gas activity on the Coastal Plain would cause significant impacts to wildlife and subsistence resources within the Arctic Refuge, and destroy the wilderness qualities of the Coastal Plain.

And those impacts occur when all the laws are followed, which is not always the case. Two days ago Anchorage residents woke to the headline in the Daily News that "Prosecutors aim to revoke BP probation." BP has been on probation for environmental crimes in Alaska's oil fields as a result of a massive 2006 oil spill there. The United States is seeking to revoke BP's probation because of another spill in 2009. Prosecutors stated that

---

[xxvii] Agreement between Arctic Slope Regional Corporation and the United States of America (Aug. 9, 1983), Appendix 2: Land Use Stipulations ASRC Lands, Kaktovik, Alaska at 6.

[xxviii] Chevron Texaco and BP currently hold lease agreements for these lands. *See* Arctic Slope Regional Corporation, Oil, http://www.asrc.com/Lands/Pages/Oil.aspx.

[xxix] *See* U.S. Fish and Wildlife Service, *Potential impacts of proposed oil and gas development on the Arctic Refuge's coastal plain: Historical overview and issues of concern* (Jan. 17, 2001), *available at:* http://arctic.fws.gov/issues1.htm; Janet C. Jorgenson, J.M. Ver Hoef, and M.T. Jorgenson, *Long-term recovery patterns of arctic tundra after winter seismic exploration,* Ecological Applications, 20(1) at 218, 219 (2010).

[xxx] *See* Janet C. Jorgenson, *Long-term recovery patterns of arctic tundra after winter seismic exploration,* Ecological Applications, at 219–20 (discussing the still evident impacts from exploration activities that occurred in the Arctic Refuge the mid 1980's).

[xxxi] 73 Fed. Reg. 28,212 (May 15, 2008).

[xxxii] 75 Fed. Reg. 76,086 (Dec. 8, 2010).

[xxxiii] Department of the Interior, Office of the Solicitor, Alaska Region, Notice of Violation issued to Conoco Phillips Alaska, Inc. (July 31, 2007).

[xxxiv] *See* Jackie Bartz, *Denning Polar Bears Wake Up to New Oil Drilling Station,* KTUU–TV, Channel 2 News (April 11, 2011).

[xxxv] *See* Rachel D'Oro, *Polar Bear Cub Rescued at Alaska Oil Field,* Fairbanks Daily News-Miner (April 29, 2011).

[xxxvi] NAS Report at 21.

> The 2009 spill vividly demonstrates that BP has not adequately addressed the management and environmental compliance problems that have plagued it for many years, and that continue to result in operational, process safety, and equipment failures. *BP's choices have been reckless, and further violations of state and federal laws are the result.*

Lisa Demer, Anchorage Daily News (November 16, 2011) (emphasis added).

Turning back to H.R. 3407, if passed it would establish a drilling program for the Coastal Plain of the Arctic Refuge with weaker standards for the protection of the wildlife and wilderness character of the Arctic National Wildlife Refuge than exist in laws that apply to federal lands elsewhere in the United States. In addition to opening the entire Coastal Plain to oil and gas activities and allowing massive placement of facilities on the Coastal Plain as described above, H.R. 3407 would also do the following:

- use an economically-qualified and thus weak "no significant adverse effect" environmental standard, *compare* Section 3(a)(2) *with* 42 U.S.C. 6504(b) (agency must "assure the maximum protection of such surface values consistent with the requirements of this Act for the exploration of the reserve") and Pamela Baldwin, *Legal Issues Related to Proposed Drilling for Oil and Gas in the Arctic National Wildlife Refuge,* CRS Report RL31115 at 8 (May 4, 2005) (providing other examples of more stringent congressional standards). [xxxvii]
- fail to mandate almost any specific environmental protection for the Coastal Plain, relying instead on the discretion of the Secretary of the Interior and the agreement of an outside "peer review" process to impose such protections, Sections 3(a), 3(g), 6(a), 7, *see* RL31115 at 11–12 (fact that "no specific controls are enacted" means that "the regulations will depend on the Secretary's interpretation"); [xxxviii]
- eliminate the fundamental "compatibility" standard that is at the heart of national wildlife refuge management, under which activities that impair refuge purposes cannot be allowed, Section 3(c)(1), *see* 16 U.S.C. § 668dd(d)(3)(A)(i);
- limit the authority currently available under key provisions of the Endangered Species Act and National Wildlife Refuge System Administration Act to close areas in the Arctic National Wildlife Refuge for the protection of wildlife and habitat, Section 3(f), *see* RL31115 at 10;
- exempt a large part of the oil and gas leasing program from the environmental review and public participation provisions of the National Environmental Policy Act (NEPA)—our nation's charter for environmental protection—and imposes severe limitations on NEPA environmental review for the remainder, Sections 3(c)(2), 3(c)(3);
- restrict judicial review of the Secretary of the Interior's decisions to such a degree as to significantly limit the traditional check placed on the executive branch by the judiciary, Section 8, *see e.g.,* RL31115 at 32 ("The requirement of clear and convincing evidence in this context differs from the usual standards for proof and may be confusing, but appears to be intended to make overturning a decision difficult").
- grant authority over the leasing program to the Bureau of Land Management (the mineral development experts) at the expense of the U.S. Fish and Wildlife Service (the federal government's wildlife experts who manage the Arctic Refuge today), Section 3(a)(1); *see* CRS Report RL31115 at 7 (BLM authority over the leasing program could "divorce the mineral development aspects from the biological/wildlife purposes and the expertise of the FWS personnel, and may result in the Coastal Plain receiving less protection than lands in other refuges do under current law and regulations").
- impose weaker restoration standards and financial assurances than exist in other laws, Section 6(a)(5), see RL31115 at 11, 14, U.S. General Accounting Office, Congressional Requesters, *Alaska's North Slope, Requirements for Restoring Lands After Oil Production Ceases* at 82–83 GAO–02–357 (Washington, D.C.: 1994) (addressing restoration requirements in other states).

Simply put, opening the Arctic Refuge to oil leasing, exploration and production, whatever the technological or environmental promises, unacceptably threatens the exceptional values of the Arctic Refuge.

[xxxvii] While the analysis in RL31115 focuses mostly on H.R. 6 as passed by the House (109th Cong.), H.R. 3407 is similar to this act.

[xxxviii] H.R. 6 did not include the "peer review" process for regulations that is contained within H.R. 3407, and which further complicates the imposition of environmentally-protective requirements.

The Claimed Benefits of Drilling the Refuge Are Illusory and More Rational Alternatives Exist

Drilling proponents claim that opening the Coastal Plain of the Arctic Refuge to oil activities will be a boon for the national treasury and economy. History and common sense show that this is not the case:

- oil estimates for the Refuge are based on unproven reserves, and the top end oil numbers used have only a 5% likelihood of being real. Recently, the United States Geological Survey (USGS) revised its estimates for the National Petroleum Reserve-Alaska (NPRA) downward from 10.6 billion barrels to 896 million barrels—roughly 10 percent of its 2002 estimate, further emphasizing the risky nature of predicting oil reserves.
- claimed federal treasury benefits of $150 to $296 billion are based on a 50/50 split of these already highly speculative numbers, and the State of Alaska undoubtedly will claim 90% of the revenue under the Mineral Leasing and Alaska Statehood Acts. Such benefits are also based on a corporate tax rate of 33%, while the oil industry has an effective tax rate of only 15.7%.[xxxix]
- industry job claims for Arctic Refuge drilling are beyond the pale of reality. To assert that there would be 60,000 additional jobs within five years is to ignore the fact that Alaska's oil industry employs only about 16,500 workers, including support jobs.

In the meantime, the five largest oil companies have brought in over $101 billion dollars in profits so far this year. Between 2005–2010, BP, Shell, Exxon/Mobil, and Chevron made more than half a trillion dollars in profits, and in that time frame they also reduced their U.S. workforce by over 11,000 jobs.

And at the same time, the oil industry currently is drilling more in the United States than anywhere else in the world, with over 2,000 drill rigs operating here as opposed to roughly 1,700 in the rest of the world. Alaska will see its busiest exploration season in years this coming winter, and projections are that TAPS can and will continue to deliver substantial oil from the North Slope to Valdez for decades to come. Indeed, the United States currently is producing more oil and gas than at any other time in our history.[xl]

To be sure, as BP's Deepwater Horizon oil spill demonstrated, the United States is also taking great risks to get this oil and gas out of the ground. We even appear willing to drill in the Arctic Ocean, despite the fact that we know that we do not have the capacity to respond to an oil spill in those remote and icy waters.[xli]

A far more rational approach to the economic and energy challenges we face in the United States is to invest in energy conservation measures and sufficiently fund programs to hasten the inevitable transition we need to make to renewable energy sources.

Conclusion

The Coastal Plain of the Arctic National Wildlife Refuge represents the 5% of America's onshore Arctic that currently is not legally open to oil and gas activities. Drilling the Refuge thus does not represent a balanced approach to energy development and environmental protection, and would destroy the values that Republicans and Democrats alike have found worthy of celebration and protection. The Arctic Refuge is a treasure owned by current and future generations of Americans, and it should not be plundered based on myopic and false claims that drilling it for oil will meaningfully contribute to our nation's current challenges.

Thank you for the opportunity to testify.

Mr. LAMBORN. OK, thank you.

We are going to shift gears and hear testimony on another bill now.

Senator Wagner.

[xxxix] *See* Corporate Taxpayers and Corporate Tax Dodgers 2008–2011, A Joint Project of Citizens for Tax Justice & the Institute on Taxation and Economic Policy at page 7 (November 2011) http://www.ctj.org/corporatetaxdodgers/CorporateTaxDodgersReport.pdf.

[xl] For more information on the state of drilling in the United States, oil industry profits and oil-related jobs in the United States see ThinkProgress (November 15, 2011) http://thinkprogress.org/green/2011/11/15/369358/why-are-house-republicans-holding-hearing-20-about-how-to-drill-more-despite-the-fact-that-we-are-drilling-like-crazy/.

[xli] A more detailed treatment of the TAPS throughput and other oil issues in America's Arctic is presented in my testimony to this committee on "Domestic Oil and Natural Gas: Alaskan Resources, Access and Infrastructure" (June 2, 2011).

STATEMENT OF THE HON. FRANK WAGNER, STATE SENATOR, COMMONWEALTH OF VIRGINIA

Mr. WAGNER. Thank you, Mr. Chairman, and members of the Subcommittee. I am here to talk about, in particular, Lease Sale 220 off the coast of Virginia, which had been included in the previous 5-year plan, but to kind of back up a little bit, I have been told that we import about $300 billion a year in energy outside the borders of this country, and the $300 billion, I sit there and try to grasp that number. Down in Virginia, our entire budget might be $70 billion over 2 years, and so I kind of want a comparison. So I compare that I guess to the Act that you passed in 2009, the Recovery Act, that was some $800 billion, $850 billion, and so now I have a concept. And that was supposed to turn the economy around and put everybody back to work.

So now I have a concept of what $300 billion is every year, and albeit a lot of that comes from Canada and Mexico, but a lot of it comes from a lot of countries that don't really hold America like we do right here, and that concerns me very much. And I wonder what would happen if that $300 billion was circulating in our own economy, employing Americans to produce American energy for American homeowners and American business. And I think that is the goal that has been driving Virginia for so long. That is what started it back in 2005, when we passed the first legislation that said, please, Washington, let Virginia go off our coast and try to develop our offshore natural resources. That bill wandered through, and with bipartisan support in both Houses of the General Assembly, made it to the Governor's desk, and then Governor Mark Warner, who is now Senator Mark Warner ultimately vetoed the bill, but when he vetoed it, he said, I really want to study this issue a little bit. It kind of came at me quick, and I want to study that.

Now you fast forward to this year and both Senator Warner and Webb from Virginia in the Senate have filed legislation to push forward Virginia's offshore desires. It is a clear statement that we made. We were initially, because of the actions we took, we were initially included in a 5-year plan, the last 5-year plan that went through, and we survived cuts, we took into account military concerns, all of the things that went through, and we defined an area, we were literally a year away from moving forward with the lease sale when this current Administration canceled the lease sale.

And now we find ourselves back at square one, and even worse, when the new 5-year plan has come out, Virginia is not included in the 5-year plan. And as we went through that process 5 years ago and as we went through the administrative processes, 79 percent of those respondents from Virginia were in favor of developing our offshore resources, 79 percent. I have never won an election by that much unless I was unopposed, and, you know, it is just an overwhelming support throughout Virginia.

Our Governor has made it a clear statement on his mind that he wants to make Virginia the energy capital of the East Coast. He recognizes that Virginia is very, very dependent on government spending, and actually with our location, the proximity to Washington as well as a very large defense establishment we have in Virginia, we recognize what is going on in Washington. We recognize that we need to diversify our economy and need to diversify

our economy in a rapid way if we are going to be able to continue to move Virginia forward.

I know every legislator is here from all over the country, and, you know, I am just laying out Virginia's plan right now and our strategy. We want to move forward. We made the statement very, very clear.

And so as we move forward, we look at this Lease Sale 220 that has come along so far, and we are very, very encouraged by the actions that we have heard within the Subcommittee and indeed the entire House Natural Resource Committee that direction may come as a part of the bill as we move forward with it. I am struck by the testimony here from Peter next to me, the million folks from the Wilderness League. My concern is the tens of millions of Americans that are out of work or underemployed right now. What can we do to put these folks back to work? What kind of hope, what kind of positive message?

To me there is nothing more basic that drives this economy than energy. Energy is the key component. We take it for granted. We shouldn't take it for granted because if we continue down the road we are going to do, we are going to find ourselves in a deeper morass, and I think if we lay out a comprehensive energy plan, which was a bill that the Virginia General Assembly passed a year later, which also included the need to go offshore but a comprehensive energy strategy to move forward, if you will, a blueprint of where we would like to take Virginia. But as we kind of move forward with that blueprint, what we find is we have our hands tied behind our back because of the decisions made inside this beltway right now. We are not being allowed to do what it is Virginia wants to do and what Virginia citizens have clearly indicated they want to do. So we are coming here today to appeal to the folks here within the halls of Congress to move forward and assist Virginia and all the rest of the States, indeed, to move forward with and do the kinds of things we want to do. As I look through, and we have talked about the Bakken reserves, the oil shale reserves up in the Upper Midwest, and I am struck by as you look at this kind of flaccid economy we have around here, the one place that is super vibrant where it is just boomer is right on top of that Bakken reserve, and so if you look at States in fiscal distress and those that are not, what you generally find is a lot of those are associated with the energy industry themselves, and so we want to move forward, we want to open that up and indeed give a blueprint that encourages all Americans and shows them, yes, we have a plan, yes, this is it, and we want you to move forward with it.

So thank you very much, Mr. Chairman.

[The prepared statement of Mr. Wagner follows:]

Statement of The Honorable Frank W. Wagner, Senator, The General Assembly of Virginia

Mr. Chairman and Members of the Sub Committee on Energy and Mineral Resources,

I want to thank you for the opportunity to testify before your committee. Specifically I would like to talk to you about Lease Sale 220, the proposed lease for oil and gas off the Eastern coast of Virginia.

Virginia has long been concerned about the energy crisis that faces this nation and Virginia. We also recognize what a tremendous opportunity for our state and nation that a comprehensive energy policy would mean to our future.

At a time of record budget deficits, unacceptable levels of unemployment, and a totally out of balance trade deficit, it is inexcusable that this nation has not developed a comprehensive energy policy that maximizes utilization of this nation's vast supply of natural resources.

This nation imports in excess of 300 billion dollars a year in energy resources from outside the borders, while at the same time we put off-limits our own energy resources and this nation has no plans to fix this large deficit.

I am struck that this number of 300 billion is nearly half the economic stimulus package passed by Congress in 2009.

What if this 300 billion was spent recovering our own natural resources? That is 300 billion employing Americans to produce energy for American homeowners and American industry.

I am told that the second largest source of revenues next to income taxes to the Federal government is Rents and Royalties collected from those companies recovering resources from Federal property both on and off shore.

To a major extent our foreign policy and military deployments are driven by our need to secure our imported energy needs. Yet at the same time, we put off-limits this nation's natural resources.

Mr. Chairman, this brings us to Lease Sale 220.

As you may be aware, during the 2005 Session of The Virginia General Assembly, I submitted legislation that passed both the House and Senate and requested Congress to lift the moratorium. This legislation was vetoed by then Governor Mark Warner. In his veto message he stated, in part, that he wanted to further study the issue. It is interesting to note that now Senator Warner and Senator Webb have introduced legislation in the Senate to move Lease Sale 220 forward including revenue sharing. In a similar manner the issue of off-shore drilling has bi-partisan support in the General Assembly.

Our current Governor, Bob McDonnell, has stated a goal of turning Virginia into the Energy Capital of the East Coast. He has worked tirelessly to achieve this goal; including getting Lease Sale 220 back on track.

Because of the legislative actions during both the 2005 and 2006 sessions of the General Assembly, the Department of Interior included Lease Sale 220 in their 5-year plan.

Lease Sale 220 went through an exhaustive series of agency input, public hearings and written comments. Through their actions the 220 block was paired back to accommodate concerns from the State of Virginia, Department of Defense, and other agencies. The Department of Interior was ready to precede with the final environmental impact studies when the sale was suspended by the current administration. Recently, the current Administration announced an out right cancellation of this sale and did not include any off-shore areas on the Atlantic coast.

It is interesting to note that our neighbor to the north, Canada, is actively recovering resources in the Atlantic basin recovering both oil and natural gas.

It is my sincere hope that this Congress will reinstate Lease Sale 220 off of Virginia and respect the desire of our Democrat Senators, the majority of our Members of the House of Representatives, our Governor and the Virginia General Assembly.

I would also hope that you not only look favorably on Lease Sale 220, but indeed look carefully at all the restrictions and prohibitions placed on this Nation's energy and natural resources. The keys to making the United States energy self sufficient lie inside these halls of Congress and down Pennsylvania Avenue.

Mr. LAMBORN. Thank you.

Mr. Milito.

STATEMENT OF ERIK MILITO, UPSTREAM DIRECTOR, AMERICAN PETROLEUM INSTITUTE

Mr. MILITO. Thank you, Chairman Lamborn, Ranking Member Markey, and distinguished members of the Subcommittee.

Good morning, my name is Erik Milito, and I am the Director of the Upstream and Energy Operations at the American Petroleum Institute. API represents over 480 member companies involved in all aspects of the oil and natural gas industry, including the tremendous numbers of companies that are involved in exploring for and developing U.S. resources in the offshore and onshore as well as the companies throughout this Nation in States like Pennsyl-

vania, New York, California, Illinois, who support the industry through steel manufacturing, manufacturing boots, helicopters, those types of things. We truly do impact the whole country.

Thank you for the opportunity to testify. API is encouraged that the House of Representatives and this Committee are discussing ways to increase oil and natural gas development in the United States. More domestic oil and natural gas development is an indispensable component of a stronger energy and economic future. More development can deliver more jobs for Americans, more revenue for our government, and greater energy security, while providing a necessary and reliable source for the fuels consumers and businesses use in their homes, vehicles, and factories, and for the petrochemicals used in everything from our clothing to our iPads and to our computers and pharmaceuticals.

Oil and natural gas currently provide most of our Nation's energy, while supporting more than 9 million U.S. jobs and delivering to our government more revenue, about $86 million a day, than any other industrial sector. And this debate is not a choice between traditional energy sources on one hand and renewable energy on the other. We will need it all to meet our Nation's growing energy demands in the future. If we can go to the first slide please.

The Department of Energy's Energy Information Administration projects that the U.S. will require 20 percent more energy in 2035 than in 2009. I think when we have these types of discussions, we have to really look at the context and look at the practical reality we face in the future. And what this slide shows is that we will have significant increases in biomass and renewables, so we are going to go from about 5 percent to about 10.7 percent of our energy coming from biomass and renewables, and that will continue to increase. It is going to increase by about 120 percent in that time frame. Yet even with the substantial increase, we will continue to rely on oil and natural gas for most of our energy needs. The blue portion on the very bottom shows about 33 percent coming from crude oil, and the green portion about 24 percent from natural gas, and while it is going to make up less of a percentage of our overall energy portfolio, we are actually going to need more of it.

One thing I would like to note is that in terms of renewables, this industry provides one out of every five dollars investment in zero carbon technology, so this industry takes it very seriously, but our focus remains on oil and gas.

Next slide, please.

We also have to look at global energy demand. This information is from the Energy Information Administration from the 2011 Annual Energy Outlook. What we see on a global level is that energy demand is going to rise more than 50 percent between 2008 and 2035, and global demand for liquid fuels will go up by 30 percent, so we as a Nation are going to continue to compete with the rest of the world for oil resources.

Next slide, please.

We are all aware of this. This has been a part of a lot of the discussion, imports. This slide shows our reliance on imports to meet our demands for crude oil, and this shows that as of 2010, imports of crude oil accounted for about 62 percent of U.S. supplies. There

is a lot of talk about how we are importing only 46 percent, but that gets into how you compute, but that is really a number for all the liquid fuels. When you are looking just at crude, the majority of our supplies do come from imports. But the good news is that through reasoned policy choices, we do have an opportunity to substantially impact this picture here such that, you know, this pie chart would show that U.S. demand for liquid fuels is met entirely from supplies from the U.S. and Canada. We can do this by providing access to U.S. resources that have been kept off limits and by approving pipelines to bring resources from Canada. By doing that, we believe we can meet our total demand in the U.S. for liquid fuels entirely from U.S. and Canadian supplies by 2026. These resources would help us meet the goals of energy security, job creation, and revenue generation. That is the last slide I am going to refer to.

A recent study by Wood Mackenzie calculates that the full development of the offshore areas that have been left off limits by Interior's recent offshore proposal, including the Atlantic, the Pacific Coast, and most of the Eastern Gulf could provide hundreds of thousands of additional new jobs, more than $300 billion in cumulative additional revenue for the government, and nearly 4 million additional barrels of oil equivalent per day by 2030.

The U.S. oil and natural gas industry provides a significant stimulus to our Nation's economy. Last year, it directly contributed an estimated $470 billion to the U.S. economy in spending, wages, and dividends, more than half of the Federal Government's 2009 stimulus program, which was just referenced by Honorable Frank Wagner. Our industry is one of the few industries creating jobs throughout the recession. The Bureau of Labor Statistics data shows that between 2007 and 2009, the height of the recession, this industry created 120,000 new jobs.

There is more work to do for that to happen. We appreciate efforts now underway in Congress, including Representative Stivers' bill, H.R. 3410, to help move us in that direction. Thank you and look forward to any questions.

[The prepared statement of Mr. Milito follows:]

Statement of Erik Milito, Upstream Director, American Petroleum Institute

Good morning. I am Erik Milito, director of upstream and industry operations at API. API represents over 480 member companies involved in all aspects of the oil and natural gas industry.

Thank you for the opportunity to testify today. API is encouraged that the House of Representatives and this committee are discussing ways to increase oil and natural gas development in the United States. More domestic oil and natural gas development is an indispensable component of a stronger energy and economic future. More development can deliver more jobs for Americans, more revenue for our government, and greater energy security—while providing a reliable source for the fuels consumers and businesses use in their homes, vehicles and factories and for the petrochemicals used in everything from our clothing to our iPhones to our computers and pharmaceuticals.

Unfortunately, U.S. energy policy today does not allow us to take full advantage of opportunities to develop here in the U.S. more of the energy we will need in the decades ahead. However, we appreciate the efforts of Chairman Hastings and this committee in passing legislation earlier this year, including H.R. 1229, 1230, and 1231, that showcase the benefits of increased oil and natural gas development.

Oil and natural gas currently provide most of our nation's energy while supporting more than nine million U.S. jobs and delivering to our government more revenue—about $86 million a day—than any other industrial sector.

And this debate is not a choice between traditional energy sources on one hand and renewable/alternatives on the other. We will need it all to meet our nation's growing energy demands in the future.

The U.S will require 20 percent more energy in 2035 than in 2009, the Energy Information Administration projects, while world demand will increase by 53 percent. To meet this demand, we will need all forms of energy, including substantial amounts of oil and natural gas. In fact, even with significant increases in renewable energy use, efficiency and conservation, the EIA projects that we will need more oil and natural gas in 2035 than we are using today.

The good news is that we have very ample resources in America that can be produced safely and economically, and the estimates of available resources are growing because continuous advances in technology both onshore and offshore are making previously unreachable resources accessible.

A simple choice lies before us. We can choose to safely and responsibly produce at home more of the oil and natural gas we know we will be consuming, creating hundreds of thousands of jobs for Americans and much more revenue for our government—or we can stand still and watch as other countries produce the resources that we will then have to purchase, with the jobs and revenue going to those nations.

Put another way: will we direct our own energy destiny and remain a world leader in resource development? Or will we let others set our course?

Wood Mackenzie calculated the benefits of expanded domestic development earlier this year in a study it conducted for API. It concluded that by increasing onshore and offshore access to U.S oil and natural gas resources, avoiding unnecessary new regulations, returning the pace of permitting approvals in the Gulf to previous levels, and bringing in more Canadian energy, we could create as many as 1.4 million jobs by 2030—with one million of those jobs ready in the next seven years. This pro-development path would also generate $800 billion in additional cumulative revenue, and substantially boost U.S. oil and natural gas production. When factoring in projected biofuels growth, following this path would allow us to meet all of our liquid fuel needs through U.S. and Canadian supplies in 15 years.

Industry is willing to make the investments, but national energy policy is not currently synched to move forward along the path of increased domestic development. The Department of the Interior's recently released offshore leasing plan basically says to continue looking where we have already been looking for the past several decades. It would leave most of our coasts locked up, while also creating disincentives for leasing in the limited areas where that would be permitted.

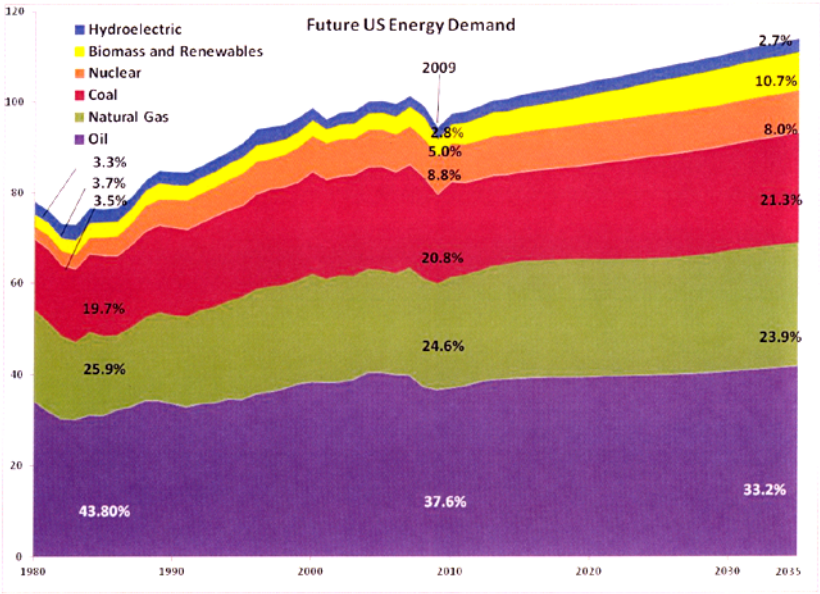
The Wood Mackenzie research calculates that full development of the offshore areas left off-limits by Interior's proposal—the Atlantic and Pacific coasts and most of the Eastern Gulf of Mexico—could provide hundreds of thousands of additional new jobs, more than $300 billion in cumulative additional revenue for government, and nearly 4 million addition barrels oil equivalent per day by 2030.

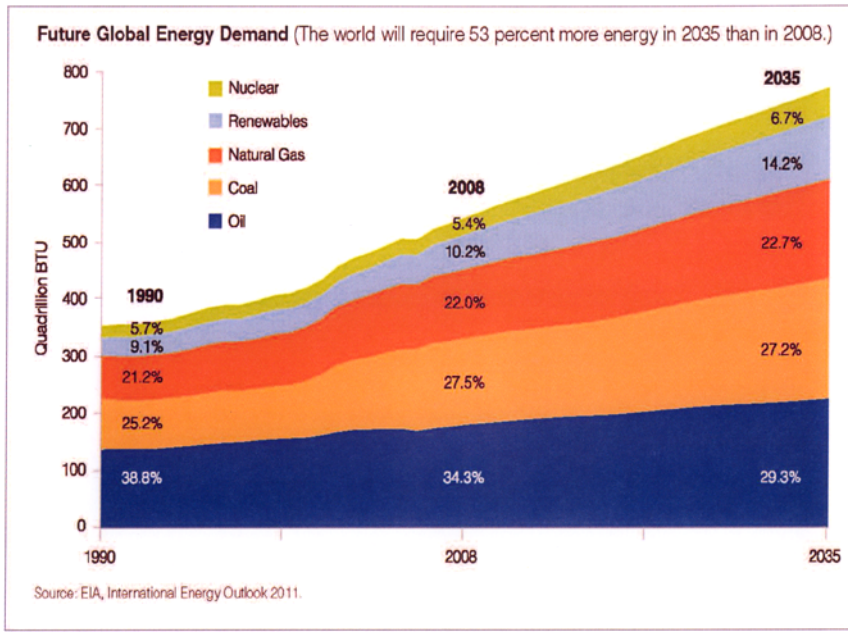
The administration says that current policy is preparing us for our energy future and that oil and natural gas production is increasing. However, the current production increases are largely due to the development of shale oil and natural gas on private lands in North Dakota, Pennsylvania, Texas, Arkansas, Louisiana and elsewhere—and because of leasing and development on public lands and federal waters initiated many years ago.

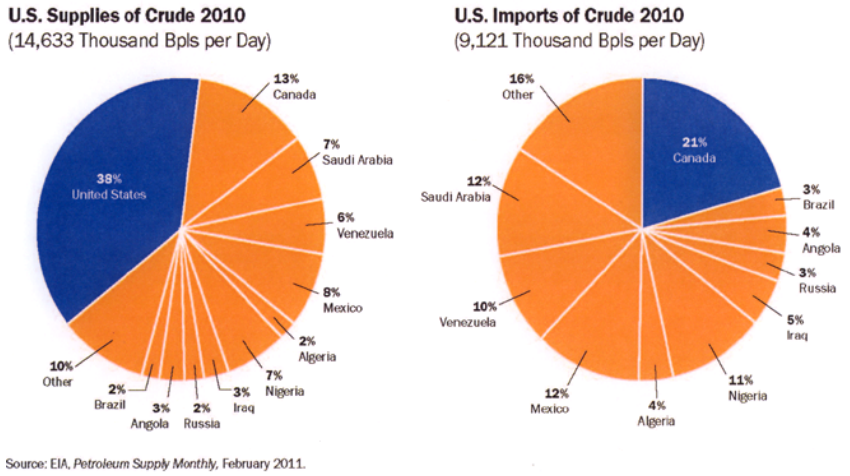
A robust national energy strategy must include the continued exploration and development of offshore areas and BLM-administered lands. These resources would help us meet the goals of energy security, job creation and revenue generation. Interior's offshore plan fails to take advantage of this opportunity. We are not doing the things necessary today to be able to meet tomorrow's energy needs with the greatest possible benefits for the American people.

The U.S. oil and natural gas industry provides a significant stimulus to our nation's economy. Last year, it directly contributed an estimated $470 billion to the U.S. economy in spending, wages and dividends, more than half the federal government's 2009 stimulus program. And it is one of few industries creating jobs throughout the recession.

We can create even more jobs and generate far more revenue if allowed to responsibly develop and produce here in the United States more of the oil and natural gas we need. But more development—especially on public lands and federally controlled waters—requires that industry and government share a vision of the potential benefits and act as partners to fully realize them. There's more work to do for that to happen, and we appreciate efforts now underway in the Congress, including Rep. Stivers bill—H.R. 3410—to help move us in that direction.


Future US Energy Demand
Hydroelectric
Biomass and Renewables
Nuclear
Coal
Natural Gas
Oil
2009
3.3%
3.7%
3.5%
19.7%
25.9%
43.80%
2.8%
5.0%
8.8%
20.8%
24.6%
37.6%
2.7%
10.7%
8.0%
21.3%
23.9%
33.2%
0
20
40
60
80
100
120
1980
1990
2000
2010
2020
2030
2035


Future Global Energy Demand (The world will require 53 percent more energy in 2035 than in 2008.)
Quadrillion BTU
Nuclear
Renewables
Natural Gas
Coal
Oil
1990
5.7%
9.1%
21.2%
25.2%
38.8%
2008
5.4%
10.2%
22.0%
27.5%
34.3%
2035
6.7%
14.2%
22.7%
27.2%
29.3%
0
100
200
300
400
500
600
700
800
1990
2008
2035
Source: EIA, International Energy Outlook 2011.



Mr. LAMBORN. Thank you.

We have one more witness on this panel, Ms. Alexander.

STATEMENT OF RYAN ALEXANDER, PRESIDENT, TAXPAYERS FOR COMMON SENSE

Ms. ALEXANDER. Thank you, Chairman Lamborn, and thank you for the opportunity to testify today.

At Taxpayers for Common Sense, our mission is to achieve a responsible Federal Government that spends taxpayer dollars and operates within its means, so, you know, we have some work ahead of us.

Over the last 15 years, TCS has actively worked to ensure that taxpayers receive a fair return on resources extracted from Federal lands and waters. Royalties and fees collected from resource development represent a valuable source of income for the Federal Government and should be collected, managed, and accounted for in a fair and accurate manner. As the rightful owners, taxpayers have the right to fair market compensation for the resources extracted from our lands and waters, as would any private landowner.

Unfortunately, over the years, taxpayers have lost billions on royalty-free oil and gas leases and royalty-free hard rock mineral operations on Federal lands. Taxpayers have also lost because of a corrupt and inadequate royalty collection system.

In today's budget climate, we cannot afford to lose this valuable revenue. These revenue collection problems must be resolved as we move forward with additional mining and energy production on Federal lands and waters.

Energy production on public lands and waters is certainly an important Federal revenue source, and today's hearing presents an important discussion, but making more Federal lands available or limiting regulations on resource extraction is not a solution to our Nation's debt crisis and could lead to greater taxpayer liabilities down the road.

Taxpayers for Common Sense is opposed to any legislative measure that would alter the existing Federal-State revenue sharing provisions for royalty payments or direct any percentage of royalties collected on new leases in Federal waters or to the States as the American Made Energy and Infrastructure Jobs Act does.

TCS does not oppose offshore drilling, provided fair market royalties are applied and appropriate taxpayer protections are in place. Indeed, with appropriate taxpayer safeguards, Federal resources can and must be used to meet our Nation's energy, transportation, and mineral needs. The calculation on whether it is in the national interest to drill should certainly include sufficiency of offshore resources but also potential long-term liabilities and risks of those liabilities.

Revenue-sharing provisions like those in the American Made Energy and Jobs Infrastructure Act siphon billions of dollars in valuable revenue from the general treasury. Altering these shares toward the States would do nothing for the bottom line of the oil and gas, wind or other offshore developers. They would owe the same royalties, rents, and fees at the end of the day either to the States or the Federal Government. Altering existing revenue-sharing arrangements also does not alter the Federal taxpayers' responsibility for offshore drilling. Unlike onshore energy operations, offshore energy operations do not occur within a State, and the impact for operations beyond State waters has national implications. Federal taxpayers fund the agencies charged with royalty collection and lease regulations.

Additionally, the U.S. Coast Guard, not the States, inspects and regulates the offshore drilling rigs as well as performs vessel regulations, search and rescue, security, and pollution response. Federal waters are administered, protected, and managed by the Federal, not State agencies at a cost to Federal taxpayers, and the revenue derived from the sale of these resources should be returned to the Federal treasury. The American Made Energy and Jobs Infrastructure Act suggests that revenues derived from the new leases be used for infrastructure and other purposes.

This approach would be a significant departure from the user-pays principle for transportation spending that has operated for decades where the system's users or drivers pay for construction and maintenance of the system. Instead, it relies on speculative future resources derived from new offshore drilling leases. Paying for a couple of years of transportation funding with expected revenues from an increase in oil and gas drilling will likely take many years to get rolling. This is not a responsible budget approach. TCS believes Congress either needs to find more concrete offsets or revenue increases to pay for the Nation's transportation system or limit spending to what we can expect through gasoline tax increases.

TCS also has concerns with the PIONEERS Act. Oil sale is in its very early stages of development, and the technology to retrieve it in a cost-competitive fashion does not currently exist. Therefore, it is extremely difficult to ensure taxpayers will receive a fair return for extracted shale. No country in the world has established a commercial and viable oil shale industry. Thousands of acres have already been conveyed for shale development but sit idle. This locks

up valuable Federal land for other uses, including other oil and gas development, grazing, timber or other uses.

Despite Federal law, the PIONEERS Act does not guarantee a fair return to taxpayers and allows the Secretary of the Interior to reduce royalties, fees, rentals, bonuses or other payments on oil shale to promote its development.

The bottom line is that Federal lands and waters must be used responsibly, and taxpayers must receive appropriate financial assurances from those companies benefiting from resource extraction. Without proper assurances, any future financial liabilities will fall on the shoulders of taxpayers. Providing increased access without addressing future taxpayer cost is fiscally irresponsible and could cost taxpayers billions.

The country is now facing a $15 trillion debt and an annual deficit of more than a trillion dollars. Many things need to be done to resolve the Nation's fiscal woes, not least of which is ensuring taxpayers get the revenue they deserve from the resources they own.

[The prepared statement of Ms. Alexander follows:]

Statement of Ms. Ryan Alexander, President, Taxpayers for Common Sense

Good morning Chairman Lamborn, Ranking Member Holt, and distinguished members of the subcommittee. Thank you for the opportunity to testify today. My name is Ryan Alexander and I am President of Taxpayers for Common Sense (TCS), a national, non-partisan budget watchdog organization. Taxpayers for Common Sense's mission is to achieve a government that spends taxpayer dollars responsibly and operates within its means.

Over the last fifteen years, TCS has actively worked to ensure that taxpayers receive a fair return on resources extracted from federal lands and waters. Royalties and fees collected from resource development represent a valuable source of income for the federal government and should be collected, managed and accounted for in a fair and accurate manner. As the rightful owners, taxpayers have the right to fair market compensation for the resources extracted from our lands and waters, as would any private landowner.

Unfortunately, over the years taxpayers have lost billions on royalty-free oil and gas leases and royalty-free hard rock mineral operations on federal lands. Taxpayers have also lost because of a corrupt and inadequate royalty collection system. In today's budget climate, we cannot afford to lose this valuable revenue. These problems must be resolved as we move forward with additional mining and energy production on federal lands and waters.

Today's hearing to examine legislation aimed at increasing energy production on public lands and waters is certainly an important discussion. But simply making more federal lands available or limiting regulations on resource extraction is not a solution to our nation's debt crisis and could lead to greater taxpayer liabilities down the road.

This morning, I would like to raise two overall concerns with the suite of legislation offered today, followed by a more specific discussion on the revenue provisions in the American-Made Energy and Infrastructure Jobs Act and the royalty provisions in the Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act, or PIONEERS Act.

Energy Legislation Must Ensure Fair and Accurate Collection of Revenues for Extraction of our Federal Resources

Natural resources derived from federal lands and waters can and do provide great benefit to the entire country. In addition to their end use and overall domestic economic benefit, as resource owners their extraction provides valuable revenue for the federal coffers.

To this end, federal lands and waters must be mined, drilled or otherwise developed in a manner that protects taxpayers' interest. Appropriate fees, rents and royalties must be applied and collected and long-term liabilities such as potential clean-up or mitigation costs must be shouldered by the extractive industries.

TCS believes in "fix it first." While our federally owned natural resources currently provide around $10 billion to the Treasury, the amount collected falls dra-

matically short of what is rightfully owed to federal taxpayers. We must recoup what we are owed before moving forward. For example, taxpayers are currently losing billions of dollars on royalty free oil and gas leases in the Gulf of Mexico, as well as royalty-free leases for hard rock mineral extraction on federal lands.

TCS believes there are many areas where reform is needed to ensure fair and accurate royalty collection. First, the federal government must have a clear, transparent collection system which has sufficient oversight and accountability. Through the many scandals that plagued the Minerals Management Service (MMS), the agency that for nearly three decades ran the government's royalty collection system, we are all aware how corrupted the system can become.

The Government Accountability Office has said for years that the Department of Interior has not done enough to monitor and evaluate its royalty collection system. A report in 2008 found that the DOI had not re-examined how it was compensated for extracted oil and gas from public lands in over 25 years and had no system in place to evaluate whether or not such a reassessment was needed. Then a 2010 study found that DOI also had no way to determine if it was accurately measuring the amount of resources being taken from public lands, meaning taxpayers may very well not be receiving a fair market value for their goods. All of this on top of some the lowest royalty rates in the world means that the system in place to collect royalties on current or new leases just isn't up to speed.

Although the MMS has been dismantled, the Department of Interior's new royalty management structure is still establishing itself. Until this new system demonstrates it can effectively manage our taxpayer resources and collect royalties from existing operations on federal lands, it would be premature to add to their portfolio with new leases.

Additionally, federal taxpayers should not be asked to provide revenue from offshore leases in federal waters to the states. The GOMESA Act already directs a portion of revenue derived from new leases in federal waters in the Gulf of Mexico to the states rather than federal taxpayers. Other legislation like the American-Made Energy Act propose expanding state revenue shares for new leases in federal waters outside the Gulf of Mexico.

Existing onshore oil and gas operations can also provide more revenue for taxpayers. In late 2010, the GAO found taxpayers could earn $23 million more in royalty revenue annually from additional natural gas obtained from federal lands, if companies were required to capture vented or flared natural gas in cases where it is economically feasible.

Making more natural resources available, without ensuring recoupment of what we are already owed for current and past operations, is likely to only ensure inadequate collection of royalties on new leases and perpetuate the existing flawed system for even longer. Without legislation to address this existing problem, taxpayers will continue to lose valuable revenue—revenue that can be used to address our nation's federal deficit.

The American-Made Energy and Infrastructure Act

Specifically on the legislation before us today I would like to first comment on Representative Stivers's bill, The American-Made Energy and Infrastructure Jobs Act. Taxpayers for Common Sense is opposed to any legislative measure that would alter the existing federal-state revenue sharing provisions for royalty payments or direct any percentage of royalties collected on new leases in federal waters to the states.

TCS is not opposed to offshore drilling. We believe with proper taxpayer safeguards and the application of fair market royalties, federal resources can and must be used to meet our nation's energy, transportation, and mineral needs. The calculation on whether it is in the national interest to drill should certainly include sufficiency of offshore resources, but also potential long term liabilities and risks of those liabilities.

Revenue-sharing provisions, like those provided in the Stivers bill, siphon billions of dollars in valuable revenue from the general treasury. Not only is this bad policy, in today's fiscal climate it is downright foolish. Altering these shares towards the states would do nothing for the bottom line of the oil and gas, wind, or other offshore developers—they would owe the same royalties, rents, and fees at the end of the day either to the states or to the federal government.

Federal taxpayers are due any royalties derived from leases operating in federal waters. Federal waters are administered, protected, and managed by federal—not state—agencies at a cost to federal taxpayers, and the revenue derived from sale of these resources should be returned to the federal treasury. Unlike onshore energy operations, offshore energy operations do not occur in a state and the impact for op-

erations beyond state waters reaches well beyond any one state and has national implications.

Federal taxpayers fund the agencies charged with royalty collection and lease regulations. Additionally, the U.S. Coast Guard, not the states, inspects and regulates the offshore drilling rigs as well as performs vessel regulation, search and rescue, security, and pollution response.

States do get the money from waters dedicated to the states under federal law and we believe this should continue in any new drilling in state waters. But all Americans should get the revenue from federal waters. These waters are more than six miles from the coast and nine miles in parts of the Gulf of Mexico. State waters are within three miles of their respective shoreline.

The American Made Energy Act suggests the revenues derived from the new leases be used for infrastructure and other purposes. House leadership has also argued for the use of speculative revenues from increased oil and gas drilling to offset very real, concrete transportation and infrastructure costs. According to the Speaker's release, House Republicans "favor an approach that combines an expansion of American-made energy production with initiatives to repair and improve infrastructure and reform the way infrastructure money is spent."

This is approach would be a fairly radical departure from the "user pays" principle for transportation spending that has operated for decades—where the system's users (drivers) pay for construction and maintenance of the system. Instead it relies on speculative future revenues derived from new offshore drilling leases. Paying for a couple of years of transportation funding with expected revenues from an increase in oil and gas drilling that will likely take many years to get rolling is not a responsible budget approach. It's like buying the Ferrari tomorrow because you are sure a raise is coming sometime in the future. If you think this sounds like a similar story that got us into our current budgetary quagmire, you'd be right.

Adding insult to injury, we've already discussed that revenues from the bill are going to be shared with the states—further constraining the actual amount the federal government will receive to pay for transportation and infrastructure needs.

TCS believes Congress either needs to find more concrete offsets or revenue increases to pay for the nation's transportation system or limit spending to what we can expect through gasoline tax increases.

In summary, royalties collected from offshore drilling in federal waters should be returned to the rightful resource owner, the federal taxpayer. States receive revenue from royalties collected within state waters and the transitional area between state and federal waters (3–6 miles from shore). The federal government manages and secures operations off our coasts and the taxpayer bears the cost of these services. The impacts of drilling in federal waters have national implications. Costs and benefits should be carried out in the interest of all Americans, not a handful of coastal states. Additionally, relying on this money to pay for today's infrastructure needs is bad budget policy.

PIONEERS ACT

TCS also has concerns with the PIONEERS Act. Oil shale is in its very early stages of development, and therefore it is extremely difficult to ensure taxpayers will receive a fair return for extracted shale. No country in the world has established a commercially viable oil shale industry.

Retrieving oil from shale may be a way to produce more domestic energy, but the technology to retrieve it in a cost competitive fashion does not currently exist. Taxpayers should not bear the financial consequences of this risky prospect. Research and development on federal lands is already occurring, and fast-tracking to commercial leasing before a technology is developed is a high risk taxpayers cannot afford.

Thousands of acres have already been leased for shale development, but sit idle. This locks up valuable federal land for other uses including other oil and gas development, grazing, timber, or other uses.

Furthermore, the PIONEERS Act does not guarantee a fair return to taxpayers. Federal mineral leasing laws should provide a fair return for federal taxpayers and for oil shale development it is explicitly required under the Energy Policy Act of 2005. The PIONEERS Act allows the Secretary of the Interior to reduce royalties, fees, rentals, bonus, or other payments on oil shale to promote its development, but because shale developers are primarily big oil companies, this amounts to little more than another subsidy to the profitable oil and gas industry.

CONCLUSION

All resources extracted from federal lands must provide federal taxpayers with fair market revenue. We believe it is imperative that energy legislation address these problems.

From our perspective, the bottom line is that federal lands and waters must be used responsibly and taxpayers must receive appropriate financial assurances from those companies benefiting from resource extraction. Without proper assurances, any future financial liabilities will fall on the shoulders of taxpayers. Providing increased access without addressing future taxpayer costs is fiscally irresponsible and could cost taxpayers billions.

The country is now facing a $14 trillion debt and an annual deficit of more than $1 trillion dollars. Many things need to be done to resolve the nation's fiscal woes, not the least of which is ensuring federal taxpayers get the revenue they deserve for the resources they own.

Furthermore, relying on the speculative revenue of new leases is dangerous fiscal policy. Instead, Congress must take steps to fix our existing royalty and leasing problems and spend less time spending money that we do not have.

Mr. LAMBORN. Thank you.

Before we ask our 5 minutes of questions each, I would like to recognize Representative Young of Alaska for his opening statement on one of the pieces of legislation for which he is the author.

STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. I thank you, Mr. Chairman, and thank you for holding this hearing.

This is really my legislation on energy for American jobs. Actually it is ANWR legislation. Tara, welcome. I was stuck in traffic burning up gas, you know, while we are doing this, you know.

But this is long overdue, Mr. Chairman, members of the Committee. This is the 11th, 12th time we have attempted to open up ANWR for the benefit of this Nation, the benefit of the people of Alaska and Alaska natives. You are going to hear, and you just heard from one environmental group, and they are not the taxpayers group, and another environmental person, and I understand their beliefs, but they don't know what they are talking about. This is very crucial to this Nation. We talk about taxpayers, and we talk about the environment. We are destroying ourselves when we keep buying foreign oil. We are just transferring the garbage to some other country that has no safeguards like we do, and this is especially important to the native community and the coastal area where Barrow, Kaktovik, Nuiqsut, the rest of the areas are badly needed. To hear this same garbage from certain groups of people when we could have saved $4 trillion—$4 trillion that was sent overseas since we passed this and then got it vetoed by President Clinton, $4 trillion. It could have helped balance the budget. But it has financed tremendous activity overseas against us and actually created 9/11.

So, Mr. Chairman, I can say truthfully that this is long overdue. I will hear people, you will hear people, "Oh, this is a little bit of oil, it won't change a thing because it takes 10 years to get it onboard." We could probably develop this in 3 years and deliver it to the pipeline and to this Nation. I say that with pretty much confidence because we built an 800-mile-long pipeline with all the infrastructure and all the docking facilities and the ships to deliver oil from 1973 to 1976, we pumped the first barrel of oil. This is the thing that should be done, and I have been in that area, most of you have not been in that area other than Tara knows what is going on, and this is not the pristine area with wolves laying next

to caribou or vice versa, that will be a cold day in Saudi Arabia whenever that happens, anybody that knows anything about this operation. The caribou have increased in Prudhoe Bay, only 74 miles away, we have a viable wildlife refuge there really. And the people that live there support this. And I just keep getting very frustrated when I hear, like I say, the garbage that comes out of people's mouths about how this pristine area, 365 million acres of land. This is one-third of a 19 million acre refuge, which I have been over most, and most people have not, even those that say they live on the coast. I have been over the lower part of it, which is the prettiest part, but it is nowhere near the oil. So this should be developed. It should be passed. The Senate should pass it. Let's get this country back on the road to recovery so we have a sound economy instead of sending our dollars overseas.

And I yield back the balance of my time.

Mr. LAMBORN. All right.

Thank you.

And last, one more important piece of business before we start our questions. I would like to take this opportunity to welcome the newest member of our Subcommittee who is here this morning. From Nevada, we have Mr. Amodei.

Welcome to the Subcommittee. Your district is one of the most mineral rich districts in the Nation, providing 80 percent of the Nation's gold production. We also find there copper, silver, molybdenum, lithium and other important metals and industrial minerals. Some people may not realize it, but one of the highest flowing oil wells in the country is also in your district in Railroad Valley. Finally your district is rich in geothermal energy. Welcome to the Committee, and we look to your knowledge and your expertise.

Would you like to make a speech at this point?

No. You don't have to.

OK. We are going to start with our round of questions. Each Member will have 5 minutes total to ask all of the witnesses, which is a big task, because you all had important and interesting things to say.

Senator Wagner, I would like to start my round by asking you my first question. How would you respond to individuals who say that providing Virginia or any other coastal State with a portion of revenues is some kind of waste of taxpayer dollars?

Mr. WAGNER. Mr. Chairman, I am kind of astounded by that statement. When you understand that Federal property in Nevada, Federal property in New Mexico, all of this Federal property that we hold, it is my understanding that 50 percent of the revenue generated on that Federal property goes directly back to the States and another 40 percent goes into a special fund, which ultimately ends up a lot of times back in that particular State also, and the Federal Government only derives 10 percent that I actually understand goes to the general fund. That is 50 percent. Under the legislation that I have glanced at, it was talking about 35 percent.

Now, citizens in Virginia or citizens in New Jersey or citizens in Massachusetts have just as much right to that Federal property in Nevada as the citizens of Nevada. And all we are asking for, not even the kind of equity that they get on Federal lands in those States, but are off our coast, immediately off our coast, a few—50,

75 miles off our coast, what we are asking for is a portion of that. Because as that infrastructure comes ashore, there are going to be associated things that we need that money for, transportation and other things that we do that. So we think it is only equitable. And we, quite frankly, don't understand the position of some of these in Congress that would say, oh, it is fine for our State, even though Virginians have just as much a right or North Carolinians or people from New Jersey, but it is not OK for you. And we don't understand that quite frankly in Virginia.

Mr. LAMBORN. OK. Thank you.

Ms. Sweeney and Mr. Helmericks, can you elaborate on the difference in pay and benefits and stability between jobs provided by the energy industry, such as this bill would create, versus other non-energy types of jobs that are available in Alaska?

Mr. HELMERICKS. Well, the big difference that I have seen is that the oil industry's jobs are very well paid. They are about the top of the scale. They are stable and they are one of the few jobs in Alaska where you can actually work year around and look at having a career.

If you take fishing, fishing is seasonal. Logging is seasonal. Construction is seasonal. Tourism is seasonal. I am only speaking about Alaska now. That is the only place I am talking about. You have government jobs, you know, teaching school, being a fireman, things of this nature. You have small business owners, people with hair salons, things of this nature. Even bush flying is seasonal. But the oil industry runs 24/7, 365 days a year. So if you are looking at entering an industry as a blue-collar worker—I am talking about if you want to drive a truck, operate a flow station, work in a camp for a catering company and you want to bring home a regular paycheck, have a 401(k) and be able to look for and invest in the future, the oil industry is your best choice in Alaska, and that is why I can so enthusiastically say, if you want to create good paying blue-collar jobs right now for people, I can give the oil industry my unequivocal endorsement.

Mr. LAMBORN. Ms. Sweeney.

Ms. SWEENEY. Thank you.

I have family members who work up and down the Trans-Alaska Pipeline in Prudhoe Bay, in Valdez, and it provides significant benefits to Alaska natives in terms of the employment opportunities and training opportunities for our people. In addition to that, the schedules, whether it is 2 weeks on, 2 weeks off, 6 on, 2 off, it enables and empowers our workers, our Alaska native workers to return home to engage in those very important subsistence activities that provide food for our families.

In addition to that, the oil industry on the North Slope provides much needed revenue for our county form of government, the North Slope Borough. And the revenues derived from that tax base also provide revenues for local schools, for police and fire protection, running water and flush toilets. I talked about that in my testimony. And so there is significant benefit to not only our region, but to the entire State of Alaska.

Mr. LAMBORN. All right. Thank you.

At this point, I would like to recognize Mr. Markey for 5 minutes.

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

Ms. Alexander, we are hearing a big discussion here about where we can find revenues for our government, especially to put it into new roads in our country. And this morning, I woke up and the story was how high the price of gasoline has now skyrocketed across the country. And it occurred to me that the four largest oil companies in the United States made over $500 billion in the last 5 years, but they laid off 10,000 people, which is unbelievable. Just, you know, they laid off 10,000 Americans while they made $500 billion over the last 5 years, the these four oil companies, these biggest ones. It is just shocking to me what they do. Meanwhile solar now has 100,000 employees; wind has 85,000 employees. So it is just really sad what the oil companies are doing in our country, laying people off. But that being said, it is clear that people are just going to be tipped upside down and have money shaken out of their pockets at the pumps as they drive to go visit their relatives over the Thanksgiving day weekend.

So what I propose, what Mr. Holt has proposed, what the Democrats have proposed is that we look at the tax breaks that we give to the oil industry, to the mining industries from—as gifts, as gifts from the Federal taxpayers, even as they are recording the largest profits that any corporations in the history of the United States have ever recorded as they lay off people in our country.

So I was just wondering, given the fact that all of the legislation which is being proposed by the Republicans would raise $5 billion, but the legislation which Mr. Holt and I and the Democrats have introduced would raise $18 billion to—and it would be used to pave over—to pave the roads of our country, to have more people put to work actually doing work and—on our highways in our country, don't you think that would be a better way for us to go, to look at all of these tax giveaways, Ms. Alexander, and to find a way to get that back, given the fact that they are likely to report even larger profits in this coming quarter, given the skyrocketing price at the pump that these oil companies are receiving?

Ms. ALEXANDER. You know, Taxpayers for Commonsense has opposed the oil and gas tax breaks for many years, for 16 years, as long as we have been around. We continue to oppose them and think that there are real opportunities for deficit reduction for taking tax breaks off the books that have been on to encourage the development of the industry that is, as you said, well established.

I think at the same time, we see that efforts to remedy the existing royalty collection system are also critical, so we will look at any proposal that we see. But we are on the record and have been on the record for a long time on those positions.

Mr. MARKEY. In addition, in the legislation which the majority has introduced, they are actually going to increase the amount of revenue that comes off of Federal lands that are given to the States rather than keeping it in the Federal Treasury so we can reduce the deficit. We have a supercommittee that is meeting right now, and their proposals would actually take money away from the supercommittee, take money away from the Federal Treasury and just give to the States and make it more difficult for us to balance the budget, make it more necessary for us to cut our troops or to cut checks for Medicare for grandma. Does that make any sense to you that we would be, you know, changing that formula?

Ms. ALEXANDER. You know, as I said in my testimony, we oppose altering the existing revenue share, particularly for offshore, because we think that any of the potential problems which everybody, particularly the industry, doesn't want to see any problems with any new development, but any problems that would happen would have national implications. Nobody can guarantee that an accident—God forbid—an accident off of Virginia only affects people in Virginia and you just can't guarantee those things when we are talking about offshore development. So we think that that is appropriate to stay in the Federal Treasury.

Mr. MARKEY. So I agree with you, Ms. Alexander. I just think that—and perhaps I care too much about, you know, ensuring that we balance the budget. I don't think we need a constitutional amendment. I just think we have to do it ourselves. And these giveaways to the oil industry, we should get them back and balance the budget with them. You know, these proposals to take the revenues that we would raise offshore and public lands and give to the States rather than keeping it to balance the budget so we can keep our defense strong, that just runs contrary to what our country should be doing at this time. So even as we debate a constitutional amendment to balance the budget out there on the Floor, we have here a Committee that is talking about actually potentially increasing the Federal deficit by changing the way in which we take the revenues from public lands and, instead of putting them in the Federal Treasury, just give them back to the States. I understand that if I could—if I came from one of those States, that maybe that makes some sense, but not while we are debating a Federal constitutional amendment to balance the budget, that it seems to me it should be our highest priority, so that we can send a signal to the American people that we really do care about balancing that budget. I know, I do. And I hope this Committee shares my deep commitment to that goal.

I thank you, Mr. Chairman.

Mr. LAMBORN. Yeah. Thank you.

I would like to remind everyone that a company like GE, which made $14 billion in profits, paid zero income taxes last year, Federal income taxes, when they had a lot of money coming in from wind production, solar, et cetera.

Mr. MARKEY. Would the gentleman yield?

Mr. LAMBORN. And I should also remind the Ranking Member that when you buy a gallon of gas at the pump, you pay a lot more in taxes than the oil company made in profit on that oil—that gallon of gasoline. So when it comes to greed and so on, we should look in the mirror.

Mr. MARKEY. Would the gentleman yield?

Mr. LAMBORN. Yes.

Mr. MARKEY. I thank the gentleman for yielding. Again, I am with you. OK. These large corporations are getting away with murder. They should be paying their taxes. OK? Whether it be General Electric or ExxonMobil, they are absolutely not paying their fair share of the dues to live in our society. And I share with you, we should do something on a bipartisan basis to make sure that General Electric and these other companies don't have——

Mr. LAMBORN. OK. Agreed upon, let us go on to our next questions.

Mr. Flores.

Mr. FLORES. Thank you, Mr. Chairman. I find the last set of statements pretty interesting given that we don't—here we are talking about American jobs, American infrastructure, the American economy, fiscal responsibility, the 26 billion Americans that are either unemployed or underemployed. And look at how many folks we have from the other side of the aisle that are here that are interested in these key American issues today: One. So let the record reflect that.

The second thing, we are talking about excessive profits. This iPad is worth about five barrels of oil, about $500 new. Now, who thinks that more profits are made on five barrels of oil or on one iPad? Any of you all care to guess? The profit margin on this iPad is over twice as high as on five barrels of oil. Let us keep that in perspective. So when we talk about companies paying their fair share, how many of you think—if we go to Apple and say, Apple, we want you to pay your fair share, we are going to double your tax rates, but we want you to produce more iPads at lower cost for Americans. How many of you think that is really going to happen? That defies the laws of economics. And the laws of economics are like the laws of gravity, the more you violate them, the harder the impact at the end.

So with that said, let us go forward. Senator Wagner, yesterday the Secretary of the Interior testified that he suspended any leasing off the Pacific Coast because local and State jurisdictions opposed drilling. Now, you are telling me that Virginia supports drilling off its coast; is that correct?

Mr. WAGNER. Mr. Chairman, Congressman Flores, that is absolutely true. In repeated measures, legislation, the Governor has——

Mr. FLORES. One word is fine. I think we got the point across. I am not trying to be—we have a lot of questions.

Second, he went on to testify that off the Atlantic Coast, that the reason he didn't allow drilling off the Atlantic Coast is because the Department of Defense felt like that would be a problem. Now, I think I heard your testimony say that you don't believe that is the case; is that right?

Mr. WAGNER. Mr. Chairman, Congressman Flores, as I went through the process, the Department of Defense weighed in very heavily. Remember, this is a 5-year ongoing study. The Department of Defense weighed in very heavily. As it was presented to me by the Department of Defense, within the lease sale 220, which we need to talk about at some point in time, is 40,000 acres. The Department of Defense said it was OK and then they designated another perhaps 40,000 acres for subsea exploration, where it would not come up through the surface of the water.

Mr. FLORES. So the answer is the Department of Defense is willing to work with the Department of the Interior if we were to tell the truth in this Committee, it sounds like. Or if the Secretary of the Interior would tell the truth.

Mr. WAGNER. I am just telling you what I saw as a——

Mr. FLORES. That is what I thought. I would like to suggest to the Chairman that we invite somebody from the Department of Defense to come talk to us as well about this issue so we can clear up that misconception. There are a couple of approaches to fiscal responsibility.

Let me ask you this, Mr. Milito, which approach do you think has the best impact on American jobs, the American economy, the Federal fiscal deficits that we face, and also revenues for infrastructure? Option A is, let's go ahead and raise the taxes and restrictions on oil companies. Option B is let's try to promote domestic drilling. Which one has the better impact?

Mr. MILITO. Option B.

Mr. FLORES. That is what I thought. OK. Which—let's see.

Mr. Helmericks, let's see what my question is for you. What has been—you are a resident of Alaska today, correct?

Mr. HELMERICKS. Yes.

Mr. FLORES. What has been the adverse impact of drilling and oil and gas operations as from your perspective? You live there.

Mr. HELMERICKS. Yes, I have. In fact, I could see the Discovery well out my bedroom window. I actually watched the well being drilled, and I am only 7 miles from the Alpine Prospect.

Mr. FLORES. Allow Ms. Sweeney time, too. OK.

Mr. HELMERICKS. The adverse impacts have been very small. Really, we have created something of a wildlife preserve around Prudhoe Bay because it is a no molestation and no hunting area. And, of course, it doesn't take the animals long to figure it out. So, honestly, if you want to see game right now, I would take you to Prudhoe Bay.

Mr. FLORES. Ms. Sweeney, do the benefits of increased oil and gas activity in your State outweigh the cost?

Ms. SWEENEY. Yes.

Mr. FLORES. Thank you.

I yield back.

Mr. LAMBORN. OK. Thank you.

Mr. Landry of the Cajun Caucus.

Mr. LANDRY. Thank you, Mr. Chairman.

Mr. Chairman, I would like to note that I, too, share the gentleman from Massachusetts' desire to balance the budget and hope that I could continue to serve here alongside with him to ensure that we get that budget balanced. And today I would like to use the same card slot as him, and we can both vote for a balanced budget amendment today.

You know, there are some statistics I think that are important: There was a recent study that showed that if you—that the average pay in the exploration and production side of the oil and gas industry, the average pay per employee is $2,000 per week. It is $104,000 a year by my math. If you are in refining, if you are downstream, the average pay is $1,750 per week. That is $91,000 a year. If you are in the pipeline industry, the average pay is $1,500 per week, $78,000 a year. Now, if you are lucky enough to be in those industries and enjoy those jobs and enjoy those wages, that means that you are now in the top 25 percent of wage earners in this country. Now, isn't that what we are about? Isn't that what America is about? And yet this week, the President destroyed

20,000 of those pipeline jobs by not allowing the Keystone pipeline to move forward. Mr. Van Tuyn, do you live here in D.C.?

Mr. VAN TUYN. Mr. Chairman, Representative Landry, I do not. I live in Alaska and have for quite a long time.

Mr. LANDRY. Now, how long did it take you to get from Alaska to here?

Mr. VAN TUYN. 10 and a half hours?

Mr. LANDRY. On an electric plane?

Mr. VAN TUYN. It was a plane, and I make the trip often.

Mr. LANDRY. Well, I can tell you that I haven't been able to find one of those planes we can plug in yet or whether we can put those solar panels on those wings to fire up those turbine props that allow you the luxury to come down here and testify before us.

Mr. VAN TUYN. Perhaps we have to work on that.

Mr. LANDRY. So until you can get us to that point, I think that it is prudent of us in this country to allow us to use the resources that we have here. You know, the shame of it is that right now—I am so mad because right now, we are exporting our cheapest form of energy. We are becoming a net exporter of natural gas while we import the most expensive form of energy. Americans should be outraged.

And, Senator, I apologize that Congress has allowed itself to just take certain States who don't want to drill—and I respect that if a State does not want to drill off their coast, I respect that. But if a State comes to Congress and says, this is our plan, and this is what we would like to do, Congress should weigh heavily on what that—on the decisions that that State makes. So I apologize to you for Congress not respecting the State of Virginia's plan to drill off its coast. I support it.

And of course—I guess my question is actually to Mr. Van Tuyn. Do you know another industry that has an average pay of the numbers that I put before you earlier?

Mr. VAN TUYN. I do, Mr. Chairman, Representative Landry. I think everyone on Wall Street.

Mr. LANDRY. Everyone on Wall Street. OK. And let me ask you, how much—does Wall Street fuel your plane?

Mr. VAN TUYN. Wall Street sure increases gas prices. I can tell you that.

Mr. LANDRY. Wall Street increases gas prices. The last time I checked it is called supply and demand. It is a supply and demand curve. And look, if you feel that Wall Street is making too much money, then go over to the Financial Services Committee. OK? But you know what, Americans right now are paying through their wallets at the gas pump. Today, in November, when gas prices are supposed to be going down, what do you think the gas price is going to be in May? And, you know, if we just keeping this can down the road, the price is just going to go up and up and up, and the economy will continue to be smothered. So I suggest that you take a good hard look at your neighbor next to you who lived in Alaska all his life, like you did, and respect his position and respect the people who are making our energy, the people who allowed you to get in that plane and go from Alaska all the way to Washington, D.C.

Thank you, Mr. Chairman.

Mr. LAMBORN. All right. Thank you.

Next is Representative Johnson.

Mr. JOHNSON. Mr. Chairman, I have no questions for this panel. So I would like to yield my time to Mr. Flores from Texas.

Mr. FLORES. Thank you, Mr. Johnson.

Let us dive into the weeds here a little bit. This is for Mr. Wagner and Mr. Milito. H.R. 3410, to increase the levels of offshore drilling, have either of you all had the chance to review that legislation? It just came out. So I don't know if you have had a chance to review it.

Mr. WAGNER. Mr. Chairman, Congressman Flores, I have not had the opportunity.

Mr. MILITO. I have. I have had a chance to look at it.

Mr. FLORES. Do you have any specific recommendations that you would make before we have a markup on that bill later on this——

Mr. MILITO. You know, we just got it. We looked at it. We wanted to have an opportunity to really get back to the Subcommittee and to the Committee staff to weigh in on it a little bit.

But generally, it is going in the direction this country needs to go in. We need to be leaders in developing our energy resources. It provides an opportunity this Administration is not providing by allowing us to go out there and develop offshore resources, and the ability to go in these areas off the Atlantic and Eastern Gulf and the Pacific, that is the step that we need to go in.

Mr. FLORES. OK. If you would, we will ask you to provide some written recommendations to the Committee if you would so that we can get those in. I am concerned—I am wondering if we put hard enough targets in there and if the targets are realistic, also. I am concerned about the fact that a lot of the information we use regarding undiscovered technical reserves may be way out of date and in most cases from what recent history has shown us is our recoveries tend to be much higher than those initial UTRs. So we need some feedback on what we can do to improve those numbers because if the Secretary is using 30-year-old data, that is going to drive us to a suboptimum outcome, and I would like to get to an outcome where we go to the areas that have the greatest potential first. One of the things in the legislation is it says you look at it by lease area, and I am wondering if you should just look at the entire offshore in the United States where do you go first instead of looking at lease areas.

Mr. MILITO. Those are actually two specific items that we have been looking at. But, you know, we want to make sure that we—a lot of it is legal language and how you interpret these clauses. But those are two concerns. We want to make sure it is maximizing and optimizing our opportunities.

Mr. FLORES. Right. Because, I mean, again, the goal here is to put Americans back to work, improve the American economy, to reduce the Federal fiscal deficit and to have the most amount of money available for U.S. infrastructure. I think that is the common objective. So if you can help us achieve those objectives, that would be great.

Yes, sir. Senator Wagner.

Mr. WAGNER. Mr. Chairman, Congressman Flores, one point I would like to add. Again, I have not read the legislation. So I apolo-

gize for that. But one of the issues that has come up that has been a big issue in Virginia is the computer models the Department of the Interior uses to actually designate what States have what purview over there. And what happens is States that have concave coastlines are very much penalized because it uses—I have been told by Interior—international treaty and it has a thing. If you just went straight east-west, as it should, from the border, straight east-west out to the end of the Continental Shelf, obviously Lease Sale 220 would be much larger. But more importantly, vast areas would be open well outside of the Navy op areas. So there would be no concerns from DOD on that. So I would hope that as that legislation moves forward—I talked to Congressman Wittman about it—that those kind of things—direction is given to Interior about how they go ahead and designate these things both on the East and West Coast.

Mr. FLORES. OK. That makes sense to me because we ought to be looking at the offshore in the aggregate and not in pieces of pie or partials. Another somewhat rhetorical question for many of you on the panel, and it is which opportunity provides the greatest impact on American jobs, the American economy, improving the Federal deficit situation and providing the most revenues to the Federal Government for infrastructure, is it drilling overseas or drilling in the United States of America? Let us start with Ms. Alexander.

Ms. ALEXANDER. In the United States, of course.

Mr. FLORES. Mr. Milito.

Mr. MILITO. The U.S.

Mr. LAMBORN. Senator Wagner.

Mr. WAGNER. The United States.

Mr. VAN TUYN. In the United States. We are reducing our imports every year and have since 2008.

Mr. FLORES. Mr. Helmericks.

Mr. HELMERICKS. Chairman, Congressman, of course in the United States.

Mr. FLORES. Ms. Sweeney?

Ms. SWEENEY. In the United States.

Mr. FLORES. OK. We have 100 percent agreement. Now, if we—the next question is, if we decide to raise taxes on oil companies domestically, is that going to increase the amount of drilling and investment in this country? Senator Wagner?

Mr. WAGNER. Mr. Chairman, obviously not. I mean, it would take money away from——

Mr. FLORES. OK. Mr. Milito.

Mr. MILITO. That would serve the opposite goal and mission. It would go the other way.

Mr. FLORES. Mr. Helmericks.

Mr. HELMERICKS. Yes, it would decrease it, Congressman.

Mr. FLORES. Ms. Sweeney.

Ms. SWEENEY. It would decrease it.

Mr. FLORES. Thank you.

I yield back.

Mr. LAMBORN. The next person on our list to ask questions is Representative Thompson.

Mr. THOMPSON. Thank you, Chairman.

Mr. Helmericks, you mentioned in your testimony that you have, quote, respectfully are asking for access to Federal oil. I certainly support that with all humility and pun intended, I want to drill down on your response a little bit. Just specifically, you talk about Federal oil, well, I think this is elementary, but who owns those resources, such as the oil and gas, on Federal lands?

Mr. HELMERICKS. The citizens of the United States.

Mr. THOMPSON. Absolutely. The United States taxpayers and the citizens here. I appreciate that.

To all of the panelists, what is the overall expected economic impact of opening the small portion of ANWR that we are talking about within this legislation?

Ms. Sweeney, any thoughts?

Ms. SWEENEY. Through the Chair, Congressman Thompson, there are significant economic benefits to developing the coastal plain of ANWR and we are looking at jobs for Americans and revenues for the Federal Treasury in addition to the benefits felt by Alaskans.

Mr. THOMPSON. Any other panelists have any other thoughts on economic impacts on opening up just a small portion of ANWR that this legislation is addressing?

Mr. MILITO. We understand that the USGS estimates that between 5 and 16 billion barrels of oil. That is more than twice the proven reserves in Texas. We also understand the production could get up to 1 million barrels of oil per day, which closes in on what we are doing in the Gulf. So this would certainly enhance our economic and energy security.

Mr. THOMPSON. Thank you.

Mr. Van Tuyn, you had made some comments about since 2008, we have reduced our imports. Today we also have unemployment that equals the size of the population of Pennsylvania, 14 million Americans. I would argue that if there has been any need to reduce imports, it is unfortunately because people are sitting at home and not having a job to be able to drive to.

Within the testimony, there were comments about the Equal Access to Justice Act and the payments that this fund provides to litigants. Mr. Van Tuyn, do you believe that lawyers and environmental groups need to draw from this or need this payment?

Mr. VAN TUYN. As much as API does. I think API gets a lot more money under the equal act—the Justice Act than environmental groups like—if not, it is—you know—under these fee-shifting provisions, API gets money, too. And that is true for the National Rifle Association and others. And it is simply a matter of fairness and access to the courts.

Mr. THOMPSON. Well, in my congressional district, where we have lost significant jobs because of what I consider to be frivolous lawsuits, it has been the environmental groups that have been killing jobs and tying things up.

How specifically would you—any suggestions on how you would suggest fixing—and I open this up to all of the panel actually, suggesting fixing the Equal Access to Justice Act? Any thoughts or comments, Ms. Sweeney?

Ms. SWEENEY. Through the Chair, Congressman Thompson, yes. On the North Slope, we have seen meaningful energy projects de-

layed by lawsuits that have very little or no merit, and we are supportive of reform of the Equal Access to Justice Act for challenges that have no merit. And what we would like to see is those that are interested in challenging meaningful energy projects in this country, that they also have skin in the game and are accountable in this process. And so our suggestion would be have them post a bond for the value of the project.

Mr. WAGNER. One other concept, probably outside the realm of anybody in this room to carry: Loser Pays. It is certainly one of those actions that the alternative of that is if a frivolous lawsuit causes unnecessary damages, have Congress create a cause of action, where the damaged party because of a frivolous lawsuit, they may seek a cause of action and come back and sue the person doing that and create a cause of action. That will have an effect of having people not file frivolous lawsuits. If there is a legitimate concern, go ahead and file a lawsuit. So I think much more achievable within this Congress would be to have a cause of action for the damaged party because of a frivolous lawsuit.

Mr. VAN TUYN. Mr. Chairman, Representative Thompson, there is already those rules in place. It is called Rule 11. If I file a frivolous lawsuit, I am subject to losing my license to practice law. It exists today, and I would say anybody who thinks the lawsuit that has been filed on Arctic oil and gas or any other issue has an absolute remedy in court to deal with that now.

Mr. THOMPSON. That is interesting information. I will be glad to take that back and why it seems that Rule 11 is being ignored, at least in my congressional district.

Thank you, Chairman.

Mr. LAMBORN. Thank you.

Representative Duncan.

Mr. DUNCAN. I learn something every day, Mr. Chairman. I really didn't know that Wall Street had complete control over the gasoline and oil prices. And I swear that I learned growing up—since I was a little boy until now—that supply and demand is the driver. And that OPEC can turn open that spigot or close that spigot just like they did in the 1970s when they had gas lines. Because the supply was cut off, gas prices went up, supply and demand. But I learned something today. Wall Street dictates all of that.

You know, I guess I am the slow zebra on the Committee. I guess I am like the average American that wonders why in the world America isn't harvesting its own resources to meet its own energy needs, lessen our dependence on Middle Eastern oil, people who don't like us very much. The average guy out there is going, "we have got the gas, we have got the oil, why are we exporting natural gas?"—as the gentleman from Louisiana just said, and importing the most expensive product? Why are we stopping bringing oil from one of our most favored nations, our neighbor, our largest trading partner in Canada, why aren't we allowing that oil to flow to American refineries and be refined into products that benefit both America and Canada? To things that have happened in the last couple of weeks and in this Congress with regard to and under this presidency, regarding energy production and American energy independence baffles me and baffles the American—average American out there. I will stop my rant.

And I want to thank Senator Wagner for being here because he and I first met in Louisiana when I went offshore to look at offshore drilling and the Devil's Tower Platform. And I want to thank him for his work because Virginia is one of the only States that has a comprehensive energy plan. And this man helped draft that comprehensive energy plan. Virginia set itself up to be very successful in the future. Let me remind the Committee that the second largest economic strength of the United States of America, second only to income taxes is the money we receive from revenues, the royalties from oil and natural gas production of American resources. The second largest income stream of the country. Virginia was poised to take advantage of offshore drilling. Senator Wagner encouraged me to be involved in South Carolina and pursue natural gas, drilling off the coast of the State. He came to South Carolina and testified as to why that was important. South Carolina and Virginia and other States ought to be like Louisiana and Texas and Mississippi and share in the oil revenues of energy sources that are produced off our coast and within our State. So, Senator Wagner, I just want to ask you to expound on—you have an energy plan for Virginia. You all were set up to drill, you were set up to harvest those resources, to benefit from the manufacturing, from all of the industry that supports offshore drilling, the royalties. What do you do now?

Mr. WAGNER. Come up here and beg you all to please put us back in the plan, Mr. Chairman. I mean, that is why I am here. It just floored us. It astounded us; after all of the hard work that had gone through so much, after all the taxpayers' dollars we expended to get Virginia into the position it is in, to find out it has been wiped out, and so we are back up here saying please, please reconsider. Nothing has changed in Virginia except for we are very, very concerned about our economic outlook, as I know each of you are for your own States and congressional districts. This is a very, very scary time. And when you mention, you know, get our oil, I need our oil, and you forgot to mention the third part of that and that is, I need my job, I need a job. And there's jobs waiting to happen right there. There are jobs that need to happen here in Virginia, your State in South Carolina, all across this country. And this is a solution to me. This is a spark that starts things going, that you can build off of, the spillover effect to move forward and ultimately end up with some lower cost energy which makes this country more competitive across the board, be it agricultural products. So much of natural gas is used in making fertilizer, as well as lower overhead across our Nation with a sound energy policy, which makes all of our exports much more competitive. That is where we need to be. We have the future. We have the natural resources. I hope Congress can get the message out, and we can start turning this country around.

Mr. DUNCAN. We stand with Virginia.

I am going to yield the balance of my time.

Mr. Flores.

Mr. FLORES. Mr. Van Tuyn, Rule 11, interesting. What percentage of the time do judges grant Rule 11 sanctions?

Mr. VAN TUYN. I do not know.

Mr. FLORES. Let me put it to you this way. In percentage terms, it is lower than the percentage profit margin on a gallon of gasoline.

Mr. VAN TUYN. Mr. Chairman——

Mr. FLORES. Let the record reflect that right now, we don't have anybody from the other side of the aisle that is paying attention to American jobs, the American economy, the Federal deficit, American energy security or national security.

I yield back the balance of my time.

Mr. LAMBORN. Thank you.

The next person to ask questions is Representative Rivera of Florida.

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

One often untold story of energy consumption is in the United States, our military is one of the largest consumers of fossil fuels. The mission of our Nation's armed forces is of the utmost importance and the skyrocketing cost of energy takes money in their budget away from other areas where they could be investing it on our troops. I am wondering if API has done any studies on how increasing domestic energy production can also be a national security issue. And perhaps Senator Wagner may have some thoughts on this, too, given the significant presence of the military in Virginia.

Mr. MILITO. Well, most of our efforts have focused on just the general ability of this country to increase its energy security by getting to the point where we become dependent upon ourselves and our neighbor to the north, Canada. You know, I was in the Army for 5 years, and we had a slogan, KISS, keep it simple, stupid. And I showed the slide which showed that we need all this energy as we move forward. We need oil and gas, and we should be leading it. We shouldn't be promoting Brazilian offshore oil and gas. We should be doing it here and leading that effort.

And what we have shown is that by providing the access to these offshore resources, providing access to the pipelines to bring the resources down to Canada, we can depend on two countries, the U.S. and Canada, which would provide the security for this Nation and for our folks in the armed services. That is the focus we have been taking and the revenues and jobs come along with it. So it is a win-win-win.

Mr. RIVERA. Senator Wagner, any thoughts?

Mr. WAGNER. Mr. Chairman, Congressman Rivera, it is my understanding that the Department of Defense is the largest purchaser of energy in this nation. Obviously, with our Air Force, Navy, all of our armed forces heavily dependent on fuels, as well as a variety of electricity, a big demand within our DOD.

As we are sitting here grappling with defense budgets in the supercommittee, and it has obviously got Virginia very, very concerned about defense cuts—we know they are coming. We hope they are minimized. But when you start looking at the defense budget, one of the major expenses, certainly not as high as the personnel expenses and health care expenses, is their procurement of energy. Anything that we can do to drive down the cost of energy is going to reduce our Department of Defense's cost of energy and allow those dollars to be freed up for training, for operations and

for maintenance, to make sure our armed forces maintain ourselves as the number one in the world like we are today.

Mr. RIVERA. Thank you very much.

Mr. Chairman, with your permission, can I yield the rest of my time to Mr. Landry of Louisiana?

Mr. LAMBORN. Certainly.

Mr. LANDRY. Thank you very much, Mr. Rivera. I appreciate it, Mr. Chairman. Ms. Alexander, do you support removing the tax credits that oil and gas companies receive, as the gentleman from Massachusetts——

Ms. ALEXANDER. Yes. We do support that.

Mr. LANDRY. OK. I am just curious. Do you know the percentage of major oil and gas companies in all of the deep-water drilling in the Gulf Coast? Do you know the percentage of projects that major oil and gas companies make up?

Ms. ALEXANDER. I don't.

Mr. LANDRY. You don't. Would you think it is 80 percent?

Ms. ALEXANDER. I am guessing you do know and you can tell me.

Mr. LANDRY. I do know, but I am trying to understand if you have any concept when you talk about big oil.

Ms. ALEXANDER. I should clarify a couple of things. First of all, our organization, we take a position that we should reform corporate taxes across the board to eliminate breaks, lower rates and simplify the code.

Mr. LANDRY. OK. Let me just say this: 36 percent of the projects are done by the majors. That means that the independents, the moms and pops out there, the people that started on land, worked on the shelf, just built their companies up, that is the majority of who drills offshore. That is who drills here, Americans, small American companies. Why is it that you believe that if we drill off the coast of a State that that State is not entitled to revenue sharing? Are you opposed—would you oppose the royalty payments that go to the land States, the States like Wyoming or Montana? Do you believe that the 50 percent of Federal royalties that they receive should be taken away from them as well?

Ms. ALEXANDER. You know, our position on onshore development is they are within the States, we think that is different. But also we—I mean, think that for onshore development, for mineral development, they need to be paying more royalties. Many of the hydro mineral developers now don't pay royalties to the United States off Federal lands. So I am happy to defend our organization's consistency. It is not a priority to change the current revenue-sharing arrangements. We don't want to see them changed. We don't want to see an increase in revenues going to the States of offshore development because we don't think that is relevant for the industry, and we don't think it is good for the Federal Treasury. I understand——

Mr. LANDRY. Do you think that the Federal Government uses your tax dollars wisely?

Ms. ALEXANDER. Not all the time.

Mr. LANDRY. Why would you want to give them more money?

Ms. ALEXANDER. I don't think my State—well, I live in the District, but I have lived in other States. But I don't always think my State does the right thing with my tax dollars either. I think that

the Federal taxpayer owns those resources and the Federal taxpayer should get those revenues. I absolutely understand that you disagree on this.

Mr. LANDRY. Mr. Chairman, I yield back.

Mr. LAMBORN. Now we will hear questions from the other member of the Cajun Caucus, Mr. Southerland.

Mr. SOUTHERLAND. I am a proud honorary member of that caucus, as are you, Mr. Chairman. So thank you very much. I would like to thank all of the witnesses.

Mr. Milito, this past week you described the Obama Administration's 5-year plan as simply maintaining the status quo. And I believe your organization sent a letter to the President calling it a missed opportunity. I appreciate that you also took on the Administration's recent boasts that U.S. energy production is at an all-time high, when in truth, the IA chart showed that energy development on Federal lands is at its lowest in 10 years. So the Obama Administration is literally taking credit for increased energy production on State and private lands where they have no jurisdiction.

I would say this also—this is also status quo for this particular Administration. Do you think that H.R. 3410 helps the government break beyond the status quo to take bold moves toward getting more domestic energy production on line in new areas?

Mr. MILITO. Definitely. We have been kind of isolated and restricted to the Central and Western Gulf for decades. And it is a very mature field. And this industry has shown the ability to use technological advances to get out there and make huge discoveries and continue to develop that to the benefit of the Gulf Coast States and the whole country. But we need to expand our opportunities and make sure that we are not missing anything. We don't even have the ability to get out in the Atlantic and run seismic work because the EIS work that was started in January of 2009 has been delayed. We are coming up on 3 years now. We want an ability to get a permit to do seismic work. And now they take the Atlantic off, what incentive does this industry have to go find the seismic?

And then it is a Catch-22 because the Administration is saying we don't have the information to move forward with those lease sales off the coast of Virginia, which are supported. So we are in a bit of a quagmire, and we are stuck in the Western and Central Gulf. And in Alaska, it has been 5 years where these leases have been issued, $4 billion spent and haven't been able to get the permits to go out there and do the work. So we are kind of stuck in a corner, and we need more opportunities.

Mr. SOUTHERLAND. Very good. And because I just arrived, I guess—is it Van Tuyn?

Mr. VAN TUYN. Yes, it is.

Mr. SOUTHERLAND. OK. I apologize if I messed that up. Let me ask you a question because I hear this often times and we talk about some things in this Committee. Is profit a bad thing?

Mr. VAN TUYN. No, it is not.

Mr. SOUTHERLAND. Is it wrong for oil companies who invest billions of dollars to have a profit?

Mr. VAN TUYN. No.

Mr. SOUTHERLAND. Then why do we have to hear the opposite of that ad nauseam in this Committee room as well as on the Floor and by groups who claim that profit is bad?

Mr. VAN TUYN. These are the most profitable corporations in the world.

Mr. SOUTHERLAND. How do you define profit?

Mr. VAN TUYN. Mr. Chairman, above your cost. The money you bring in above your cost.

Mr. SOUTHERLAND. But I am a business owner. Our family has been in business for many, many years, many generations. I have asked this question before, and I don't know if you are a business owner, because I don't know your past. What is an acceptable rate of return on an investment? I mean, is it 20 percent, 30 percent, 10 percent, 5 percent? What is acceptable? I am a small-business owner. But I think it is relative.

Mr. VAN TUYN. You know, I don't have a strong opinion on that. I think that the oil industry has shown that it is historically the most profitable——

Mr. SOUTHERLAND. I asked you about profit percentage.

Mr. VAN TUYN. I think it changes by industry and volume.

Mr. SOUTHERLAND. Well, let me tell you as a small business owner and as one who has a degree in business and the experience of a long history of family—of multiple businesses, 10 percent is always, in business, 10 percent is, you know, something that you say, hey, we can invest and have 10 percent, then it is worth our while. OK? It is worth hard work. It is worth putting an investment in. I am sitting here and hearing people say billions and billions and billions of dollars. That is wonderful and great. It is sensational, and it is a bit disingenuous. Because if an organization has a billion dollars in profit, to totally ignore the $15 billion that they had to invest is a bit disingenuous, wouldn't you agree?

Mr. VAN TUYN. I guess, Mr. Chairman, Congressman Southerland, I think it is not fair in the United States to have a tax rate on the books of 33 percent and pay less than 16 percent of your taxes. If you want to pay 16 percent, then——

Mr. SOUTHERLAND. First of all, you are probably of the opinion that higher taxes leads to a greater economy.

Mr. VAN TUYN. I would not express that opinion. That is far outside my expertise.

Mr. SOUTHERLAND. So my point being with my remaining seconds left, my point being that last year with Chevron, Exxon, and BP all being in the 5, 6, 7 and 8 percent profit margin, that is acceptable, based on the billions upon billions of dollars that are invested and that the American Treasury receives from their investment. And it just infuriates me, really, as a business owner to—everybody wants to use the word billions, but they never want to use the proper terminology that business owners understand and it is profit margins based on percentage.

So with that established, I yield back.

Mr. LAMBORN. All right.

Thank you. I want to thank the witnesses for be being here today. Members of the Committee may have additional questions for the record and I would ask that you respond to these in writing. Thank you for being here.

And I would like to now call to the desk the second panel of witnesses. The Subcommittee will take a brief recess and reconvene in 5 minutes at 11:25.

[Recess.]

Mr. LAMBORN. The Subcommittee will come back to order. I would now like to introduce the 5 members of our second and last panel. Mr. Todd Dana, Chairman and CEO of Uintah Partners LLC; Mr. Bill Eikenberry, rancher and Former Associate Wyoming State Director of BLM; Mr. Steven Gardner, President and CEO of ESCI, LLC; and Mr. Joe Zaluski, executive vice president also of ESCI, LLC; and Mr. Patrick McGinley, Professor of Law at West Virginia University College of Law.

And like all of our witnesses, your written testimony will appear in full. So we ask that you keep your oral statements to 5 minutes. And you saw allow the lights work: They are green until the last minute, when they turn yellow, and red after 5 minutes. So we will go ahead and start in with our first witness.

Mr. Dana, you may begin.

STATEMENT OF TODD DANA,
CHAIRMAN AND CEO, UINTAH PARTNERS, LLC

Mr. DANA. Thank you, Mr. Chairman and members of the Subcommittee.

My name is Todd Dana. I am Chairman and CEO of Uintah Partners. I am pleased to talk with you today regarding H.R. 3408, Protecting Investment in Oil Shale, The Next Generation of Environmental Energy and Resource Securities Act.

Mr. Chairman, as an oil shale industry entrepreneur, I welcome the opportunity to provide my perspective on the re-emerging United States oil shale industry. My goal is to provide the Committee with the guidance and support it needs to push for the development of what I believe to be one of this country's greatest assets, over 1 trillion barrels of very premium crude oil from oil shale in Utah, Colorado and Wyoming.

After researching the global energy demand and technologies of the future for liquid energy about 10 years ago, I determined that the development of unconventional oil shale would by necessity come to fruition in the United Sates in my lifetime. Each day I go to work in the oil shale industry, I am more and more confident that my efforts will develop—to develop responsible environmental and economically viable technology for this industry will play a major role in bringing much needed jobs to our country and thus benefit our national security.

The fact is that we now have the technology to tap into this enormous resource, a resource that the U.S. Department of Energy has estimated at more than 800 billion barrels of recoverable oil from shale. We simply need to harness the combination of our business acumen and community resources so guide us down the path of responsible planning and environmental sound development of these rich reserves.

For almost 100 years, scientist, engineers and corporations have attempted to extract oil from shale on an economic scale. Despite having produced millions of barrels of oil from shale decades ago, the price of oil on the global market could not sustain the industry.

The industry has not flourished for many reasons. Some are economic and some are technical. Most people familiar with oil shale in the Rocky Mountain region understand that it is actually quite easy to produce oil shale from oil shale rocks using the well known process of pyrolysis. The problem has been that the capital and the operating costs relative to mining, building and operating retorts, and the building and operating of hydrotreaters or upgraders has been too expensive relative to the price of crude oil.

But while the economics have failed, the resource remains a viable, very world-class asset. For the past 6 years, oil prices have averaged above $85 per barrel. At that price, the oil shale industry could have been operating profitably for the past 6 years. The price of oil driven by supply and demand as well as geopolitical constraints and with nationalism on the ride from China, is rising. Just a few weeks ago at the oil shale symposium in Golden, Colorado, at least half a dozen companies set forth timelines indicating the commencement of commercial operations between 2016 and 2020.

The new price of crude oil combined with new technology and the anticipated higher volume production and lower operating costs will be the primary drivers of the industry, provided of course if the Federal Government will allow it to move forward with development through commercial leases.

For many years, horizontal kilns and vertical retorts have been limited to approximately 5,000 barrels per day. For example, the ATP Process, the Paraho Process and Petrosix Process and even the processes developed by the Estonians have been stuck at this certain ceiling of volume. I am aware of at least three surface retorts now with technologies that have the ability to provide shale oil delivering over 25,000 barrels per day on an economic and environmentally sound basis.

I am pleased to report to the Committee that there are now full commercial projects in development, including with tens of millions of dollars in mine planning, engineering and development that will put the industry in play by 2016 to 2017.

But again, this will only be possible with your support and that of the responsible Federal agencies. Because the Federal Government controls the vast majority of this vital resource, the most important thing we could do now is to have government establish clear rules, lift the overreach of regulation and establish a dedicated entity to coordinate with all the key regulators. The development of oil shale in Utah, Colorado, and Wyoming, will provide millions of jobs over decades to come, thereby reducing our dependence on foreign oil and our substantial trade deficit.

All of this can be done responsible in a manner that protects water, wildlife and the environment, while providing liquid transportation energy that we need for our national and economic security.

Thank you for the opportunity to appear today. And I will be happy to respond to questions later.

[The prepared statement of Mr. Dana follows:]

Statement of Todd Dana, Chairman & CEO, Uintah Resources, Inc.

I thank the Committee on Natural Resources and Chairman Lamborn for the opportunity to provide perspective and comments on the reemerging United States Oil Shale Industry—from the perspective of an industry entrepreneur. I hope my comments will be helpful in guiding reasonable and bipartisan support for what I believe is America's best asset, over 1 trillion barrels of very premium crude oil from oil shale in Utah, Colorado and Wyoming.

For almost 100 years many scientists, engineers and corporations have attempted to extract oil from shale on an economic basis. Despite having produced millions of barrels of oil from oil shale rocks decades ago in the United States, the price of crude oil in global markets was not supportive of this industry. The industry has not flourished for economic reasons and some technical reasons. Most people familiar with oil shale in the Rocky Mountain region understand that it is actually quite easy to produce oil from oil shale rocks using the well known process of pyrolysis which is heat in an oxygen free environment. The problem has been that the capital and operating costs relative to mining, building and operating retorts to extract the oil, and building and operating hydrotreaters to upgrade have been to expensive relative to price of crude oil. But while the economics have failed the resource remains a viable world class asset.

What is now changing is price of crude oil. Over the past six years the price of WTI NYMEX crude oil prices has stabilized above $85.00 average price per barrel. The price of oil is driven by supply and demand as well as geopolitical constraints. With nationalism on the rise, competition form China and growth in Asia and emerging economies demand is expected to rise and drive prices upward. With an average NYMEX WTI crude oil price of $85.00 per barrel, the oil shale industry will emerge by the end of 2016 and into 2017 with first production. Just a few weeks ago at the Oil Shale Symposium at Golden, Colorado at least a half dozen companies set forth timelines in presentations showing commercial operations starting between 2016 and 2020. The new price support in the global crude oil market combined with new technology based on much higher volume production and much lower operating costs is the driving new forces that will open this industry. When people ask "What is different now about oil shale?" the answer is simply two main reasons. First, global crude prices have risen to an average of $85 dollars per barrel, and second, new, outstanding, high volume technology is being developed in a responsible manner that lowers the operating costs from 75 dollars per barrel to about 35 dollars per barrel. It is really that simple.

To the credit of the environmental community, with the rise of the Green Energy movement earlier this past decade, inspiration and guidance was provided to many of us in the oil shale industry who set out to open the industry responsibly. For example, after researching the global energy demand and technologies of the future for liquid energy about ten years ago, I determined that unconventional oil shale would by necessity come to fruition in the United States in my life time. I also determined that the limitations of solar and wind to actually replace petroleum were wishful thinking and that liquid petroleum is an entirely different industry. Since my decision 8 years ago to participate in the oil shale industry, I have not regretted this decision once. Not only do we now see the failures of economics in solar, wind and ethanol as I predicted 8 years ago, but we now see that America has fallen into a rut of fighting wars in the Middle East over oil. Each day I go to work in the oil shale industry, I feel my efforts to develop responsible environmental technology and economic technology will be a part of not only displacing future emissions but also displacing the need for wars over oil that cost the health and lives of soldiers and their families. Let me say that to all opposing environmental activists willing to fight against the oil shale industry, I implore you, in the name of our military families to cease with unnecessary and frivolous opposition to the industry that otherwise causes these many wars for oil in the Middle East. The anti-oil agenda is futile and green energy cannot and will not replace our need for liquid fuels. I know many environmentalists share an opposition to wars and especially wars over oil and that has been a key driver in promoting an anti oil agenda. We are now in era where environmentalism and regulation is actually causing these wars and green energy cannot offer us a realistic solution to liquid fuels. Its time to do the best we can with the resources and technology we have and that, speaking from my research and point of view has morally lead me to engage in responsible oil shale development. I encourage you and all good Americans to consider your activism and weight it in this context.

The fact is that oil shale industry can help us develop responsibly and inhibit the United States from fighting for oil elsewhere. Tens of thousands of soldiers have been maimed, millions of people have been killed and the United States is on the

verge of financial collapse due to spending on these oil wars. We can do better. We have the technology. We simply need the moral judgement and the community working together attitude of beneficial development through responsible planning.

After 8 years in the oil shale technology development business I have a few easy solutions to the environmental concerns that I would like to discuss. The most often cited challenges are relative to

1. Water
2. Emissions
3. Reclamation
4. Wildlife

In regards to water, many environmental alarmists would have America believe there is no water for the oil shale industry. This is patently false. Over the past years I have spent in this industry I have found it humorous to read newspaper article after newspaper article about how much water oil shale will use. There has never been a shortage of conflict-inducing journalists looking to regurgitate this worn out story with arguments on both sides. Seldom however is the real issue of supply and source of water dealt with. Even government sanctioned reports of the industry such as that as from the Rand Corporation have been completely misguided when it comes to water use in oil shale and availability and process volumes. The truth is that water is widely available in the State of Utah for purchase. Anyone worried about the water availability can simply buy the water. For example, my company negotiated a large contract recently that now provides us all of the water rights we need into the foreseeable future for our own process water for oil shale. The water is available and it is in abundance currently in use for corn and alfalfa farming. If the price of oil can support buying that water from farms, it can be used on an industrial basis in the oil shale industry—its that simple. On a macro level of planning for water consumption in the arid West (for example population growth), for those that are naïve to believe that this is the way we plan the world, there's not much I can say to dissuade someone on water. But even on a macro scale argument of water, it is also true that water can and will be piped to the region from long distance if necessary widely available from Utah Lake, The Great Salt Lake and even as far distant as the ocean itself. Water is not a problem for oil shale. Every comment to the contrary is just environmental activism without the economic understanding of importing the water. Water is not only available now it will be far into the future for the U.S. oil shale industry.

In regards to air emissions I have already mentioned the benefits of using clean burning natural gas to heat up the oil shale in retorting processes. Many of the projects I am familiar with now seeking air permits are actually coming forward as minor source emitters. In other words, the oil shale processes they employ are so low in emissions due to burning natural gas (instead of buring the rock itself as in the old days) that they are not even major sources under the Clean Air Act. Natural gas in abundance will continue as an ideal input for retorting oil shale. America is currently discovering enormous amounts of natural gas from shale formations from the Rockies all the way to New York and beyond. Unlike the Solar and Wind industries which cannot compete with electrical generation from natural gas without subsidies, the U.S. oil shale industry actually benefits from natural gas at low prices and without subsidies. Because oil shale retorting is driven by natural gas, each barrel of oil shale becomes that much cheaper to produce. Further, after production of shale oil from the rocks in the pyrolysis step, oil shale requires the semi-refining step known as hydrotreating or upgrading. The oil is processed at high temperature and high pressure and combined with 2,300 standard cubic feet of hydrogen per barrel. The hydrogen comes from natural gas and therefore the lower cost of natural gas lowers the price of oil shale as well. It should be understood by your committee that this downward pressure on natural gas is forseeable for the next two or three decades. This is excellent news for oil shale inputs on energy and upgrading relative to hydrogen production.

Further to the discussion of emissions is the overall emissions profile of each barrel of crude oil. While environmentalists have recently attempting to label Canada's oil sands as a "dirty oil" the same cannot be said of U.S. oil shale. Not only does the step of burning clean natural gas for the pyrolysis emit very little emissions but the reality is that oil shale once hydrotreated yields nearly 75% of the barrel as Ultra Low Sulfur Diesel (ULSD). This is not diesel as we have once known this is diesel known as Green Diesel, the same Green Diesel that most of the European automakers have highlighted as highly fuel efficient. I will refer the committee to the Super Bowl TV commercial from Audi from two years ago known as the "Green Police Commercial". The Green Police where depicted policing ridiculous notions of green living including a police barricade on the highway. When the Green Diesel Audi approached the Green Police at the traffic stop, the Green Police noticed the

Ultra Low Sulfur Diesel automobile from Audi and allowed it through. Americas Green Police environmentalists need to get the memo and join the Ultra Low Sulfur/ Green Diesel movement. The Europeans have gone to this fuel for mileage efficiency and its time we do so here in the United States. In fact, there are several green diesel automobiles that actually get better gas mileage than gas-electric hybrids—most people are not aware of that. I am hoping to see Al Gore drive up to the Sundance Film Festival in Utah in a Green Diesel vehicle from Germany and not just a Prius each year. When the true story of the potential of oil shale is told relative to Green Diesel, the emission profile looks quite normal to regular crude oil production already refined around our country. This is good news for American families looking to be employed by the oil shale industry and simultaneously provide a secure energy future for our children.

In regards to mining and surface disturbance in the U.S. oil shale industry many environmentalists argue that oil shale lands cannot be reclaimed and that desert land do not grow back. This is also patently false. I wish to direct the committee to look into all of the gas well pads that have been drilled on oil shale surfaces for decades now in Utah and Colorado. All across the Piceance Plateau and in the Uintah Basin thousands of natural gas well pads have been cleared by dozers to flatten a site suitable for drilling rigs to set up and drill for natural gas. It is quite typical that these pads are directly on the outcrop of oil shale and the oil shale is pushed up in large piles around a flat surface. There are now hundreds of well sites that are now reclaimed where once drilling has taken place. The oil shale lands (high desert lands) are now so well reclaimed that it takes a very keen and trained eye to even notice that a well even once been there. There are other examples as well. For instance, in the case of the old Geokinetics oil shale production site in Utah that produced over 100,000 barrels of shale oil, the land that was once disturbed can best be noticed today by looking for wild life. The deer and elk in the area actually prefer to live and graze on these reclaimed oil shale lands which support far better foliage than the undisturbed and unreclaimed lands. This brings me to a few comments about wildlife from an industry perspective.

Its amazing to me that we have grown into a society that protects sage grouse more than American soldiers. I think environmentalism and the green energy movement is falling apart these days not only due to the failure of President Obama to negotiate with the Chinese in regards to the Kyoto Protocol and relative to a global carbon trading platform, but also because the American people view with disgust the fact that we are blocking our hydrocarbon resource development domestically actually causing our soldiers oversees to fight wars for oil as a result. Each day I work on oil shale technology and project development I am inspired by American soldiers who sacrifice for our country. I am committed to reducing the impact on wildlife such as sage grouse that environmentalists cite as needing protection relative to our industry. What I believe the American people are seeing clearly now is that perhaps it is our fellow countrymen and countrywomen serving us in the armed forces that are rare, precious and endangered. Blown off limbs, destroyed familes to death, disability and loss bring a whole new meaning to an "Endangered Species Act". The good news is that reason is on our side and environmentalists everywhere are recognizing overregulation, unnecessary alarmism and unwelcome damage to our society and our economy by blocking resource extraction. Let me be clear, we welcome reasonable environmental planning to the table of planning the oil shale industry, but I think more emphasis going forward will be placed on American lives, American jobs and stopping our wars overseas for oil. It should already be common knowledge that human beings are far more valuable to this earth than wildlife activism.

In closing, let me say that the key to the industry is volume production. For many years horizontal kilns and vertical retorts have been limited to approximately 5,000 barrels per day. For example, the ATP Process, the Parahoe Process, the PetroSix Process and even the processes developed in Estonia have been stuck at this ceiling of volume. I am aware of at least 3 surface retorting technologies that have the ability to produce shale oil delivering over 25,000 bpd on an economic and environmentally sound basis. I am pleased to report to the committee that there are now full commercial projects in development, including with tens of millions of dollars in mine planning, engineering and development that will put the industry in play by 2016 to 2017. The projects I speak of have nothing to do with federal lands or the Research and Development programs administered by the BLM. My recommendation is that the BLM and the federal government pass laws that keep the bureaucracy of Washington out of the industry and make all federal lands available to the private sector. Since the Energy Policy Act of 2005 was enacted the Department of Interior has leased approximately 30,000 acres of the 1.9 million acres of oil shale. This is pathetic performance—less than 1% of 1%. The federal government has no skill in managing the lands containing oil shale let alone determining what

the technology should and shouldn't be. Just as with Solyndra the federal government isn't going to pick a winner in the oil shale industry. The best technologies I am aware of have nothing to do with federal programs.

The fact is that there is a thriving oil shale industry emerging in oil shale in Utah, Colorado and Wyoming. Dozens of the highly respected private equity and hedge funds have invested into start up companies working on technology in this space. For example, in 2006, I authored patents and invented an oil shale process known as the EcoShale In Capsule Process for low cost, high volume production of shale oil. Since that time, my technology has garnered more than $100 million dollars in supportive investments. Without any subsidies from the federal government, and set in a time and era where trillions have been spent on reviving the economy and fighting wars for oil—virtually no money has been spent or provided to the oil shale industry for assistance. This is a shame on so many levels as this industry holds the key for economic and national security—and industry that directly offsets the hundreds of billions in trade deficit for imported crude oil.

I am hoping to help be a driver of change influencing better technology and also convincing my environmental friends that the time has come to stop catalyzing wars for oil overseas by blocking domestic hydrocarbons. Our war is an economic and creative war here at home. If we win it we can be stewards for the environment and protect the unnecessary loss of life of American soldiers fighting wars for oil. Perhaps the most interesting thing I have learned in development over the past decades is that the very same technology of pyrolysis for oil shale is the same technology for creating biochar. Intellectuals in the Carbon Trading world of Kyoto know and promote the pyrolysis of biomass to create biochar—a carbon capture and sequestration method that is superior to other approved Clean Development Mechanisms—I have attended many of these seminars and have studied Biochar. As the oil shale industry unfolds and new technology in this space emerges, biomass pyrolysis will excel as well as a result. Isn't it interesting that oil shale pyrolysis—a legitimate potential solution to our problems of wars for oil, trade deficit, jobs, energy security could simultaneously emerge as the same technology for even carbon capture and sequestration. I find that absolutely fascinating, Mr. Chairman. I believe many in the U.S. Congress will find that fascinating as well. Thank you, very much to the committee for this opportunity.

I am available for questions.

Mr. LAMBORN. Thank you, Mr. Dana. That was perfect timing.

Mr. Eikenberry.

STATEMENT OF BILL EIKENBERRY, RANCHER, FORMER ASSOCIATE DIRECTOR OF THE BUREAU OF LAND MANAGEMENT IN WYOMING

Mr. EIKENBERRY. Thank you, Chairman Lamborn and Ranking Member Holt, for the opportunity to testify today on the PIONEERS Act and the important question of the feasibility and wisdom of developing oil shale deposits in Colorado, Utah and Wyoming. I am a former land manager, served 30 years at the Department of the Interior and most recently served as Associate State Director of BLM in Wyoming. I also taught for approximately 5 years in environmental natural resources at the University of Wyoming.

I am a third-generation Wyoming rancher, so I pay close attention to energy development issues in the West and how these activities affect the rural communities and our ranching way of life. And I have been deeply involved in environmental issues with the Department of the Interior over a long period of time.

I urge the Committee to oppose this legislation. Oil shale is a failed resource that will create zero energy, zero jobs and certainly no revenues for transportation. If oil shale is supposed to fund our crumbling infrastructure, it is simply not going to happen.

As you may know, we are seeing record levels of oil and gas development right now in the United States. In fact, drill activity is

higher today than it has been in the past 24 years. That means production of oil and gas under the Obama Administration is higher today than when President Bush left office.

Still, as a Westerner and a former land manager, I understand the challenges of this Committee when it comes to producing energy, creating jobs, growing revenue and so on. That is why I believe to achieve this goal, Congress should ensure that the oil and gas companies develop something like 22 million acres of public lands that have already been leased but are simply not being developed.

And these are proven reserves on these public lands. Industry should also seek to develop—we have something like 7,000 applications to permit to drill that are laying in these States. Something like 3,500 APDs are laying in Wyoming and another 3,500 that are spread out through New Mexico, Utah, and Montana. But there are simply acreages out there that have been leased that big oil is simply not developing.

I believe the Markey bill, which would create an annual production incentive fee to ensure that industry uses these resources it already has in hand, would do just that. And I certainly would support that.

And another way to fund our crumbling transportation sector would be to end the $15 billion a year in special tax breaks for oil and gas companies, which they receive every year. And that is something that we have talked about here today, in terms of royalties and the subsidies, of course, that is going to big oil.

Instead of attacking commonsense safeguards for clean water, clean air, protections which benefit people like myself in farming and ranching, make the companies use what they have first, and that includes oil shale. Companies such as Chevron, Shell, Exxon Mobil have upwards of 200,000 acres leased for oil shale speculation. Let the free market work in those lands already leased before we dive into more taxpayer-funded subsidies and Western land giveaways, such as the Lamborn legislation proposes.

The bill today that offers up oil shale as an answer to our current economic woes does not really pass the real test, much less achieve any of the stated goals of this Subcommittee. The only thing blocking oil shale development is the thing that has blocked it for a hundred years: the rock itself. It is low-quality resource oil shale rock and the very physics that make up that rock. It simply is not viable.

Oil shale is not a viable resource in the West. It is simply a Wall Street speculation on our public lands. We have been waiting for a hundred years to see a technological breakthrough in oil shale development. It is simply not viable.

Once again, there are zero jobs, zero energy, and zero revenues in oil shale speculation. Shell, for example, already has rights to more than $1 trillion of Federal oil shale resources, except those resources aren't worth a dime because they don't have the technology to extract it in an economically viable way. Even Shell admits that it will be anywhere between 10 to 20 years before we even know whether the latest technologies will be economically viable.

Oil shale speculation is a dangerous gamble. Are we actually willing to start taking away water rights from farmers and ranch-

ers like myself and wastewater from the Colorado River to conduct speculation on a failed technology——

Mr. LAMBORN. Mr. Eikenberry, are you about to wrap up?

Mr. EIKENBERRY. I am, real quick here——like oil shale in the public lands.

The legislation introduced by Congressman Lamborn won't solve any of our energy or jobs issues out West. It will just invite throwing more taxpayer-funded subsidies at a failed resource. It would shift the cost of oil shale research on to the backs of already struggling local communities. It would put critical water sources at risk.

And, in summary, Mr. Chairman, again, I urge the Committee members to unequivocally oppose the PIONEERS Act.

[The prepared statement of Mr. Eikenberry follows:]

Statement of Bill Eikenberry, Rancher and former Associate Director of the Bureau of Land Management in Wyoming

Thank you Chairman Lamborn and Ranking Member Holt for the opportunity to testify today on the PIONEERS Act and the important question of the feasibility and wisdom of developing oil shale deposits in Colorado, Utah and Wyoming.

Opening remarks

I am a former land manager who served over 30 years with the U.S. Department of the Interior and most recently served as the associate state director of the U.S. Bureau of Land Management in Wyoming. I was also an adjunct professor of natural resources at the University of Wyoming. Today, I tend to my ranch in south eastern Wyoming and pay keen attention to the energy development issues in the West and how those activities would affect rural communities and the agricultural sector.

As you may know, we are seeing record levels of oil and gas development in the United States. In fact, drill rig activity is higher today than at any point in the last 24 years. Also, both production of oil and gas are higher today than when President Bush left office.

Still, I can appreciate the concern the members of this committee have when it comes to producing energy, creating jobs, and growing revenue. I believe that to achieve this goal, Congress should ensure that oil and gas companies "use it or lose it" and develop the 22 million acres of public lands already leased for development. Industry should also seek to develop the 7,000 drilling permits where they have a green light to drill—over half of which are in my home state of Wyoming.

Unfortunately, oil shale will fail to achieve any of the goals aimed at by this committee. The only thing blocking oil shale development is the same thing that has blocked it for 100 years. It is the low-quality resource of the rock and physics.

Oil shale is just an opportunity to fuel Wall Street-style speculation on our public lands. Without the breakthrough in technology for commercial oil shale development—which industry says is at least a decade or more away—there are no jobs, there is no energy, and there is no revenue in oil shale.

In fact, the legislation introduced by Congressman Lamborn would actually invite throwing more taxpayer-funded subsidies at a failed resource, shift the cost oil shale research onto local government, and communities, put water resources at risk, gamble away 2 million of acres of public lands for speculation, and risk losing real jobs in the agricultural, tourism, and outdoor recreation sectors.

I urge the committee members to unequivocally oppose the PIONEER Act and vote no on this legislation.

No Jobs, No Energy, No Revenues

Regardless of whether you support, oppose, or like most people are uncertain about oil shale development, the fact remains that the fundamental problem with oil shale is the rock itself. This bill will do nothing to change that fact. Oil shale is not feasible because industry leaders such as Shell Oil, ExxonMobil, and Chevron have not been able to solve the many technical, economic and environmental hurdles, despite decades and hundreds of millions of dollars of testing and researching various technologies.

What Congress, through this legislation, is looking to do is step in front of the Department of the Interior, circumvent a process underway that has strong local input from stakeholders across the West, and force bad land use and economic deci-

sions that would directly hurt local communities and economies. It is because of those concerns—concerns I have about the fundamental goals of the PIONEERS Act—that I am here today.

As industry continues its decades-long research and tests technologies with the goal of developing commercially-viable business models, we have time to make sure that we ask and answer the correct questions. The PIONEERS Act presents oil shale as a viable jobs and energy program. If Congress is looking at oil shale to spur economic growth, we as a country are in a mess of trouble.

For more than 100 years, boosters have promised that pulling oil out of rock-solid kerogen formations in the West would be easy, and the region would be awash in jobs, fortunes and eternal economic prosperity if we only tapped it. That's the central trust of the PIONEERS Act. The reality though is that such overly optimistic promises of oil shale have throughout history shown to be pure hype. In the 1910s and 1920s, people were lured West by oil shale boosters' promises of jobs and easy money. But that hype busted in the mid-1920s when oil reserves were found in Oklahoma, Texas and California—shattering the livelihoods of thousands of people in Wyoming and Colorado's Western slope.

The same dynamic played out in the 1940s and again the late 1970s into the 1980s. I lived through those turbulent times in the 1980s and can tell you that lofty promise by industry and government hurt people.

In 1980, Exxon announced at a meeting in western Colorado that they would be developing 8 million barrels per days by 2010. In 1981, the Reagan administration approved a $1.2 billion loan guarantee for Exxon's Colony oil shale project. One year later, in May 1982, Exxon pulled the plug on its Colony oil shale project and more than 2,000 local workers lost their jobs over night.

Twenty-eight years later, not a single barrel of oil from shale has made its way into the nation's commercial oil supply. It's not for a lack of trying—and it not a result of any particular federal policy. Industry heavyweights like Shell and ExxonMobil have hundreds of thousands of acres of private oil shale lands on which to test their technologies. They've also invested hundreds of millions of dollars. They still cannot produce oil from oil shale.

The current research program the Bush Administration initiated in 2007 is progressing but is yielding few results. Shell Oil recently announced that it was shifting gears and is now looking to develop deeper deposits. Enefit USA (formerly OSEC) told the BLM in a July 2011 report that they were taking a step back and reviewing their entire approach to research. Chevron, in their quarterly reports to the BLM, has likewise shown little progress.

Why is this background important? The bill states oil shale is "one of the best resources available for advancing American technology and creating American jobs." Aside from the fact that the leading companies are not American—they are Dutch, French, and Estonian—until there are technologies, there are no jobs, there is no energy, and there is no revenue. What there is, is hope and hype, and that's it.

Shifting the Cost of Doing Business on to Local Governments and Giving the More Taxpayer Handouts to Big Oil

While it is not the intent of the PIONEERS Act to hurt local communities, one of the unintended consequences of this legislation is that the very local communities that would be responsible for supporting development could be severely negatively impacted by development.

Local governments, as the host communities, would be charged with developing the infrastructure necessary to support commercial development. That means our communities would need to provide schools, housing units, hospitals, police and fire departments, social services, road improvements, and the like. The way governments pay for these improvements is through royalty payments. Under current law, 49% of royalties go the states and local governments to bear the financial costs of supporting local governments.

As Democrat Keith Lambert and Republican Ken Parsons, two local elected officials from western Colorado stated in an August 2011 editorial in the *Grand Junction Daily Sentinel,* "Cutting the royalty rate by more than half, as rules set in place by the previous administration provide, effectively removes millions of dollars intended to help our communities provide the increased services and infrastructure necessary to accommodate the industry." Congress, in a rush to "accelerate" oil shale, has yet to discuss in any serious way the potential impact development would have on local governments. To conclude, as the PIONEERS Act does, that Congress should force the BLM to levy low royalties at the expense of taxpayers without first examining the fiscal impacts on local governments is extremely troubling.

At Congressman Lamborn's oil shale hearing in Grand Junction in August 2011, Jim Spehar, the former Mayor of Grand Junction, Colorado, raised this very issue. As Spehar stated in written testimony:

> "Whether you oppose or support oil shale development, it's irresponsible not to be planning now for potential development and the possible impacts. That examination of impacts demands more than just a science project. But current research is focused primarily on technology, not the broad range of social, economic, environmental and other community impacts that will result if the technical research is ultimately successful. Just as the industry desires certainty in what's required of it, so do communities deserve that same degree of certainty as to what the expectations of will be of their local governments, non-profits and other agencies, schools, hospitals, for infrastructure and services associated with the development of this industry."

Instead of following this sage advice and examining the impacts of foisting an unproven industry on local governments with incredible unknowns, Congress instead is now trying to subsidize industry and tear down the BLM all for a gamble on oil shale—one that has been a losing bet for 100 years. Lost in this shuffle are the real impacts on local governments, rural agriculture, and communities.

The reviews that the BLM is undertaking—the reviews this Act seeks to upend—are critical to understanding these and other impacts. It is reprehensible for Congress to subsidize large, highly profitable corporations at the expense of local communities, while also attempting to undermine two extremely important reviews that the BLM is undertaking. Companies such as ExxonMobil, Chevron, and Shell can afford to pay the costs of their own research.

Gambling on Oil Shale at the Expense of Real Jobs and Western Economies

Just as local governments would feel the impacts of potential development, so too would our ranchers, farmers, water districts and others whose livelihoods rely on access to clean air and water.

The PIONEERS Act, by working recklessly to "accelerate" potential oil shale development, might be asking western communities to trade real jobs we have right now in the agricultural, tourism, and outdoor recreation industries for the promised, but never delivered, employment from oil shale.

In 2008, the BLM determined that large-scale development of oil shale—the goal of the PIONEERS Act—would fundamentally change the face of western Colorado. Currently, our communities and economies are agriculture based, but also benefit from diverse income sources such as recreation, hunting, fishing, retirement, colleges, tourism, and real oil and gas energy production. The BLM forecasts that if large-scale industrial oil shale development were ever to become possible, it would dry up our farms and ranches, diverting scarce water supplies to industrial uses, thereby changing the economic and social fabric of our communities.

In fact, major corporations already have extensive water rights that they could use for oil shale speculation. As Congressman Lamborn knows, using large quantities of water for oil shale, as the BLM, GAO, Rand Corporation and Colorado water users have concluded would be needed, would have profound impacts on the state and on economies. Utah would face similar challenges. As a rancher I have huge concerns with the potential impacts to agriculture oil shale development would bring. When coupled with existing massive oil and gas production, the cumulative impacts could be staggering.

It is for these that Ken Neubecker, the executive director of the Western Rivers Institute and a past president of Colorado Trout Unlimited, offered this sage advice in written testimony to the House Natural Resources Committee:

> "Taken in isolation the water needed for full oil shale development is legally and physically available. However, as Wayne Aspinall noted 'In the West, when you touch water you touch everything.' Water in the West is no longer a resource to be developed; it is a fully developed resource. Simply put, the water needed for oil shale development will come from someone else's current or planned use. It will have water supply implications far beyond the boundaries of the open spaces of northwest Colorado, eastern Utah and southwest Wyoming."

Hunting and fishing is also central to our region. Not only are these activities part of who we are as a people, but they are also a central part of our economies. Already oil and gas development in the Piceance Basin is impacting herds. Rushing potential large-scale oil shale development on top of this existing energy framework, as the PIONEERS Act seeks to do, could be devastating to this important industry.

One final issue this committee should examine is the energy demands and associated impacts on our air and water. Independent studies by Dr. Adam Brandt at Stanford and Dr, Cutler Cleveland have concluded that it might actually take more

energy to develop oil shale than the amount of energy that can be recovered from oil shale. The reason is the huge energy demands associated with production. The BLM estimated that producing just 100,000 barrels of oil per day from oil shale would require 1.2 MW plant with enough capacity to power 1.2 million homes each year. Those power plants do not yet exist, and that is a significant hurdle for development. If companies use natural gas to power production, the demands would likewise be astounding. To produce 2,400 MW, a very efficient combined cycle gas power plant would require approximately 135 BILLION cubic feet of natural gas,[1] or about 10% of Colorado's gas production. The fuel bill would be about $600 million per year.

Industrializing the local landscape brings massive amounts of air pollution. Communities in Wyoming, Colorado and Utah are already experiencing worse air from natural gas development than Los Angeles. The cumulative impacts of oil shale and oil and gas development must be understood, as poor air would not only compromise public health but would also seriously impact other sectors of the tourism and outdoor recreation industry.

Closing

I support Interior Secretary Ken Salazar commitment to take a fresh look at two key decisions that were rushed to at the end of 2008 regarding oil shale. As a rancher I too am concerned about what we are getting into with oil shale and the amount of water that commercial development might require. Ensuring oil shale doesn't steal or pollute my water or that of my neighbors requires moving carefully, and I support Secretary Salazar's caution. I also support the strong work by the BLM to ensure that stakeholders from across the West have a seat at the table in this decision. Understanding the impacts before proceeding with oil shale commercial development is just common sense—but it is common sense that this legislation seeks to undermine.

In summary, I would again like to thank the committee for the opportunity to testify today.

I sincerely urge the committee to consider the dangers in rushing ahead with oil shale speculation and the serious cost that it could bring to western rural communities and local economies.

I urge the committee to vote "no" on the PIONEERS Act and allow the current BLM stakeholder process to move forward so that everyone has a voice in this incredibly important decision.

Mr. LAMBORN. OK. Thanks for your testimony.

We will now shift gears and hear testimony on our fourth bill that we are considering today.

And Mr. Gardner?

STATEMENT OF J. STEVEN GARDNER, P.E., PRESIDENT AND CEO, ECSI, LLC

Mr. GARDNER. Thank you, Mr. Chairman.

My name is Steve Gardner. A little background: I grew up on a tobacco farm in the Appalachian region of Kentucky. I went to the University of Kentucky and got a degree in agricultural engineering, but by some fluke turn of life I ended up working in the coal industry, doing primarily reclamation and environmental work in the Appalachian region. I went back to school, then got a degree in mining engineering and environmental systems. I now work as a consultant, have been working in and around the mining industry for about 36 years now.

Our firm, ECSI, was a subcontractor on the Polu Kai Services team as part of the EIS for the stream protection rule proposed by OSM. Approximately 2 years ago, I received a call from OSM, who asked if ECSI would be interested in being involved in the EIS.

[1] There is roughly 1000 Btu per cubic foot of gas. A 2400 MW combined cycle power plant would generate about 18 million MWh per year at an 85% capacity factor. The heat rate might be 7.5 MMBtu/MWh, implying 135 billion cubic feet of gas per year.

The stated reason was ECSI's reputation, both in the regulatory and the regulated community.

OSM intended the process to be a minority small-business set-aside contract so they could issue it quickly, and OSM was recommending subcontractors for the team. That was to include ECSI; Morgan Worldwide, who is recognized for their work in the environmental community; and a national geotechnical firm. It was our understanding that OSM had a preferred minority business contractor for the project.

In due course, we received a call from PKS. They planned to retain MACTEC, a large national consulting group, for the geotechnical and some of the environmental aspects of the project; Morgan Worldwide; Plexus Scientific for their NEPA experience; and then our firm.

In June of 2010, there was a kickoff meeting here in D.C. with OSM. We learned that OSM had assembled internal teams for the rule writing and for the EIS. An immediate issue that came up was the short time frame for the project. Many of the OSM team members were concerned about that, as well, and they advised us that they thought it was likely that time extensions would be granted, and additional budget increases, to adequately prepare the EIS. Also at that time, we were given a copy of the proposed rule, dated May 25, 2010.

There were two other key issues that were brought up at that time. OSM, at that point, did not believe that public meetings were necessary. The NEPA experts on the team said it was absolutely required. And after long debate, Director Pizarchik was called in, and the decision was made to conduct additional scoping. That essentially delayed the process 4 months right off the bat.

It was also unclear to the PKS team if the proposed rule applied to underground coal mining methods. That question was repeatedly posed to OSM over the weeks. It was not until several months in to the project that OSM finally told us that the proposed rule would be applied to underground mining. This took the team by surprise and also many of the OSM personnel present at that meeting by surprise.

The team felt that that last-minute inclusion of underground mining impacts was a major change of scope and budget and requested additional time and money. OSM denied that request and then insisted that the underground mining had been part of the original scope all along. That disagreement is well documented in the record.

After the 4-month delay for scoping, OSM began to embed its own engineering and science personnel into the various contractor working groups, ostensibly to speed up the process. One subgroup was formed to perform the production impact analysis based on the alternatives. That subgroup included members of our firm, Morgan Worldwide, PKS, and OSM personnel.

As an additional validation of that process, it was proposed that selected coal companies from across the country be surveyed to get their input on what the production impacts would be. OSM originally approved that approach, but then hours, literally hours, before us sending that survey out, OSM withdrew its approval.

The coal production impacts that were forecast under each alternative were then distributed to the rest of the PKS team, including those members performing the economic analysis. Those production impact numbers were then used to predict the job impacts nationwide. After that information was leaked, then at a team meeting here in D.C. OSM suggested that the PKS members revisit the production impacts and associated job loss numbers with different assumptions. That, obviously, would then lead to a lesser impact.

The team was concerned about a very specific instruction from OSM to make the assumption that the 2008 stream buffer zone rule was in effect and being enforced across the U.S. At that time, which was, of course, not true. The PKS team unanimously refused to use a fabricated baseline scenario to soften the production loss numbers.

Thank you for this opportunity to present a different side of this story.

[The prepared statement of Mr. Gardner follows:]

Statement of J. Steven Gardner, PE, President and CEO, ECSI, LLC

My name is Steve Gardner. I am President and CEO of ECSI, LLC, an engineering consulting group based in Lexington, Kentucky. ECSI's core business is mining, in particular coal mining in the United States. ECSI was subcontracted by Polu Kai Services (PKS) as subject matter experts to assist with the EIS for the Stream Protection Rule.

Approximately 2 years ago, I received a call from someone at OSM who asked if ECSI would be interested in being involved in drafting the Stream Protection Rule EIS that was going to be contracted. He stated that the reason ECSI was being approached as a recommended subcontractor was our reputation with both regulatory and regulated community. OSM intended the process to be a minority/small business set aside contract so that they could issue quickly. OSM was recommending subcontractor teams to be ECSI, a national geotechnical firm, and Morgan Worldwide (recognized for their work in the environmental community).

In conversations with OSM personnel, it was our understanding that OSM had a preferred, minority business contractor who would contact ECSI. In due course, we received a call from PKS who was responding to an RFP issued by OSM to perform an Environmental Impact Statement on the Proposed Stream Protection Rule. PKS advised us that they were assembling a team of consultants to perform this complicated, nationwide programmatic EIS and that they were looking at our firm to be the mining experts on the team. They were also retaining MACTEC, a large national consulting group to perform geotechnical and environmental aspects, Morgan Worldwide to contribute their mining and environmental expertise to complement and balance our involvement, and Plexus Scientific for their NEPA experience, project management, logistics and final EIS drafting. ECSI assisted PKS in preparing the proposal and budget, and eventually a contract was issued to PKS. We assembled a team of experts in mining. These included nationally recognized academic experts in mining, hydrology, and reclamation (some of whom are experts that OSM has utilized on a routine basis).

The EIS project kicked off in June 2010 with a meeting in DC between PKS, the subcontractors and OSM's team. During that meeting, we learned that OSM had two teams assembled. One was a rule writing team and the other an EIS team. An immediate issue that came up was the short timeframe within which OSM wanted the EIS prepared. PKS and the subcontractors voiced their collective concern that the accelerated timeframe was overly ambitious. OSM team members agreed and advised that there would likely be time extensions granted and budget increases to adequately prepare an EIS of this magnitude. The original date for delivery of the Draft EIS was February 2, 2011. The assignments were allocated and ECSI was charged with reviewing the concepts of the proposed rule and predict production impacts nationwide. A copy of the draft rule dated May 25, 2010 was provided to the PKS team at that time.

There were two key issues that the PKS team brought to OSM's attention during that kickoff meeting, pertinent to the EIS and NEPA process:

- OSM did not believe that public meetings were necessary, and that the Notice of Intent (NOI) and request for public input within the NOI, as published in

the Federal Register, was adequate. Virtually everyone on the PKS team agreed that the NEPA process called for public meetings to be held so that affected communities could comment. The PKS team convinced OSM of the necessity of public meetings, which added approximately 4 months to the process. Public meetings (termed "open houses") were held across the country. These meetings were poster sessions where the various alternatives for the rule were outlined and the public was given the opportunity to submit written comments or oral statements.

- It was unclear to the PKS team if the proposed rule applied to underground coal mining methods. That question was repeatedly posed to OSM, and several months into the project at a team meeting in Atlanta, the PKS team was informed that the decision had been made that the proposed rule would be applied to underground mining. This took both the PKS team and many of the OSM personnel present by surprise. The PKS team received a letter dated October 7, 2010 from OSM stating that it was disingenuous to suggest that the rule did not apply to underground mining. The PKS team felt that the last minute inclusion of underground mining impacts was a major change in scope and schedule to the EIS, and requested additional time and budget to properly evaluate the impacts. OSM denied this request and insisted that underground mining had been part of the original scope of work all along and that the contractors were well aware of this. This disagreement is well documented in the record.

After this initial 4 month delay for scoping meetings, OSM began to embed its own engineering and science personnel in the various contractor EIS working groups, ostensibly to speed up the process.

To determine impacts on coal production under the various Alternatives, including the proposed rule (termed the "Preferred Alternative"), ECSI planned an analysis of production impacts utilizing "typical mine" models of all mining methods from each coal producing region, and applying Alternatives to those mines to determine production impacts. However, that effort proved to be impossible within the prescribed schedule and budget. As an alternative to the "typical mine" analysis, an Expert Elicitation methodology was proposed and approved by OSM. That methodology and the major assumptions are described in detail within the Draft EIS at Section 4.0.6.1, as submitted by PKS on February 23, 2011. A subgroup was formed to perform the expert elicitation production impact analysis, which included members of ECSI, Morgan Worldwide, PKS, and OSM personnel. As an additional validation of the elicitation process, ECSI proposed that selected coal companies from each coal region be surveyed on what they believed the production impacts would be under each Alternative. OSM originally approved of this approach, but hours prior to sending the survey out, OSM withdrew its approval.

Coal production impacts under each Alternative were forecast and the results were distributed to the rest of the PKS team, including the team members performing economic analyses. The production impact numbers were then utilized to predict job impacts nationwide.

A joint PKS and OSM team meeting was held in February in OSM's offices in DC. During this meeting, OSM "suggested" that the PKS team revisit the production impacts and associated job loss numbers, and with different assumptions that would then change the final outcome to show less of an impact. The EIS team unanimously told OSM that it was not appropriate to change assumptions just to get a different answer. The team was also very concerned with the specific instruction from OSM to make the assumption that the 2008 Stream Buffer Zone (SBZ) Rule was in effect and being enforced across the U.S., which was not true. No state with an approved SMCRA program had promulgated the 2008 SBZ Rule, especially since the rule itself was subject to the litigation which brought about the SPR. If the PKS team assumed that the 2008 SBZ was in effect as part of the baseline existing environment, the nexus from the SBZ to the SPR would show less production, and therefore less job loss impact. The PKS team unanimously refused to use a "fabricated" baseline scenario to soften the production loss numbers.

In order to meet the revised February 23, 2011, deadline for submission of a Preliminary Draft EIS, the PKS team inserted "placeholders" in the narrative of the document and a general disclaimer into the document to succinctly describe the situation with respect to OSM's change in instructions to the PKS team, assumptions and baseline data:

"[NOTE—As a direct result of recent instructions from OSM, the production impact analysis with a baseline thermal energy balance adjustment using the 2008 EIA production figures will be changed to a production/benefits analysis using the 2010 EIA dynamic production forecast as the baseline without a static thermal bal-

ance component. Section 4.06, Methodology, will be revised to reflect the new OSM-approved methodology. In addition, OSM has indicated that:

- *the SPR implementation timeline should be shortened from the previously approved 12 years to 8½ years;*
- *that Chapter 2 may be further modified (Alternative 5 as previously approved may not reflect the current rule provisions and other Alternatives may have to be modified to reflect these changes); and*
- *that the production impacts/benefits should be tested by applying the alternative analysis to typical mines for each Region.*

These new instructions will likely require substantial changes to Chapter 4, as well as changes to Chapter 2.]"

It is important to note that Chapter 2 of the EIS is the description of all Alternatives, including the "Preferred Alternative," upon which the entire EIS impacts analysis is based.

Shortly after the February meeting with OSM in DC, the PKS team received a notice that the contract with PKS was not going to be renewed.

I had the opportunity to review the testimony of Joseph G. Pizarchik, Director of OSM during the November 4, 2011, Subcommittee on Energy and Mineral Resources Hearing and would like to address comments made during the hearing:

1. Mr. Pizarchik made the statement that the job loss numbers were "placeholders" and were "fabricated." As I have previously stated, the EIS team, which included OSM personnel, performed the analysis to the best of its ability given the deadline and budget. When OSM did not like the result of the analysis, OSM asked that the team change the baseline conditions and use alternative assumptions to alter the coal production and job loss numbers.
2. Plagiarism was alleged against the PKS team in drafting the EIS. Under NEPA, it is preferred that the drafters of an EIS utilize as much existing information as possible and not "reinvent the wheel." While I cannot speak for the entire PKS team, ECSI utilized text from previous EIS documents, as directed by OSM, where appropriate and cited those documents in its references. In fact, ECSI posed the question to OSM personnel of whether we should simply cite previous EIS documents or if we should put the actual text in the SPR EIS. ECSI was directed by OSM to put the text in the SPR EIS rather than merely cite to another document for ease of the reader.
3. Despite Mr. Pizarchik's claim that OSM was at "arms length" during the process, OSM personnel were intimately involved in the EIS throughout.

Thank you for the opportunity to appear before the Committee today to testify about our involvement with the Stream Protection Rule EIS.

Mr. LAMBORN. All right. Thank you.

Mr. Zaluski?

STATEMENT OF JOE ZALUSKI,
EXECUTIVE VICE PRESIDENT, ECSI, LLC

Mr. ZALUSKI. My name is Joe Zaluski. I am the Executive Vice President of ECSI.

And Steve has gone through quite a bit of what we did as a subcontractor to Polu Kai. We were the subject-matter experts; we were not the NEPA experts or the EIS experts. And in preparing for today, I listened to Director Pizarchik's testimony here before this same Committee and take sharp issue with him in regard to five areas at least.

He challenged the qualifications of the subcontractors, and Steve has already addressed some of that, ECSI's expertise as well as Morgan Worldwide. Personally, I retired from the practice of law in 2009, but for 35 years all I did was SMCRA work. It is kind of an old country song: I did SMCRA before there was a SMCRA. I was up here with Mo Udall, actually, when SMCRA was being drafted, and helped in that regard, and my good friend to my left, as well. So all I have done for 35 years is SMCRA work, and I think I know the subject.

I take issue with Director Pizarchik's testimony in regard to our qualifications, as I said. He seemed to intimate that the methodology used by the team to predict coal production shifts and job loss was some sort of hands-off with OSM. It is not true; OSM was intimately involved. And, Mr. Chairman, we supplied you and the Committee with rather lengthy materials, and everything that Steve and I will testify to is supported by emails or conversations with OSM.

The Director implied, I think in response to Congressman Johnson's question, that OSM didn't give us any assumptions on which to base production shifts and job losses. That is not the case. We were given very specific assumptions; I will be glad to talk about those if we have the time. And that ties directly to the placeholder comment made by the Director, somehow implying that the team did sloppy work, ran out of time, and stuck something in as a placeholder.

In the documents tendered to OSM at the very beginning, there is a footnote that says, these are placeholders because OSM at the last minute, as Steve mentioned, changed the assumptions. They changed the assumptions so markedly that there was no time to go back and rerun the numbers. And, in fact, as Steve said, one of the assumptions they wished to change the surface mining experts refused to accept.

There was an email early on in the process—as Steve said, we were asked to send out our thoughts and our mapping and production shift impacts to selected members of the industry. I believe we were required to do that by contract. At the last minute, literally at the last minute, we checked with OSM and said, OK, here is the package we are going to send out, here is what we are going to say, and here is who it is going to. I received an email back in red—and I didn't know you could send emails in red, to be quite honest—and it said under no circumstance are we to do that, and then an email relaying a conversation with the Director by an OSM senior person who said that the Director's position is non-negotiable on this and violations would have extreme consequences. Not exactly a great working relationship.

As Steve said, I think contrary to what the Director indicated, OSM was heavily involved in this process. They embedded dozens of their people into the team, so much so that we started in June and by October we had participated in so many extra conference calls, meetings, whatever, with OSM personnel—because I think the folks working on this were as confused as we were—that we were running out of budget. We were going to ask for more money to get our project done because we had spent hours and hours and days in meetings that were not scheduled.

I personally believe, having been involved in SMCRA since the beginning of time, that this was about a 3-year process that they were trying to get done in 15 minutes. It just didn't work.

I would conclude to say that the initial OSM regulations, SMCRA regs, and the permanent program took years to accomplish, with lots of input from State agencies and sister agencies. Mr. Chairman, I think in support of the legislation that is pending here today, we need to take that time to better think out what needs to go forward here and not just run and try to get it done in a very

short period of time. I think the experts involved asked very hard questions of OSM that they simply could not answer.

I thank you for your time.

[The prepared statement of Mr. Zaluski follows:]

Statement of Joseph J. Zaluski, Executive Vice-President, ECSI

My name is Joe Zaluski, I am Executive Vice-President of ECSI, LLC, an engineering consulting group based in Lexington, Kentucky. ECSI was subcontracted by Polu Kai Services ("PKS") as a subject matter experts to assist with the EIS for the Stream Protection Rule.

In preparation for addressing you today, I watched the entirety of recent testimony by Director Pizarchik before this Committee. I would like to comment on several statements made by the Director.

We have submitted materials to the Committee for your review and those materials are rather voluminous. I do not know if they were also supplied to you by the Office of Surface Mining. They have been supplied to you today as a result of this Congressional Inquiry.

First, as to the credentials of the subject matter experts, I respectfully disagree with any implication that the team was not well qualified. If you wish to elaborate upon that during the question and answer period, I will be glad to do so. However, as to ECSI, I can tell you that the President of the company, Steve Gardner, has spent nearly 30 years in the mining consulting business in virtually every aspect. He is a Professional Engineer and has been involved in various state and national legislative efforts concerning mining, as well as the every day permitting and operational aspects of all types of mining operations. He is extraordinarily active in national organizations and has been recognized by them for his achievements.

Without taking up too much time, I can advise that I became involved in SMCRA before there was a SMCRA. As an attorney, I first worked for the Commonwealth of Kentucky while SMCRA was being lobbied in Congress. I began my career involvement with the regulation of surface and underground mining at that time and have continued, literally, ever since. I helped draft part of SMCRA, I served on the first regulation drafting committee with Walter Heine who became the first Director of OSM in 1978; and participated in the adoption and drafting of the first SMCRA based regulations. I helped in the drafting of Kentucky's program, both at the regulatory and statutory level. I have been involved with mining in virtually every aspect, not just with rule making, but from the permitting, problem solving and litigation perspective. I have been involved at the local and national levels and believe that I am well respected by counsel and other professionals on virtually every side of the mining issues that have arisen over the years. I served as one of the first chairmen of the Natural Resources Section of the Kentucky Bar Association; and have served as President of the Energy and Mineral Law Foundation, a nationwide nonprofit academic and continued education organization celebrating its 30th year in existence. I have published in this area and know the subject matter very well. I hope that is why I was asked to participate in this process.

Contrary to the Director's intimation that the subcontractors were inept, I believe that the train wreck of an attempt at an EIS was caused by OSM's constant change in direction, instructions, assumptions and restrictions. All that is well documented in the materials we have supplied to the Committee. In fact, an email that will give you some idea as to the relationship between OSM and the contractors is dated December 15, 2010.

We were developing impacts to various types of mining across the nation and believed that our contract specifically required us to solicit industry input on the impact of various alternatives on various types of mining operations across the country. We had packaged up material and had lined up several companies to review our work. At the last moment before sending the material out, we contacted OSM to advise them that we were about to undertake that step. We received an email back through Polu Kai that was written in red and stated "under no circumstance is the internal workings of this team and/or the rule team to be released to outside parties. See suggestions below." The actual email from OSM to Polu Kai stated as follows:

As per my meeting with OSM Director Joe Pizarchik, no part of the SPR rule text or EIS are to be sent to any parties for the purposes of the EIS preparation at any time. He indicated that this direction is non-negotiable, and that violations would have extreme consequences.

His alternative suggestions for how to proceed are two-fold:

1. Contractor team members working with OSM staff should develop our "best estimates" based on sound science and engineering, and provide those as a part of the draft EIS. He and I chatted about the possibility of error, but agreed that the comment period for the draft EIS will give the opportunity for all sides to provide us with additional information. Additionally, he indicated that we should be able to explain exactly how the numbers and assumptions for impacts to coal production were derived, including being able to explicitly list all factors used by the consultants to generate their estimates.
2. The Director suggested that we develop an internal team of mining engineers and other appropriate experts from OSM and other federal agencies to "peer review" the methodology used by the consultants. His suggestion was to include mining engineers in OSM regional and field offices, USGS, BLM and other DOI and non-DOI federal agencies.

My suggestion is that we have a call tomorrow to strategize on how best to proceed.

I think that email really sums up the relationship between OSM and the EIS team. The contractors were threatened with "extreme consequences;" and in the alternative suggestions from the Director makes it very clear that OSM understood that "best estimates" would be used; and, in the second paragraph, that there was a very close working relationship between OSM and the EIS team. This was certainly not the impression that the Director left when he testified before you.

Having been involved in the SMCRA at the national level and the rulemaking at that level, as well as at the state level, I and others stated to OSM at the kickoff meeting for the EIS that the schedule for accomplishing this task was absurdly short. A reasonable schedule for this process, which should have involved all regulatory authorities, state and national, should easily have been set for three years.

Contrary to what the Director stated, OSM was intimately involved throughout this process with not only regularly scheduled face-to-face meetings and telephone conferences, but constant phone calls and emails—most with conflicting instructions. As you will see from the documents supplied to the Committee, OSM embedded dozens of its employees into the EIS Team. We met with them constantly. They approved methodologies, especially with regard to production shifts. They supplied the team with assumptions for financial models. Examples of the assumptions would include which production numbers to use nationwide and requirement that as we determined production shifts that we maintain a national thermal balance. These instructions came directly from OSM.

The assumptions that we were directed to take by OSM, contrary to the Director's testimony, are set forth in the exhibits to the February 15, 2011, letter tendered to the Committee. In addition to the February 15, letter I just referred to, there is a second letter dated February 23, 2010, to the OSM contracting officer responsible for the implementation of the consulting contract with PKS and subsequently ECSI, LLC. I direct your attention in particular to the tab entitled "PKS Detailed Response to OSM Cure Notice," pages 1–20. Every statement made in that section is well documented by emails, letters and other exhibits attached to that same letter.

I would direct attention to the following:

Attachment 1—OSM, in December 20, 2010, confirms the methodology proposed by the contractors for determining production shifts, if any.

Attachment 2—as late as February 6, 2011 the consultants are still attempting to resolve with OSM the baseline for calculating production shifts. This was approximately 2 days before OSM issued its Cure Notice.

Attachment 4—is also worth noting that OSM at this time had reversed its position that the national thermal balance had to be maintained during implementation. These changes were very significant as far as their impact on the work of the EIS team.

Attachment 5—Bill Winters of OSM on February 18, 2011, changed the implementation timeline from 8 ½ years to 12 years. This would be another significant change that would likely affect production shift and job loss.

Let me conclude my remarks by again reflecting back on the development the initial SMCRA regulations and what is known as the permanent program. The process took years to accomplish with the input from states that had mining within their borders. A great deal of time and expertise went into that effort. The Stream Protection Rule, although it may have a fairly innocent and noble name, seeks to rewrite the very heart of the entire program. To try to accomplish this in short order was a mistake, a big mistake. The experts involved asked very pointed questions of OSM that simply could not be answered.

Thank you for this opportunity.

Mr. LAMBORN. All right. Thank all four of you for being here today—excuse me, we have another witness.

Professor McGinley, please share your testimony. Then we will launch into our questions.

STATEMENT OF PATRICK C. McGINLEY, PROFESSOR OF LAW, WEST VIRGINIA UNIVERSITY COLLEGE OF LAW

Mr. MCGINLEY. Thank you, Mr. Chairman. Thank you for inviting me to testify today.

Mr. Chairman, Congressman Johnson, the proposed bill, the Coal Miner Employment and Domestic Energy Act, laudably seeks to address the plight of coal field communities. The lack of jobs and opportunities there is heart-wrenching and unacceptable. For more than a century, an economic boom-bust cycle has resulted in chronic unemployment, poverty, and lack of opportunity in many of the communities that provide the coal that generates 50 percent of our Nation's electricity.

Part of my written testimony offers a view of this historical context, and I will not repeat that this morning. Let me turn first to some important facts.

Since the enactment of the Federal Surface Mining Control and Reclamation Act of 1977, coal production in the United States has increased significantly, while the number of coal mining jobs has dropped precipitously. The loss of jobs in the coal fields is not related to regulation. It is related directly to the mechanization of coal mining.

Interestingly, there was a stream buffer zone rule that was in effect beginning in 1982, imposed by Secretary Watt's OSM in the Reagan Administration, and it remained in effect until 2008. There was a time when there were no complaints about the stream buffer zone rule, but when much larger equipment moved into central Appalachia to remove more and more of Appalachian Ridge tops, what happened was that the buffer zone rule was simply not enforced, and OSM and the State regulatory agencies looked the other way while the violation of law continued.

Interestingly, today, after long downward trends, coal mining jobs in West Virginia and other central Appalachian States are on the upswing. The Mine Safety and Health Administration released information only last week showing that the number of mining jobs have reached the highest level in central Appalachia in a decade, and East Coast coal exports are nearing the capacity point.

That said, more jobs and better protection of the environment in coal field communities is imperative. In my view, the proposed bill, with all due respect, will deliver neither.

Notwithstanding its praiseworthy goal, the language of the five subsections of the bill contain terms that are extraordinarily vague and, therefore, unenforceable. The bill provides no definitions by which to measure the loss of jobs or coal production. The geographical and temporal limits of the bill's prohibitions are undefined.

This bill, if enacted, would trigger the law of unexpected consequences, I would submit. Enactment of the bill has the potential to make regulation less predictable for a coal industry crying out for predictability.

One need not look far to find ways to use existing law that could have the impact of producing jobs. SMCRA moneys in the AML Reclamation Fund should be released. Billions of dollars of reclamation from prior pre-SMCRA mining remains to be done, and these jobs are shovel-ready.

Section 515(c)(3) of SMCRA requires that, in order to obtain a permit for mountaintop removal mining, a cooperator must propose to the regulatory agency either an industrial, commercial, agricultural, residential, or public facility as a post-mining land use. The law requires an MTR permit applicant to present specific plans for proposed post-mining land use and assurances that it will be obtainable according to expected need and market, that public facility investment is ensured, and that there is private financing to complete the proposed use.

In short, SMCRA says no post-mining development, no jobs, no MTR mines. But one can search the tens of thousands of acres mined by MTR methods and find only scant evidence of the required industrial, residential, commercial, and other post-mining economic development there. Rather than a field of economic dreams fulfilled, one finds fields of weeds and few jobs.

Thirty-five years after SMCRA was enacted, one should ask the coal industry and regulators, where is the post-mining development on these mine sites? Where are the jobs? Why has this explicit mandate of post-mining economic development of SMCRA been ignored?

Our coal mines are safer today because of mine safety regulation, but they are still not safe enough. Enforcement of SMCRA and the Clean Water Act has reduced pollution in coal mining externalities, but not enough. Regulations that save lives and protect communities are not an enemy of job creation; they are a necessary companion of economic development.

I would be glad to answer any questions and provide any additional information that may be helpful to the Committee.

[The prepared statement of Mr. McGinley follows:]

Statement of Patrick C. McGinley, Professor of Law, West Virginia University College of Law

Chairman Lamborn, Representative Holt and members of the Committee, thank you for inviting me to testify today on the proposed "Coal Miner Employment and Domestic Energy Act."

Since 1975, I have been a member of the West Virginia University College of Law faculty where I am presently the Judge Charles H. Haden II Professor of Law. Prior to this, I served as a Special Assistant Attorney General with Pennsylvania's Environmental Strike Force where I enforced laws regulating coal mining and mine safety prior to enactment of SMCRA.

I grew up in the Western Pennsylvania coalfields as the grandson of a coal miner who worked in West Virginia, Ohio and Alabama coal mines a century ago. My mother was born in Piper, a coal company town in the Cahaba coalfield of Bibb County, Alabama. From the time I joined the WVU faculty until the present, I have represented coalfield families and organizations in matters relating to SMCRA. I was honored to have served on then-Governor Manchin's Independent Investigation teams that reported on the Sago and Upper Big Branch mine disasters.

As far as the proposed Bill—it's sponsor clearly understands the plight of coalfield communities—the lack of jobs and opportunities in these communities is be heart-wrenching. I know because I have friends and family who live and work in the coalfields. However, the lack of employment is not new to the coalfields. For more than a century a economic boom-bust cycle has visited the best of times and the worst of times upon those communities that provide fuel that generates fifty percent of our nation's electricity.

It should be noted, however, the since SMCRA was enacted in 1977, coal production has increased dramatically. The loss of jobs in the coalfields is related directly to mechanization—the ingenuity of mining engineers—who have brought giant dragline shovels to strip coal from mountain ridges and longwall mining that gouges two mile long swaths of a coal seam—a mile wide—from below the earth's surface. The mechanized mines of the 21st century are not labor intensive—but they produce far more coal per miner than would have been though possible when SMCRA was enacted. Interestingly, today, after a long downward trend of coal mining jobs is on the upswing. There is evidence that strictly regulated coal mining is producing more jobs while protecting the environment. That said, more jobs and better protection of the environment and coalfield communities is needed.

However, the proposed bill will, in my review, deliver neither, notwithstanding it's praiseworthy goal. The language of the 5 subsections of the bill contain terms that are extraordinarily vague and, therefore unenforceable. The bill provides no definitions by which to measure the loss of jobs or coal production. The geographical limits of the bill's prohibitions are undefined.

Such legislation, if enacted, would trigger the law of unintended consequences. Enactment of the bill has the potential to make regulation less predictable for a coal industry crying out for predictability in regulation.

The prohibition of agency power to initiate regulatory action could jeopardize the property, health and lived of coalfield families. Subsection 4, though vague, could prohibit coalfield communities from petitioning to have areas declared unsuitable for coal mining when such mining places community water supplies, homes and coalfield environments at risk.

Subsection 5 places upon the Department of the Interior an impossible task of determining what regulatory actions might result in a court declaring that an unconstitutional "taking" of private property has occurred. As Justice Brennan once remarked—determining what is a regulatory taking is "the equivalent to the physicist's search for the quark." Subsection 5 is simply unenforceable by any legal standard and also raises serious constitutional separation of powers concerns.

As the goal of the proposed bill is to promote jobs and economic development in coalfield communities, I submit that it is important to understand the context in which SMCRA was enacted and has been administered and enforced since 1977. I examined this context in a law review article I wrote. I want to share this context with the Committee and urge it to consider the broader context before proceeding on the proposed bill.

As the 1960s began, a combination of coal industry consolidation, a poor coal market, population exodus from coalfield communities, and the attendant collapse of mining employment "made for a severe and chronic economic predicament" for West Virginia's coalfield communities. West Virginia's unemployment rate was the nation's highest, more than triple that of the rest of the nation. As the coal-based economy continued to collapse, tens of thousands left the coalfields in search of work in the industrial plants of the Northeast and the nonunion textile and manufacturing plants of the Sunbelt.

The Coal Bust of the 1960s: New Relationships Between Coalfield Communities and the Companies

Unwilling to be stuck with camp houses, commissaries, and other facilities that the newly contracted industry did not need, some camp owners altered the relationship between themselves and the miners living in the company houses. This relationship continued in many instances for decades; even today there are former coal camps where the successors in interest to the first coal company masters collect rents from descendants of early miner occupants.

The rent in most cases was and is consistent with the quality of the premises involved. For example, a 1987 Charleston (W.Va.) Gazette ("the Gazette") article related that coal camp houses were being rented then for $15 per month. While the rental amount seems incredibly low, one must consider that the amount reflects what is said to be the first rule of real estate valuation: location, location, location. Associated Press reporter Jules Loh described the location of the old coal camp in Eureka Hollow:

> The springs from Eureka Hollow flow into Elkhorn Creek. The village on its trash-strewn banks at the mouth of the hollow is Eckman. You won't find it on a road map. Eckman consists of a grocery store, filling station and a one-room post office. Wooden planks thrown over a ditch at the uphill edge of town mark the start of the road up Eureka Hollow.
>
> Woebegone wooden houses, many of them falling down, dot the hillsides along the road. Tree limbs, like crutches, prop up porches. Abandoned houses crumble alongside inhabited mobile homes. Coal dust trodden into

> black gum replaces grass. Red dog, a rust-colored mine waste turned into coarse gravel, paves driveways. Automobile carcasses rot beneath clotheslines burdened with patched jeans and faded shirts.
>
> Roosters peck around lopsided sheds, providing a staccato music. Homemade pinwheels stuck in bare yards offer snatches of joy.

After closure of the mines connected to a company town, the landlord-tenant relationship was most frequently a "month to month" agreement. These month to month tenancies in many instances were honored by the coal camp owners for decades. However, as explained below, in the last ten years encroachment of large-scale mountaintop removal and longwall mining operations has often resulted in abrupt termination of these long relationships. With little notice, families whose history in an old coal camp extends back for many decades have been unceremoniously forced to move to make way for mining operations. In some instances, a whole community has been evicted. Within weeks of notice, homes were torched and bulldozed, leaving only empty lots where community and family roots had been planted and nurtured for the better part of a century.

Renting coal camp houses was not the only way owners of coal camps sought profit. In the 1950s many coal companies chose to sell the camp houses to their occupants. Harry Caudill describes the sales "technique" used to persuade coal camp occupants to buy the houses in which they lived:

> The first step in their program to "free" the camps lay in the making of blandly optimistic statements to their employees and to the general public. They gave the impression that the company anticipated twenty or thirty years of uninterrupted mining with their employees drawing high wages. No mention was made of mechanization or of reduced payrolls. While no specific promises were made, the miner and his wife were led to believe the inhabitants of the camps could expect continued employment at union-scale wages.

The next step in the operators' disposition of coal camp houses was the announcement that they were getting out of the real estate business so their executives could concentrate on mining. Writing with razor-sharp sarcasm, Caudill describes the "con":

> Besides, said the benevolent bosses, they wanted the miners and their families to enjoy the feeling of independence and self-assurance that comes from home ownership. It was undemocratic, the Big Bosses now declared, for the company to dominate the affairs of the community. A new generation of stockholders and officials wanted the people to live proudly in their own homes and to govern their communities in conformity with the Great American Dream. The company owners opened up offices for the purpose of facilitating the sale of camp houses. Prices were not exorbitant and occupants were given purchasing priority. Buyers could pay through monthly deductions from their wages.

The timing of these sales programs was excellent—for the company owners. Most sales occurred as the winds of mechanization began to blow through the industry. The timing was not so good for a miner who might find "himself jobless before his home was cleared of debt, though most purchasers pridefully held a deed 'free and clear of encumbrances' before the discharge notices were slipped into their pay envelopes."

Although nearby underground mines closed and production from the remaining deep mining operations continued to decline, if the new home owners could find work in other mines they tried to maintain and improve what they had purchased. Moreover, a critical distinction existed between coal camp rental properties, whose residents had no incentive to spend their often meager income on property that they were merely renting and houses purchased by camp residents from company owners. Families in the latter category generally invested in the maintenance, repair, rehabilitation, and remodeling of their homes to the extent that their income would enable them to do so. Attorney Gerald Stern described how families worked to improve the camp houses they bought from the company and the investment they made to transform a camp house to a home of their own:

> The miners took great pride in turning them into real homes, helping each other, or even paying someone to do the work once they saved enough money. An indoor bathroom, maybe new electrical wiring, electrical baseboard heating, new floors, a new roof, new siding to keep out the cold, maybe a new porch or even a new room. Roland [Staten] and his wife Gladys spent seven years remodeling House No. 20—adding a cesspool, paneling, insulation, siding, a new roof and furnace, and even a garage. This was no coal-camp house anymore. In those communities where mining jobs could still be found, miners receiving respectable middle-class wages often

> built modest new homes so that they could continue to live near relatives in what had been their homeplace for many decades.

Of course, when a camp house was purchased and the family breadwinner lost his mining job and could not find another that paid a living wage, purchasing food and fuel for heating and cooking took precedence over home maintenance and repair. During the 1960s bust, and again in the last decade and a half of the twentieth century, many residents of the former coal camps found it increasingly difficult to maintain their homes as more and more mines closed and mining jobs evaporated.

Thus, to the vicious cycle of coal industry boom and bust—long the dominant impediment to sustained coalfield economic development—was added the albatross of home ownership. Miners who purchased a coal camp house and abruptly found themselves on the unemployment dole without promise of finding work faced the horns of a dilemma. To provide for their families, they would be forced to migrate to another region of the country leaving behind their relatives, lifelong friends, and ancestral homeplace. And, if they decided to leave, it would be difficult to sell their home. If they could find a seller at all, they were likely to sell at a significant loss. If they stayed, there were no jobs and only the largess of government relief programs was available to sustain them.

Faced with such a choice, many unemployed miners chose to seek work in other states, abandoning their homes and the life savings they often represented. Some who left could not establish themselves in other places and returned to their homeplace. Others chose to hang on, hoping against hope that another coal boom would begin and "the mines" would start hiring again. In the interim, unemployed miners would do whatever it took to survive. Roger Luster, of Eureka Hollow explained the quandary he and thousands of other coal camp families faced as coal mining jobs evaporated:

> "It's rough, buddy. . .. This is home. This is where we were both born and raised. We like it here. Until I can find work, we stay. If the program I'm on runs out, well, then I guess we'll have to think about moving on. Where to? Where can a man with a family go with no place to set out for and no money to get there? Hard as it is, we want to stay here. This hollow is home."

Unfortunately, new underground and strip mining technology and other political and economic factors dashed dreams of a new boom and "the mines," as 1960s coal camp residents knew them, ceased to exist. Professor John Alexander Williams places the hopes of coalfield residents and four decades of reality into perspective:

> One measure of the social change induced by these trends was the number of miners in West Virginia: more than 150,000 in 1945, but just over 17,000 in 1999, by which time there were fewer miners in the state than there were nurses or telephone solicitors. WalMart now has more employees in West Virginia than any coal company, although coal industry apologists still insist that "five thousand people working at WalMarts in this state don't equal 400 coal jobs." Michael Harrington's widely acclaimed book, The Other America, captured the plight of the urban and rural poor at the beginning of the 1960s. The book was a phenomenon, revealing for the first time to a broad national audience that the nation's post-World War II economic prosperity had not reached many Americans. Harrington observed, "The millions who are poor in the United States tend to become increasingly invisible. Here is a great mass of people, yet it takes an effort of the intellect and will even to see them."

The dire circumstances of many who lived in the coal camps of central Appalachia was not invisible to those who took the time to look. But, as Harrington explained, "looking" took some effort:

> Poverty is often off the beaten track. It always has been. The ordinary tourist never left the main highway, and today he rides interstate turnpikes. He does not go into the valleys of Pennsylvania where the towns look like movie sets of Wales in the thirties. He does not see the company houses in rows, the rutted roads (the poor always have bad roads whether they live in the city, in towns, or on farms), and everything is black and dirty. And even if he were to pass through such place by accident, the tourist would not meet the unemployed men in the bar or the women coming home from a runaway sweatshop.

Two years before The Other America was published, one important observer did take the time to visit West Virginia's coal camps. Then-Senator John F. Kennedy was shocked by what he saw and learned there during the state's 1960 presidential primary. That primary campaign was crucial to Senator Kennedy's quest for the

Democratic Party's nomination and his later election to the presidency. As one West Virginia newspaper observed:

> It was important to Kennedy. . .. He won the primary, showing that a Catholic could win in a predominantly Protestant state, a key victory in his drive to the nomination and the presidency. It was important as well because of what he saw, and what the reporters and TV cameramen with him saw, at the home of Burley Luster. Luster was a disabled coal miner with a sickly wife and eight hungry children living in a four-room shanty. Kennedy talked with them for 45 minutes and then, shaken, stood on the Luster's sagging front steps and promised, if elected, to press Congress for federal help in Appalachia.

Kennedy's message from Eureka Hollow alerted America to the paradox of wretched poverty in an area teeming with rich resources. Professor John Alexander Williams relates that "Kennedy and his entourage. . .traveled through West Virginia by bus and car in the early spring, when nature had not yet hidden the abuse of the land by mining. . .. The politicians and reporters following the campaign were less impressed by the state's scenic beauty than by its environmental scars and miserable roads." Despite the relief efforts at the federal level, life was as bleak as ever in the coalfields of Appalachia as the 1960s drew to a close.

The 1970s Coal Boom

As the decade of the 1970s began, John Denver's song Take Me Home, Country Roads portrayed West Virginia as "almost heaven." Denver's song put West Virginia residents in an upbeat mood, coming along "at just about the right time" as "it reflected a growing feeling of satisfaction shared by many, if not most, citizens, a feeling that one of the worst chapters in West Virginia's history was closing at last."

The coalfield economy perked up again at the beginning of the 1970s as the United States attempted to come to grips with an "energy crisis" triggered by price fixing of petroleum supplies by a Middle-Eastern cartel. The cost per barrel of petroleum soared during the 1970s as the Organization of Petroleum Exporting Countries (OPEC) ratcheted up prices in response to the Yom Kippur War and the closing of the Iranian oil fields after the Shah of Iran was overthrown in a 1978 Islamist coup. The U.S. economy reeled in the 1970s from the impact of the abrupt skyrocketing of energy prices. The nation's gross domestic product fell by 6% and unemployment doubled to 9%.

In the former company towns of southern West Virginia and other Appalachian states, significant numbers of job postings for coal mines appeared for the first time in decades as electric energy producers shifted from petroleum to a more reliable and less costly product. In West Virginia alone, more than 17,000 new miners were placed on payrolls during the period between 1973 and 1978.

Freelance journalist Rudy Abramson capsulized life in the Appalachian coalfields during the short-lived boom:

> During those fabulous days in the mid-seventies, thousands of men who had left the mountains came home from distant cities to dig coal. In West Virginia, Virginia, Kentucky, and Tennessee, small truck mines that had been abandoned for years were reopened. Nearly anybody who had or could borrow money to buy a dump truck and a road grader could become a strip mine operator. Bootleggers mined without permits and got good money for gray mixtures of coal, slate, and rock. Spot market prices soared to nearly $100 a ton and suddenly-rich independent operators lived in opulence, bought luxury cars for their wives, and concluded business deals on the golf course. Two and a half decades after the boom, Abramson interviewed people who had lived in or near the Boone County, West Virginia, town of Whitesville. They described life there during the boom: Saturday nights in Whitesville were reminiscent of the good old days after World War II when it was hard to get through the crowds on the sidewalks. Miners' families from communities up and down the Big Coal River—Seth, Comfort, Sylvester, and Sundial—and up from Marfork, High Coal, and Seng Creek Hollows came to shop, take in a movie, and catch up on the news. You could forget finding a parking place in the middle of town. The good times did not last.

Coalfield Communities: 1980 to Present

The boom of the 1970s was short. As oil prices increased in the 1980s, and midwestern utility companies turned to cheaper western coal in the 1990s, the economy of the Appalachian coalfields cycled again into a bust phase. Another factor responsible for this shift was the continuing loss of mining jobs in Appalachian underground mines resulting from even further mechanization. In 1980, coal jobs had

dropped by 7,000 from the boom high of almost 63,000 in 1978; five years later only 35,813 miners were working in West Virginia. Ten years later, in 1990, coal mine employment had dipped further to less than 29,000. By 2002 less than 15,000 miners worked in the state. Today,—ten years later—and notwithstanding SMCRA, NEPA and Clean Water Act requirements more than 20,000 coal miners are at work in West Virginia. Similar patterns of the natural resources boom bust cycle occur in most coalfield communities.

The recession of the early 1980s further weakened West Virginia's economy. By 1984, West Virginia had the nation's highest unemployment rate and "economic indicators pointed to continuing difficulties, with recovery trailing far behind that of the other states."

Another important factor in the economic plight of West Virginia from the 1980s to the present has been the coal industry's continuing political domination of state government. In 1985, the West Virginia Legislature enacted the "super tax credit," a law supposedly intended to expand economic development in the state. In 1986, the legislature extended the super tax credits, provided that existing state companies increased hiring and modernized their operations. Given the grip of Coal industry interests on the state, it is not surprising that coal companies received nearly ninety percent of the total amount of these credits.

This coal lobbyist-generated windfall for industry harmed the state economy rather than promoting economic development. One observer has suggested that:

> [I]n their long-range effect, they may have actually compounded the very problem they were supposed to alleviate. The study of the super tax credits in 1990 revealed that the number of jobs in coal mining had fallen by 1,300 in spite of an increase of 13.3 percent in coal production. The adverse effects of the super tax credits on state revenues and on the general economy led in 1990 to *45 legislation to prevent coal companies from using the super tax credits to avoid payments of severance taxes. . .. [T]ax officials estimated that about 20% of the coal mined in the state was produced free of any business taxes.

During 1985–1989, under the guise of stimulating new coal development, the state's Workers' Compensation Fund (WCF) slashed premiums paid by coal companies by thirty percent and awarded generous refunds to companies. By the beginning of the 1990s, the WCF faced a deficit of $1.2 billion.

While West Virginia ended the 1970s in better economic shape than it had been in for decades, state government corruption in the 1980s eliminated the economic gains. Journalist Rudy Abramson interviewed Randy Sprouse who had lived Whitesville, West Virginia during the 1970s boom. Sprouse remembered the prosperity of the moment: "You had two or three clothing stores, shoe stores, furniture stores, a whole bunch of restaurants, taverns, a movie theater, and a bowling alley. . .. Anything you wanted, you could get right there in Whitesville. You didn't have to leave Whitesville for anything." Whitesville today is depressingly different:

> Most of [what Randy Sprouse described] has been gone for years. The sidewalks of Whitesville are usually empty. Vacant stores dot the town's main drag and windows are covered with dust from coal trucks that rumble through night and day. Traffic lights work intermittently. Parking meters were removed long ago.

The economic plight of coalfield communities in the 1980s continued throughout the next decade as new mining technologies replaced more labor-intensive methods. While Appalachian coal production approached record levels in 2003, the number of coal miners declined to its lowest level since the nineteenth century. The coalfield economy continues to stagnate with high levels of unemployment in those areas which lead in coal production.

Unable to rely on state government for economic and environmental protection, the communities looked to Washington for assistance. The federal assistance that John F. Kennedy had promised from the front porch of Burley Luster's Eureka Hollow home in 1960 materialized in a plethora of federal programs such as food stamps and Medicaid, which continue to this day to sustain many who remain in the old camps of central Appalachia. One new federal program, the Surface Mining Control and Reclamation Act of 1977, held out the promise of protecting coalfield communities and their citizens from the environmental, economic, and social harm that unregulated coal mining had caused. The following discussion examines how that promise was effectuated.

Regulation of the Adverse Impacts of Coal Mining

When historian John Williams completed West Virginia: A History, he made predictions about the future of coalfield communities:

> In terms of short-run market considerations, strip mining is the swiftest and cheapest way to expand coal production. . .. Stripping is the most costly method of producing coal, however, if social and environmental factors are calculated. . .. The future of tourism and recreation depends to a significant extent on what is done about surface mining and other environmental issues. . .. Yet the political impact of recreation industries is diffuse, and the aesthetic and human values that environmental degradation subverts are difficult to measure. By contrast, the coal industry retains much of its old-time political power. . .and can readily deploy it to defend immediate and specific economic concerns. It appears that Professor Williams was especially prescient when he predicted that "environmental controversies promise to generate the most lively and probably the most crucial debates that West Virginia faces in the last quarter of the twentieth century."

Professor Williams's prediction that environmental controversies would come to the fore as the twentieth century came to a close was not based on gut instinct or crystal-ball gazing. Rather, as a historian, Williams based his predictions on an appreciation of the policies, politics, and players that had shaped West Virginia's past and his recognition of the old and new forces that were then in motion vying for control of the extraction of Appalachia's vast coal wealth.

As students of history are aware, most of the enterprises of the Industrial Age created significant adverse externalities. For example, effluent from steel and chemical manufacturing poisoned thousands of miles of the nation's streams and air pollution from the same plants clouded urban skies. For the better part of a century, the nation's polluting industries were given a free pass by Americans who agreed with industry's plea—"where there's smoke there's jobs."

It was not until the mid-1960s that people in the United States began to appreciate the extent to which industrialization had externalized costs to their own communities. Citizens' demand for pollution cleanup and regulation of the adverse effects of industrial activities spurred Congress to enact the National Environmental Policy Act of 1969 and reached its apogee in 1977 with passage of the federal Surface Mining Control and Reclamation Act. No other federal environmental regulatory statute contains as many opportunities for citizen involvement nor grants to citizens such a broad array of statutory rights that may be used to influence the law's administration and enforcement than does SMCRA.

To understand the current struggle of the people of the coalfields for economic and environmental justice, one must understand how SMCRA came to be law and the way in which its strict mandate has been administered and enforced. The following discussion begins with an examination of SMCRA's origins in the oppressed and poverty stricken Appalachian coal camps in the 1960s. SMCRA's history is then traced from enactment through criticism of state and federal enforcement to the current extraordinary controversy over enforcement of SMCRA's so-called "mountaintop removal" regulatory regime.

Historical Overview of the Pre-SMCRA Period

Prior to the enactment of SMCRA in 1977, unregulated surface and underground coal mining created enormous environmental harm throughout the Appalachian coalfields. These externalities created disincentives for local economic development as well as other adverse social and economic consequences. Generally, local people experiencing these costs of mining also enjoyed the benefits of jobs created by mining. The adverse environmental impacts of mining received scant notice in the Appalachian coal camp struggle for survival during the first half of the twentieth century. Like the pervasive pollution that accompanied steel mills and chemical plants, coal mining's adverse impacts were seen as part and parcel of the industrialization.

The most visible adverse impacts of coal strip mining were the scars gashed in Appalachian mountainsides. Surface mining strips away forest vegetation, causing erosion and attendant stream sedimentation and siltation, accompanied by negative impacts on aquatic life and drinking water supplies. In some coalfield regions, iron-laden sulphuric acid mine drainage pollution from underground mining produces red-orange stained stream beds and renders some watercourses ecologically sterile. Underground and strip mining contaminated or depleted underground aquifers that provide domestic and farm water supplies to many coalfield families. Loud noise and dust from blasting and earth-moving activities disturb nearby communities and wildlife. During mining, dust and debris often fill the air as soil and underlying rock strata are blasted apart, earth is moved, and coal extracted. Landslides caused by indiscriminate dumping of mine spoil downslope on steep Appalachian mountainsides buried cars, homes, and sometimes killed people.

From the beginning of these efforts to regulate strip mining, the coal industry cooperated with local and state politicians to oppose meaningful state regulation. Economic competition between coalfield states for jobs and tax revenues fueled this opposition. Instead of placing limits on the worst of strip mining abuses, legislators chose to protect their own domestic industry. Obviously, they reasoned, a state choosing to pass laws to reduce the adverse consequences of coal mining would impose increased costs on its own coal industry. Those costs would not be incurred by coal operators in other states that chose to give carte blanche to their own coal operators. State politicians recognized that the price of coal produced in a state forbearing regulation would be cheaper and thus more competitive in the market than coal produced in a state that imposed environmental regulatory costs on its operators.

By the end of the 1960s, public concern over the adverse impacts of coal mining had grown to a crescendo of opposition. It was generally recognized that the states could not and would not impose meaningful regulation on coal companies operating within their own borders. Coalfield citizens and other critics of strip mining realized that only a statute passed by Congress could end the states' "race to the bottom." A federal law imposing uniform national regulatory standards would nullify the strongest argument raised against regulation—in-state coal operators' competitive position vis-a-vis operators in other states. Operators in every state would be required to play by the same federal rules. The race to the bottom pressures would be eliminated by instituting a uniformly applicable federal regulatory program.

Years of national media attention and unrelenting pressure from coalfield residents made it impossible for Congress to ignore coal stripping. Proponents of federal regulation accumulated massive documentation of the enormous costs coal mining had externalized onto coalfield communities. Furthermore, Congress faced a national outcry against irresponsible coal mining when the totally avoidable collapse of a huge coal waste impoundment at Buffalo Creek, West Virginia killed more than one hundred people, injured thousands more, and wiped out whole communities.

Twice Congress passed legislation, and twice the coal industry and its state political allies succeeded in persuading President Gerald Ford to exercise his veto power. But with the transition to the Carter Administration came cooperation from the executive branch, and Congress once again passed legislation regulating surface mining. On August 3, 1977, President Jimmy Carter signed the Surface Mining Control and Reclamation Act of 1977. Finally, federal regulation was being imposed on the coal industry in an effort to minimize the adverse impacts of underground and strip mining.

SMCRA's Cooperative Federalism Approach to Regulation

Paralleling other federal environmental regulatory laws, Congress designed SMCRA as a "cooperative federalism" statute. Congress found that "the cooperative effort established by this chapter is necessary to prevent or mitigate adverse environmental effects of present and future surface coal mining operations."

SMCRA's cooperative federalism scheme instituted an extensive and permanent federal regulatory presence to deal with problems previously within the sole domain of the states. Congress created a new Office of Surface Mining (OSM) to oversee implementation, administration, and enforcement of SMCRA. Congress intended that states have the option to assume "exclusive jurisdiction" to administer and enforce SMCRA, subject to compliance with minimum statutory standards and compliance with OSM's implementing regulations. Moreover, state assumption of "exclusive jurisdiction over the regulation of surface coal mining and reclamation operations" was made specifically subject to OSM's oversight and enforcement power. If an OSM-approved state fails to implement, enforce, or maintain its program in accordance with SMCRA, OSM must enforce part or all of such program or assume exclusive federal jurisdiction over all mining operations within the state.

Problems immediately arose pertaining to OSM's administration of SMCRA's phased implementation. OSM's effort to promulgate permanent program rules produced one of the most extensive rulemaking proceedings in the history of administrative law. Two drafts were submitted for public comment; 57 public meetings and 25 days of public hearings were held; 589 public comments were received by OSM; 22 different task forces, composed of over 100 technical experts from more than 20 agencies, evaluated and revised the draft rules into their final form.

In the quarter century since enactment of SMCRA, the environmental degradation and attendant adverse social and economic impacts on coalfield communities continue, albeit not at the catastrophic levels that existed in the pre-SMCRA years when coal mining was essentially unregulated. One of the best examples of such continuing regulatory failure can be seen in the failures of state and federal enforcement of SMCRA's requirements pertaining to huge mountaintop removal strip

mines that have proliferated in the southern West Virginia coalfields. It is there, in close proximity to coalfield communities that a specific SMCRA promise of environmental protection and local economic development was broken by coal operators and compliant federal and state regulators.

Mountaintop Removal Strip Mining

A decade and a half after enactment of SMCRA, some believed the statute was reducing abuses of coalfield lands and people caused by conventional strip and underground mining. Notwithstanding a significant measure of success, some coalfield communities continued to feel the effects of inadequately regulated mining that had plagued them decades earlier. Many of these post-SMCRA impacts were produced by new surface and deep mining techniques that had gained favor with the nation's biggest coal producers.

A major transformation of the coal industry triggered this post-SMCRA departure from conventional mining methods. Corporate mergers, consolidations, and bankruptcies accompanied intense competition between eastern and western coal mining operations. A combination of all of these events foreshadowed the growth of "mountaintop removal"—a strip mining technique that existed only on a small scale before SMCRA. One commentator observed:

> Because of [competition with] cheap western coal, mountaintop removal suddenly boomed in central Appalachia in the 1990s. Trucks and power shovels have grown to gargantuan sizes, and drag lines swing shovels holding up to 100 cubic yards of rock. Mountaintop mines that reduce ridges and peaks by hundreds of feet now sprawl across more than 2,000 acres. An estimated 400 square miles of southern West Virginia mountains and ridges have been leveled and 1,000 miles of streams buried beneath debris blasted, shoved, and dumped into narrow valleys. The move to the use of large-scale mountaintop removal operations would make mining in Appalachia more efficient, productive, and—most importantly for coal operators—much less labor-intensive. Mechanization and concomitant massive job losses attendant stripping operators' embrace of mountaintop removal were paralleled by the underground operators' adoption of new deep mining technology.

The coal industry's competition-driven movement to new mining methods in central Appalachia adversely impacted coalfield communities both above and below the earth's surface. On both fronts, coal production and man-hour efficiency in Appalachian mines increased dramatically. However, as mountain ridges were blasted apart and more miles of headwater streams were buried under huge valley fills, mine jobs continued to hemorrhage. Promises that mountaintop removal mining would spur job-creating commercial, industrial, and residential development have gone unfulfilled.

Mountaintop Removal Mining Methods

SMCRA regulations define mountaintop removal as "surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill. . .by removing substantially all of the overburden off the bench and creating a level plateau or gently rolling contour, with no highwalls remaining." As traditional contour and area mining rapidly declined during the 1980s and 1990s, growing numbers of mountaintop removal mines began clear-cutting the steep-sloped hardwood forests and chopping off mountaintops in eastern Kentucky and southern West Virginia. The underlying coal seams there lie sandwiched in layers of rock and soil hundreds of feet thick. In mountaintop removal operations, each layer of the rock above a coal seam is blasted and removed, the coal is extracted, and then the next layer is removed until the removal of rock and coal layers is no longer cost-effective.

Operators put some of the removed rock back on the flattened mountaintop. Because rock blasted from its natural state "swells," coal operators assert there is usually inadequate room available on the flattened mountaintop to place this "swell" or "excess spoil." The spoil is dumped in adjacent valleys, often creating huge "valley fills." A single valley fill may be as much as 1,000 feet wide and extend several miles at the upper reaches of Appalachian headwater streams.

Over the course of more than two decades, the West Virginia Department of Environmental Protection (DEP) and its predecessors authorized the coal companies to bury at least 786 miles of West Virginia streams under valley fills. Thousands of acres of hardwood forests were leveled. The United States Fish and Wildlife Service found that "'the loss of these streams and their associated forests may have ecosystem-wide implications.'" Beginning in the late 1980s, the size and number of mountaintop removal mines and their associated valley fills increased, especially in

southern West Virginia, which has enormous reserves of high-energy, low-sulfur coal coveted by electric utilities.

The 95th Congress Placed Strict Limits on Mountaintop Removal Mining Under SMCRA

Ordinarily, when a state grants a permit to conduct strip mining operations, a coal operator is required to restore mined land to its approximate original contour (AOC). When Congress was debating SMCRA, central Appalachian coal operators and coal-state congressional representatives sought an exemption from the AOC requirement for mountaintop removal mining. Mountaintop removal mining, they argued, could produce flat land for development—a commodity in very short supply in the mountainous coalfields of West Virginia, Kentucky, Virginia, and Tennessee. Congress accommodated these requests, but placed severe limitations on those situations where mountaintop removal would be allowed under a variance from the generally applicable AOC reclamation requirement.

In order to qualify for a variance from the AOC requirement, SMCRA requires that a mountaintop removal permit applicant propose a postmining land use that falls in one of five specific categories: industrial, commercial, agricultural, residential, or public facility (which includes recreational facilities). In addition, the permit applicant must also prove that the *59 proposed postmining use constitutes an equal or better economic or public use of the affected land as compared to the premining land use. An applicant seeking an AOC variance must also provide specific plans for its proposed postmining land use and accompanying assurances. Finally, SMCRA requires that the applicant demonstrate that the proposed use would be consistent with adjacent land uses, existing state and local land-use plans and programs, and that all other requirements of SMCRA will be met. In granting a mountaintop removal permit with an AOC variance, a state must impose certain specific public safety and environmental protection requirements on the permittee.

Where is the Promised Economic Development? Where are the Post-Mining Jobs SMCRA Promised as the Trade-off For Allowing Mountaintop Removal?

In a 1997 interview, longtime West Virginia coal industry lobbyist Ben Green told Business Week, "With mountaintop removal, you get 100% mineral recovery, you can't mine again, and you get better land use than you ever had in its natural state." If by "better land" Greene meant "flatter" land then his statement was true. Mountaintop removal had created tens of thousands of acres of flat land. Greene's claims echoed the arguments that persuaded Congress to allow the practice only if the resulting flattened mountaintop was to be used as part of a coal operator proposed development that would create jobs for coalfield communities and promote local economies.

Ben Greene was not alone in trumpeting the value of flat land. As they have from SMCRA's inception, coal industry and government officials continue to tout flattening mountain ridges as a panacea for economic development. There was, and is, one problem with the scenario—mountaintop removal has played a significant role in the precipitous decline in coal mine employment, and has flattened and deforested mountaintops that now lay barren, generating weeds rather than jobs. As explained below, a quarter century after enactment, SMCRA's promise to coalfield communities of shopping centers, industrial plants, and new affordable housing—all located on flattened mountaintops—has been broken.

In August 1997, Penny Loeb, a Senior Editor at U.S. News & World Report, broke the story of mountaintop removal's adverse impacts on coalfield residents. Her article, "Shear Madness," exposed to a national audience the social and environmental injustice attendant the large-scale expansion of mountaintop removal in the coalfields. Loeb wrote:

> [C]oal companies and some state officials note that strip mining provides high-paying jobs—weekly pay averages $922. And some contend that West Virginians are better off with their mountains flattened—several dozen buildings, including four schools and three jails, have been built on them so far.
>
> . . .But the costs are indisputable, and the damage to the landscape is startling to those who have never seen a mountain destroyed. Topographic and landscaping changes leave some regions more vulnerable to floods. . .. And state employment records suggest the jobs argument is not very compelling. Mountaintop removal accounts for only 4,317 workers in the state—less than 1 percent of its job force. Overall, mining employment in the state has fallen from 130,000 in the 1940s and 1950s to just 22,000 last year. Loeb

catalogued multiple impacts on coalfield communities caused by the proliferation of mountaintop removal mines:

> Thirty floods have occurred in the past two years in areas where watersheds were bared and redesigned, and several people have lost their lives in such floods. Whatever the role of mining in the state's overall economy, its impact on nearby communities is devastating. Dynamite blasts needed to splinter rock strata are so strong they crack the foundations and walls of houses: Homeowners filed 287 blasting complaints with the state in the past year. Trucks full of coal rumble past some people's front porches at the rate of 20 an hour, 24 hours a day. Mining dries up an average of 100 wells a year and contaminates water in others.

The claims that mountaintop removal would bring economic development and prosperity to coalfield communities are not supported by the facts.

> Thirty floods have occurred in the past two years in areas where watersheds were bared and redesigned, and several people have lost their lives in such floods. Whatever the role of mining in the state's overall economy, its impact on nearby communities is devastating. Dynamite blasts needed to splinter rock strata are so strong they crack the foundations and walls of houses: Homeowners filed 287 blasting complaints with the state in the past year. Trucks full of coal rumble past some people's front porches at the rate of 20 an hour, 24 hours a day. Mining dries up an average of 100 wells a year and contaminates water in others.

Loeb's report was followed by a comprehensive series of investigative newspaper articles in the Charleston Gazette, beginning in 1998, which examined mountaintop removal mining and its impacts on the economy and people of the coalfields. The series, "Mining the Mountains," exposed the myth promoted for two decades by coal industry advocates. The claims of industry lobbyists, politicians, and regulators that mountaintop removal would bring economic development and prosperity to coalfield communities were shown to be demonstrably false.

State Mountaintop Removal Permitting Receives Scrutiny

The first article in the series described a DEP hearing on the application for the largest strip mine ever proposed in West Virginia. The hearing was held in the gymnasium of an aging Logan County elementary school; more than 125 people jammed the narrow bleachers. Ward described the scene as follows:

> Just over the ridge from the school, Arch Coal Inc. had stripped 2,500 acres of the Logan County hills around Blair Mountain. The company has applied for a permit to mine 3,200 more.
>
> If state regulators approve the new permit, giant shovels and bulldozers will eventually lop off the mountaintops of an area as big as 4,500 football fields.
>
> Residents of the tiny communities along W.Va. 17 complained Arch Coal's existing mine already makes their lives miserable. Why, they asked regulators at the hearing, should the company get a permit to mine more?
>
> Melvin Cook of Blair was the first to walk across the gym floor to a microphone and speak up. He complained about the blasting.... "You can't bear it," Cook said. "It has torn my house all to pieces."
>
> Residents of nearby communities were not the only people who attended the public hearing.

A solid block of the gym's bleachers was filled with miners and their families who said that "they wanted jobs at the new mine. But they agreed the company should make sure mining doesn't disturb area residents."

The Gazette series told of giant machines that "towered over old-time shovels and bulldozers" used in earlier coal stripping. Those monster machines "can literally move mountains," the newspaper related; only a few skilled equipment operators stood at the controls. Gazette readers also learned that in twenty years nearly 500 square miles of the state had been strip mined; from 1994 to 1998, the average size of the new mines had doubled each year; and, in 1997, DEP had issued new permits totaling 31 square miles, an area larger than Charleston, West Virginia. Today, the areas and coalfield communities impacted have grown substantially, while coal production continues to produce high revenues for coal companies—but few of the jobs or economic development promised by SMCRA.

State Mountaintop Removal Permitting Decisions Questioned by Environmental Protection Agency

The Gazette also closely examined specific mountaintop removal permitting decisions by state and federal agencies. The series noted that Arch Coal, Inc.'s subsidi-

aries had been seeking agency approval to permit larger and larger mines which would bury long segments of mountain headwater streams.

Coal Industry's Initial Response to Media Investigations of Mountaintop Removal

At the beginning of the "Mining The Mountains" series, Ken Ward Jr. explained the initial response of coal industry officials and state and federal regulators: "Coal operators say all of this attention is unwarranted. Some have hauled out standard jobs-vs.-the-environment arguments. Others insisted the fight over stopping strip mining ended decades ago—and that they won."

A coal mine manager told Ward, "'I want everybody to understand that we have been trying to work with the community[.]. . .It's not as one-sided as everybody tries to make it appear.'" An official of the DEP Office of Mining and Reclamation said, "'We think we're doing a daggone good job, but we could always do better.'" An environmental engineer in EPA's Region III told Ward: "'We are definitely evaluating the overall issue[.]. . .But at this point, we're just talking among ourselves[.]. . .It's a little early to say what EPA will do right now.'"

Regulators Ignore SMCRA's "Approximate Original Contours" Mandate

As discussed above, SMCRA requires most strip mines to be reclaimed to their approximate original contours (AOC). SMCRA, however, allows the AOC requirement to be waived for mountaintop removal mining operations in certain narrowly circumscribed situations. In order to qualify for an AOC waiver, a permit applicant is required by SMCRA to propose commercial, industrial, residential, agricultural, and/or public uses for the land after it has been stripped, leveled, and reclaimed. The obvious goal of waiving the AOC restoration mandate was economic development that would bring new jobs and prime the pump for coalfield community economies.

A Charleston (W. Va.) Gazette investigation raised serious questions about state and federal agency oversight of state decisions to waive AOC restoration requirements for mountaintop removal mines. The Gazette described a visit to DEP's Logan County office and his discussions there with officials in charge of permitting mountaintop removal mines:

> Ken Stollings points to the maps and charts on his office wall to show how Hobet Mining will turn the rugged peaks and valleys around Blair Mountain into flat plains and a few rolling hills.
>
> Stollings, a Division of Environmental Protection engineer, shows the changes to his boss, agency permit supervisor Larry Alt. Asked if this proposal meets the legal mandate that mined land be reclaimed to its "approximate original contour," Alt and Stollings just laugh.
>
> "We just can't stack it as high as God did," Alt says with a shrug.

Approximate original contour, or AOC, is the heart of the federal strip mining law. But among many West Virginia regulators, it's becoming a joke. The Gazette reported that the AOC waiver rules were "routinely skirted by dozens of huge mountaintop-removal strip mines." After coal companies blasted and ripped apart mountain ridgetops to reach multiple coal seams, state regulators allowed them to avoid the expense of restoring the land to AOC. Instead, DEP permitted coal operators to take the cheapest path: shoving and dumping the remains of mountains—millions of cubic yards of rock and dirt—on top of headwater streams in nearby valleys.

Information contained in DEP's own files revealed a systemic failure on the part of state regulators to apply SMCRA's AOC requirements to mountaintop removal mines. An The investigation found that in 1997 alone, DEP had authorized twenty permits for mountaintop removal mines to level twenty square miles. That study showed that the companies obtaining these permits rarely ask for or received approximate original contour exemptions for mountaintop removal." A West Virginia Freedom of Information Act request revealed that only one-quarter of active mountaintop removal mines had obtained the AOC exemption. Thus, 75% of active mountaintop removal mines in West Virginia were being operated in violation of state and federal law.

A freedom of information Act request led an investigative reporter to a memorandum written in the early 1990s by OSM officials that, for the first time, resembled an agency AOC policy. Because the policy contained no guidance for permit reviewers on how to define AOC, it served as the basis for state officials' later defense that they had no idea what AOC meant when it came to mountaintop removal mines. The upshot of this bureaucratic sleight of hand was that operators could lop hundreds of feet off mountaintops, dump "excess spoil" into valleys, and level off thousands of acres—all under the guise of meeting SMCRA's AOC requirement.

By definition a mountaintop removal mine is one that removes entire coal seams running beneath a mountaintop. Many of the mines permitted without AOC variances reduced the elevation of mountain ridges by hundreds of feet. A mountaintop removal mine that reclaims mined land to its approximate original contours is obviously an oxymoron—but an oxymoron that regulators were willing to embrace so that coal operators could avoid SMCRA's strict economic development requirements applicable to mountaintop removal mining. The most egregious impact of DEP's failure to enforce the AOC requirement was the denial of jobs and permanent economic development that should have accompanied mountaintop removal mining operations.

The Response of Industry and Regulators to the Revelation that AOC Requirements Had Been Ignored for Two Decades

Upon learning the results a newspaper's investigation of DEP's systemic violation of AOC permitting requirements, coal lobbyists at first admitted that problems might exist. However, they insisted that only technical matters were involved. The president of the West Virginia Coal Association told the Gazette: "'It sounds like to me [like DEP] needs to take a look to see if they meet all the requirements[.]. . .Apparently, there are some issues to be addressed, but they have little [to] do with environmental compliance.'"

An A.T. Massey public relations officer asserted, "'Massey Coal companies have complied with the reclamation regulations[.]. . .On any permit that does not include an AOC variance, the plans for reclaiming the mine site meet state guidelines for AOC standards.'" David Todd, then an Arch Coal executive asserted, "'We have been applying for mining permits and they have been reviewed by and granted by DEP, with oversight by OSM[.]. . .That's got to be pretty fair evidence that [mountaintop removal mines] are being approved and operated according to and in compliance with the law.'"

A supervisor of the OSM Charleston field office was questioned at a press conference where he appeared with the visiting OSM Director. OSM maintained that DEP was not issuing mountaintop removal permits without AOC variances. When later confronted with a list of such permits, the federal officials promised OSM would look into the allegations. "'Maybe we should put the burden on the state to come up with some criteria,'" an OSM offical said. "'It's something we might want to tighten down on. I don't think the state has paid enough attention to AOC and postmining land uses and configurations.'"

A Promise Broken: Systemic Waiver of Mountaintop Removal Requirements Negate SMCRA's Economic Development Goal

A Charleston Gazette investigation during the summer of 1998 examined longstanding claims of coal industry advocates and government regulators, who championed mountaintop removal as an economic development engine. The Gazette published a devastating article documenting how SMCRA's promise of economic development had been ignored by the West Virginia coal industry with the acquiescence of state and federal regulators.

The Gazette found that for more than two decades, SMCRA's mountaintop removal requirements had been consistently ignored by regulators and coal operators. Coal companies had been allowed to flatten mountains and dump hundreds of millions of cubic yards of "excess spoil" in valleys obliterating hundreds of miles of headwater streams.

The Gazette investigation found that over two decades, DEP had permitted more than fifty square miles for mountaintop removal mines; the plans for "economic development" at those mines were limited exclusively to pastures, hayfields, forests, or range lands On the contrary, the Gazette's investigation showed that the most popular land use proposed for mountaintop removal sites was "fish and wildlife habitat." Incredibly, while "fish and wildlife habitat" was not a post-mining land use recognized by SMCRA, it accounted for almost one third of the total mountaintop removal acreage permitted by DEP. In the last decade however there has, thankfully been at least some effort to create post-mining development on MTR mine sites. That effort has been meager, to say the least. The full potential of SMCRA's post-mining economic development mandate has been ignored.

The Response of Industry and Regulators to the Lack of Economic Development

When confronted with the results of the Gazette's postmining land-use investigation, industry lobbyists agreed there had not been much development, but claimed it was not the fault of coal operators. "'Are you going to have a Toyota plant at Wharncliffe, West Virginia?'" one asked. Answering his own question, he said,

"'Probably not. But I don't think the law obligates the mining industry to put up bricks and mortar. Our responsibility is to make sure the opportunity is there.'"

The former President of the West Virginia Mining and Reclamation Association said SMCRA's requirements were outdated and "'too stringent for today's large mountaintop removal mines.'" An official with DEP's Office of Mining and Reclamation said that all the involved parties needed to look at postmining uses: "'There's not a lot of pre-planning done in terms of development[.]. . .There is a need for some long-term land use planning considerations. It's hard for us to say what's going to be out there and who is going to develop what and what the future holds.'"

Conclusion

It has been more than a decade since these questions were raised about the failure of state and OSM officials to require coal operators engaged in MTR mining to provide the SMCRA mandated industrial, commercial, and residential economic development—the long-term economic development sorely needed in the Appalachian coalfields.

It is laudable that members of this Committee and the author of the Bill under consideration seek ways to bring much needed jobs to coalfield communities. There is no disagreement that unnecessary regulations can impede economic development and deprive our nation of much-needed jobs at a time of nationwide concern about our economic future.

Make no mistake however jobs and environmental protection that protects coal field communities and their land and water and economic development—are not mutually exclusive. While the proposed bill is no doubt well intended, it does not hold out a serious promise for the creation of jobs in America's coalfields. Removing virtually all power of the Department of the Interior to take regulatory action to protect coalfield communities is neither wise policy nor will this Bill impose legally enforceable standards that could possibly create the employment opportunities that in the sponsor's goal.

With all due respect, this Committee can take the initiative to investigate the failure of state and federal regulators to honor SMCRA's promise of post-mining industrial, commercial and residential development on lands permitted for MTR mining.

When Congress enacted SMCRA in 1977 it recognized a trade-off—flattened mountain ridges would be replaced by long term economic development creating jobs in coal regions where the boom-bust economic cycle had resulted in high unemployment and few opportunities. For those who desire jobs in the coalfields one must ask—why has SMCRA's mandate been almost totally ignored.

This is not to say, however, that jobs are more important than the homes, water supplies, and the environment of coalfield communities. Recent studies have raised serious quations about the possible relationship of large scale coal mining operations and adverse health impacts on those who live near mines. Moreover, peer-reviewed studies by scientists indicate very serious concerns about the impact of some coal mining on water quality of entire watersheds in Central Appalalachia.

This Committee and this Congress should heed these warnings and thoroughly examine coal mining's externalities before deciding that regulation by the Department of the Interior is unnecessary, kills jobs and inhibits the spirit of creativity and ingenuity that have long characterized American industry and business.

The lessons of the past provide important messages for the policy makers of today. Those lessons—of the Buffalo Creek disaster, of the Farmington No. 9 mine, and more recently of the Massey Energy Upper Big Branch Mine explosion speak to us today. Black lung disease is on the rise among coal miners, our coal mines are still not safe enough and enforcement of SMCRA and the Clean Water Act still does not adequately protect coalfield communities.

I would be glad to answer any questions and to provide any additional information that may be helpful to the Committee. Thank you.

Mr. LAMBORN. OK. Thank all five of you for your testimony. I appreciate that.

And we will start our first round of questions with myself.

Mr. Dana, as I am sure you are aware, in February the Administration settled a lawsuit and announced they would be re-reviewing the current rules for commercial oil shale leasing and amendments made to the resource management plans.

Can you tell the Committee what this review will do to the progress of oil shale development in the West?

Mr. DANA. Mr. Chairman, in my opinion, the uncertainty that is being sown by certain groups that would oppose the industry has been very effective. Since the Energy Policy Act of 2005, which instructed Interior to take steps forward to significant oil shale development, that hasn't occurred. And that, I believe, more than anything, is slowing down industry.

It has been said, with respect to water and environment, that these resource management plans have to be reviewed over and over again. What I believe now is happening is just—it is never going to end. It is really just a tactic of anti-oil to stop oil shale development in the U.S.

Mr. LAMBORN. And my next question: In 2007, six 160-acre tracts of land were leased to 3 companies for R&D and demonstration projects, with the potential to expand each of those to as much as 5,120 acres. However, in the second round of leases, the expansion potential was decreased to only 480 acres and, as a result—and I am talking about under the current Administration—and, as a result, received little industry interest.

Do you feel that this decision made by the Administration benefited or injured oil shale development? And are you aware of the reasons behind this decision by the Obama Administration?

Mr. DANA. Well, Mr. Chairman, I am not aware of all the reasons. I can speak from experience.

My small company that I was involved with in Utah, which has now raised over $100 million for excellent technology, did not participate in those leases, for the purpose of—the leases are just not big enough.

It also creates an enormous amount of expense that small companies like ourselves cannot innovate because of the cost of NEPA and the EA work that is involved. So what you have is America's best and brightest trying to develop technologies that can address water use, lower emissions, and expand our national security through energy, but we have no ability to come forward through the gauntlet that is being put forth by the current Administration to get through the BLM in a reasonable manner that small companies can innovate.

There is a real need for small-company innovation in this space, because the major oil companies often weigh their projects, including oil shale, against their best economic projects globally. They determine things on a basis of internal rate of return, and so, as they look at their overall projects globally, oil shale moves down to the lower end of the internal rate of return, despite the fact that for the last 6 years oil has averaged $85 per barrel.

At $85 per barrel, the industry should have been in operation for the last 6 years. At $50 oil, everybody breaks even. At $60 oil, you start to do OK. At $70 oil, you do very well. At $80 oil, you do very, very well, and so forth. This is similar to the Canadian Alberta tar sands experience. It will be the same in the United States as we go forward.

Mr. LAMBORN. Something I have noticed, and many people have as well, and that is that most of the innovative energy production in this country in recent years, since the Obama Administration came into office, has been on private lands. You look at the

Marcellus gas shale in Pennsylvania, you look at the Bakken oil shale, the conventional oil from shale deposits in North Dakota.

And is this also happening with oil shale in the West, in your experience?

Mr. DANA. Mr. Chairman, absolutely. The private lands and also the lands under the School and Institutional Trust Lands of Utah are really America's best hope to open up lands, whereas the BLM lands have not been allowed.

In the Energy Policy Act of 2005 and in these resource management plans, they make clear that there are 1.9 million acres of oil shale lands. Less than 1 percent of 1 percent since EPACT 2005 has been leased to the private sector to develop. So not only are companies like ours limited to private lands and SITLA lands, but now we see major oil companies who have excellent technology, such as Royal Dutch Shell, have gone to the Hashemite Kingdom of Jordan, completely out of the United States, looking for other lands, not only private but away from our regulatory burden.

Mr. LAMBORN. Well, I am glad that those private lands are available out there, but it is a sad state of affairs when the 2-1/2-billion-acre Federal estate in this country, including offshore areas, is not open for energy production. And we see hurdle after hurdle thrown in the way of companies that would be willing to invest their private dollars at no cost to the taxpayer. And it is just a sad state of affairs.

I turn over the questioning now to Representative Johnson.

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

Mr. Gardner, I had no idea that you were a tobacco farm boy. I bet you there is not more than you and myself in here that know what sand lugs are. We will have to talk about some of those stories another time.

Mr. GARDNER. Yeah, I have the honor of being involved in the two most politically incorrect industries in the country.

Mr. JOHNSON. Yeah.

Well, gentlemen, on a more serious note, I can tell you that I am both shocked and alarmed at your verbal testimony and your written testimony that has been entered into the record and some of the clarification that you have provided that points to some pretty shocking inconsistencies with information that we have received from OSM and Director Pizarchik in the past.

On November 4th, the Director testified at that very table where you are sitting and was specifically asked if any official at OSM had asked the contractor, and therefore the subcontractor, to change the assumptions for its economic analysis, and he replied, and I quote, "As regarding any official, anybody in the management level, I don't believe that occurred."

However, in your statement, you said that there was a meeting in February of this year where OSM management demanded that you revisit the production impacts and, therefore, the associated job loss numbers and make different assumptions to show less of an impact.

In your view, does this not contradict the Director's answer in his previous testimony?

Mr. GARDNER. Yes, I felt it did.

Mr. JOHNSON. Mr. Zaluski?

Mr. ZALUSKI. Yes, sir.

Mr. JOHNSON. In fact, was not the main purpose of the February meeting to figure out a way for the agency and, by extension, you and the other subcontractors to lower the impact numbers?

Mr. GARDNER. Well, that is what it appeared to us.

Mr. JOHNSON. Furthermore, was the February meeting between OSM and the contractors tape recorded or transcribed?

Mr. ZALUSKI. It was our understanding that, under the contract between OSM and PKS, the prime contractor, that they were required to tape or record every meeting, yes, sir.

Mr. JOHNSON. OK. Were the tape recordings sequentially numbered?

Mr. ZALUSKI. I believe so.

Mr. JOHNSON. Do you have complete copies of all of these? And, if so, will you provide all of these sequentially numbered recordings and transcripts to the Committee?

Mr. ZALUSKI. We don't have those.

Mr. JOHNSON. You don't have them. Can you tell us who can provide those to the Committee?

Mr. ZALUSKI. I would assume PKS. I would assume OSM. I can't say much more than that, sir.

Mr. JOHNSON. OK.

Mr. Chairman, as a matter of record, we need to get those recordings.

Mr. LAMBORN. So noted.

Mr. JOHNSON. This, to me, is, frankly, as I said, shocking and alarming, that the Administration asked you to make false assumptions. Some people would call that lying. You know, as a two-wheeled-wagon-rut, mule-farming farm boy, tobacco-farming kid, I can tell you that is what it means to me.

And the meeting that you attended in which this happened could be on tape somewhere. I am looking forward to getting those tapes. It is imperative to me that the Administration turn these over to the Committee immediately so that we can verify and further clarify what we have heard here today.

Mr. Gardner, you said that after the job loss numbers came back that OSM asked your company, ECSI, to make the assumption that the 2008 stream buffer zone rule was in effect and being enforced across the United States, which was not true.

Why was one of the changed assumptions that OSM asked you to make was that the use of the 2008 stream buffer zone rule—can you edify that, please?

Mr. GARDNER. Well, it was in that February 1 meeting. And, again, I used the word "strongly suggested" that we change our assumptions to change the end results. That 2008 stream buffer zone rule proposal would have changed production. There would have been impacts from that. And it was predicted, and OSM also agreed, that that would have reduced production across the country. Therefore, they wanted us to start with that as a baseline, and that, obviously, would have led to a lower production impact and then, consequently, plugged into the economic model, lessen job losses.

Mr. JOHNSON. OK.

Mr. Chairman, I want to continue with this line of questioning. I am out of time this time. I am hoping we are going to have another round.

Mr. LAMBORN. OK, our next questioner is Mr. Landry.

Mr. LANDRY. Mr. Chairman, I would like to yield my time to the gentleman from Ohio.

Mr. JOHNSON. I thank the gentleman for yielding.

So, by implementation of the 2008 stream buffer zone rule, production would have been decreased, and, therefore, the job loss numbers under the new proposed rule would not reflect nearly as badly as they did. Is that what I just heard?

Mr. GARDNER. Yes, sir.

Mr. JOHNSON. OK. So is it safe to say that, contrary to what Director Pizarchik told members of this Committee 2 weeks ago about the 2008 stream buffer zone rule being a rollback, that is false? Because, in fact, the 2000 rule added significant environmental protections that would have increased costs and reduced the amount of coal available for production across the board, had it been implemented by OSM. Is that correct?

Mr. GARDNER. That was everybody's belief.

Mr. JOHNSON. OK.

Were the economic impact numbers just a placeholder? You talked about that a little bit before. Were the economic impact numbers just placeholder, numbers that have no basis in fact, as stated by Director Pizarchik? Either one of you that wants to answer.

Mr. ZALUSKI. We took great offense at that, Congressman. The numbers that the Director refers to as placeholders became placeholders because OSM changed the assumptions that were used to create those numbers. Not only was the 2008 stream buffer zone one of those assumptions, we were told to maintain the national thermal balance—if coal was lost in one area, how much coal someplace else would have to be picked up. We were told to use the 2008 EIA production numbers and then suggested maybe 2010 numbers might be better. We were told to use a static model and then, later on, a dynamic model.

And it is like statistics; you can make this say anything you want it to say, which I think was the driver here. But the dynamic model would be—the result of that would be, there may be jobs lost, but they are being lost because of the recession or decreased demand for coal. Anybody else is responsible—or greenhouse gas legislation or implementation. So they were trying to put the job loss, in my opinion, off on anybody else but OSM's SPR.

Mr. JOHNSON. OK.

So if Director Pizarchik claims that those numbers were meaningless placeholders, as he has indicated before this Committee, and that they had no basis in fact, why would they need to have an all-day meeting to discuss how to change the assumption in order to lower the numbers?

Mr. GARDNER. Good question.

Mr. ZALUSKI. Lots of things happened that day, Congressman. It was a contentious meeting.

Mr. JOHNSON. OK. But was this change in assumption—first of all, OSM gave you the assumptions, right?

Mr. ZALUSKI. Yes, sir.

Mr. JOHNSON. OK. I want to make sure that that is in the record.

So was this change in assumptions noticed in the draft EIS as a placeholder?

Mr. ZALUSKI. There is a footnote at the beginning of chapter 4 explaining that these are placeholders because——

Mr. JOHNSON. Because of the change in assumptions.

Mr. ZALUSKI. Yes, sir.

Mr. JOHNSON. OK.

Speaking of the draft EIS, how did Director Pizarchik's original decision not to include scoping, which would have been a violation of NEPA, affect the contractor's work on the rule?

Mr. GARDNER. That put us behind approximately 4 months right off the bat.

Mr. JOHNSON. Were you given any additional time on the end to do the real tough, heavy-lifting work?

Mr. GARDNER. I would have to go back and look at the schedule. I believe there was a bit of time added, for several reasons, but not enough time to adequately address what we felt needed to be done.

Mr. JOHNSON. OK. So you mean to tell me that, in a process that the United States and others have said is moving at breakneck speed, you lost 4 months of that process because of Director Pizarchik and the Administration's oversight of doing scoping first? Is that accurate?

Mr. GARDNER. Yes, sir.

Mr. JOHNSON. It seems to me that there is just a pattern of mismanagement on this rulemaking by OSM.

Mr. Gardner, you have testified that OSM staff were embedded with you and the other subcontractors, and they were intimately involved in working on the EIS. Do you believe that this rule should be considered economically significant? And did OSM staff agree that the rule was economically significant and that it would result in job losses?

Mr. GARDNER. I believe they did, yes.

Mr. JOHNSON. OK.

Mr. Chairman, I am down to seconds, so I am going to yield back the 5 seconds, but hopefully we will get another round because I am not done.

Mr. LAMBORN. Well, we will start our second round here.

Mr. Eikenberry, you said a number of things I disagreed with, but let me just focus on a couple. And then I will have Mr. Dana, sort of, give a rebuttal or his version of the answer.

You said that extracting usable petroleum products from oil shale is a failed technology. Are you aware that there is not really any one settled technology, that there is still research and development and experimentation? And, to me, it is premature to say that we have a, quote/unquote, "failed technology" when there are companies out there willing and eager to invest their moneys and try different things.

Mr. EIKENBERRY. Yeah, I am very much aware of that, and that is one of the reasons why no one has the technology to make this oil shale industry viable. It is simply not there. It won't be. I have been involved in this thing for 40 years——

Mr. LAMBORN. OK. Well, then, that leads to my next question. You said you thought there would be a gamble or a risk to the taxpayer. I don't see that. If a company thinks that they have a possibility of getting a good rate of return and they are willing to invest their own private dollars, number one, I don't see that that puts the taxpayers on the hook for anything, and, number two, maybe they will come up with something and have a breakthrough.

I mean, look at hydraulic fracturing. That has only really come on—we knew about hydraulic fracturing for a long time, but only when you married that up—if I understand correctly the sequence, you know, it is only when you married that up with horizontal drilling that you could really unleash the potential of shale gas. And that has just been a few years ago.

So how can you—you don't have a crystal ball that says it is never going to work. And besides, if they are willing to invest their own money, why should you or I really care if they want to throw their money away?

Mr. EIKENBERRY. Well, as long as they have the resources—like, Shell has roughly a trillion dollars, supposedly, of oil shale resources that they are not moving forward with in any way, shape, or form. If they thought they had a technology and they thought that this was viable, they would be pushing this. They are not. They are backing off.

There are just simply too many headwinds associated with oil shale, not the least of which, any which one, and not the least of which is just the technology.

Mr. LAMBORN. OK, then if, in your opinion, it is never going to work, why do you care if we let them go out and prove that?

Mr. EIKENBERRY. I simply don't care, but don't get the communities out there in these small—in these areas excited about a big oil shale industry, because it is simply not going to happen. And if it does happen, let the big oil, let the companies provide that infrastructure to these companies when and if it happens. But don't keep pushing this thing. That is what I am saying.

Mr. LAMBORN. OK.

Mr. Dana, you have heard our interchange. What is your commentary? And then, also, if you could address the issue, on top of that, of water, because he expressed earlier a concern that this would use a lot of water.

Mr. DANA. Thank you, Mr. Chairman.

And with respect to you, Mr. Eikenberry, I completely disagree. And I think I would just put forth and refer you to look at what is happening globally right now. In China, the Fushun Mining Corporation has tens of thousands of barrels of retorting going on right now. They just recently installed about a $400 million technology from ThyssenKrupp, the ATP process. This is all new brand-new technology that is producing tens of thousands of barrels of oil. In Australia, very large projects down there proceeding forward with QER backed by very big people with excellent technology.

I would also refer you to look in Jordan and the progress that they are making in Jordan. I would refer you to look in Brazil, where the Petrosix Process has been managed very well for the last 20 years, and Petrobras has now come to Utah looking for technology. I would also let you know that Mitsui and others have been

in Utah, including the Estonian Government just recently bringing their technology from Estonia, which just recently has been expanded in Estonia with wonderful technology.

So it is a global resource. It is very real. Unlike the comments that you made about water—water is abundant. I, myself, am a very big water owner in Uintah County through our company. That water was readily available. There is an enormous amount of water under——

Mr. LAMBORN. But does your process that your company is particularly concentrating on, does it use water at all?

Mr. DANA. I actually innovated a technology, along with Dr. Jim Patten, for Red Leaf Resources that does not use water. And so it is very effective. I assigned that to Red Leaf Resources.

So there are people working on environmental solutions. The water can be mitigated. The emissions, by not going into burning the rock but using indirect heating, which is through clean-burning natural gas, is a new innovation.

And I would just say, look back to the efforts made in Canada. For 40, 50, 60 years, they struggled with the Canadian Alberta tar sands. What they did is they stuck to it with clear and defined regulation from the Alberta province that allowed them to move forward with the Canadian tar sands. In the last 10 years, they have had $100 billion of capital investment. They are now the number-one supplier of crude oil to the United States.

The substantial amount of that imported oil is truck and shovel mining, two tons to make a barrel. It is the same with oil shale. The difference is that when you pyrolize oil shale, the resulting crude that you get is actually very premium to——

Mr. LAMBORN. And, last, what about the impact on taxpayers?

Mr. DANA. Well, the impact on taxpayers is only positive for oil shale. If you look at 2-1/2 million barrels per day, which is likely over the next 25 years, you are looking at half a trillion dollars, based on the taxable income from upgraders, the taxable income on retorting, and the royalty rate at a flat 8 percent average. We are talking—we have looked at this. It is very doable.

There has been 4 million barrels produced in the United States. It was tested for JP-8 fuel back in the first go-around. This is a wonderful asset. It will create millions of jobs. It is real. And we need to get rid of the regulation that is stopping it.

Mr. LAMBORN. OK. Thank you.

I am sorry I have gone over my time. Mr. Johnson and then Mr. Amodei.

Mr. JOHNSON. Thank you, Mr. Chairman.

Now, in the last round of questioning that I had, we established that both you, Mr. Gardner and Mr. Zaluski, both you and your colleagues, as well as the OSM staff, agreed that the rule was economically significant and that it would result in job losses, correct?

Mr. GARDNER. Yes.

Mr. JOHNSON. Then if OSM staff thought it was economically significant and would lead to job losses, why in the world did Director Pizarchik testify 2 weeks ago that the rewrite of the rule would actually create jobs?

Mr. GARDNER. You would have to ask him that.

Mr. JOHNSON. OK. Well, I intend to. Thank you.

Furthermore, based on your understanding and expertise in the coal industry, do you think that the economic analysis firm was correct to say that the number of direct jobs lost would be about 7,000?

Mr. GARDNER. Frankly—and this is my personal opinion—I was surprised it was that low.

Mr. JOHNSON. OK. All right.

Did the firm that did the economic analysis, did they have any coal experience background, that did this?

Mr. GARDNER. I am not sure of their exact experience. I know they were Ph.D.-level economists, and I am not sure if they had coal experience or not. They were economic modelers.

Mr. JOHNSON. OK.

Obviously, once OSM used its influence over Polu Kai to come to a, quote/unquote, "mutual decision" to end the contract, your contract with Polu Kai and OSM also came to an end. Since that time, has OSM hired another contractor to finish the EIS?

Mr. GARDNER. Yes. I saw a press release that indicated that they had hired another contractor, I believe back in June.

Mr. JOHNSON. OK.

Do you know if there is a balanced approach with industry and environmentalists on the team working on the EIS now, like there was when you folks were involved?

Mr. GARDNER. I don't know the exact makeup of the team or the experience. I believe I saw in the press release that Morgan Worldwide was still working on the revised contract, along with another company, Energy Ventures Analysis.

Mr. JOHNSON. OK.

Finally, and just to clarify, the rewrite of the rule would significantly affect underground mining, correct?

Mr. GARDNER. Yes. That was our belief, yes.

Mr. JOHNSON. OK.

Now, I have also heard that Polu Kai, itself, did not have the experience and the qualifications to do this job, and, therefore, that is why OSM basically handpicked and came to you guys as the subcontractors. Is that an accurate statement?

Mr. GARDNER. That was my impression. We were approached many months in advance of the contract and an RFP that was issued, and we thought a very good team of experts put together to work under the PKS contract. And they contributed to the work. They hired several people, themselves, and they were the contract administrators and logistical support and contributed to the NEPA aspects of the project.

Mr. JOHNSON. But you and your colleagues, you were the subject-matter experts that were doing the heavy-lifting work?

Mr. GARDNER. In the mining, that was our role, was to be the mining experts on the team.

Mr. JOHNSON. OK. And if I understood your testimony here today, as well as Mr. Pizarchik's testimony previous, he has questioned your qualifications, correct?

Mr. GARDNER. That was the impression I got.

Mr. JOHNSON. OK. Well, but you were handpicked by OSM, right?

Mr. GARDNER. Yes, sir.

Mr. JOHNSON. OK. All right.

OK. Well, I want to thank you both for your testimony. I also want to commend both of you for your integrity in standing up to the Administration when they asked you to use false assumptions to give them the answers that they wanted. A lot of folks in your shoes would have taken a different course, perhaps, to make a quick buck, but you stood up, did the right thing, and it shows that you and your company and you gentlemen are men of honor. And I thank you again for being here today.

Mr. Chairman, today some very troubling information has come to light and makes my legislation all the more important. I hope that we will begin to receive the answers from the Administration as to how political appointees are overriding the judgment of career OSM employees and the very contractors that OSM selects to do these important jobs.

In my opinion, it is necessary for at least Director Pizarchik, if not Secretary Salazar, to come back to this Committee to testify on these new developments. I will not rest until we have all the answers on this rulemaking process, until my legislation becomes law, because thousands of jobs in my district are on the line. The American people demand accountability in the Federal Government. And I think we have some very serious concerns here. I want to get to the bottom of it.

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

Mr. LAMBORN. OK, thank you.

Representative Amodei?

Mr. AMODEI. Thank you, Mr. Chairman.

Following the lead of the preceding speaker, I will yield back the balance of my time and——

Mr. LAMBORN. OK, if I could reclaim——

Mr. AMODEI. Absolutely.

Mr. LAMBORN.—the remainder of your time?

And I will just have a couple of wrap-up questions for the witnesses who talked on the coal issue. This is such an important issue. And Representative Johnson has done a great job of drilling down into a very specific sequence of events that help understand what was really happening, but I would like to just stand back and ask a couple of general questions.

Are you aware that the stream buffer zone rule—and we got this in the testimony, and both of us were there, as well as Representative Shelley Moore Capito, in Charleston, West Virginia, about a month and a half ago. And we heard testimony that underground longwall mining will be severely affected and curtailed by the stream buffer zone rule, not just so-called mountaintop mining.

Is that something that you both are aware of?

Mr. GARDNER. Yes, sir. And that was our analysis in the production impacts. And, as I said earlier, we had repeatedly asked if the proposed rule would apply to underground mining and did not receive that answer until well into the project. And then that changed the whole scope and the analysis. And we received conflicting instructions throughout the process on exactly what OSM personnel thought those impacts would be.

Mr. ZALUSKI. I would concur, Chairman. The instructions, the directions changed constantly. The answer to your question directly

is, yes, it will impact underground mining, longwall mining, for very different reasons, perhaps—the waste disposal.

At one point—again, I think the fact that they had knowledgeable people as contractors is what presented OSM with a problem here, perhaps. But I asked if, in fact, a longwall permit with less than 400 feet of cover—kind of a technical term—would even be issued. Originally, the answer was, no, we will not issue that permit. Well, that sterilizes a lot of coal. Again, a direct answer to your question. That answer was reversed a few months later, that, yeah, we will answer that, we will issue that permit.

So we don't know, because we have been out of the loop now for a few months, what the final rule is going to look like. But that is a very important issue. It does apply to underground mining. It does apply to longwall mining. And they are all tied to—another issue in the SPR was the definition of stream. And we talked to the Congressman's staff about this.

One of our assignments was to define a stream. And I know you have been on this Committee for a while. That is a gigantic chore. And, again, we are given a few months to do that, but it impacts everything: where you can mine, where you can't mine. It also impacts underground mining.

So the answer is "yes" for several reasons.

Mr. LAMBORN. OK. When I see this Administration time after time—I mean, the latest, delaying the Keystone XL pipeline decision—shutting down energy source after energy source. If it was just one or two isolated things, I wouldn't say there is a pattern, but I just see a pattern day after day of doing this.

Do you think there are some in OSM or higher up who have an agenda of, not just by unintended consequence of bureaucratic regulation that can't take everything into account, which happens every day around here, but actively trying to shut down underground mining and not just the so-called mountaintop mining?

Mr. GARDNER. Let me respond first by saying, I have many friends that work for OSM. They are professionals, they are engineers and scientists, they are mining engineers and other professionals that I feel have great knowledge.

Now, there are some issues. And we were very surprised by a lot of the instructions that we got and the changing of instructions. So, to answer your question, I was concerned.

Mr. LAMBORN. Mr. Zaluski?

Mr. ZALUSKI. Thank you for pronouncing that correctly, Mr. Chairman.

Mr. LAMBORN. It took me two times.

Mr. ZALUSKI. It gets pronounced several ways. When I was a prosecutor, I was called "Scruski" one time.

In any event, I agree with Steve. It is hard to understand the motivation. It doesn't seem logical, so therefore it must be something else. That is my, kind of, analysis.

And, again, I am talking about the way it was administered. It just didn't make sense. I have done this a long time and been involved in lots of SMCRA programs at the State level and Federal, and some of this was baffling. And asking simple questions, like, again, does this apply to underground mining, that is a yes-no, and

it took 4 months to get an answer, and it really skewed our work significantly.

So I don't know the motivation. It just does not seem logical.

Mr. LAMBORN. Well, I am very concerned, as is Representative Johnson. I mean, severely affecting and limiting above-ground mining is one thing. I mean, that alone would be potentially devastating to the production of coal and electricity as well as jobs in that area. And I know we have to keep track of the environmental issues, I understand that, but we have to balance it with what the impact is. But to include underground mining in that equation is doubly devastating.

Last, I will just finish with this: Are you in a position to comment on whether there was adequate notice for comments given to the States out there? Because some of them complained bitterly that they were not given enough notice, and it was almost ridiculous how little time they had to wade through these huge requests for comments.

Mr. ZALUSKI. I would love to comment on that.

I think that Director Pizarchik read letters or whatever from other States that were upset with the quality of the work, the placeholders and so forth.

In my humble opinion, this was a massive rewrite of the entirety of SMCRA. This was the guts of SMCRA they were trying to do. You know, in 2008, it was called the stream buffer zone rule. Now it is the stream protection rule. They changed the name, and they really broadened the scope. This was a major rewrite. The States should have been given plenty of time. The sister agencies—Fish and Wildlife, EPA, all the alphabet soup—should have been given plenty of time.

And to give somebody our work—and when I say "our," the team's work—and say, "You have until Friday to give us your comments," was absurd. You don't get meaningful comments. And I think the States—we talked to some of those people. We were in Wyoming recently, and Montana, for other reasons but talked to some regulators, and they were still smarting from being put in that position. You know, if you don't comment, we think you agree; let's go on. And it was unfair to the States, it was unfair to the sister agencies.

This, again, was a major rewrite. The schedule should have been about 3 years. And we were hired in June, as the Congressman pointed out; we were delayed 4 months, and the deliverable was February. So we had a very short period of time. And, by the way, within which, we had three OSM team leaders in that short period of time, and you would have to ask the Director why.

But to do something at this level and to affect this many people and the Nation's energy, you don't do it by Friday. It just doesn't work.

Mr. LAMBORN. OK. Thank you.

That concludes our questioning. Will the two of you be available as the rule is possibly handed down at some point in the future to help us understand the impacts of it?

Mr. ZALUSKI. Well, we make our living in this area, so I assume we will read it and be glad to give any advice we can, sir.

Mr. LAMBORN. OK. Thank you.

I want to thank all five of you for being here.

Members of the Committee may have additional questions for you in writing. I would ask that you respond to those if you are given those.

Mr. LAMBORN. If there is no further business, the Committee, without objection, will be adjourned.

[The prepared statement of the U.S. Department of the Interior follows:]

Statement for the Record by the U.S. Department of the Interior

Thank you for providing the Department of the Interior the opportunity to submit this Statement for the Record on several pieces of recently-introduced legislation, including H.R. 3407, the "Alaskan Energy for American Jobs Act;" H.R. 3408, the "Protecting Investment in Oil Shale and Next Generation of Environmental, Energy, and Resource Security Act;" H.R. 3409, the "Coal Miner Employment and Domestic Energy Infrastructure Protection Act;" and H.R. 3410, the "American-Made Energy and Infrastructure Jobs Act."

For the reasons discussed below, the Department opposes the legislation.

Introduction

In his appearance before this Committee on Wednesday, Secretary Salazar discussed the Administration's commitment to promoting safe and responsible domestic oil and gas production as part of a broad energy strategy that will reduce our dependence on foreign oil. Outlined in the *Blueprint for a Secure Energy Future,* the strategy will result in producing more of our oil and natural gas here at home, using cleaner, alternative fuels, and improving our energy efficiency.

Secretary Salazar has set goals for the Department's energy programs that will ensure that energy development on our public lands and oceans is done in the right way, in the right places and with the right protections for the environment and the safety of workers.

Recognizing that America's oil supplies are limited, we must develop our domestic resources safely, responsibly, and efficiently, while at the same time taking steps that will ultimately lessen our reliance on oil. We are making significant progress toward these ends. Total U.S. crude oil production was higher in 2010 than in any year since 2003. Oil production from the federal OCS increased by a third from 2008 to 2011; from onshore public lands increased 5 percent from 2009 to 2010. U.S. natural gas production is up 7 percent from 2008, and is at its highest level in more than 30 years.

We are working hard to build on this success. In 2010, the Bureau of Land Management (BLM) held 33 oil and gas lease sales covering 3.2 million acres and in 2011, BLM scheduled an additional 32 lease sales and has held 28 to date. The BLM has scheduled an additional 33 lease sales for 2012. In 2010, the Department offered 37 million offshore acres in the Gulf of Mexico for oil and gas exploration and production. And the 2012–2017 Outer Continental Shelf (OCS) Oil and Gas Leasing Proposed Program, discussed in more detail below, makes more than 75 percent of the estimated undiscovered technically recoverable oil and gas on the OCS available for development.

Alaskan Energy for American Jobs Act

The Alaskan Energy for American Jobs Act, H.R. 3407, is similar to legislation introduced earlier this year in the House of Representatives. Among other things, it directs the Secretary of the Interior to establish an oil and gas leasing program on the coastal plain; limits environmental review of the program and related activities; and limits judicial review of the program.

The National Wildlife Refuge System, managed by the U.S. Fish and Wildlife Service, is the world's premier system of public lands and waters set aside to conserve America's fish, wildlife, and plants. The mission of the system is to manage a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitat for the benefit of the public. Nearly 46 million people visit national wildlife refuges each year, and visitation generates almost $1.7 billion in sales for regional economies and results in the employment of tens of thousands of people.

Last year's *Deepwater Horizon* explosion and oil spill in the Gulf of Mexico has served to highlight the importance of careful scrutiny of oil and gas development issues and the need to develop these resources safely and responsibly. We have been clear that there are some places where oil and gas development is appropriate and

some places where it is not. The Arctic National Wildlife Refuge, because of its unique conservation values and importance as wildlife habitat, is a place where development is not appropriate.

The Arctic Refuge itself is America's finest example of an intact, naturally functioning community of arctic and subarctic ecosystems. Such a broad spectrum of diverse habitats occurring within a single protected unit is unparalleled in North America, and perhaps in the entire circumpolar north. When the Eisenhower Administration established the original Arctic Range in 1960, then-Secretary of the Interior Seaton described it as:

> [O]ne of the world's great wildlife areas. The great diversity of vegetation and topography in this compact area, together with its relatively undisturbed condition, led to its selection as...one of our remaining wildlife and wilderness frontiers.

The original "Arctic National Wildlife Range" was created in 1960 by Public Land Order 2214 "[f]or the purpose of preserving unique wildlife, wilderness and recreational values...." In 1980, the Alaska National Interest Lands Conservation Act (ANILCA) enlarged the area, designated much of the original Range as wilderness under the 1964 Wilderness Act, renamed the whole area the Arctic National Wildlife Refuge and added four additional purposes: to conserve caribou herds, polar bears, grizzly bears, muskox, dall sheep, wolves, snow geese, peregrine falcons, other migratory birds, dolly varden, and grayling; to fulfill international treaty obligations; to provide opportunities for continued subsistence uses; and to ensure necessary water quality and quantity.

And just last December, President Obama recognized the 50th Anniversary of the creation of the Refuge with a Proclamation stating that:

> [i]n the decades since its establishment, the Arctic National Wildlife Refuge has continued to be one of our Nation's most pristine and cherished areas. In the decades to come, it should remain a place where wildlife populations, from roaming herds of caribou to grizzly bears and wolf packs, continue to thrive.

The Presidential Proclamation also reiterated the Administration's commitment to making responsible choices and ensuring the continued conservation of these wild lands.

The Arctic Refuge's coastal plain is critically important to the ecological integrity of the whole Arctic Refuge, providing essential habitats for numerous internationally important species such as the Porcupine Caribou herd and polar bears. The compactness and proximity of a number of arctic and subarctic ecological zones in the Arctic Refuge provides for greater plant and animal diversity than in any other similar sized land area on Alaska's North Slope, and it is an important part of a larger, international network of protected arctic and subarctic areas.

In the spring of 2010, the Fish and Wildlife Service initiated public discussions about the issues surrounding stewardship of the Arctic Refuge and future goals for that management. These discussions served as the foundation for development of a draft Comprehensive Conservation Plan and Environmental Impact Statement that outlines a 15-year management plan for the refuge. These conservation plans are revised periodically for every refuge around the country, as a matter of course.

The draft plan contains six alternatives for long-term management, ranging from the continuation of current practices to the recommendation of up to three geographic areas (including the Arctic Refuge coastal plain) for potential inclusion within the National Wilderness Preservation System, and the recommendation of four additional Wild and Scenic Rivers in the refuge. The draft plan does not identify a preferred alternative and, similar to the current management plan, will not include any decisions regarding oil development on the Arctic Refuge. The involvement of the public has been and will continue to be a critical part of the multi-year development process. The Service anticipates the release of a revised CCP and final EIS in the summer of 2012 and a final decision by the end of 2012.

The Administration is working hard to promote the safe and responsible development of domestic oil and gas, and Alaska is an important component of these efforts. But the unique conservation values contained in the Arctic National Wildlife Refuge make it a world class natural area and the preeminent remaining American wilderness. As such, the Administration strongly opposes any industrial development within the Arctic Refuge.

The PIONEERS Act

H.R. 3408, the "Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act," is similar to legislation introduced earlier this year in the House of Representatives. It would deem final regulations relating to oil shale management that were published by the Bureau of Land Man-

agement on November 18, 2008, and the November 17, 2008, BLM Resource Management Plan amendments and record of decision to satisfy all legal and procedural requirements under any law and require the Secretary to implement those actions without any further administrative action. The bill would also: require the Secretary to hold, within 180 days of enactment, a lease sale for additional parcels for oil shale research, development, and demonstration leases and, no later than January 1, 2016, no less than 5 commercial lease sales in areas with the most potential for oil shale development; and authorize the Secretary to reduce royalties, fees, and other payments on leases to incentivize the development and production of oil shale.

The BLM testified before the Committee's Energy and Minerals Subcommittee several months ago on the current status of the Department's oil shale program. At that time, the BLM stated that its goal was to provide an opportunity for companies to develop a new generation of oil shale technologies by establishing an orderly and environmentally responsible program that provides a fair return for taxpayers.

In 2010, it was explained, the BLM advanced three nominations for a second round of Research, Development, and Demonstration leases. Analysis under the National Environmental Policy Act is underway to examine how the proposed technologies will affect the environment, and issuance of those leases will depend largely on the results of the NEPA analyses and other factors as the nominees refine their individual processes for developing oil shale.

BLM also noted that it had begun a new planning process this year to take a fresh look at what public lands are best suited for oil shale and tar sands development, and anticipated taking a fresh look at the regulations governing oil shale development to ensure they reflect a sound management approach. It was also noted that the planning process would not disturb RD&D activities already under way, and that information developed from these activities could help inform this process.

Also discussed at that hearing were issues that need to be addressed before a successful commercial oil shale program could be economically viable, including whether the technologies currently being developed can become viable on a commercial scale; the need for a better understanding of the potential impacts of commercial oil shale development on Western lands, wildlife, and, particularly in the arid West, watersheds; and the need to understand the energy demands of viable commercial production.

BLM concluded that, in light of the many fundamental questions about oil shale that need to be answered, it is vital that the BLM administer a balanced, carefully planned RD&D program. The review of the regulations governing oil shale development will ensure that the regulations reflect the latest information about water and other potential environmental considerations, and will allow BLM to uphold its responsibility to deliver taxpayers a fair return on the development of this resource.

H.R. 3408 disregards the fact that there are currently no known economically viable and environmentally sound ways in the United States to extract liquid fuel or suitable refinery feedstock from oil shale at a commercial level. Moreover, the legislation would pre-empt BLM's careful review of the regulations and analysis through a programmatic environmental impact statement, being carried out, in part, because of additional information that has come to light since the original work was done. This includes a Government Accountability Office report published in October 2010 finding that oil shale development could have significant negative impacts on the quality and quantity of water resources. Because the legislation disrupts this careful and important process, the Department opposes H.R. 3408.

Coal Miner Employment and Domestic Energy Infrastructure Protection Act

H.R. 3409, the Coal Miner Employment and Domestic Infrastructure Protection Act, would prohibit the Secretary from issuing or approving any proposed or final regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) that would adversely impact domestic coal mine employment; would reduce revenue received from coal by reducing the amount of coal available for mining; reduce the amount of coal available for domestic consumption or export; designate any area as unsuitable for surface mining and reclamation operations; or expose the United States to liability taking the value of privately owned coal through regulation.

At a recent hearing before the Committee's Energy and Minerals Subcommittee, Office of Surface Mining Director Joseph Pizarchik testified about the importance of domestic coal production to the economy and to our energy supply. Coal mining provides well-paying jobs, and produces about half of the Nation's electricity and will remain an important part of our energy mix for decades to come.

Also discussed at that hearing were the statutory purposes that Congress specified within SMCRA, including to assure that American coal mines operate in a man-

ner that protects people and the environment and that the land is restored to beneficial use following mining; to assure that the coal supply essential to the Nation's energy requirements is provided; and to strike a balance between protection of the environment and agricultural productivity and the Nation's need for coal. SMCRA requires that surface coal mining and reclamation operations be conducted to minimize disturbances to fish, wildlife, and related environmental values "to the extent possible using the best technology currently available."

The Department must carry out the mandates in SMCRA and must do so using the best available science and technology.

It is with this in mind that revision of the 2008 Stream Buffer Zone Rule is being considered. In his statement, Director Pizarchik discussed the many benefits to updating the Rule, that the agency would make informed regulatory decisions supported by the Draft EIS analysis, and that additional ample opportunity for public input on both the rule and its Draft EIS would be carried out.

H.R. 3409 interferes with the Department's ability to meet these important statutory purposes and requirements and preempts the Department's ongoing regulatory process, thus preventing regulatory improvements that will more fully carry out the bureau's mission, make use of the best available science and technology, better protect streams nationwide, and provide greater clarity and certainty to the mining industry and the affected communities.

American-Made Energy and Infrastructure Jobs Act

A number of provisions similar to those contained in H.R. 3410, the American-Made Energy and Infrastructure Jobs Act, have appeared in other legislation introduced in the House of Representatives and the Administration has expressed concern about a number of these issues in past statements. Generally, H.R. 3410 would require the Department to open new areas on the Outer Continental Shelf (OCS) to leasing and would require the inclusion in 5-year oil and gas leasing programs of oil and gas production goals; would mandate that the Secretary conduct specified offshore oil and gas lease sales; would repeal the moratorium on development in the Eastern Gulf of Mexico; would authorize leasing offshore of the territories of the United States; and would put in place a new disposition program for revenue received from offshore energy leases.

In mandating the opening of new areas on the OCS, H.R. 3410 would provide no discretion to the Secretary to determine which areas are appropriate and safe for such exploration and development. Moreover, while it calls for making specific percentages of resources within different regions available, we would note that the Department of the Interior's recently released 5–Year Program makes 75% undiscovered technically recoverable oil and gas resources estimated in federal offshore areas available for exploration and development.

Secretary Salazar discussed the recently released Proposed 5-year Program for 2012–2017 before the Committee on Wednesday, noting that the Department has put in place rigorous standards for safety and responsibility for the development of oil and gas resources on the Outer Continental Shelf. These reforms to offshore oil and gas regulation and oversight are the most extensive in U.S. history, and strengthen requirements for everything from well design and workplace safety to corporate accountability. They are helping to ensure that the United States can safely and responsibly expand development of its energy resources consistent with our stewardship responsibilities.

The Proposed Program will advance safe and responsible domestic energy exploration and production by making available for development more than three-quarters of undiscovered oil and gas resources estimated on the OCS, and includes substantial acreage for lease in regions with known potential for oil and gas development. This Proposed Program promotes responsible development and is informed by lessons learned from the *Deepwater Horizon* tragedy and the reforms that we have implemented to make offshore drilling safer and more environmentally responsible.

A key part of safe and responsible development of our oil and gas resources is recognizing that different environments and communities require different approaches and technologies. The Proposed Program reflects this recognition, and accounts for issues such as current knowledge of resource potential, adequacy of infrastructure including oil spill response capabilities, Department of Defense priorities, and the need for a balanced approach to our use of natural resources. The majority of lease sales are scheduled for areas in the Gulf of Mexico, where resource potential and interest is greatest and where infrastructure is most mature. But it also includes frontier areas, such as the Arctic, where we must proceed cautiously, safely, and based on the best science available.

Moreover, the bill would hastily open areas of the Gulf of Mexico to leasing, including requiring the Department of the Interior (DOI) to hold two lease sales in

the Gulf of Mexico using outdated NEPA analysis that was conducted before the *Deepwater Horizon* oil spill. The Administration has strengthened NEPA analysis in light of lessons learned from the spill. DOI intends to hold a Central Gulf of Mexico lease sale in mid-2012 that would include both of the sale areas referenced in this bill. Notably, DOI is on track to hold that sale before the deadline that the bill would mandate for Lease Sale 222.

As we have noted in response to similar legislation, the Administration is committed to promoting safe and responsible domestic oil and gas production as part of a broad energy strategy that will protect consumers and reduce our dependence on foreign oil. H.R. 3410 undermines and circumvents the transparent public process for determining which new areas are appropriate to lease. For this reason, the Department opposes the legislation.

Conclusion

For the reasons discussed in this statement, the Department opposes H.R. 3407, H.R. 3408, H.R. 3409, and H.R. 3410.

[Whereupon, at 12:34 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

Statement of Rikki Hrenko, CEO, Enefit American Oil Company

Mr. Chairman, Enefit American Oil Company ("Enefit") appreciates the Subcommittee's consideration of and supports H.R. 3408, the Protecting Investment in Oil Shale the Next Generation of Environmental, Energy, and Resource Security Act or "PIONEERS Act". This legislation is critical to energy investment, job creation, and energy security for the United States. Enefit supports passage of this legislation which will promote further investment and development of the vast oil shale resource this nation possesses. Enefit submits this statement for inclusion in the official record.

Mr. Chairman, Enefit submitted a statement for the record in conjunction with the hearing held on August 24, 2011 in Grand Junction, Colorado and incorporates those comments herein. Enefit continues to support the Subcommittee's efforts to promote the development of oil shale in the United States and believes passage of the PIONEERS Act is a vital step toward regulatory certainty, access to federal oil shale resources, and attracting large scale investment in development and production of this nation's greatest energy resource.

ENEFIT, PROVEN PRODUCTION AND WORLD-WIDE DEVELOPMENT

Enefit, known as Eesti Energia in Estonia, was founded in 1939 and processes more oil shale than any other company worldwide. Our mines produce approximately 17 million tons of oil shale per year. We operate the world's largest oil shale fired power plants with a total output of 2,380 MW. Enefit also owns and operates what we believe to be the world's most advanced shale oil production technology. In total we have mined 1 billion tons of oil shale, produced 550 TWh of power and produced 200 million barrels of oil. Enefit has operations in Estonia, Latvia, Lithuania, Finland, Jordan, and now the United States, in eastern Utah. We currently employ over 7,500 people worldwide.

In 2012 Enefit is scheduled to place in service a new shale oil plant in Estonia using second generation technology which is even more efficient and is based on our current proven technology. The new Enefit280 plant will double our current shale oil production capacity, will consume 2.26 million tons of oil shale per year, will produce over 2,000,000 barrels of shale oil per year, and 75 million m^3 of high calorific retort gas per year. The plant will also co-produce 35 MWh (net) of electricity per year, after covering all of its own electrical needs, selling this electricity back to the grid. Our new technology will meet all current European Union environmental standards and our process to extract oil from shale requires no water.

Enefit American Oil will bring the Enefit280 technology to the United States and is currently in the process of developing our resources located in eastern Utah on private, state, and federal lands which are encompassed in our project. These resources total approximately 2.6 billion barrels of shale oil in place. Decades of experience in the mining and development of oil shale resources in Estonia provide us with the knowledge, technology, and expertise to responsibly develop oil shale resources in the United States and will meet all current U.S. environmental standards. Our current plan is to build the project in two phases with the first phase producing 25,000 barrels per day by 2020 and full production of 50,000 barrels per day

by 2024. We anticipate this project will provide approximately 2,000 direct jobs that will be high-paying, stable and long-term.

ACCESS TO FEDERAL RESOURCES AND REGULATORY CERTAINTY

In order to responsibly develop the oil shale resources of the United States, estimated at 1.5 trillion barrels of oil, the Administration and Congress must provide a stable set of rules and regulations that will attract the billions of dollars that are required to develop these resources. The 2005 Energy Policy Act set the stage for this process but full implementation has not been allowed. While many characterize oil shale development as interesting science projects, the truth is that shale oil has been produced for decades on a commercial scale in other countries. In the United States, however, production is not occurring because a stable U.S. regulatory framework is what is missing, not proven and capable technology.

Enefit will develop a large scale industrial project in Utah which requires large scale investment. We are comfortable moving forward because we are able to develop and operate largely on private lands. We are in a rare position to have better regulatory certainty on our Federal RD&D lease owing to the rules set in the 2005 Energy Policy Act, which are an integral part of our lease. Yet the Enefit project alone is insufficient for the development of a full scale oil shale industry in the U.S. The Federal Government controls approximately 80% of the oil shale resources in the western U.S. and there are insufficient private and state lands to develop these resources on a scale that will allow the U.S. to achieve true energy independence. Regional infrastructure needed to support development will only be built through the development of additional oil shale projects which will further incentivize investment in the industry. Growth in the oil shale industry will result in the creation of thousands of high-paying, long-term, stable jobs that can provide sustained growth in the U.S. economy. All of this requires responsible, planned development on federal lands through a competitive commercial leasing program. The PIONEERS Act will allow for this to occur as previously contemplated in 2005 by Congress and the President.

The PIONEERS Act recognizes the thorough and lengthy public process that was completed during the initial implementation of the 2005 Energy Policy Act which resulted in a regulatory framework that began attracting companies and interest in the development of oil shale resources on federal lands. However, lawsuits have led to regulatory uncertainty, resulting in curtailed investment in the industry and prevention of broad development and investment in oil shale in the U.S. As a result, companies are investing significant sums in oil shale development outside of the US.

Upon complete implementation of the 2005 Act, oil shale resources will be developed pursuant to all U.S. environmental laws and regulations, will return a fair royalty to the Federal Government, and will generate thousands of American jobs. The PIONEERS Act would allow for the full implementation of the 2005 Act provisions which will once again attract investment in oil shale in America.

Technologies, such as the Enefit technology, are proven and producing shale oil in commercial quantities today.. Oil shale deposits in the U.S. can be developed on an industrial level if the Federal government will simply provide reasonable access to sufficient resources for industrial size development as the 2005 Energy Policy Act and the resulting regulations intended to facilitate. The PIONEERS Act would mandate Federal lands be available for commercial leasing and allow the responsible development and production of this vital energy resource to proceed for the benefit of American workers, energy independence, and revenue for states and the Federal Government.

CONCLUSION

Enefit American Oil is committed to producing high quality liquid transportation fuels from oil shale in eastern Utah. This commitment involves billions in capital investment, thousands of high-paying long-term jobs, tax revenues for federal, state and local governments and will make the United States a little less dependent on foreign oil resources. However, one successful project is not enough to establish an oil shale industry in the United States. The PIONEERS Act will provide the required access to 80% of America's best oil shale and allow the U.S. to build a responsible industry. Enefit supports passage of the PIONEERS Act.

○