

STREAMLINING PERMITTING OF AMERICAN ENERGY ACT
OF 2012

JUNE 15, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4383]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4383) to streamline the application for permits to drill process and increase funds for energy project permit processing, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Streamlining Permitting of American Energy Act of 2012”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—APPLICATION FOR PERMITS TO DRILL PROCESS REFORM

Sec. 101. Permit to drill application timeline.
Sec. 102. Solar and wind right-of-way rental reform.

TITLE II—ADMINISTRATIVE PROTEST DOCUMENTATION REFORM

Sec. 201. Administrative protest documentation reform.

TITLE III—PERMIT STREAMLINING

Sec. 301. Improve Federal energy permit coordination.

Sec. 302. Administration of current law.
 Sec. 303. Policies regarding buying, building, and working for America.

TITLE IV—JUDICIAL REVIEW

Sec. 401. Definitions.
 Sec. 402. Exclusive venue for certain civil actions relating to covered energy projects.
 Sec. 403. Timely filing.
 Sec. 404. Expedition in hearing and determining the action.
 Sec. 405. Standard of review.
 Sec. 406. Limitation on injunction and prospective relief.
 Sec. 407. Limitation on attorneys' fees.
 Sec. 408. Legal standing.

TITLE I—APPLICATION FOR PERMITS TO DRILL PROCESS REFORM

SEC. 101. PERMIT TO DRILL APPLICATION TIMELINE.

Section 17(p)(2) of the Mineral Leasing Act (30 U.S.C. 226(p)(2)) is amended to read as follows:

“(2) APPLICATIONS FOR PERMITS TO DRILL REFORM AND PROCESS.—

“(A) TIMELINE.—The Secretary shall decide whether to issue a permit to drill within 30 days after receiving an application for the permit. The Secretary may extend such period for up to 2 periods of 15 days each, if the Secretary has given written notice of the delay to the applicant. The notice shall be in the form of a letter from the Secretary or a designee of the Secretary, and shall include the names and titles of the persons processing the application, the specific reasons for the delay, and a specific date a final decision on the application is expected.

“(B) NOTICE OF REASONS FOR DENIAL.—If the application is denied, the Secretary shall provide the applicant—

“(i) in writing, clear and comprehensive reasons why the application was not accepted and detailed information concerning any deficiencies; and

“(ii) an opportunity to remedy any deficiencies.

“(C) APPLICATION DEEMED APPROVED.—If the Secretary has not made a decision on the application by the end of the 60-day period beginning on the date the application is received by the Secretary, the application is deemed approved, except in cases in which existing reviews under the National Environmental Policy Act of 1969 or Endangered Species Act of 1973 are incomplete.

“(D) DENIAL OF PERMIT.—If the Secretary decides not to issue a permit to drill in accordance with subparagraph (A), the Secretary shall—

“(i) provide to the applicant a description of the reasons for the denial of the permit;

“(ii) allow the applicant to resubmit an application for a permit to drill during the 10-day period beginning on the date the applicant receives the description of the denial from the Secretary; and

“(iii) issue or deny any resubmitted application not later than 10 days after the date the application is submitted to the Secretary.

“(E) FEE.—

“(i) IN GENERAL.—Notwithstanding any other law, the Secretary shall collect a single \$6,500 permit processing fee per application from each applicant at the time the final decision is made whether to issue a permit under subparagraph (A). This fee shall not apply to any resubmitted application.

“(ii) TREATMENT OF PERMIT PROCESSING FEE.—Of all fees collected under this paragraph, 50 percent shall be transferred to the field office where they are collected and used to process protests, leases, and permits under this Act subject to appropriation.”.

SEC. 102. SOLAR AND WIND RIGHT-OF-WAY RENTAL REFORM.

Notwithstanding any other provision of law, each fiscal year, of fees collected as annual wind energy and solar energy right-of-way authorization fees required under section 504(g) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g)), 50 percent shall be retained by the Secretary of the Interior to be used, subject to appropriation, by the Bureau of Land Management to process permits, right-of-way applications, and other activities necessary for renewable development, and, at the discretion of the Secretary, by the U.S. Fish and Wildlife Service or other Federal agencies involved in wind and solar permitting reviews to facilitate

the processing of wind energy and solar energy permit applications on Bureau of Land Management lands.

TITLE II—ADMINISTRATIVE PROTEST DOCUMENTATION REFORM

SEC. 201. ADMINISTRATIVE PROTEST DOCUMENTATION REFORM.

Section 17(p) of the Mineral Leasing Act (30 U.S.C. 226(p)) is further amended by adding at the end the following:

“(4) PROTEST FEE.—

“(A) IN GENERAL.—The Secretary shall collect a \$5,000 documentation fee to accompany each protest for a lease, right of way, or application for permit to drill.

“(B) TREATMENT OF FEES.—Of all fees collected under this paragraph, 50 percent shall remain in the field office where they are collected and used to process protests subject to appropriation.”.

TITLE III—PERMIT STREAMLINING

SEC. 301. IMPROVE FEDERAL ENERGY PERMIT COORDINATION.

(a) ESTABLISHMENT.—The Secretary of the Interior (referred to in this section as the “Secretary”) shall establish a Federal Permit Streamlining Project (referred to in this section as the “Project”) in every Bureau of Land Management field office with responsibility for permitting energy projects on Federal land.

(b) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into a memorandum of understanding for purposes of this section with—

- (A) the Secretary of Agriculture;
- (B) the Administrator of the Environmental Protection Agency; and
- (C) the Chief of the Army Corps of Engineers.

(2) STATE PARTICIPATION.—The Secretary may request that the Governor of any State with energy projects on Federal lands to be a signatory to the memorandum of understanding.

(c) DESIGNATION OF QUALIFIED STAFF.—

(1) IN GENERAL.—Not later than 30 days after the date of the signing of the memorandum of understanding under subsection (b), all Federal signatory parties shall, if appropriate, assign to each of the Bureau of Land Management field offices an employee who has expertise in the regulatory issues relating to the office in which the employee is employed, including, as applicable, particular expertise in—

- (A) the consultations and the preparation of biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);
- (B) permits under section 404 of Federal Water Pollution Control Act (33 U.S.C. 1344);
- (C) regulatory matters under the Clean Air Act (42 U.S.C. 7401 et seq.);
- (D) planning under the National Forest Management Act of 1976 (16 U.S.C. 472a et seq.); and
- (E) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) DUTIES.—Each employee assigned under paragraph (1) shall—

- (A) not later than 90 days after the date of assignment, report to the Bureau of Land Management Field Managers in the office to which the employee is assigned;
- (B) be responsible for all issues relating to the energy projects that arise under the authorities of the employee’s home agency; and
- (C) participate as part of the team of personnel working on proposed energy projects, planning, and environmental analyses on Federal lands.

(d) ADDITIONAL PERSONNEL.—The Secretary shall assign to each Bureau of Land Management field office identified in subsection (a) any additional personnel that are necessary to ensure the effective approval and implementation of energy projects administered by the Bureau of Land Management field offices, including inspection and enforcement relating to energy development on Federal land, in accordance with the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(e) **FUNDING.**—Funding for the additional personnel shall come from the Department of the Interior reforms identified in sections 101, 102, and 201.

(f) **SAVINGS PROVISION.**—Nothing in this section affects—

(1) the operation of any Federal or State law; or

(2) any delegation of authority made by the head of a Federal agency whose employees are participating in the Project.

(g) **DEFINITION.**—For purposes of this section the term “energy projects” includes oil, natural gas, coal, and other energy projects as defined by the Secretary.

SEC. 302. ADMINISTRATION OF CURRENT LAW.

Notwithstanding any other law, the Secretary of the Interior shall not require a finding of extraordinary circumstances in administering section 390 of the Energy Policy Act of 2005.

SEC. 303. POLICIES REGARDING BUYING, BUILDING, AND WORKING FOR AMERICA.

(a) **CONGRESSIONAL INTENT.**—It is the intent of Congress that—

(1) this Act will support a healthy and growing United States domestic energy sector that, in turn, helps to reinvigorate American manufacturing, transportation, and service sectors by employing the vast talents of United States workers to assist in the development of energy from domestic sources; and

(2) Congress will monitor the deployment of personnel and material onshore under this Act to encourage the development of American technology and manufacturing to enable United States workers to benefit from this Act through good jobs and careers, as well as the establishment of important industrial facilities to support expanded access to American energy resources.

(b) **REQUIREMENT.**—The Secretary of the Interior shall, when possible and practicable, encourage the use of United States workers and equipment manufactured in the United States in all construction related to mineral resource development under this Act.

TITLE IV—JUDICIAL REVIEW

SEC. 401. DEFINITIONS.

In this Act—

(1) the term “covered civil action” means a civil action containing a claim under section 702 of title 5, United States Code, regarding agency action (as defined for the purposes of that section) affecting a covered energy project on Federal lands of the United States; and

(2) the term “covered energy project” means the leasing of Federal lands of the United States for the exploration, development, production, processing, or transmission of oil, natural gas, wind, or any other source of energy, and any action under such a lease, except that the term does not include any disputes between the parties to a lease regarding the obligations under such lease, including regarding any alleged breach of the lease.

SEC. 402. EXCLUSIVE VENUE FOR CERTAIN CIVIL ACTIONS RELATING TO COVERED ENERGY PROJECTS.

Venue for any covered civil action shall lie in the district court where the project or leases exist or are proposed.

SEC. 403. TIMELY FILING.

To ensure timely redress by the courts, a covered civil action must be filed no later than the end of the 90-day period beginning on the date of the final Federal agency action to which it relates.

SEC. 404. EXPEDITION IN HEARING AND DETERMINING THE ACTION.

The court shall endeavor to hear and determine any covered civil action as expeditiously as possible.

SEC. 405. STANDARD OF REVIEW.

In any judicial review of a covered civil action, administrative findings and conclusions relating to the challenged Federal action or decision shall be presumed to be correct, and the presumption may be rebutted only by the preponderance of the evidence contained in the administrative record.

SEC. 406. LIMITATION ON INJUNCTION AND PROSPECTIVE RELIEF.

In a covered civil action, the court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of a legal requirement, and is the least intrusive means necessary to correct that violation. In addition, courts shall limit the du-

ration of preliminary injunctions to halt covered energy projects to no more than 60 days, unless the court finds clear reasons to extend the injunction. In such cases of extensions, such extensions shall only be in 30-day increments and shall require action by the court to renew the injunction.

SEC. 407. LIMITATION ON ATTORNEYS' FEES.

Sections 504 of title 5, United States Code, and 2412 of title 28, United States Code, (together commonly called the Equal Access to Justice Act) do not apply to a covered civil action, nor shall any party in such a covered civil action receive payment from the Federal Government for their attorneys' fees, expenses, and other court costs.

SEC. 408. LEGAL STANDING.

Challengers filing appeals with the Department of the Interior Board of Land Appeals shall meet the same standing requirements as challengers before a United States district court.

PURPOSE OF THE BILL

The purpose of H.R. 4383, as ordered reported, is to streamline the application for permits to drill process and increase funds for energy project permit processing.

BACKGROUND AND NEED FOR LEGISLATION

Since taking office, the Obama Administration has made energy and mineral development on federal lands so burdensome and undesirable that companies consistently seek out state and private lands for development rather than deal with the lengthy and uncertain federal regulatory process. The Administration has taken historically devastating steps to delay and halt production on federal lands—such as delaying the issuing of a permit by months or even years, removing swaths of land from previously announced lease sales and restricting areas prospective for future solar and wind energy development.

Burdensome and duplicative environmental restrictions and legal challenges greatly stifle energy projects and job creation, sometimes for years. A recent SWCA Environmental Consultant report reviewed the economic impacts of all outstanding oil and natural gas projects proposed on federal lands in the West. SWCA determined that 44,329 wells were proposed in 22 NEPA documents currently under development. These wells, mostly located in Utah and Wyoming, would create over an estimated 120,000 jobs, \$139 billion in government revenue, and \$27.5 billion in economic activity. Many of these wells have been tied up in the environmental review process for over five years. The study concluded that if these wells were permitted to go forward by 2020, the West could produce as much oil and natural gas on a daily basis as the U.S. imports from Russia, Iraq, Kuwait, Saudi Arabia, Venezuela, Algeria, Nigeria, and Colombia combined.

Delays and energy permitting backlogs plague the Department of the Interior and U.S. Forest Service. Bureau of Land Management (BLM) field offices suffer from lengthy permitting backlogs partially due to underfunding and understaffing. Since 2008, the yearly Interior appropriations bill has levied a fee on oil and natural gas companies for submitting and processing Applications for Permit to Drill (APD). This fee has increased annually in the appropriations bill, and the current cost per APD is \$6,500. The companies are then left waiting months, sometimes years to have their permit(s) approved. The federal government waiting times are sig-

nificantly longer than state waiting times. The federal government often takes over 200 days to process a permit; the average state processing time is 45 days. Companies pay the \$6,500 APD fee upon submission regardless of how long it takes the application to be reviewed. This fee is entirely directed to the general treasury—the BLM field offices with the greatest APD workloads receive no additional funding to expedite the processing of permits.

In addition to bureaucratic delays, energy projects—whether conventional or renewable—are challenged at nearly every step of the development process by lengthy, burdensome lawsuits that can go so far as to completely halt the project's development. Most recently, an environmental group sued the U.S. Forest Service claiming that a proper Environmental Impact Statement was not completed under the National Environmental Policy Act and that a planned wind project in the Green Mountain National Forest would lead to a decrease in the bat population. Additionally, an environmental lawsuit was filed against the BLM, and the U.S. Fish and Wildlife Service claiming that the 4,000 acre Calico Solar project in California would pose a threat to endangered species.

Aside from halting energy production and job creation, these lawsuits are essentially funded by taxpayer dollars. Often, environmental groups are able to obtain reimbursement for all or part of their legal costs, while the companies and federal government must bear the cost of defending itself. Lawsuits can remain in the court system for years, which ties up companies' capital investments and ties up taxpayer dollars in the court system.

COMMITTEE ACTION

H.R. 4383 was introduced on April 18, 2012, by Congressman Doug Lamborn (R-CO). The bill was referred primarily to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. The bill was also referred to the Committee on the Judiciary. On April 26, 2012, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On May 16, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. Congressman Lamborn offered amendment designated #1 to the bill; the amendment was adopted by voice vote. Congresswoman Colleen Hanabusa (D-HI) offered amendment designated .004 to the bill; the amendment was not adopted by a bipartisan rollcall vote of 17 to 24, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: May 16, 2012

Recorded Vote #: 13

Meeting on / Amendment: **HR 4383** – An amendment offered by Ms.Hanabusa.004 was NOT AGREED TO by a roll call vote of 17 yeas and 24 nays.

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|----------------------------------|-----|-----|------|----------------------------|-----|-----|------|
| Mr. Hastings, WA Chairman | | X | | <i>Mr. Heinrich, NM</i> | X | | |
| <i>Mr. Markey, MA Ranking</i> | X | | | Mr. Benishek, MI | | X | |
| Mr. Young, AK | | | | <i>Mr. Lujan, NM</i> | X | | |
| <i>Mr. Kildee, MI</i> | X | | | Mr. Rivera, FL | | | |
| Mr. Duncan of TN | | X | | <i>Ms. Sutton, OH</i> | X | | |
| <i>Mr. DeFazio, OR</i> | X | | | Mr. Duncan of SC | | X | |
| Mr. Gohmert, TX | | | | <i>Ms. Tsongas, MA</i> | X | | |
| <i>Mr. Faleomavaega, AS</i> | | | | Mr. Tipton, CO | | X | |
| Mr. Bishop, UT | | X | | <i>Mr. Pierluisi, PR</i> | X | | |
| <i>Mr. Pallone, NJ</i> | X | | | Mr. Gosar, AZ | | X | |
| Mr. Lamborn, CO | | X | | <i>Mr. Garamendi, CA</i> | X | | |
| <i>Mrs. Napolitano, CA</i> | X | | | Mr. Labrador, ID | | | |
| Mr. Wittman, VA | | X | | <i>Ms. Hanabusa, HI</i> | X | | |
| <i>Mr. Holt, NJ</i> | X | | | Ms. Noem, SD | | X | |
| Mr. Broun, GA | | X | | <i>Mr. Tonko, NY</i> | X | | |
| <i>Mr. Grijalva, AZ</i> | X | | | Mr. Southerland, FL | | X | |
| Mr. Fleming, LA | | X | | Mr. Flores, TX | | X | |
| <i>Ms. Bordallo, GU</i> | X | | | Mr. Harris, MD | | X | |
| Mr. Coffman, CO | | X | | Mr. Landry, LA | | X | |
| <i>Mr. Costa, CA</i> | X | | | Mr. Runyan, NJ | | X | |
| Mr. McClintock, CA | | X | | Mr. Johnson, OH | | X | |
| <i>Mr. Boren, OK</i> | | X | | Mr. Amodei, NV | | X | |
| Mr. Thompson, PA | | X | | | | | |
| <i>Mr. Sablan, CNMI</i> | | | | | | | |
| Mr. Denham, CA | | X | | | | | |
| | | | | | | | |
| | | | | TOTALS | 17 | 24 | |

Congresswoman Colleen Hanabusa (D-HI) offered amendment designated .002 to the bill; the amendment was not adopted by a bipartisan roll call vote of 16 to 25, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: May 16, 2012

Recorded Vote #: 14

Meeting on / Amendment: **HR 4383** – An amendment offered by Ms.Hanabusa.002 was NOT AGREED TO by a roll call vote of 16 yeas and 25 nays.

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|----------------------------------|-----|-----|------|----------------------------|-----|-----|------|
| Mr. Hastings, WA Chairman | | X | | <i>Mr. Heinrich, NM</i> | X | | |
| <i>Mr. Markey, MA Ranking</i> | X | | | Mr. Benishek, MI | | X | |
| Mr. Young, AK | | | | <i>Mr. Lujan, NM</i> | X | | |
| <i>Mr. Kildee, MI</i> | X | | | Mr. Rivera, FL | | | |
| Mr. Duncan of TN | | X | | <i>Ms. Sutton, OH</i> | X | | |
| <i>Mr. DeFazio, OR</i> | X | | | Mr. Duncan of SC | | X | |
| Mr. Gohmert, TX | | | | <i>Ms. Tsongas, MA</i> | X | | |
| <i>Mr. Faleomavaega, AS</i> | | | | Mr. Tipton, CO | | X | |
| Mr. Bishop, UT | | X | | <i>Mr. Pierluisi, PR</i> | X | | |
| <i>Mr. Pallone, NJ</i> | X | | | Mr. Gosar, AZ | | X | |
| Mr. Lamborn, CO | | X | | <i>Mr. Garamendi, CA</i> | X | | |
| <i>Mrs. Napolitano, CA</i> | X | | | Mr. Labrador, ID | | | |
| Mr. Wittman, VA | | X | | <i>Ms. Hanabusa, HI</i> | X | | |
| <i>Mr. Holt, NJ</i> | X | | | Ms. Noem, SD | | X | |
| Mr. Broun, GA | | X | | <i>Mr. Tonko, NY</i> | X | | |
| <i>Mr. Grijalva, AZ</i> | X | | | Mr. Southerland, FL | | X | |
| Mr. Fleming, LA | | X | | Mr. Flores, TX | | X | |
| <i>Ms. Bordallo, GU</i> | X | | | Mr. Harris, MD | | X | |
| Mr. Coffman, CO | | X | | Mr. Landry, LA | | X | |
| <i>Mr. Costa, CA</i> | | X | | Mr. Runyan, NJ | | X | |
| Mr. McClintock, CA | | X | | Mr. Johnson, OH | | X | |
| <i>Mr. Boren, OK</i> | | X | | Mr. Amodei, NV | | X | |
| Mr. Thompson, PA | | X | | | | | |
| <i>Mr. Sablan, CNMI</i> | | | | | | | |
| Mr. Denham, CA | | X | | | | | |
| | | | | | | | |
| | | | | TOTALS | 16 | 25 | |

Congressman Rush Holt (D-NJ) offered amendment designated .001 to the bill; the amendment was not adopted by a bipartisan roll call vote of 15 to 25, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: May 16, 2012

Recorded Vote #: 15

Meeting on / Amendment: **HR 4383** – An amendment offered by Mr. Holt.001 was NOT AGREED TO by a roll call vote of 15 yeas and 25 nays.

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|----------------------------------|-----|-----|------|----------------------------|-----|-----|------|
| Mr. Hastings, WA Chairman | | X | | <i>Mr. Heinrich, NM</i> | X | | |
| <i>Mr. Markey, MA Ranking</i> | | | | Mr. Benishek, MI | | X | |
| Mr. Young, AK | | | | <i>Mr. Lujan, NM</i> | X | | |
| <i>Mr. Kildee, MI</i> | X | | | Mr. Rivera, FL | | | |
| Mr. Duncan of TN | | X | | <i>Ms. Sutton, OH</i> | X | | |
| <i>Mr. DeFazio, OR</i> | X | | | Mr. Duncan of SC | | X | |
| Mr. Gohmert, TX | | | | <i>Ms. Tsongas, MA</i> | X | | |
| <i>Mr. Faleomavaega, AS</i> | | | | Mr. Tipton, CO | | X | |
| Mr. Bishop, UT | | X | | <i>Mr. Pierluisi, PR</i> | X | | |
| <i>Mr. Pallone, NJ</i> | X | | | Mr. Gosar, AZ | | X | |
| Mr. Lamborn, CO | | X | | <i>Mr. Garamendi, CA</i> | X | | |
| <i>Mrs. Napolitano, CA</i> | X | | | Mr. Labrador, ID | | | |
| Mr. Wittman, VA | | X | | <i>Ms. Hanabusa, HI</i> | X | | |
| <i>Mr. Holt, NJ</i> | X | | | Ms. Noem, SD | | X | |
| Mr. Broun, GA | | X | | <i>Mr. Tonko, NY</i> | X | | |
| <i>Mr. Grijalva, AZ</i> | X | | | Mr. Southerland, FL | | X | |
| Mr. Fleming, LA | | X | | Mr. Flores, TX | | X | |
| <i>Ms. Bordallo, GU</i> | X | | | Mr. Harris, MD | | X | |
| Mr. Coffman, CO | | X | | Mr. Landry, LA | | X | |
| <i>Mr. Costa, CA</i> | | X | | Mr. Runyan, NJ | | X | |
| Mr. McClintock, CA | | X | | Mr. Johnson, OH | | X | |
| <i>Mr. Boren, OK</i> | | X | | Mr. Amodei, NV | | X | |
| Mr. Thompson, PA | | X | | | | | |
| <i>Mr. Sablan, CNMI</i> | | | | | | | |
| Mr. Denham, CA | | X | | | | | |
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| | | | | TOTALS | 15 | 25 | |

The bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 25 to 15, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: May 16, 2012

Recorded Vote #: 16

Meeting on / Amendment: **HR 4383** – Adopted and favorably reported to the House of Representatives, as amended, by a roll call vote of 25 yeas and 15 nays.

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|----------------------------------|-----|-----|------|----------------------------|-----|-----|------|
| Mr. Hastings, WA Chairman | X | | | <i>Mr. Heinrich, NM</i> | | X | |
| <i>Mr. Markey, MA Ranking</i> | | | | Mr. Benishke, MI | X | | |
| Mr. Young, AK | | | | <i>Mr. Lujan, NM</i> | | X | |
| <i>Mr. Kildee, MI</i> | | X | | Mr. Rivera, FL | | | |
| Mr. Duncan of TN | X | | | <i>Ms. Sutton, OH</i> | | X | |
| <i>Mr. DeFazio, OR</i> | | X | | Mr. Duncan of SC | X | | |
| Mr. Gohmert, TX | | | | <i>Ms. Tsongas, MA</i> | | X | |
| <i>Mr. Faleomavaega, AS</i> | | | | Mr. Tipton, CO | X | | |
| Mr. Bishop, UT | X | | | <i>Mr. Pterluisi, PR</i> | | X | |
| <i>Mr. Pallone, NJ</i> | | X | | Mr. Gosar, AZ | X | | |
| Mr. Lamborn, CO | X | | | <i>Mr. Garamendi, CA</i> | | X | |
| <i>Mrs. Napolitano, CA</i> | | X | | Mr. Labrador, ID | | | |
| Mr. Wittman, VA | X | | | <i>Ms. Hanabusa, HI</i> | | X | |
| <i>Mr. Holt, NJ</i> | | X | | Ms. Noem, SD | X | | |
| Mr. Broun, GA | X | | | <i>Mr. Tonko, NY</i> | | X | |
| <i>Mr. Grijalva, AZ</i> | | X | | Mr. Southerland, FL | X | | |
| Mr. Fleming, LA | X | | | Mr. Flores, TX | X | | |
| <i>Ms. Bordallo, GU</i> | | X | | Mr. Harris, MD | X | | |
| Mr. Coffman, CO | X | | | Mr. Landry, LA | X | | |
| <i>Mr. Costa, CA</i> | X | | | Mr. Runyan, NJ | X | | |
| Mr. McClintock, CA | X | | | Mr. Johnson, OH | X | | |
| <i>Mr. Boren, OK</i> | X | | | Mr. Amodei, NV | X | | |
| Mr. Thompson, PA | X | | | | | | |
| <i>Mr. Sablan, CNMI</i> | | | | | | | |
| Mr. Denham, CA | X | | | | | | |
| | | | | | | | |
| | | | | TOTALS | 25 | 15 | |

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The title of the bill is the “Streamlining Permitting for American Energy Act of 2012.”

Section 2. Table of contents

TITLE I. APPLICATION FOR PERMITS TO DRILL PROCESS REFORM

Section 101. Permit to drill application timeline

Section 101 requires the Secretary of the Interior to approve or deny an application for a permit to drill within no later than 60 days. If a decision is not made in 60 days, the application is deemed approved. The Secretary shall collect a single \$6,500 permit processing fee per application at the time the decision is made. Half of the fee remains in the field office that process the permit.

Section 102. Solar and wind right-of-way rentals

This section provides that half of solar and wind right-of-way rental fees will remain with the Secretary of the Interior to direct to BLM field offices, the U.S. Fish and Wildlife Service, or other federal agencies that review and process renewable energy projects on BLM land.

TITLE II. ADMINISTRATIVE PROTEST DOCUMENTATION REFORM

Section 201. Administrative protest documentation fee

Section 201 provides that a \$5,000 fee will be collected with each protest for a lease, right of way, or application for permit to drill. Half of the fee will remain in the field office that processes the protest.

TITLE III. PERMIT STREAMLINING

Section 301. Improve federal energy permit coordination

Section 301 establishes a pilot project to staff BLM field offices with staff to specialize in the permitting process to expedite permitting decisions.

Section 302. Administration of current law

This section provides that the Secretary of the Interior shall administer Section 390 of the Energy Policy Act of 2005 without requiring a finding of “extraordinary circumstances.”

Section 303. Policies regarding buying, building, and working for America

Section 303 specifies that through this Act, Congress intends to support a healthy and growing energy sector that creates jobs for Americans. When possible, the Secretary of the Interior will encourage the use of United States workers and equipment.

TITLE IV. JUDICIAL REVIEW

Section 401. Definitions

This section provides definitions for terms used in the bill.

Section 402. Exclusive venue for certain civil actions relating to covered energy projects

Section 402 provides that the district court where the challenged project or leases exists will be the venue for legal action.

Section 403. Timely filing

This section specifies that a civil action must be filed no later than the end of a 90 day period after final agency action.

Section 404. Expedition in hearing and determining

Section 404 provides that the court will endeavor to hear civil actions as expeditiously as possible.

Section 405. Standard of review

This section provides that administrative findings and conclusions relating to Federal actions will be presumed correct, and provides a standard for rebuttal.

Section 406. Limitation on injunction and prospective relief

Section 406 limits the duration of injunctions to halt energy projects to 60 days and limits prospective relief.

Section 407. Limitations on attorneys' fees

This section limits attorneys' fees and expenses.

Section 408. Legal standing

Section 408 provides that challengers filing with the Department of the Interior Board of Land Appeals shall meet the same requirements as challengers before a district court.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4383—Streamlining Permitting of American Energy Act of 2012

Summary: H.R. 4383 would require the Secretary of the Interior to establish certain fees for activities related to the development of

oil and gas on federal lands. Half of the amounts collected from those fees along with half of all receipts from renewable energy projects on federal lands would be available to the Secretary, subject to appropriation, to cover the costs of administering a program aimed at streamlining the approval process for energy projects. The bill also would exempt lawsuits that affect activities related to energy production on federal lands from the Equal Access to Justice Act (EAJA), which requires the federal government to pay attorneys’ fees for plaintiffs that prevail in lawsuits against the United States.

Based on information provided by the Bureau of Land Management (BLM), the Government Accountability Office (GAO), and certain environmental groups, CBO estimates that enacting the legislation would increase offsetting receipts (a credit against direct spending) by \$384 million over the 2013–2022 period; therefore, pay-as-you-go procedures apply. In addition, CBO estimates that implementing the legislation would cost \$156 million over the 2013–2017 period, assuming appropriation of the necessary amounts. Enacting the bill would not affect revenues.

H.R. 4383 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4383 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

| | By fiscal year, in millions of dollars— | | | | | |
|---|---|------|------|------|------|-----------|
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2013–2017 |
| CHANGES IN DIRECT SPENDING^a | | | | | | |
| Application for Permit to Drill Fees | | | | | | |
| Estimated Budget Authority | –33 | –36 | –36 | –36 | –36 | –176 |
| Estimated Outlays | –33 | –36 | –36 | –36 | –36 | –176 |
| Protest Fees | | | | | | |
| Estimated Budget Authority | –3 | –3 | –3 | –3 | –3 | –15 |
| Estimated Outlays | –3 | –3 | –3 | –3 | –3 | –15 |
| Total Changes | | | | | | |
| Estimated Budget Authority | –36 | –39 | –39 | –39 | –39 | –191 |
| Estimated Outlays | –36 | –39 | –39 | –39 | –39 | –191 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Oil and Gas Administrative Costs | | | | | | |
| Estimated Authorization Level | 18 | 19 | 19 | 19 | 19 | 95 |
| Estimated Outlays | 17 | 19 | 19 | 19 | 19 | 94 |
| Renewable Energy Administrative Costs | | | | | | |
| Estimated Authorization Level | 6 | 9 | 13 | 17 | 19 | 64 |
| Estimated Outlays | 6 | 9 | 12 | 16 | 19 | 62 |
| Total Changes | | | | | | |
| Estimated Authorization Level | 24 | 28 | 32 | 36 | 38 | 158 |
| Estimated Outlays | 23 | 28 | 32 | 36 | 38 | 156 |

Note: Components may not sum to totals because of rounding.
^a CBO estimates that enacting the bill would increase offsetting receipts by \$39 million a year over the 2018–2022 period, for a total increase of \$384 million over the 2013–2022 period.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of 2012 and that the necessary amounts will be appropriated for each fiscal year.

Direct spending: CBO estimates that enacting H.R. 4383 would increase offsetting receipts by a total of \$384 million over the 2013–2022 period.

Application for permit to drill (APD) fees. Title I would require firms to pay a \$6,500 fee each time they apply for a permit to drill on federal oil and gas leases. In 2011, when BLM was authorized to assess a similar fee, the agency processed roughly 5,000 permits and collected about \$31 million. Based on information provided by BLM, CBO expects that the agency will process 5,000 APDs in 2013 and an average of 5,500 APDs each year over the 2014–2022 period. Thus, CBO estimates that enacting title I would increase offsetting receipts by \$354 million over the 2013–2022 period.

Protest fees. Title II would require any entity that files a protest (a formal objection to a BLM decision) against a lease, right of way, or APD, to pay a \$5,000 fee. A protest may result in BLM reversing a decision or delaying the issuance of a decision. Under current law, any entity can file a protest without paying a fee. Based on information provided by BLM regarding the number of protests filed in each of the past five years, CBO expects that, under current law, about 1,200 protests would be filed each year. We expect that the fee required under the bill would deter some and raise additional receipts. CBO estimates that enacting title II would increase offsetting receipts by \$3 million a year over the 2013–2022 period.

Limitation on attorneys' fees. Title IV would exempt lawsuits that affect energy production on federal lands from EAJA. Based on information from GAO, CBO estimates that over the next 10 years, the U.S. Treasury will make payments totaling less than \$50,000 a year on behalf of the Department of the Interior and the Forest Service as a result of such lawsuits. Thus, we estimate that enacting the bill would result in a small decrease in direct spending from lost attorneys' fees over the 2013–2022 period.

Spending subject to appropriation: Title III would establish a Federal Permit Streamlining Project aimed at expediting the approval of new energy projects (including oil and gas drilling and renewable energy development) on federal lands. The bill would authorize the appropriation of 50 percent of all receipts generated under titles I and II of the bill and 50 percent of gross receipts from renewable energy development on federal lands available to the Secretary to administer the project. Most of those funds would be used to hire additional employees to guide new energy projects through the federal approval process. In total, CBO estimates that implementing title III would cost \$156 million over the 2013–2017 period, assuming appropriation of the authorized amounts.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in direct spending that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4383, THE STREAMLINING PERMITTING OF AMERICAN ENERGY ACT OF 2012, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON MAY 16, 2012

| | By fiscal year, in millions of dollars— | | | | | | | | | | | | |
|--------------------------------|---|------|------|------|------|------|------|------|------|------|------|-----------|-----------|
| | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2012–2017 | 2012–2022 |
| NET INCREASE IN THE DEFICIT | | | | | | | | | | | | | |
| Statutory Pay-As-You-Go Impact | 0 | –36 | –39 | –39 | –39 | –39 | –39 | –39 | –39 | –39 | –39 | –191 | –384 |

Intergovernmental and private-sector impact: H.R. 4383 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the Bureau of Land Management (BLM), the Government Accountability Office (GAO), and certain environmental groups, CBO estimates that enacting the legislation would increase offsetting receipts (a credit against direct spending) by \$384 million over the 2013–2022 period; therefore, pay-as-you-go procedures apply. In addition, CBO estimates that implementing the legislation would cost \$156 million over the 2013–2017 period, assuming appropriation of the necessary amounts. Enacting the bill would not affect revenues.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill, as ordered reported, is to streamline the application for permits to drill process and increase funds for energy project permit processing.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MINERAL LEASING ACT

* * * * *
SEC. 17. (a) * * *

* * * * *
(p) DEADLINES FOR CONSIDERATION OF APPLICATIONS FOR PERMITS.—

(1) * * *

[(2) ISSUANCE OR DEFERRAL.—Not later than 30 days after the applicant for a permit has submitted a complete application, the Secretary shall—

[(A) issue the permit, if the requirements under the National Environmental Policy Act of 1969 and other applicable law have been completed within such timeframe; or

[(B) defer the decision on the permit and provide to the applicant a notice—

[(i) that specifies any steps that the applicant could take for the permit to be issued; and

[(ii) a list of actions that need to be taken by the agency to complete compliance with applicable law together with timelines and deadlines for completing such actions.]

(2) APPLICATIONS FOR PERMITS TO DRILL REFORM AND PROCESS.—

(A) *TIMELINE.*—*The Secretary shall decide whether to issue a permit to drill within 30 days after receiving an application for the permit. The Secretary may extend such period for up to 2 periods of 15 days each, if the Secretary has given written notice of the delay to the applicant. The notice shall be in the form of a letter from the Secretary or a designee of the Secretary, and shall include the names and titles of the persons processing the application, the specific reasons for the delay, and a specific date a final decision on the application is expected.*

(B) *NOTICE OF REASONS FOR DENIAL.*—*If the application is denied, the Secretary shall provide the applicant—*

(i) in writing, clear and comprehensive reasons why the application was not accepted and detailed information concerning any deficiencies; and

(ii) an opportunity to remedy any deficiencies.

(C) *APPLICATION DEEMED APPROVED.*—*If the Secretary has not made a decision on the application by the end of the 60-day period beginning on the date the application is received by the Secretary, the application is deemed approved, except in cases in which existing reviews under the National Environmental Policy Act of 1969 or Endangered Species Act of 1973 are incomplete.*

(D) *DENIAL OF PERMIT.*—*If the Secretary decides not to issue a permit to drill in accordance with subparagraph (A), the Secretary shall—*

(i) provide to the applicant a description of the reasons for the denial of the permit;

(ii) allow the applicant to resubmit an application for a permit to drill during the 10-day period beginning on the date the applicant receives the description of the denial from the Secretary; and

(iii) issue or deny any resubmitted application not later than 10 days after the date the application is submitted to the Secretary.

(E) FEE.—

(i) IN GENERAL.—Notwithstanding any other law, the Secretary shall collect a single \$6,500 permit processing fee per application from each applicant at the time the final decision is made whether to issue a permit under subparagraph (A). This fee shall not apply to any resubmitted application.

(ii) TREATMENT OF PERMIT PROCESSING FEE.—Of all fees collected under this paragraph, 50 percent shall be transferred to the field office where they are collected and used to process protests, leases, and permits under this Act subject to appropriation.

* * * * *

(4) PROTEST FEE.—

(A) IN GENERAL.—The Secretary shall collect a \$5,000 documentation fee to accompany each protest for a lease, right of way, or application for permit to drill.

(B) TREATMENT OF FEES.—Of all fees collected under this paragraph, 50 percent shall remain in the field office where they are collected and used to process protests subject to appropriation.

* * * * *

DISSENTING VIEWS

We oppose H.R. 4383 because it would unnecessarily tie the hands of the Interior Department in reviewing drilling operations on public lands and make drilling less safe. This legislation would impose arbitrary deadlines on the Interior Department's review of applications for permits to drill onshore. Just as the Majority tried to do for offshore drilling, drilling permits would be automatically "deemed approved" after 60 days if the Interior Department had not finished its review.

While the Majority has acknowledged the important role that NEPA and the Endangered Species Act play in properly reviewing drilling permits and has now included language to prevent permits from being deemed approved after 60 days in cases where reviews under those laws are ongoing, there is no requirement in the bill that would prevent permits from being deemed approved if safety reviews were incomplete. This provision is especially dangerous given that a Natural Resources Democratic staff review of drilling safety violations on public lands found that between 1998 and 2011, one-fifth of the drilling violations on public lands were related to blowout preventers or other well control equipment. Furthermore, there were more than 50 instances where an operator began drilling on federal lands without an approved permit to drill from the BLM. We should be seeking to ensure that oil companies are drilling on our public lands with the highest level of safety, not truncating the review of drilling applications.

The BLM submitted testimony stating that H.R. 4383 "would essentially strip from the BLM its ability to issue [applications for permits to drill] on important reviews and clearances—including cultural surveys and necessary tribal consultation." We oppose rushing to limit proper review of drilling permits, especially when oil companies are warehousing roughly 6,700 drilling permits that have already been approved by the Interior Department where they could be drilling immediately. In addition, oil production on federal lands onshore is higher than it was under the Bush Administration, according to an EIA review of production going back to 2003.

H.R. 4383 also includes a likely unconstitutional provision requiring any American citizen seeking to protest an oil and gas lease, drilling permit or right of way to post a nonrefundable \$5,000 "documentation fee." This is a blatant attempt to deny ordinary American citizens the ability to contest decisions by the federal government. This section would seek to prevent people from contesting oil and gas development in areas where it may harm hunting, fishing, recreation or the other uses of our public lands.

The legislation also contains provisions designed to close the doors of the courthouse to citizens who believe the federal government is not complying with the law. While these provisions are no doubt aimed at environmental plaintiffs they would almost cer-

tainly impair the legal rights of many other potential plaintiffs, including oil and gas companies.

The Majority rejected an amendment from Representative Hanabusa (D-HI) that sought to maximize the development of renewable energy on public lands to achieve a goal of 25 percent of the electricity consumed by the federal government coming from renewable sources by the year 2025. The Majority also voted down an amendment from Representative Hanabusa that would have ensured that the bill's requirement that citizens post a nonrefundable, \$5,000 "documentation fee" would not abridge the right of the people to petition for the redress of grievances afforded by the First amendment to the Constitution. Finally, the Majority rejected an amendment from Energy and Mineral Resources Subcommittee Ranking Member Holt (D-NJ) that would have struck the language from the H.R. 4383 that would require drilling permits to be deemed approved after 60 days, which could make public lands less safe.

H.R. 4383 takes an approach that is neither warranted nor wise. We should not be seeking to limit public involvement and proper review of drilling permits, as the legislation would do, when oil production from public lands onshore has increased under the Obama Administration and the oil industry is sitting on thousands of approved permits to drill.

EDWARD J. MARKEY.
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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON THE JUDICIARY

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June 14, 2012

HAND-DELIVERED

The Honorable Doc Hastings
 Chairman
 Committee on Natural Resources
 1324 Longworth House Office Building
 Washington, DC 20515

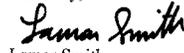
Dear Chairman Hastings,

I am writing with respect to H.R. 4383, the "Streamlining Permitting of American Energy Act of 2012," which the Committee on Natural Resources reported favorably, as amended, on May 16, 2012. As a result of your having consulted with us on provisions in H.R. 4383 that fall within the Rule X jurisdiction of the Committee on the Judiciary, I agree to discharge our Committee from further consideration of this bill so that it may proceed expeditiously to the House floor for consideration.

The Judiciary Committee takes this action with our mutual understanding that by foregoing consideration of H.R. 4383 at this time, we do not waive any jurisdiction over subject matter contained in this or similar legislation, and that our Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues in our jurisdiction. Our Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and asks that you support any such request.

I would appreciate a response to this letter confirming this understanding with respect to H.R. 4383, and would ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during Floor consideration of H.R. 4383.

Sincerely,



Lamar Smith
 Chairman

Hon. Doc Hastings
June 14, 2012
Page 2

cc: The Honorable John Conyers, Jr.
The Honorable Edward Markey
The Honorable John Boehner
Mr. Tom Wickham, Jr.

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TODD YOUNG
 CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
 Washington, DC 20515

June 14, 2012

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The Honorable Lamar Smith
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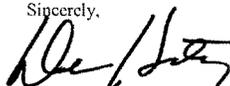
Dear Mr. Chairman:

Thank you for your letter regarding H.R. 4383, the Streamlining Permitting of American Energy Act of 2012. As you know, the Committee on Natural Resources ordered reported the bill by a bipartisan vote on May 16, 2012. I appreciate your support in bringing this legislation before the House of Representatives, and accordingly, understand that the Committee on the Judiciary will forego action on the bill.

The Committee on Natural Resources concurs with the mutual understanding that by foregoing consideration of H.R. 4383 at this time, the Committee on the Judiciary does not waive any jurisdiction over the subject matter contained in this or similar legislation. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on the Judiciary represented on the conference committee. Finally, I would be pleased to include your letter and this response in the bill report filed by the Committee on Natural Resources, as well as in the *Congressional Record* during floor consideration, to memorialize our understanding.

Thank you for your cooperation.

Sincerely,



Doc Hastings
 Chairman

