



POWER THE FUTURE

ENERGY POLICY ROADMAP





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INTRODUCTION

On August 16th, President Biden signed the bloated, and hilariously named, “Inflation Reduction Act of 2022” (IRA)—bloated because of the \$380 billion in handouts to Biden’s green cronies, and hilarious because, as non-partisan experts have found, the bill won’t reduce inflation¹. Instead it will spend billions of taxpayer dollars to subsidize energy sources that are costly, unreliable², and threaten the nation’s energy security.

In many ways, the IRA is emblematic of Biden’s energy record. Since the start of his presidency, Biden has indulged in apocalyptic concerns about climate change at the expense of American energy production, workers, and consumers. Early in his presidency, aping the constant refrain from climate Chicken Littles, Biden signed an executive order, which stated, “There is little time left to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory.”

Therefore, Biden grandly declared, “it is the policy of my Administration that climate considerations shall be an essential element of United States foreign policy and national security.” Moreover:

Since the start of his presidency, Biden has indulged in apocalyptic concerns about climate change at the expense of American energy production, workers, and consumers.

*We must combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government with efforts from every corner of our Nation, every level of government, and every sector of our economy.*³

Federal agencies acted quickly to implement Biden’s reckless order, and their policies continue to wreak havoc on American energy, consumers, and the economy. For example, the Interior Department, led by radical former Rep. Deb Haaland (NM), banned new federal onshore and offshore oil and gas leases.⁴ This is significant, because oil and gas production from federal lands and waters comprises about 24 percent and 11 percent of total U.S. oil and gas production,

1 CBO

2 NERC, MISO

3 <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>

4 Section 208 of Biden’s Executive Order 14008: “Oil and Natural Gas Development on Public Lands and in Offshore Waters. To the extent consistent with applicable law, the Secretary of the Interior shall pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior’s broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts associated with oil and gas activities on public lands or in offshore waters. The Secretary of the Interior shall complete that review in consultation with the Secretary of Agriculture, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of Energy. In conducting this analysis, and to the extent consistent with applicable law, the Secretary of the Interior shall consider whether to adjust royalties associated with coal, oil, and gas resources extracted from public lands and offshore waters, or take other appropriate action, to account for corresponding climate costs.” Ibid at 3.

respectively.⁵ To put those figures in context, “if U.S. federal land/waters was treated as its own country, the 2.67 million barrels of oil it produced daily in 2019 would have made it the 11th largest daily oil producer in the world that year.”⁶

Several states sued Interior to overturn the ban, and a federal district court recently ruled (again) that it is illegal.

The Federal Energy Regulatory Commission (FERC), under the chairmanship of Biden appointee Richard Glick, has done similar damage. Ever since Glick became chairman, FERC has routinely delayed authorizing new natural gas pipelines and infrastructure. And then last February, Glick, whom Politico described as “Biden’s most effective climate warrior,”⁷ along with his fellow Democratic commissioners, voted to change FERC’s longstanding policy governing authorizations of gas infrastructure, tilting reviews to favor climate change considerations over consumers.

After a bipartisan congressional backlash ensued, FERC reversed itself and redesignated that policy as “draft,”⁸ but the natural gas industry continues to face regulatory uncertainty and confusion.

Biden’s Securities and Exchange Commission (SEC) is also complicit in the administration’s climate hysteria. Earlier this year, as part of the extremist “environment, social, and governance,” or ESG, movement, Biden’s SEC Chairman, Gary Gensler, proposed a mandatory “climate change disclosure” rule, which would require publicly traded companies to, among other things, describe plans to deal with the “physical effects of climate change,” as well as quantify their greenhouse gas emissions and those from the small businesses in their supply chains.

Even the relatively obscure Office of Comptroller of the Currency (OCC), which regulates the national banks and federal savings associations, is getting in the game. Biden’s nominee to head the OCC, Saule Omarova, said that the threat of climate change justified bankrupting the nation’s coal, oil, and gas industries. After it became clear Omarova couldn’t get sufficient support in the Senate, Biden withdrew her nomination. Even so, the OCC now has its first “Climate Change Risk Officer” to address “climate financial risk” to the banking system.⁹

The results of Biden’s green assault on American energy have been disastrous. Since Biden took office, gasoline prices began a steady rise, reaching their highest levels ever recorded (including after accounting for inflation) earlier this year at \$5.00 a gallon. Despite recent fortuitous declines, prices are still well over \$1-a-gallon higher than they were at the beginning of the year, and 87 cents higher than this time last year.¹⁰



The results of Biden’s green assault on American energy have been disastrous.

5 <https://www.api.org/news-policy-and-issues/blog/2022/03/24/drilling-down-on-federal-leasing-facts>

6 Ibid at 5

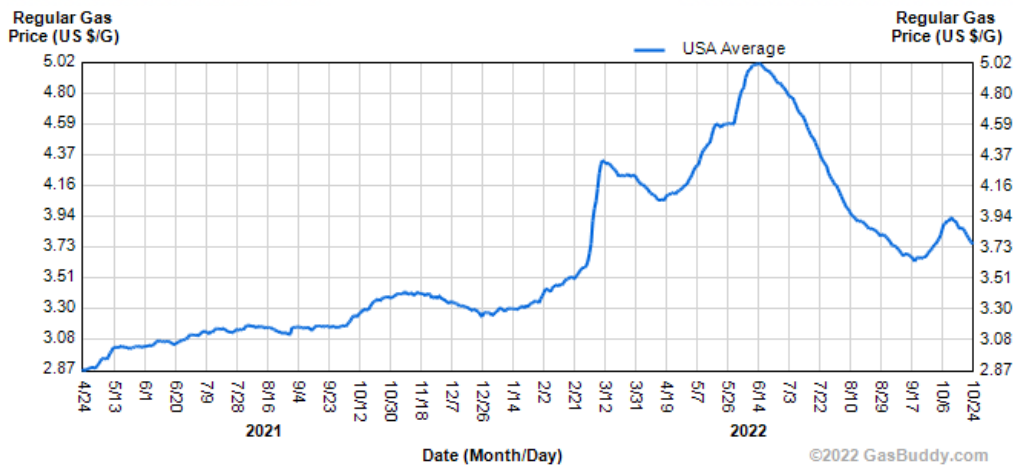
7 <https://www.politico.com/news/2022/03/26/federal-energy-regulatory-commission-glick-senate-00017800>

8 <https://www.utilitydive.com/news/manchin-barrasso-ferc-gas-infrastructure-pipeline-review/619816/>

9 <https://www.occ.gov/news-issuances/speeches/2021/pub-speech-2021-97.pdf>

10 <https://www.eia.gov/petroleum/gasdiesel/>

18 Month Average Retail Price Chart



While feeling the Biden-imposed pain at the pump, consumers are also paying more when they flip the light switch. Thanks in part to Biden’s FERC, residential electricity prices, according to the U.S. Energy Information Administration (EIA), “will be 6.1% higher in 2022, largely as a result of high natural gas prices.”¹¹ According to a July report from EIA, “new 12-month high daily [wholesale electricity] prices” were set on May 20 at various electricity regions across the country, including “in the Mid-Atlantic (PJM), the Midwest (MISO), and in Louisiana.”¹²

More specifically, according to data compiled by the National Energy Assistance Directors Association (NEADA), “One in six U.S. homes, or 20 million households, have fallen behind on their energy bills as power prices rise and inflation eats up incomes. In June, NEADA warned that “Electricity prices are expected to increase significantly this summer as result of rapidly rising natural gas prices, a primary feeder fuel for electricity and a warmer summer creating additional demand for electricity.”¹³

11 <https://www.eia.gov/pressroom/releases/press515.php>

12 <https://www.eia.gov/electricity/monthly/update/wholesale-markets.php>

13 <https://www.bloomberg.com/news/articles/2022-08-23/can-t-pay-utility-bills-20-million-us-homes-behind-on-payments-facing-shutoffs>

14 <https://rbnenergy.com/already-gone-us-refinery-shutdowns-a-major-contributor-to-refined-product-squeeze-and-high-prices>

15 <https://www.bloomberg.com/news/articles/2022-06-03/chevron-ceo-warns-not-to-count-on-new-us-oil-refinery>

16 Ibid. at 13

17 <https://www.westernenergyalliance.org/blog/responding-to-the-white-house-blame-game-on-leases>

Biden’s efforts to enforce the ESG agenda, the purpose of which is to reduce investment in fossil fuels, is also reducing the nation’s refining capacity, which means higher prices now and well into the future. Lost refining capacity “is limiting the ability of refiners to respond to the strong demand recovery and loss of supply.”¹⁴

Mike Wirth, CEO of Chevron, noted in June that

the U.S. has not built a new refinery since the 1970s. “My personal view,” Wirth said, “is there will never be another new refinery built in the United States.”¹⁵ Wirth, who met with administration officials this summer, implicitly placed blame at Biden’s feet, noting that, “You’re looking at committing capital 10 years out, that will need decades to offer a return for shareholders, in a policy environment where governments around the world are saying: we don’t want these products. We’re receiving mixed signals in these policy discussions.”¹⁶

Refusing to take any responsibility for his self-imposed mess, Biden has embarrassingly gone hat-in-hand to beg Saudi Arabia and OPEC to increase oil production. At the same time, he has deflected blame onto, among others, Vladimir Putin—he called high gasoline prices “Putin’s price hike”—and the U.S. oil and gas industry, which he falsely accused of hoarding drilling permits, even as his own administration banned new oil and gas leases, and his environmental activist allies blocked production through lawsuits.¹⁷

Perhaps most egregiously, he attacked gas station

owners, most of which are small businesses owned and operated by immigrants. “My message to the companies running gas stations and setting prices at the pump,” Biden tweeted, “is simple: this is a time of war and global peril. Bring down the price you are charging at the pump to reflect the cost you’re paying for the product. And do it now.”¹⁸

Not surprisingly, Biden’s tweet revealed his fundamental ignorance of how oil markets work. Crude oil prices are set on the global market, which largely determines prices for petroleum products such as gasoline.¹⁹ Even liberal Jeff Bezos, founder of Amazon,

mocked Biden for his stupidity. “Ouch. Inflation is far too important a problem for the White House to keep making statements like this,” Bezos tweeted back. “It’s either straight ahead misdirection or a deep misunderstanding of basic market dynamics.”²⁰

energy Green New Deal. The list covers the entire energy supply chain, from production (upstream) to pipelines (midstream) to refineries (downstream)—and is designed to create and protect jobs, lower energy prices for consumers, strengthen energy security, and return energy independence to the United States.

ROBUST OVERSIGHT AND INVESTIGATION

Congress should pursue an aggressive oversight strategy that includes regular hearings with Biden administration officials from the White House, the Department of Energy, the Department of the Interior, the Environmental Protection Agency, the Securities Exchange Commission (SEC), the Federal Energy Regulatory Commission (FERC), and other relevant agencies. The first two years of the Biden administration have provided ample opportunity for robust oversight and investigation. Examples could include Energy Secretary Granholm’s investments in the electric bus manufacturer Proterra and her promotion of electric vehicles, the White House’s involvement with the writing of FERC policy statements, Tracy Stone Manning’s past collaboration with ecoterrorist organizations, and environmental organizations participation in writing official administration policy.

However, Republicans should not only conduct oversight – they should pursue pro-energy policies for the country. That is why Power The Future has compiled the following top ten solutions to end the nations’ ongoing energy crisis.

118TH CONGRESS: ENERGY POLICY ROADMAP

It’s now time to stop Biden’s anti-energy agenda and get the country’s energy policy back on track. Biden’s failures are contributing to inflation and an economy teetering on the brink of recession.

Power the Future has compiled an “Energy Policy Roadmap for 2023,” a top ten list of policies that, if enacted, can help reverse the destruction caused by Biden’s anti-

Congress should pursue an aggressive oversight strategy.

18 <https://www.politico.com/news/2022/07/03/kirby-biden-gas-prices-00043876>

19 <https://www.eia.gov/energyexplained/gasoline/factors-affecting-gasoline-prices.php>

20 <https://www.reuters.com/business/energy/bezos-slams-bidens-call-gasoline-stations-cut-prices-2022-07-03/>



heaviest on lower-income Americans.²²

The Congressional Budget Office (CBO) confirmed this view. In a post-mortem analysis of the IRA's economic and fiscal impacts, CBO found that because of the natural gas tax, not surprisingly, a "company's increased expense is expected to be passed through, in part, to end users in the form of higher prices." Just who are those "end users"? Consumers, of course, who "will bear more of the cost increase from a charge for methane emissions by paying higher prices."²³

The natural gas tax, as CBO explained, will also create a vicious cycle: the Biden FERC and Interior Department have already shut down natural gas production and delivery via pipeline to markets. To compound matters, the disastrous natural gas tax, "increases the cost of producing natural gas, which raises its price and lowers its total output."²⁴

New Policy:

On day one, as their first order of business, the 118th Congress should introduce and then pass legislation to repeal Joe Biden's natural gas tax.

Energy Policy Roadmap 2023: **TOP TEN SOLUTIONS TO END AMERICA'S ENERGY CRISIS**

1. REPEAL JOE BIDEN'S NATURAL GAS TAX

Though it has received scant attention from the media, the natural gas tax buried in Joe Biden's Inflation Reduction Act will harm American consumers, small businesses, and decrease natural gas production, which is critical to the well-being of the economy.

For starters, thanks in good part to FERC and its Biden-backed chairman, Richard Glick, natural gas prices are through the roof. Forbes found that, in examining futures markets from November through March, "the prime winter heating months, against those of September 1, 2022, *U.S. natural gas futures markets are up a stunning 95% year-over-year.*"²¹ (emphasis added)

No matter. President Biden signed the IRA's so-called "methane fee" anyway, purportedly designed to reduce methane emissions from oil and natural gas production. In truth, according to the American Gas Association, the tax will "amount to tens of billions of dollars annually" on consumers, with the economic burden falling

2. END BIDEN'S OIL AND GAS LEASING MORATORIUM/RETURN POWER TO STATES

Unfortunately for America, Joe Biden has kept his word—that is, Biden has fulfilled his campaign promise to stop new oil and gas production on federal lands. During a 2020 campaign event in New Hampshire, Biden emphatically pledged the following: "No more drilling on federal lands, period. Period, period, period."²⁵

21 <https://www.forbes.com/sites/salgilbertie/2022/09/05/high-natural-gas-prices-will-cripple-europe-and-hurt-us-consumers-this-winter/?sh=5a2b1bd94bc7>

22 https://www.aga.org/globalassets/letter-to-congress-on-methane-fees-090721_final.pdf

23 <https://www.cbo.gov/publication/58166>

24 Ibid. at 23.

25 <https://grist.org/politics/biden-promised-no-new-drilling-on-public-lands-heres-why-he-broke-that-promise/>

Thanks to a federal judge in Louisiana, Biden’s ban, covering new offshore and onshore leases, was initially blocked under a preliminary injunction last year. This forced the Interior Department’s Bureau of Land Management (BLM) to issue an onshore leasing plan in April 2022 that would open 173 parcels on roughly 144,000 acres in 9 states.

But this was not an unmitigated victory for American energy. As noted in an April 15th press release announcing the sale, Interior “initially began analyzing 646 parcels on roughly 733,000 acres that had been previously nominated for leasing by energy companies.” “As a result of robust environmental review,” Interior wrote, “the final sale notices will offer approximately 173 parcels on roughly 144,000 acres, an 80 percent reduction from the acreage originally nominated.”²⁶ [emphasis added]

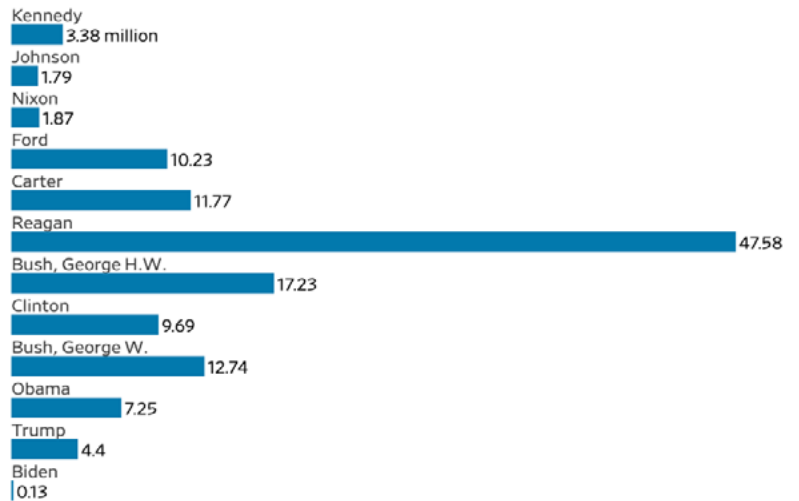
What’s more, for the first time since a five-year offshore leasing plan was required by law in 1980, the U.S. does not have an offshore leasing plan in place. Moreover, according to the American Petroleum Institute, “the last time the U.S. went this long without an offshore lease sale was during the Kennedy administration.” Both result from the administration’s policy, “which is a de facto moratorium on new federal offshore leasing.”²⁷

In the first 17 months of the Biden Administration, only one offshore lease sale has been held, and it was blocked in court after activists sued.²⁸ And despite issuing the onshore leasing plan in April, Interior has dragged its heels on actual sales, not conducting its first until *summer of this year*.

Furthermore, recent troubling pattern of agreeing in litigation settlements with activists challenging Trump lease sales to halt further leasing in specific areas shows that their real intent is to come as close to a complete halt as they can.

After the federal district court placed a temporary halt on Interior’s ban, the Biden Administration appealed. In July 2022, the 5th Circuit Court of Appeals determined the district court’s ruling was too vague, and sent it back down for further review. On August 15th, the district court once again ruled the ban illegal, permanently but this time with more specificity, and limited to the 13 plaintiff states²⁹ and to only cancelations and postponements of lease sales that came before suit was filed in March 2021. Time will tell if the Biden (again) appeals the ruling.

Federal acres leased for oil-and-gas production, first 19 months of administration



Note: First terms only. Excludes National Petroleum Reserve in Alaska and Coastal Plain of the Arctic National Wildlife Refuge.

Sources: Bureau of Land Management; Bureau of Ocean Energy Management

What’s clear, though, is that Biden’s overall leasing record, as compared to other administration’s in the post-war era, is *simply atrocious*. According to a recent analysis by the *Wall Street Journal*, the Biden Administration “has leased fewer acres for oil-and-gas drilling offshore and on federal land than any other administration in its early stages dating back to the end of World War II.”³⁰

26 <https://www.doi.gov/pressreleases/interior-department-announces-significantly-reformed-onshore-oil-and-gas-lease-sales>

27 <https://www.api.org/news-policy-and-issues/blog/2022/08/22/finalize-a-robust-offshore-leading-program-for-energy-security-clarity>

28 Ibid. at 23

29 LA, AL, AK, AR, GA, MS, MO, MT, NE, OK, TX, UT, WV.

30 <https://www.wsj.com/articles/federal-oil-leases-slow-to-a-trickle-under-biden-11662230816>



New Policy:

Congress should pass legislation ending Biden’s illegal leasing moratorium, and require that any future moratorium must first be passed by Congress and signed by the President. It should also require a minimum number and geographic breadth of quarterly oil and gas lease sales, allow “Applications for Permits to Drill” (APDs) to take effect 30 days from the date an application is filed, and rescind federal regulatory authority over hydraulic fracturing, deferring to state regulatory regimes.

Last year, TC Energy projected that “the total number of American union workers constructing Keystone XL in 2021 will exceed 8,000” with “\$900 million in gross wages. In total, “Keystone XL is expected to employ more than 11,000 Americans in 2021, creating more than \$1.6 billion in gross wages.”³⁴

Again, thanks to Joe Biden, that won’t happen.

New Policy:

Using its authority under Article I, Section 8 of the Constitution, Congress should immediately pass legislation that deems KXL approved, and prohibits any further judicial review of the project.

3. APPROVE THE KEYSTONE XL PIPELINE

It’s exasperating to relate, but most forget that the Keystone XL Pipeline (KXL), before President Biden killed it as one of his first official acts in office, had been languishing in the federal permitting process, after numerous legal and political twists and turns, since 2008.³¹

The fact is, KXL was an essential component of ensuring American energy security over the next several decades, as it would have supplied an additional 830,000 barrels of secure Western Canadian crude oil to the U.S. Gulf Coast. This supply would help meet increased demand for transportation fuel and a wide range of useful manufactured products. And it would have displaced crude oil from OPEC and Mexico.³²

Opponents of KXL, including Biden, falsely argued that KXL never had a shovel in the ground, so canceling it didn’t really matter. In fact, KXL was over half complete. Thanks to Biden, TC Energy, the corporate developer of the project, was forced to fire 1,000 construction workers.³³

4. BLOCK BIDEN’S ESG REGULATIONS

The Environment, Social, Governance (ESG) movement has taken the oil and gas industry by storm. ESG is shorthand for the committed effort of “woke” investors, including those at major hedge funds, such as Blackrock, to disinvest in fossil fuels to pave the way for the so-called “energy transition.”

Unfortunately, it’s working. When it comes to investment in oil and gas, “ESG pressures are serving as a block, preventing capital from entering the oil market and preventing it from balancing,” according to energy research firm Goehring and Rozencwajg Associates.

31 <https://apnews.com/article/5831ea1867454124aa4a97bc8d72e48b>

32 <https://www.alberta.ca/keystone-xl-pipeline-project.aspx>

33 <https://www.reuters.com/business/energy/tc-energy-cuts-jobs-keystone-pipeline-nixed-markets-start-move-2021-01-21/>

34 [https://www.tcenergy.com/announcements/2020/2020-10-28-tc-energy-awards-more-than-\\$1.6-billion-in-american-contracts-to-build-keystone-xl-project-to-create-over-8000-union-jobs-in-2021/](https://www.tcenergy.com/announcements/2020/2020-10-28-tc-energy-awards-more-than-$1.6-billion-in-american-contracts-to-build-keystone-xl-project-to-create-over-8000-union-jobs-in-2021/)



“There is little relief in sight.” According to the firm, in good part because of ESG pressures, “capital spending at the 100 largest energy companies in the S&P 500 topped out at \$228 bn in 2014 and had already fallen by a third to \$155 bn in 2019.”

Securities and Exchange Commission (SEC) Chairman Gary Gensler, a Biden appointee, has taken wokeness and ESG ideology to new heights. Gensler and the SEC’s Democratic commissioners have proposed a rule to require publicly traded companies to disclose to investors the “risks” they face from climate change. As Gensler grandly declared on March 21:

*Investors representing literally tens of trillions of dollars support climate-related disclosures because they recognize that climate risks can pose significant financial risks to companies, and investors need reliable information about climate risks to make informed investment decisions. Today’s proposal would help issuers more efficiently and effectively disclose these risks and meet investor demand, as many issuers already seek to do.*³⁵

But the rule would do nothing of the kind. In a letter signed by the attorneys general representing 24 states, including energy producing states such as West Virginia, Louisiana, Texas, and Oklahoma, the SEC rule is thinly disguised attempt at “backdoor regulation” by the Biden Administration.

With the climate disclosure rule, the SEC is “redefining itself at the behest of political interests bent on destroying industries central to the American economy—building blocks like energy companies, traditional automakers, and more.”³⁶

New Policy:

Once finalized, Congress should use the Congressional Review Act (CRA) to overturn the Gensler-Biden climate disclosure rule, and pass new legislation prohibiting the SEC from requiring climate change disclosure unless it meets the Supreme Court’s longstanding “materiality” standard.

5. REPEAL THE CALIFORNIA WAIVER

California is in the news, much to the chagrin of its green activist-in-chief, Gov. Gavin Newsom (D). Along with an unstable grid caused by state mandates requiring volatile renewable electricity sources, such as solar and wind, California’s legislature passed legislation in August to ban the sale of new cars with internal combustion engines—the kind driven by the vast majority of drivers—in 2035.³⁷

And unfortunately, this madness isn’t just confined to California: 15 states and Washington, D.C., which cover about 40 percent of the U.S. population, usually follow the Golden State’s lead in setting vehicle emissions standards. Normally, under the federal Clean Air Act, states are preempted from doing this, but the Clean Air Act also authorizes EPA to grant California a waiver from these restrictions. After California gets its waiver, but only after it does, other states can sign up for its regulations without even needing EPA review.

Earlier this year, the Biden EPA reinstated the waiver for California to establish its own greenhouse gas emissions standards for new vehicles sold in the state.³⁸ Reinstating this waiver—which the Trump Administration had revoked—means that EPA, California bureaucrats, and their corporate cronies in the auto industry will now impose greenhouse gas emissions standards that will make conventional cars more expensive—all with the goal of driving consumers to pricier electric vehicles they can’t afford.

But the “California waiver” is not just about making the car you purchase more expensive. In good measure,

35 <https://www.sec.gov/news/press-release/2022-46>

36 <https://www.sec.gov/comments/s7-10-22/s71022-20131409-301574.pdf>

37 <https://www.latimes.com/business/story/2022-08-25/california-ban-gasoline-mandate-zero-emission-2035>

38 <https://www.gov.ca.gov/2022/03/09/governor-newsom-statement-on-biden-administrations-restoration-of-californias-clean-car-waiver/>

it's also about discouraging greater investment in, and ultimately shutting down, the U.S. refining sector.

And it seems to be working. Mike Wirth, CEO of Chevron, recently lamented the future of the refining sector, in large part because of government policy of the kind California and the Biden EPA are implementing today. As he put it:

But what we've seen over the last two years are shutdowns. We've seen refineries closed. We've seen units come down. We've seen refineries being repurposed to become bio refineries. And we live in a world where the policy, the stated policy of the U.S. government is to reduce demand for the products that refiners produce...At every level of the system, the policy of our government is to reduce demand, and so it's very hard in a business where investments have a payout period of a decade or more. And the stated policy of the government for a long time has been to reduce demand for your products.³⁹

So what's the upshot, according to Wirth? "There hasn't been a refinery built in this country since the 1970s. I personally don't believe there will be a new petroleum refinery ever built in this country again."⁴⁰

New Policy:

Congress should pass legislation to once and for all remove EPA's authority to grant California a waiver to set its own emissions standards for new cars and trucks. The bill should also forbid EPA from establishing emissions standards that are equivalent to bans on internal combustion engines and mandates on auto companies to manufacture electric vehicles.

6. END ACTIVIST-LED "SUE AND SETTLE" AND "CITIZEN LAWSUITS"

The federal permitting process is nothing short of a bureaucratic disaster. Project developers routinely face bottlenecks from a potpourri of federal agencies responsible for issuing permits under various environmental laws, many of which haven't been updated for 40 years or more.

But one of the biggest problems facing builders is litigation driven by environmental activist groups (and this is not just true for fossil fuels but also for renewable energy projects). Whether it's the Center for Biological Diversity or the Southern Environmental Law Center, such groups routinely sue fossil fuel developers using so-called "citizen suit" provisions in environmental statutes, such as the Clean Air Act and the Endangered Species Act.

These provisions authorize two kinds of lawsuits: "enforcement actions against entities that violate environmental laws, including permit limitations and other regulatory and statutory requirements; and actions to compel agencies to carry out nondiscretionary duties, including promulgating statutorily required regulations."⁴¹

Activist groups have tended to use the first tactic to great effect. According to the law firm Wilmer Hale:

Lawsuits asserting violations of environmental laws provide an avenue for citizens or groups to compel compliance in the absence of agency enforcement. There has been an increase in citizen suits against a host of regulated entities in recent years, and suits against energy companies and utilities—whether meritorious or not—will likely continue to be filed.⁴²

In addition to "citizen suits," activists have sued under the Administrative Procedure Act (APA) to challenge,

39 <https://www.foxbusiness.com/markets/chevron-ceo-oil-refinery-built-u-s>

40 Ibid. at 30.

41 <https://www.wilmerhale.com/insights/client-alerts/20190328-citizen-suits-challenge-rollbacks-replacements-and-project-approvals>

42 Ibid at 32.

successfully in some instances, agency actions granting permits and authorizations to the Keystone XL, Dakota Access, and Mountain Valley pipelines. They have also taken agencies to court over inadequate climate change analyses underpinning federal lease sales for oil and gas development.⁴³

On top of this, activists have routinely conspired with federal bureaucrats to engage in “sue and settle,” a practice elevated to an art form during the Obama Administration.

“Sue and settle” occurs when “an agency such as EPA accepts a lawsuit from outside advocacy groups that effectively dictate the priorities and duties of the agency through legally-binding, court- approved settlements negotiated behind closed doors—with no participation by other affected parties or the public.”⁴⁴

This practice especially hurts energy-producing states, which are usually shut-out of the process. As the former director of the Arkansas Department of Environmental Quality noted, under sue and settle, “When the states are disenfranchised, so is the truth of our federalist democracy, and the people WE represent.”⁴⁵

New Policy:

Pass legislation that ends “sue and settle”; stops activist groups from abusing citizen suit provisions in environmental statutes, while also ensuring that the Constitutional rights of landowners and property owners are protected; and restricts environmental groups from suing under the APA.



7. BAN USE OF THE “SOCIAL COST OF GREENHOUSE GASES”

When bureaucrats craft rules and determine their costs and benefits, the goal, at least of rational policymaking, is to maximize “net benefits.” When it comes to climate change policy, bureaucrats faced a conundrum: no U.S. climate change regulation would produce any meaningful climate benefits, because carbon dioxide is emitted and diffused globally. And China is the world’s top emitter of CO₂.

But for climate alarmists, necessity—that is, regulating every corner of the American economy—is the mother of invention. Hence the “social cost of greenhouse gases” (SCGHG), defined as “a monetary estimate of the economic impacts associated with emitting an additional ton of that GHG in a given year.” Conversely, “this dollar figure represents the benefit of a one-ton reduction.”⁴⁶

This concept sounds technical, and it’s existence is known only to activists and academics, who invented it to ensure that climate regulation would always produce net benefits—and, conversely, that enabling fossil fuel projects would always produce net costs on the economy, as well as public health, agricultural productivity, and property damage from natural disasters.⁴⁷

Via executive order, President Biden reconstituted the interagency working group tasked with determining the SCGHG and applying it to regulatory and other

43 Ibid. at 32.

44 https://www.uschamber.com/assets/documents/u.s._chamber_sue_and_settle_2017_updated_report.pdf

45 Ibid. at 35.

46 <https://sgp.fas.org/crs/misc/IF11844.pdf>

47 <https://news.stanford.edu/2021/06/07/professors-explain-social-cost-carbon/>

activities across the federal government.⁴⁸ The working group's mandate "is entirely based on getting an answer that justifies taxing and regulating CO2 emissions."⁴⁹

The consequences for energy production are plain to see. On September 6, the Department of Interior settled a lawsuit with several environmental activist groups (see "sue and settle" above), including the Center for Biological Diversity and WildEarth Guardians, that effectively blocks the previous sale of "113 oil and gas leases encompassing 58,617 acres of public land in the states of Montana, North Dakota, and South Dakota."⁵⁰

Green groups challenged those lease sales on grounds that Interior failed to employ the SCGHG into its environmental impact analysis under the National Environmental Policy Act (NEPA). By including the social cost in the NEPA reviews, the Biden Administration will be able to claim, "the leases have a significant negative environmental impact even when they don't and then seek to cancel them."

Moreover, even after it completes its review, if Interior allows development, "green groups will still be able to challenge the reviews and leases afresh in court."⁵¹

New Policy:

Congress should pass legislation banning all federal agencies and White House offices from using the SCGHG for any purpose.

8. AUTOMATIC APPROVALS FOR LNG EXPORT TERMINALS

U.S. LNG exports are serving as a lifeline to European countries desperately seeking natural gas being denied to them by Russian President Vladimir Putin. Thanks to the innovation and entrepreneurship of America's energy industry, the U.S. is now the world's leading exporter of LNG.⁵²

Despite the Biden Administration's hostility to fossil fuels, the Russian-Ukraine war has forced its hand politically, and thus the idea of delaying or rejecting approvals has become somewhat untenable, although FERC recently announced a five-month delay of its review of Venture Global's LNG project in Louisiana.⁵³

On top of this, Biden's green allies continue to wage virtual war on the expansion of LNG exports. According to the Environmental Integrity Project, "The reality is that a dramatic increase in global reliance on LNG could be playing with fire, from a climate perspective."⁵⁴

Current law gives the Biden Administration—or any similar administration hostile to LNG exports—ample opportunity to impose punitive delays that can prove costly and disruptive. LNG export approvals are governed by Section 3 of the Natural Gas Act (NGA). Section 3 of the NGA is administered by DOE and FERC.

DOE has been the source of considerable delay in providing export authorizations.⁵⁵ Under the NGA, DOE authorizes LNG exports to foreign countries. After providing for public input, DOE "shall" grant an order of authorization *unless* it determines that the export "will not be consistent with the public interest." DOE has broad authority to grant authorization with

48 <https://www.akingump.com/en/news-insights/less-frost-and-more-cost-biden-revives-interagency-working-group-to-publish-updated-social-costs-of-carbon-and-other-greenhouse-gases.html>

49 <https://www.instituteforenergyresearch.org/climate-change/the-zombie-social-cost-of-carbon/>

50 https://earthjustice.org/sites/default/files/files/final_settlement_agreement_mt_lease_sale.pdf

51 https://www.wsj.com/articles/biden-freezes-oil-and-gas-leases-joe-manchin-west-virginia-climate-energy-chuck-schumer-11663093146?mod=opinion_trending_now_opn_pos4

52 <https://www.eia.gov/todayinenergy/detail.php?id=53159>

53 <https://news.bloomberglaw.com/environment-and-energy/ferc-issue-five-month-delay-for-venture-globals-cp2-review>

54 <https://environmentalintegrity.org/wp-content/uploads/2022/06/LNG-report-6.9.22.pdf>

55 <https://www.klgates.com/DOE-Takes-Concrete-Steps-to-Streamline-Permitting-and-Reassure-Global-LNG-Markets-06-20-2018>

modifications, terms, and conditions that it “may find necessary or appropriate.”

In 1992, Congress amended Section 3, and provided that, with respect to imports and exports to and from a country with which the United States has in effect a free trade agreement (FTA) “requiring national treatment for trade in natural gas,” that import or export “shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.”⁵⁶

Although LNG trade to countries with an FTA “shall be granted without modification or delay,” Congress did not impose any actual deadline on DOE to process export applications. Applications for non-FTA countries are not even subject to “without . . . delay” or any other statutory requirement to act quickly.

DOE determines whether an LNG export authorization would be in the “public interest” by looking to economic, international, environmental, and gas-supply security factors. This open-ended analysis is inherently uncertain⁵⁷ and open to manipulation by an administration hostile to LNG exports.

New Policy:

Congress should pass legislation to amend Section 3 of the NGA, to put LNG exports on the same footing as crude oil exports. That is, Congress should declare that all LNG exports, no matter whether to countries with FTAs or non-FTAs, are in the public interest, thus eliminating DOE review entirely.

56 See 106 Stat. 2866.

57 RE: Response to Request for Information Regarding Reducing Regulation and Controlling Regulatory Costs, Center for Liquefied Natural Gas, (Jul. 14, 2017), *available at* <https://www.ngsa.org/wp-content/uploads/sites/3/2020/06/NGSA-CLNG-DOE-RFI-Comments.pdf>.

58 https://www.supremecourt.gov/opinions/21pdf/20-1530_n758.pdf

59 <https://www.supremecourt.gov/opinions/06pdf/05-1120.pdf>



9. OVERTURN MASSACHUSETTS V. EPA

Proponents of fossil fuels and supporters of reining in the administrative state secured a significant win recently with *West Virginia v. EPA*. In that case, the Supreme Court ruled that EPA’s “Clean Power Plan” (instituted by the Obama Administration) had overstepped its authority by regulating under a rarely used provision in the Clean Air Act to determine (through “generation shifting”) the composition of the nation’s electric generation mix. As the Court found:

EPA claimed to discover an unheralded power representing a transformative expansion of its regulatory authority in the vague language of a long-extant, but rarely used, statute designed as a gap filler. That discovery allowed it to adopt a regulatory program that Congress had conspicuously declined to enact itself. Given these circumstances, there is every reason to “hesitate before concluding that Congress” meant to confer on EPA the authority it claims under Section 111(d).⁵⁸

This is undoubtedly a landmark case, but more needs to be done. Obama’s EPA crafted the Clean Power Plan because it claimed authority under the CAA that the Supreme Court, in 2007, decreed that it had, by a 5-4 vote, in *Massachusetts v. EPA*.⁵⁹ In that case, the Court ruled that the definition of “air pollutant” under the CAA included carbon dioxide and other greenhouse gases, and that EPA could regulate greenhouse gases from new motor vehicles (and new motor vehicle engines) if it determined that they “endanger public health and welfare,” which it did in 2009.



Massachusetts v. EPA is “easily the Supreme Court’s most important environmental law decision in well over a decade.” The case set EPA “on a course to regulate greenhouse gas emissions and potentially remade much of administrative law.”⁶⁰ Thankfully, *West Virginia v. EPA* restricted EPA’s authority to regulate greenhouse gases, but it did not overturn *Massachusetts*, leaving the Biden EPA with continued ability to wreak havoc on American energy producers.

New Policy:

Congress should pass legislation overturning *Massachusetts v. EPA*, explicitly stating that the Clean Air Act does not include greenhouse gases, and also rescind the Obama Administration’s endangerment finding for greenhouse gases and prohibit any future EPA from making any similar finding for greenhouse gases.

10. STOP BIDEN’S WAR ON COAL

With sky-high gasoline and natural gas prices, the policy debate in Washington has focused mainly on President Biden’s illegal and costly war on U.S. oil and gas production. Meanwhile, Biden’s EPA continues what Obama’s started: the destructive war on coal.

While activists cheer on EPA for shutting down coal plants in the name of climate change, Biden’s EPA is excessively, and needlessly, clamping down on so-called “conventional pollutants,” such as nitrogen oxides, sulfur dioxides, and ozone. The result is a spate of rulemakings wreaking havoc on coal-fired power generation, covering “Coal Combustion Residuals,” “Effluent Limitation Guidelines,” “Regional Haze,” “Transport Rule,” and many others.

“Unless moderated,” wrote the trade group America’s Power to the North American Electric Reliability

Corporation (NERC), which is responsible for ensuring grid reliability, “we estimate these rules, taken together, will cause coal retirements to rise sharply during 2026-2028 and, therefore, exacerbate resource adequacy challenges in certain regions of the country.”⁶¹

Regional grid operators have expressed alarm over specific EPA rulemakings targeting coal. For example, the Midwest Independent System Operator (MISO), in comments submitted to EPA regarding its proposed “Transport Rule,” wrote that if the rule is “promulgated as drafted,” it “would cause significant, potential adverse impacts associated with grid reliability.”⁶²

And that, of course, is MISO’s assessment of just one rule—accounting for the compounding effect of all the Biden EPA’s anti-coal rules, the situation appears even more dire.

New Policy:

Congress should pass legislation rescinding the Biden EPA rulemakings addressing coal-fired power plants. It should also require EPA to conduct a reliability study, in conjunction with the North American Electric Reliability Corporation (NERC), examining the impacts on grid reliability of any future EPA rulemakings affecting coal-fired power plants.

60 https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1101&context=nulr_online

61 <https://americaspower.org/wp-content/uploads/2022/08/Jim-Robb-Letter-Aug-16-2022-1.pdf>

62 <https://americaspower.org/wp-content/uploads/2022/06/Grid-Operator-Comments-on-Transport-Rule.pdf>

CONCLUSION

If Congress takes these bold, but practical steps, to stop Biden's attack on American energy, it can restore hope for energy workers, consumers, and the economy. There's no question Biden will veto these measures—but at this point, that's not really the point.

Passing these ten policies will provide a clear contrast with Biden on energy between two competing visions: one rooted in allowing market participants to produce the cleanest, most reliable, and most affordable energy on the planet, versus another, Biden-backed vision that favors mandates, command-and-control regulations, and dictates from bureaucrats designed to stamp out fossil fuels and prioritize cronies in the green energy industry—all the while scoffing at regular people who have to suffer the consequences.

It's time for a contrast, one that will allow the American people to choose. And hopefully in time, they will choose that it's now time for Joe Biden's energy reign of terror to come an inglorious end.

If Congress takes these bold, but practical steps, to stop Biden's attack on American energy, it can restore hope for energy workers, consumers, and the economy.

