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OVERSIGHT HEARING: EXAMINING THE PRESIDENT'S FISCAL YEAR 2016  
BUDGET REQUEST FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

WEDNESDAY, MARCH 4, 2015

U.S. SENATE

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 9:32 a.m. in room 406, Dirksen Senate Building, the Honorable James Inhofe [chairman of the committee] presiding.

Present: Senators Inhofe, Vitter, Capito, Boozman, Sessions, Wicker, Rounds, Sullivan, Boxer, Cardin, Whitehouse, and Markey.

STATEMENT OF THE HONORABLE JAMES INHOFE, A UNITED STATES SENATOR  
FROM THE STATE OF OKLAHOMA

Senator Inhofe. The meeting will come to order.

We appreciate very much, Administrator McCarthy, your being here. We will have a lot of things to talk about, agreements and disagreements.

The EPA is proposing to cut \$333 million from the Clean Water State Revolving Loan Fund which provides grants and loans for wastewater treatment. This is one of the programs that back in my State, and I am sure in other States, that is very popular and one in which we are very much involved.

EPA is three years behind in reporting to Congress on wastewater and storm water needs. However, it doesn't stop EPA from pursuing its new waters of the US rule on which we had a hearing. I have to say, in my State of Oklahoma, the Farm Bureau and the other ag groups find that to be the one that is the most offensive to them and is going to be the biggest problem.

The President's budget proposes a 66 percent cut in the Diesel Emissions Reduction Grant Program, which Senator Carper, who will be here shortly, I am sure, and I work to fund each year. Voluntary diesel engine retrofits through matching funds are a cost effective way of reducing diesel engine pollution which EPA estimates causes 15,000 premature deaths each year.

EPA consistently misses its statutory deadline for proposing

and finalizing renewable volume obligations for refiners, creating significant uncertainty and volatility buying and selling Renewable Identification Numbers or RINs, which are the credits used as proof of compliance with the Renewable Fuels Standard.

The President's budget cuts Superfund, Homeland Security Preparedness and Response while he is out saying that terrorism is less of a threat to the American people than climate change. In fact, EPA also intends to pursue a legislative proposal for an additional \$4 billion in mandatory spending for EPA to enforce its climate change regulations which 32 States oppose and will result in double digit electricity price increases in 43 States.

Mandatory spending would mean that EPA would hand out money with no Congressional oversight. The President requests \$3.5 million for 20 new attorneys because, "Each EPA action is expected to be challenged in court, which will require skilled and experienced attorneys specialized in the Clean Air Act to devote significant resources to defense of these actions."

I think that was your quote, Madam Administrator. These attorneys would defend a climate change rule which, according to EPA's own consistent testimony, will not affect climate change.

In fact, the Clean Power Plan would reduce CO2 concentrations by less than 1 percent, reduce global temperature rise by less than 0.016 degrees Fahrenheit, and reduce sea level

rise by the thickness of three sheets of paper.

If we would like to point to our international agreement with China as proof that global concentrations will change, it is important to keep in mind that China emits 800 million tons of CO2 per month while the Clean Power Plan reduction would be 550 million tons per year. We are talking about 550 million tons per year as opposed to 800 million tons a month from China.

In November, EPA proposed lowering the ozone standard when the current standard is not implemented in 40 percent of the Country. Manufacturers will not be able to expand.

I remember years ago, we did a study in Oklahoma on what it would really mean if we had to go into a non-attainment status. It would be something very, very damaging. When we had the standards of 75 ppm, I will ask you to respond, how many States have not complied with the 2008 standards before we even go into more stringent standards.

Members of the committee and I are looking forward to questioning the EPA's priorities on the regulatory agenda.

Senator Boxer?

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF THE HONORABLE BARBARA BOXER, A UNITED STATES SENATOR  
FROM THE STATE OF CALIFORNIA

Senator Boxer. Thank you very much, Senator.

Welcome, Administrator McCarthy. Thank you for your dedication and devotion to your work, to the American people, to clean air, clean water, safe drinking water, and making sure that we treat this planet the way it deserves to be treated so that our grandchildren can actually have a decent quality of life.

EPA has a vital mission that affects the well-being of every American: implementing our Nation's landmark laws. I mentioned a few, clean air, children's health, safe drinking water, toxics, and water quality in America's lakes and rivers. The health and safety of our children and families depends on the critical work you do and the way we support you or fail to support you.

I am pleased that EPA's budget request of \$8.6 billion includes a \$452 million increase above the fiscal year 2015 enacted level, but we need to remember that six years ago, EPA's budget was \$10.3 billion, and the fiscal year 2016 budget request that we will discuss today is a 20 percent cut from that level. EPA is being asked to do more rather than less. I think it is important for us to keep that in mind.

Yes, I think my colleague is right. The budget does place an important focus on combating dangerous climate change. We are seeing the consequences of climate change all around us, from

historic droughts to extreme wildfires to vanishing wildlife habitat. We are seeing the extreme weather predicted by scientists who sat there in 2008 and said, you are going to see more snowfall, more droughts and more heat.

When my friend and colleague went to the Floor to show that it was cold out and threw a snowball, he said he did it because he thinks we are too serious and he wants us to lighten up.

Senator Inhofe. Since you mentioned my name, I can interrupt you here. Yes, we need to lighten up.

Senator Boxer. Let the record show I quoted him correctly. He said "We need to lighten up."

Here is the deal. He proved my point and the point of those of us who believe climate change is real because we are seeing these extreme snowfalls, records are being broken while we are seeing extreme heat. That is the weather. The climate is different than the weather. We are clearly seeing the rise in overall temperatures.

This is happening right before us. Last week on the front page of the Post, we read that Native villages in Alaska are being threatened by deteriorating sea ice. Entire villages will have to be moved. One is being moved right now at a cost of upwards of \$100 million. The article warns, "In the coming decades this could apply to numerous other towns." This has happened before.

Honest to God, I think the only place that doesn't get it is right here but that is the way it is and the way it will continue to be for a couple years, that is for sure.

I want to say EPA is doing essential work on behalf of the American people to address the growing threat of climate change. The budget would ensure that State governments have the resources, the technical assistance and the incentives to help cut carbon pollution from our Country's biggest source, power plants.

I urge you to keep up your good work. You are going to be attacked hard today on this. I know that and I appreciate the fact that my colleagues on the Republican side see it differently. I want to say that those of us on this committee on our side of the aisle feel you have to do this. It is in the law.

Carbon pollution is pollution. We already know from scientists that the co-benefits of reducing carbon mean better health for all of our people, regardless of where they live.

Another important area of EPA's budget is support for the Nation's water infrastructure. I commend EPA for proposing funding for the Water Infrastructure Financing and Innovation Act, which was created last year in the Water Resources Reform and Development Act of 2014.

I want to thank Senator Vitter, Senator Inhofe, Senator

Cardin and Senator Carper for going along with this idea.

This is new financing. It is like TIFIA, it leverages funds. However, I agree with my friend and colleague that this is not a replacement for the State revolving fund. I am very concerned that inadequate levels of funding proposed for the State revolving fund is going to hurt our people at home.

Our Nation's water infrastructure needs far outstrip the funding available. The proposed \$53.8 million cut to the State revolving funds will make this funding gap grow. We are in agreement on that, Mr. Chairman.

EPA is also doing essential work to protect the drinking water of 117 million Americans. I believe this clean water rule makes a lot of sense. I want to compliment you and the Corps of Engineers for your testimony at the last hearing. It was very contentious.

The bottom line is we need to make sure that if there is pollution upstream, that it does not wind up in the bodies of the people living downstream. We need to protect the Clean, Safe Drinking Water Act. One way to do it is by having this rule clarified.

In closing, EPA has a record that Americans support. You are one of the most popular agencies in the Country, whether it is Republicans, Democrats or Independents, because you are fighting for the health of the people.

I think you are doing a great job. I look forward to hearing from you later.

[The prepared statement of Senator Boxer follows:]

Senator Inhofe. Thank you, Senator Boxer.

Ms. McCarthy, we will recognize you for the reasonable time you may take. Then we will open it up to questions.

STATEMENT OF GINA MCCARTHY, ADMINISTRATOR, UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY: DAVID BLOOM,  
ACTING CHIEF FINANCIAL OFFICER, ENVIRONMENTAL PROTECTION AGENCY

Ms. McCarthy. Thank you, Chairman Inhofe, Ranking Member Boxer and members of the committee, for the opportunity to appear before you to discuss the Environmental Protection Agency's proposed fiscal year 2016 budget.

I am joined by the agency's Acting Chief Financial Officer, David Bloom.

The EPA's budget request of \$8.592 billion in discretionary funding for the 2016 fiscal year provides resources that are vital to protecting human health and the environment, while building a solid path forward for sustainable economic growth.

Since 1970 when EPA was founded, we have seen over and over again that a safe environment and a strong economy go hand in hand.

The budget supports essential work to address climate change, improve air quality, protect our water, safeguard the public from toxic chemicals, support communities' environmental health, maintain Corps enforcement strengths, support needed research and work towards a sustainable future for all Americans.

Effective environmental protection is a joint effort of the EPA, States and our tribal partners. We are setting a high bar for continuing our partnership efforts and looking for

opportunities for closer collaboration and targeted joint government projects, in planning processes through efforts like E-Enterprise.

That is why the largest part of our budget, \$3.6 billion or 42 percent, is provided directly to our State and tribal partners. The fiscal year 2016 budget request includes an increase of \$108 million for State and tribal categorical grants.

This budget requests \$1.1 billion to address climate change and to improve air quality. These resources will help protect the most vulnerable to climate impacts and harmful health effects of air pollution through common sense standards, guidelines, as well as partnership programs.

Climate change is not just an environmental challenge. It is a threat to public health, our domestic and global economy and to our national and international security. The request supports the President's Climate Action Plan and in particular, the Clean Power Plan, which establishes carbon pollution standards for power plants.

In addition, the President's budget calls for \$4 billion for a Clean Power State Incentive Fund to support State efforts to accelerate carbon pollution reductions in the power sector.

Protecting the Nation's water remains a top priority for EPA. In fiscal year 2016, we will finalize and support implementation of the Clean Water rule which will clarify types

of waters covered under the Clean Water Act and foster more certain and efficient business decisions to protect the Nation's waters.

Recognizing the need for water infrastructure, the SRF and related efforts are funded at over \$2.3 billion. We will work with our partners to help communities by focusing on issues such as financial planning for future public infrastructure investments and expanded efforts through States to identify financing opportunities for resilient drinking water, wastewater and stormwater infrastructure.

Last month, the agency launched the Water Infrastructure and Resilience Financing Center. That is a key component of this expanded effort. We are proposing a multifaceted effort to help our communities, including low income neighborhoods, rural communities and communities of color.

This includes targeted funding and on the ground community assistance through EPA's regional coordinators and a network of circuit riders. An investment of \$16.2 million will help local communities improve safety and security at chemical facilities and prevent and prepare for oil spills.

These efforts represent a shared commitment among those with a stake in chemical facility safety and security, ranging from facility owners to first responders.

The fiscal year 2016 budget request will let us continue to

make a real and visible difference to communities every day. It gives us a foundation to improve infrastructure across the Country and it will sustain State, tribal and federal environmental efforts across all our programs.

With this proposed budget, the President is not only sending a clear signal about the resources EPA needs to effectively and efficiently work with States and tribes to protect public health and the environment, it is also a part of an overall federal a budget proposal that does not accept the bad public policy embodied in sequestration and does not hold back needed resources and nondefense spending in order to increase needed defense spending or vice versa.

Instead, the President's proposed fiscal year 2016 budget finds a path forward to avoid sequestration and properly support both domestic and national security interests.

Mr. Chairman, I thank you for the opportunity to testify and look forward to answering questions.

[The prepared statement of Ms. McCarthy follows:]

Senator Inhofe. Thank you very much.

We are going to have six-minute rounds and use the early bird rule which we established when we changed things around here. I will begin and probably will not take all of my time because I want to reserve some in case some of my colleagues want to have more time.

The EPA is asking for, as I said in my opening statement, \$3.5 million for additional attorneys and lawyers to defend their proposals. My question would be if the States requested a judicial stay of the rule after it is finalized to allow for legal challenges to the rule to be resolved, would the EPA object to that request for a stay?

Ms. McCarthy. We see no reason for a stay in the rule, Senator, but if you are looking at the lawyers we are asking for.

Senator Inhofe. I am talking about the existing source rule.

Ms. McCarthy. We are not interested in staying any of the rules, Senator. We don't think there is a reason for it. We are moving ahead to finalize those rules.

The lawyer issue is not related to our climate effort. It is related to regional and headquarters efforts to provide the resources we need to smoothly move through permits, to get our legal positions on our rules effectively identified and commented on.

Senator Inhofe. I understand your answer is no. Now I will ask the second part of that question. As soon as some of the States refuse to submit a SIP, a State program, or if the EPA denies the State SIP, would the EPA consider withholding federal highway funding or would you say no?

Ms. McCarthy. This is not a traditional State SIP under the national ambient air quality standards. There are other processes for us to work with States. Clearly our hope is that States will provide the necessary plans. If not, there will be a federal system in place to allow us to move forward.

Senator Inhofe. For the benefit of some who may not be aware of why we have been talking so much up here, it seems like every hearing we have turns into a global warming hearing. One of the reasons people are talking about doing this through regulation is that ever since 2003 we have had four votes in the United States Senate to go ahead and do something, have some kind of cap and trade they are now talking about doing through regulation.

It was soundly defeated four times. Now the Obama Administration is saying we will do through regulation what we were unable to do through legislation.

Ozone is a big deal for a lot of us. The 2008 implementation program, which planned for a 2008 ozone NAAQS was issued two weeks ago. I made the statement in my opening that

there are a lot of States which have not complied with 2008, correct?

Ms. McCarthy. That is correct.

Senator Inhofe. Do you know how many States?

Ms. McCarthy. I do not know, sir, because we are in the early stages of implementing the 2008 standard.

Senator Inhofe. We have a standard of 75 ppb. A new standard they have tested down to 65 ppb and even 60 ppb. Even 65 ppb, in my State of Oklahoma, would put all 77 of our counties out of attainment. That is a very serious thing.

What is the justification for going ahead and moving toward this before we have had compliance with the 2008 regulations? What is your justification for that?

Ms. McCarthy. Actually, we are under a court order to move forward because the Clean Air Act enacted by Congress requires us to review these every five years and we are significantly behind.

The good news is this rule is simply looking at the level we need to achieve in order to protect public health and welfare. That is what we are going to be making a decision on.

Senator Inhofe. As opposed to moving on with that rule?

Ms. McCarthy. We don't have an option here. The Clean Air Act requires us to look at the science as it is updated every five years. The court has told us that is what it says over and over.

Senator Inhofe. That same court was there in 2008 when many States had not complied with that. That is my point. I don't see any logical reason we would move to a more stringent standard when we haven't complied with that.

I am going to save the remaining two minutes of my time.  
Senator Cardin?

Senator Cardin. Thank you, Mr. Chairman. I appreciate it very much and appreciate this hearing.

Ms. McCarthy, it is always a pleasure to have you before the committee.

Senator Inhofe. I am going to interrupt you. She has been chairman for the last eight years and I am just not used to this, so I won't recognize you. I will recognize Senator Boxer next.

Senator Boxer. To thoroughly confuse matters, I yield my time to Senator Cardin and will take mine later.

Senator Cardin. Thank you, Senator Boxer and thank you, Mr. Chairman.

Mr. Chairman, I just want to make a point. Only in the United States Senate would getting a majority vote, 50 some votes, in favor of a proposal be characterized as soundly defeated.

My recollection is the cap and trade provision, to which you referred, got over 50 votes in the United States Senate. I just wanted to correct the record on that point. I am sure the public

understands that a majority is not a majority in the United States Senate.

I want to compliment you on your budget as it relates to important priorities. I think the overall budget is a reasonable investment in the Environmental Protection Agency and I applaud the Administration for bringing that forward.

I think the emphasis on climate change as it relates to U.S. leadership that will have, I think, major dividends in global action which help the people of our Country, is exactly where we need to be. Your budget reflects those priorities.

I want to first start by saying I am very supportive of the priorities that you have set as it relates to the size of the EPA budget and the focus on issues that are critically important to our Country.

I want to ask you why you are recommending a reduction in the State Revolving Fund on clean water. I want to preface that by telling you I know the circumstances in Maryland and the circumstances around the Nation where water main breaks are a daily occurrence, where we had River Road in Montgomery County become a river threatening peoples' lives, where we have seen businesses shut down, where we have seen the Beltway shut down because of water main breaks. I visited Baltimore water main facilities and found water mains that are 100 years old and in desperate need of repair.

Our States are crying out for more resources in the State Revolving Fund. Can you explain to me the rationale for the recommendation on the State Revolving Fund?

Ms. McCarthy. Senator, there is no question that this is a level that is \$50-some odd million below what was enacted last year. I will have to point out though it is \$527 million above what the President requested last year. We certainly recognize there are significant challenges out there and are doing the best we can within a conservative and appropriately designed budget.

Senator Cardin. I am going to let you finish your answer but it seems to me you are saying that you are depending on Congress to put in the right amount of money?

Ms. McCarthy. We have actually submitted a budget that is very close to what was enacted last year. We are trying to address the issue in a variety of different ways.

I am not suggesting that I wouldn't love to have lots of money to address these issues but difficult choices need to be made. I will point out that we are trying other very creative approaches to also supplement the money that is available in SRF so that we can target SRF appropriately. Then we have the WIFIA Center that we are beginning to create this year.

I think the Water Infrastructure Resiliency Finance Center is also a very creative approach to try to address this challenge by building more public-private partnerships.

It is not that I don't think we could always spend more money and spend it effectively. I am suggesting that public sector dollars will not cover the need that is out there. We need to find very creative approaches and also attract private sector dollars into this venture because it matters to all of us.

Senator Cardin. I agree with that. I agree that we are going to have to supplement the infrastructure financing by creative methods, whether it is WIFIA, tax credits or public-private partnerships. My Mayor, Stephanie Rawlings-Blake, suggested a separate trust fund for water infrastructure. We are going to have to do something for more.

You need a basic program that at least is there to provide the fundamental commitment by the Federal Government. The same thing is true, by the way, with highway transportation. We want our six year reauthorization but we also recognize we may have to supplement that with more infrastructure in creative ways.

Maybe my math is different than yours. We can do this later and get me the information. My staff tells me this is a 22 percent cut in the Clean Water State Revolving Fund, amounting to a transfer of \$332 million.

Ms. McCarthy. I am sorry, I misunderstood. I thought you meant the entire fund. The Clean Water SRF is lower because we have shifted a lot of the additional resources to drinking water. As a whole, it is \$2.302 billion we are proposing.

Senator Cardin. The State Revolving Fund that deals with our wastewater treatment facilities are cut by 22 percent?

Ms. McCarthy. That is because the shift is going to drinking water for the first time in quite a while because the need on drinking water is even more severe than the need for wastewater at this point. I can show you, and certainly will provide your staff with the figures.

Senator Cardin. We need modern drinking water for capacity but if we don't deal with wastewater treatment, we are going to have problems with clean water in our streams. I can assure you of that. It is a major source of pollution for our water bodies.

Ms. McCarthy. I totally agree with you. We would be able to utilize money effectively. This is, I think, a reasonable approach to start recognizing that at this point, drinking water has not been appropriately funded and that we need to make some shift in that fund. We are certainly able and willing to talk to folks about why we believe that is the case.

Senator Cardin. We are half right and half wrong. Drinking water needs more, but you shouldn't be cutting the State Revolving Fund.

Senator Inhofe. Thank you.

Senator Wicker?

Senator Wicker. Thank you very much.

First of all, I would like to ask unanimous consent to enter

into the record, an article, an op-ed, from the Wall Street Journal of September 19, 2014 by Steven E. Koonin, entitled Climate Science Is Not Settled.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Wicker. I would point out to our witness and also to the members of the committee that Steven E. Koonin, interestingly enough, was Under Secretary of Science in the Energy Department during President Obama's first term and is currently Director of the Center for Urban Science and Progress at New York University. Yet, he authors an essay entitled, Climate Science Is Not Settled.

I am going to read extensively from it in the time I have. Mr. Koonin starts by saying, "The idea that 'Climate science is settled' runs through today's popular and policy discussions. Unfortunately, that claim is misguided. "It has not only distorted our public and policy debates on issues related to energy, greenhouse-gas emissions and the environment, but it also has inhibited the scientific and policy discussions that we need to have about our climate future.

He sounds like you, Mr. Chairman. At this point, he says, "The crucial scientific question for policy isn't whether the climate is changing. That is a settled matter. The climate has always changed and always will."

The author also believes humans are influencing the climate, but he says, this, "The impact of human activity appears to be comparable to the intrinsic natural variability of the climate system itself. The crucial unsettled scientific question for policy is how will the climate change over the next century under

both natural and human influences. Answers to that question at the global and regional levels as well as to the equally complex questions of how ecosystems and human activities will be affected should inform our choices about energy and infrastructure."

There is one other sentence that I will quote at this point. "Even though human influences could have serious consequences for the climate, they are physically small in relation to the climate system as a whole." I think that is a very interesting and balanced opinion piece raising doubts about the question of whether this is settled science.

I also would simply respond to what the Ranking Member said about deteriorating sea ice. I would point out to my colleagues that as a matter of fact, according to NOAA, indeed arctic ice in January of this year was 6.3 percent below the 20 year average from 1981-2010.

However, at the same moment, Antarctic sea ice is the largest on record, 44.6 percent above the 1981 to 2010 average. Deteriorating sea ice may be happening to 6.3 percent extent in the Arctic but it seems to be increasing by 44.6 percent in the Antarctic.

Director McCarthy, I noticed and would call to your attention that Congressman Whitfield in the House submitted questions on June 19, 2014 to EPA concerning the carbon dioxide regulation for power plants. He received a letter finally on

February 11, 2015. I just wondered, Administrator McCarthy, if since that time you have a better answer to those questions. The questions concern power plants. Has EPA estimated the impact of this proposed CO2 rule for existing power plants in terms of global mean temperature?

The answer includes this sentence, "Although EPA has not explicitly modeled the temperature impacts of this rule, the clean power plant has an important and significant contribution to emission reductions." In other words, EPA cannot tell Congressman Whitfield, in answer to his question, to what extent is the temperature going to be impacted by this clean power rule.

Further, he asked, "Has EPA estimated the impact of the proposed CO2 rule for existing power plants in terms of global mean sea level rise?" Again, the EPA was unable to answer his question: "The EPA has not explicitly modeled the sea level rise impacts of this rule."

I will tell you what is going to happen because of this rule to my State of Mississippi. It is going to be devastating to the economy. The Mississippi Energy Institute says, "The estimated cost to Mississippi ratepayers is \$14 billion by 2030, not including fuel costs. Mississippi is projected under this power plan to experience the largest increase in electricity production costs of any State, a 177 percent increase."

I would say to my colleagues, and I would say to you,

Administrator McCarthy, we know the negative effects on the hardworking people of my State in terms of how much money they are going to have to pay, but your agency is unable to say in a six month time in answer to a question submitted by the chairman of the subcommittee what impact, if any, it will have on global temperature and was unable to say what impact, if any the rule would have on sea level rise.

It seems to me the answer is, well, it is bound to help. We know it is going to increase electricity rates by 177 percent, cost jobs and make it harder for the people in my State, but we just think it is bound to help in some way although we cannot quantify that.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Mr. Wicker.

Senator Boxer?

Senator Boxer. Thank you so much, Mr. Chairman.

I am going to ask unanimous consent to place into the record the series of votes that the Senate has taken regarding climate change. Is that okay with you?

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Inhofe. I have the same list, I believe. If yours is different, then I would ask unanimous consent that next to yours, that is granted, I will have mine. Without objection, so ordered.

[The referenced information follows:]

Senator Boxer. May I ask that I get back the 10 seconds that my friend stole from me?

Senator Inhofe. You have it.

Senator Boxer. Here is the deal. We started voting on climate change issues in 2003. We got our clocks cleaned in 2003 and 2005, absolutely true. In 2008, we had, absent Senators Collins, Martinez, Smith, Snowe, McCain and Coleman, by letter saying they were with us, that would have been 56 to 36 in favor of a cap and trade plan know as the Climate Security Act, Lieberman-Warner. We had 4 short of 60. We had a majority.

Then we had a Murkowski joint resolution to disapprove the ruling on the endangerment finding. That failed, 47 to 53.

Then on April 6, 2011, we had a 50 to 50 vote on the McConnell amendment to prohibit the Administrator of the Environmental Protection Agency from promulgating any regulation concerning climate. That failed.

Then we had an astounding vote. I voted with my chairman, 98 to 1, climate change is not a hoax, yeah. That was really a huge admission.

Today, we hear from my friend, Ted Wicker. I take this out of context. I think what I heard you say was that there are scientists now that you respect saying that human activity does have an impact. You said it is offset by other things, but this is the first time I have ever heard you say that. In my mind, I

think we are gaining ground, not fast enough for our grandkids, but we are gaining ground.

On the sea ice, I wanted to talk to my friend because I saw an amazing presentation by NOAA on what is happening to the ice. You are right about Antarctic versus Arctic, but there is just more ice, it is just that it is thinner. We will talk about that because I think that is a very important point you are making on the ice.

Back to you, Administrator McCarthy. The EPA's budget supports implementation of the President's Climate Action Plan by allocating funding for efforts to establish limits under the Clean Air Act on carbon pollution from cars, trucks and power plants.

All these actions consistent with the three Supreme Court decisions in Massachusetts v. EPA of 2007, American Electric Power v. Connecticut in 2011, and Utility Air Resources Group v. EPA of 2014, are your actions consistent with the Supreme Court decisions or is your rogue agency making up this stuff as you go along?

Ms. McCarthy. They are consistent with the decisions and laws that this body has passed.

Senator Boxer. Isn't it true that if you were not to move forward, you could be subjected to lawsuits by are families who are concerned about these issues?

Ms. McCarthy. I am quite sure.

Senator Boxer. EPA's Revolving Loan Program for drinking and wastewater infrastructure help to ensure the water we drink is safe and that our lakes and rivers are clean. This is a place where I think there is bipartisan concern about the budget.

We see a net cut of \$53 million. Can you explain how EPA will ensure adequate investments in clean and drinking water given these cuts?

Ms. McCarthy. EPA believes that the total \$2.302 billion investment in SRF which includes drinking water and clean water is a significant step forward. We certainly understand there may be interests in additional funding.

The absolute need of the drinking water supply that we have identified so far is \$348 billion. On the clean water side, it is \$298 billion in needed investment. We understand that these are issues that will take yearly significant investments.

The challenge we have is with our limited budget, we have a number of core functions in which we need to provide resources in order to protect public health and the environment.

Senator Boxer. You are saying you increased funding on one part of the clean water mission and you cut it on the other. Is that accurate?

Ms. McCarthy. We actually shifted funds away from the wastewater side and shifted it into the drinking water because

there is some immediate need that we have identified, not that there isn't an immediate need in both categories.

Senator Boxer. My takeaway from this, I am not asking a question, it gets back to the 20 percent cut in EPA's budget that we have see over time is having an impact internally. In administering landmark laws like the Clean Water Act, it is important that federal agencies follow the best available science.

Ms. McCarthy. Yes.

Senator Boxer. Can you expand on the science used to develop the clean water rule and how the rule reflects the best available science?

Ms. McCarthy. Thank you for raising this, Ranking Member.

The clean water rule is a rule the Supreme Court actually told us almost six years ago that we should do some more science around this so we could be clear about the waters that needed to be protected that were absolutely significant for drinking water and other functions we are relying on.

They told us to go back and look, which we did. We actually did a compilation of more than 1,000 studies that had been done and peer-reviewed. We worked with our Science Advisory Board so that could look at that compilation, look at the assessment and do a peer review.

We have done the science. We need to be able to reflect

better in our rules what waters are necessary to protect under clean water. That is going to clarify issues that the States and this body, many of you, have been asking us to clarify for years. We are using sound, peer-reviewed science to do our job moving forward.

Senator Inhofe. Thank you, Senator Boxer.

Let me take the chairman's prerogative and ask if you want to respond to the last question Senator Wicker asked during his line of questioning?

Ms. McCarthy. There were many, sir. I understand that there are a vast minority of scientists who believe that the challenge of climate change isn't as significant as the majority.

Senator Wicker. Referring to the very last question with regard to what benefits are we going to receive from the clean power plant with regard to temperature and sea level which is what I thought was the whole point.

Ms. McCarthy. This issue was actually fairly well discussed by the Supreme Court. When they were looking at this issue, this is work and advice we followed, the Supreme Court said it was very clear that carbon pollution is a danger to public health and welfare and that efforts need to be underway to make progress.

The benefits that we are looking at are the benefits of strong domestic action that will, in and of itself, send a clear signal that we are doing what we can cost effectively and

flexibly to make progress on carbon pollution.

It has already changed the international dynamic because climate change cannot be addressed without significant effective international efforts but we are going to do our part. That is the benefit of this rule.

To ask me whether a marathon can be accomplished without crossing the first mile, I would say you can't do it. While this won't get us to a cleaner, to address fully the issue of climate change, it gets us out of the gate, it gets us running and it provides the impetus and energy that we need to prove the actions we need to address climate change are both economically sound and are going to be providing us great national security and we are going to be able to move this ball forward internationally which is the forum for finally addressing climate change in the most comprehensive and cohesive way.

Senator Wicker. Twenty seconds, Mr. Chairman.

Senator Inhofe. Yes, out of my time.

Senator Wicker. I would simply observe the Supreme Court has a legalistic view of this but we have policy decisions to make as legislators and representatives of the taxpayers. It might be when all this is said and done we have the whole international community agreeing on what we should do, that this is going to prevent sea level from rising a quarter of an inch.

I might decide that is not worth a 177 percent increase in

electric rates for my citizens in my State. It might be that they would conclude it is going to help by one degree globally. I might conclude that is just not worth the loss of jobs for Americans.

Senator Inhofe. My time is down to one minute now.

Senator Sullivan?

Senator Sullivan. Thank you, Mr. Chairman.

Administrator McCarthy, it is good to see you again.

Ms. McCarthy. You too.

Senator Sullivan. I always think it is important to get on the record at these hearings how important clean water is and clean air. As I have mentioned before, in Alaska, we have the most pristine environment in the world. Alaskans are really great about taking care of it.

As a matter of fact, I think we care about our environment a lot more than a lot of people in this town. We have a tremendously good record of taking care of that environment.

I think one of the things they are most concerned about is two interrelated themes that most Alaskans, I would say the vast majority, is concerned about. Your agency is not accountable. It is not accountable to the law. Most importantly, it is not accountable to the people where you are not listening to the people or the States. I will get into that in a minute.

Then you rush to get out rules which is of concern. Where

we think you are trying to put out an agenda that is not based in the law to quickly get that agenda established before you leave office.

On accountability, I think there is a whole host of issues we can talk about but from my perspective, this is a really big issue for me. Accountability starts at the top. Last year, there was a glowing Wall Street Journal profile on you but some of us found it rather disturbing.

You were up in Alaska, honored by the Alaska Native people with gifts, which is a big deal in my State. You were quoted in the article about one of the gifts, which was a pen, that you threw the f---ing thing away, was your quote. A young girl gave you a jar of moose meat from Native people that you said, "could gag a maggot."

A lot of people saw that as a glowing article. Most people in Alaska saw it as an incredible disrespect to the people of my State. To me when the leader of an agency comes to a State and makes those kinds of statements to a national newspaper, it doesn't show that you are focused on serving the people you are required to serve.

Have you had the opportunity to make a comment on that, to apologize? If you would like to apologize here publicly, that would be fine.

Ms. McCarthy. I am happy to apologize for those remarks. I

will tell you they were taken out of context but it doesn't matter because they hurt individual tribes I care about.

Senator Sullivan. They sure did. Thank you for apologizing.

Ms. McCarthy. No problem.

Senator Sullivan. The clean water rule, the "waters of the U.S." rule, is one of these issues that when you talk about no support, either in the law or the people, I think it is something that is happening right now.

My view is this is executive amnesty for water. Let me give you a reason why. In 2009, the EPA proposed expanding the clean water jurisdiction, is that true, through the Congress?

Ms. McCarthy. Yes.

Senator Sullivan. You did. It went nowhere in the Congress in terms of the bills that were submitted in 2009 to expand the clean water jurisdiction.

Ms. McCarthy. We never proposed such bills, sir.

Senator Sullivan. For the record, we can get the bills that were proposed, a letter from your predecessor on expanding the jurisdiction of the Clean Water Act.

When that happens and the Congress doesn't move on that, the Administration is not allowed to simply say, we are going to do it with a rule. That rule will expand the jurisdiction of the EPA in Alaska over our waters by approximately 40 percent, in a

State that already has 60 percent of all waters in the United States in Alaska covered by the Clean Water Act.

In this last hearing, I asked for your legal opinion on where you got the legal authority. We still have not received that. Can you get that opinion to us?

Ms. McCarthy. Senator, I have been very clear. I have no authority to expand the jurisdiction of the Clean Water Act, nor am I proposing through a rulemaking to do that.

Senator Sullivan. There are a lot of people who disagree with that. We would like to see your legal opinion that gives you the authority to propose this rule.

Ms. McCarthy. I have no legal opinion to support that position. I am not doing that.

Senator Sullivan. Don't you do legal analysis of the rules you propose?

Ms. McCarthy. We do legal analysis of our rules. We do not expand through our rulemaking the jurisdiction under the rule. I implement.

Senator Sullivan. That is the big issue right now. You said you didn't do that in your clean air issue and, a lot of States sued. The recent Supreme Court came out and said you did exactly that, you violated the Constitution.

There are not a lot of people who believe what you are saying in terms of the authority. You have not done a legal

analysis on "the waters of the U.S." and whether you have the legal authority? You have no legal analysis on this?

Ms. McCarthy. We have certainly done a legal analysis in the proposed rule and we will explain it in the final as well after looking at comments, but I have never claimed that the agency can expand the jurisdiction of the law.

Senator Sullivan. You cannot. That is why we need a legal opinion that says you are not doing that when many people think you are doing that. You have no legal analysis on "the waters of the U.S." right now?

Ms. McCarthy. No. We clearly are looking at staying within the boundaries of the Clean Water Act legally and using science to implement it appropriately as the Supreme Court told us we should do. That is what this rule is all about.

Senator Sullivan. Mr. Chairman, if I may, I think in the last hearing, I asked for the legal analysis that you said your agency undertook that says that "the waters of the U.S.," the regulation you have, is a legitimate agency function because it is based in statute.

You said you were going to provide that. We have not seen that.

Ms. McCarthy. I am happy to provide you the actual clean water rule that we proposed. It does include a legal analysis of what we are supposed to do, what we were told by the Supreme

Court, the boundaries of the law, and explain why we are well within those boundaries in following that advice.

Senator Inhofe. Thank you, Senator Sullivan.

Senator Whitehouse?

Senator Whitehouse. Thank you, Mr. Chairman.

Welcome, Administrator. How are you?

Ms. McCarthy. I am well, Senator. How are you?

Senator Whitehouse. I am well, thank you.

Could you comment for a bit on EPA's track record in terms of the cost of regulation? We come at this question with things like the U.S. Chamber of Commerce's statement that proposed existing power plant regulation will cost the economy 224,000 jobs and \$289 billion in high electric costs through 2030. That got replayed by colleagues of mine pretty extensively.

Upon examination, it earned a PolitiFact false and it earned four Pinocchios from the Washington Post Fact Checker. We have had your predecessors, both Republican and Democrat, here describing over and over as environmental rules have come up, how there has developed a more or less standardized industry response which is to exaggerate the costs, deny the benefits and try to cast doubt about the problem.

What is your view? Let us start with the Clean Air Act. How has EPA's enforcement of the Clean Air Act worked to the benefit or peril of the American people?

Ms. McCarthy. Overall, the Clean Air Act has resulted in 70 percent reduced air pollution, while the GDP has tripled. We have looked at all of our major rules and followed all of the economic procedures we are supposed to follow, the best science that we can.

Time and time again, we actually over project the costs, so our rules are even more cost effective than we have projected. That is not a surprise to people who see how we follow the rules and our transparency. Time and time again, we know we hear the same arguments over and over again every time we propose a rule.

Every single time, I have never seen those lack of benefits come through or those excess costs be realized. This Congress has given us requirements to continue to look at cost benefit but also to do a 20-year study of the Clean Air Act and how those benefits have been realized. The benefits have far exceeded even the individual benefits we estimated for each of those individual rules.

It is a tremendous opportunity to improve public health and protect the environment. We are going to continue to implement it effectively and cost effectively.

Senator Whitehouse. Over and over again, the American people have been economic winners as well as public health winners because of EPA regulations?

Ms. McCarthy. We have shown that we identify for people

what the public health goals have to be to keep themselves and their families safe. It sparks innovation, it grows jobs, it helps us maintain a robust economy and it keeps our lifestyle that we are so used to in this Country available to everyone.

It is part and parcel of how we have grown the economy in this Country. I am sure hoping that continues.

Senator Whitehouse. The question of carbon pollution continues to be debated. As you said, the debate is getting increasingly one-sided as an amazing majority of scientists and every single major scientific organization in the Country comes down on the side of the importance of coping with carbon pollution.

In addition to your obligation to follow the best available science, which you do in this, you also have an obligation to follow the law. The Supreme Court has spoken quite clearly to the question of carbon pollution, has it not?

Ms. McCarthy. Quite a few times, yes.

Senator Whitehouse. Using those words, defining carbon emissions as a pollutant, correct?

Ms. McCarthy. They have also indicated that EPA's science, I cannot quote it directly but the word outstanding comes to my mind. They vilified that we have done everything we could on the science side and we have proven our case.

Senator Whitehouse. I think it is important to note the

history we began with because it casts a spotlight on whether or not we really have a legitimate discrepancy in scientific opinion or whether this is simply the rollout of a repeat performance that has happened over and over again whenever an industry has faced a new regulation to protect the public health in which they create artificial doubt with a stable of basically kept scientists.

I think it is important that we bear that in mind and that the public keep an eye on that as well. Would you agree there is a difference between a legitimate, scientific debate and this campaign of doubt casting that has pre-existed the fight over carbon? It goes all the way back to whether tobacco was safe or not. The tobacco industry was the great proponent and inventor of this theory, was it not?

Ms. McCarthy. Yes, and I am certainly aware that the wealth of science we have that shows that climate change is real, it is happening, and it is a threat. Humans are causing the majority of that threat. It is supported by the majority of scientists and frankly, the public in the U.S. at this point as well. They are concerned. The impacts are already being felt.

Climate change is not a religion or a belief system. It is a science fact and challenges us to move forward with the actions we need to do to protect future generations.

Senator Whitehouse. Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Whitehouse.

Next we will hear from Senator Sessions but first, I do have my last remaining minute of which I am going to give 45 seconds to Senator Sullivan. Let me just quote one of the imminent scientists of the many, many scientists who believe this, Richard Lindzen, from MIT who made the statement that "controlling carbon is a bureaucrat's dream. If you control carbon, you control life." Many, many scientists out there agree with that.

Senator, if you finish your line of thinking there, you may have 45 seconds.

Senator Sullivan. Thank you, Mr. Chairman.

I just want to wrap up the discussion on the issue of the legality of your actions. There are a lot of people in Alaska, and I think throughout the Country, who are doubting the legal basis for which your agency is acting.

Mr. Chairman, for the record, I would to submit a Wall Street Journal editorial called, A Constitutional Tutorial for Obama, the President and EPA do not possess an heralded power to rewrite laws, and more recently, a Wall Street Journal op-ed from Harvard professor, Laurence Tribe, The Clean Power Act is Unconstitutional, where Laurence Tribe says, "Frustration with congressional inaction cannot justify throwing the Constitution overboard to rescue this lawless EPA proposal."

[The referenced information follows:]

Senator Sullivan. I would like to wrap up with one final question. What is the rush on "the waters of the U.S." regulation? You are expediting it. Isn't it true that OMB allowed you to expedite this because they said it wasn't a major rule? You are expediting this rule when 35 States have said they oppose it and over 1 million comments have not been placed online on this rule. It seems to me that you are rushing this.

Again, we would like to see the legal basis for you moving outside the normal procedures for the timeline of a rule that is going to impact dramatic parts of the Country and huge parts of my State.

Ms. McCarthy. Very quickly, first of all, the reason we are moving forward with this rule is we are in no rush. In fact, the questions began in 2001. We are moving it forward. We actually have been requested by States, by industries, by farming and ranching groups to move forward with the rulemaking to provide clarity. We are moving for our constituencies, the people who are confused and need answers.

We have not had 35 States tell us. There have been individuals representing various constituencies in States or different offices in States who have commented, but we have received over 1 million comments and 87.1 percent of those comments we have counted so far -- we are only missing 4,000 -- are supportive of this rule. Let me repeat, 87.1 percent of

those one plus million are supportive of this rule.

Senator Inhofe. Thank you.

Senator Sessions?

Senator Sessions. Thank you, Mr. Chairman.

As a member of the Budget Committee and somewhat familiar with the Budget Control Act which contained the growth of spending, I think EPA this year should be flat spending or at least no more than 2.5 percent increase. You are proposing a 6 percent increase. Where does the money come from? Are you proposing to break the limitations?

Ms. McCarthy. It is part of the President's proposal which is not going to buy into the bad policy of sequestration, but he has designed a budget that can accommodate this.

Senator Sessions. The inflation rate in the United States is about 2 percent, so you want to have a three times the inflation rate increase in spending. I would suggest that when we go to our States, the group we have most complaints about from our constituency, highway people, whether it is our farmers, our energy people, is the Environmental Protection Agency. It is an extraordinary overreach.

You apparently are unaware of the pushback that is occurring in the real world. I just want to tell you I am not inclined to increase your funding 6 percent a buck. Now you say we have a crisis and there are dangers out there.

In an article by Mr. Lumbergh, who testified before the Budget Committee from the Copenhagen Institute, along with Dr. Pioki from Colorado, "We have had fewer droughts in recent years." Do you dispute that?

Ms. McCarthy. I don't know in what context he is making statements like that, but I certainly can tell you about the droughts that are happening today.

Senator Sessions. No, no, I am not arguing to you today that you are wrong about global warming because we have a cold spell. I am asking you what are the worldwide data about whether or not we are having fewer or less droughts.

Ms. McCarthy. I will be happy to provide it, but I certainly am aware that droughts are becoming more extreme and frequent.

Senator Sessions. You are aware that the IPCC has found that moisture content of the soil is, if anything, slightly greater than it has been over the last decade in their report. Are you aware of that?

Ms. McCarthy. I don't know what you are referring to, Senator, but I am happy to respond.

Senator Sessions. You need to know because you are asking this economy to sustain tremendous costs and you don't know whether or not the soil worldwide is more or less moist?

Ms. McCarthy. I don't know where your cost figures are

coming from.

Senator Sessions. I am quoting the IPCC. What about hurricanes? We had more or less hurricanes in the last decade?

Ms. McCarthy. There have been more frequent hurricanes and more intense. In terms of landing, those hurricanes on land, I cannot answer that question. It is a very complicated issue.

Senator Sessions. It is not complicated on how many landed. We have had dramatic reduction in the number. We have gone a decade without a Class III or above hurricane.

Ms. McCarthy. The scientists are not really considering that number to be significant because the subset is so small that you are looking at, you are taking issues in science out of context.

Senator Sessions. Are you asserting that you have evidence that we have greater hurricanes around the world in the last decade than the previous decade?

Ms. McCarthy. I am asserting that I have plenty of evidence, factual evidence from scientists who know this issue that climate change is happening, it is real, and it is happening now.

Senator Sessions. Of course the climate is changing, Ms. McCarthy. You have been saying we have more storms. Will you submit within a few days, it shouldn't take long, a showing that we have had more storms in the last decade?

Ms. McCarthy. When you say "we," what are we talking about, the U.S.?

Senator Sessions. The world.

Ms. McCarthy. I am happy to submit the full breadth of science that we have behind climate. We have submitted it and will submitted it again.

Senator Sessions. Would you acknowledge that over the last 18 years, the increase in temperature has been very little and that it is well below, 90 percent below most of the environmental models that show how fast temperature would increase?

Ms. McCarthy. No, I would not agree with that. A 1 degree temperature is significant.

Senator Sessions. I am asking below the models or above the models?

Ms. McCarthy. I do not know what the models are actually predicting that you are referring to. There are many models and sometimes it is actually going faster and sometimes slightly slower than the model predicts, but on the whole, it makes no difference to the validity and the robustness of climate science that is telling us that we are facing an absolute challenge that we must address both environmentally and economically from a national security perspective, and for EPA, from a public health perspective.

Senator Sessions. Carbon pollution, CO<sub>2</sub>, is really not a

pollutant. It is a plant food and it does not harm anybody except that it might include temperature increases.

Let me ask you one more time, just give me this answer. If you take the average for the models predicting how fast the temperature would increase or is the temperature in fact increasing less than that or more than that?

Ms. McCarthy. I cannot answer that question specifically.

Senator Sessions. Mr. Chairman, I would say this is a stunning development, that the head of the Environment Protection Agency, who should know more than anybody else in the world, who is imposing hundreds of billions of dollars in costs to prevent climate and temperature increases, doesn't know whether their projections have been all along.

Ms. McCarthy. Whose projections? What models, sir?

Senator Sessions. Where do you get the information that the temperature is increasing? Isn't it from climate models produced by scientists around the world that projected certain increases as the actual temperature increased at that rate?

Ms. McCarthy. It depends on what you are looking at. In the time frame of climate, which is trends, absolutely, positively.

Senator Sessions. Would you submit to me a written document that explains how you believe the models have been proven correct and whether or not, I will ask this specific question, had it

increased less than projected or more than projected?

Ms. McCarthy. I would be happy to provide you the information. My concern is you are not looking at climate in the kind of trend lines that climate determines. Sometimes you were asking us did we get it right last year, did we get it right the prior four years, instead of looking at this as climate demands. This isn't weather patterns. This is a partitive time. If you look at the last century, we have had changes in our climate that we should not have seen over a span of 1,000 years.

Senator Inhofe. I am sure that Senator Sessions is looking forward to getting your written document.

We wanted to hear from Senator Markey but we have a unanimous consent request by Senator Vitter.

Senator Vitter. Actually, Mr. Chairman, I will pass and try to stay around. Thank you.

Senator Inhofe. Senator Markey.

Senator Markey. Thank you.

Senator Sessions, they have a big stunning development in Massachusetts. It is that temperatures off the coast of Massachusetts and the Atlantic have been measured at 20 degrees above normal.

What is happening is this Arctic vortex is being sent down in larger amounts than ever seen before as Anchorage has almost no snow on its grounds, leads to this cold air lingering longer

over Massachusetts and then hitting this 20 degree warmer than normal Atlantic Ocean which then leads to more moisture and more precipitation which then leads to us breaking the record for the most snow in history.

That is not weather; that is climate. There is a distinction between these things. The reason we know things are changing off the coast of Massachusetts is NOAA, NASA and predecessor agencies have been using thermometers since the 1880s to actually take the temperature of the water and the air. They just write it down each year.

They do that all around the world, actually. Scientists all around the world keep these temperatures.

The reason we know it is happening is that people have been using thermometers over all these years. It is not a more sophisticated technology, it is exactly the same technology, probably costs more but it is the same exact device.

We are now suffering from that in Massachusetts. It is climate. There is an intensity, an extra level of effect that it creates.

I would like to point out that in the op-ed of Steven Koonin, that Senator Wicker put in the record, there was one sentence he left out. That sentence says, "Uncertainty need not be an excuse for inaction." I applaud the EPA for all of its great work. I thank you, Madam Administrator, for what you have

done on this issue.

I would like to move the renewable energy component of your clean power plant rules and ask, as you finalize these rules, will you be incorporating up to date renewable costs so what is truly achievable is reflected?

Ms. McCarthy. Yes, sir, we will.

Senator Markey. The renewable fuels standard is another policy where technology and innovation can help reduce carbon pollution. Last year, facilities with almost 60 million gallons of cellulosic ethanol fuel per year capacity on line. Another 30 million gallons per year of facility was set up this year.

To continue that growth and investment, the advanced biofuels industry needs policy certainty. Will the upcoming renewable fuels standard proposal reflect developments in cellulosic and advanced biofuels and support their growth in the future as was the intent of the 2007 legislative language?

Ms. McCarthy. Yes, sir.

Senator Markey. Can you elaborate a little?

Ms. McCarthy. I think the challenge for us has been the requirement to annually look at these budgets. We are looking at ways in which we can send longer term signals to the market so that advancements like cellulosic can really find investment opportunity on a longer term basis that they need to continue to grow.

Senator Markey. I was the co-author of that language in 2007. Then it was cellulosic but then we went almost immediately into a recession which hurt that industry.

Ms. McCarthy. It has really taken off.

Senator Markey. It did not get its initial shot but in normal economic conditions, we are quite confident it will be successful.

I want to turn to EPA's work to keep our water clean. Between 1979 and 2001, about 15 football fields were the wetlands that feed into the historic Buzzards Bay in Massachusetts were cleaned of all vegetation and pollutants with high levels of fertilizer and pesticides that contaminated the waters that feed into the Bay. It was all done without notification or permitting.

The EPA tried to take action against the polluters using its Clean Water Act authority but more than 15 years later, the case is still not resolved and the wetlands have never been restored.

The reason this case remains in limbo is that the Supreme Court was unable to make up its mind about whether wetlands are bodies of water that fall under the Clean Water Act's jurisdiction.

Rather than perpetuate the uncertainty that the Supreme Court created, EPA responded to requests from religious organizations, small businesses, public health groups,

sportsmen's associations and State leaders to craft a definition of which types of water bodies can be subject to enforcement under the Clean Water Act and which cannot.

Isn't it true that the EPA, as it reviews more than 1,200 peer-reviewed, scientific papers and other data, established a Scientific Advisory Board of 26 independent scientists to review the EPA's work, reached out to stakeholders in every single State and reviewed more than 1 million comments on the proposed rule?

Ms. McCarthy. That is true.

Senator Markey. Isn't it true that more than 30 Republican Senators and House members publicly called on EPA to write a rule instead of just issuing guidance like EPA initially planned to do?

Ms. McCarthy. That is true.

Senator Markey. Isn't it true that when this rule is finalized, it will actually cover fewer water bodies than was the case under policies that were promulgated by the Reagan Administration and it will permanently remove types of bodies of water from being subject to EPA's authority under the Clean Water Act?

Ms. McCarthy. That is correct.

Senator Markey. It seems that common-sense, scientifically-based policy is being put on the books and we thank you so much for doing that.

Thank you, Mr. Chairman.

Senator Inhofe. Thank you, Senator Markey.

Senator Capito?

Senator Capito. Thank you.

Thank you, Madam Administrator. I appreciate your coming before the committee today.

I want to say at the onset, I think, in a bipartisan way, we have asked questions about the technical assistance issues through the Safe Drinking Water and the Clean Water Acts.

It does maximize resources to a lot of localities, municipalities and it is very important to all of us no matter how big or small your State is.

You know I am from the State of West Virginia. We have had numerous conversations. As one of my colleagues said, I would say in the State of West Virginia, if I hear disagreements, which I hear quite a few, but EPA is always right at the epicenter because of the impact of the regulatory environment we have had because we are so heavily reliant on coal as our power source.

I would like to ask this question. You have in your remarks that the President's budget calls for a \$4 billion Clean Power State Incentive Fund. The way I am reading this, that is a legislative prerogative, correct? That exists outside your budget?

Ms. McCarthy. That is not included in our budget.

Senator Capito. That has to be passed here in Congress before that would ever be funded?

Ms. McCarthy. That is correct.

Senator Capito. I am not going to waste a lot of time on that one because I don't think that is going to go. Although I will say, at cross purposes there, in your remarks, you say it helps with the financing for renewable and low income communities, but in the analysis by the committee, the bipartisan analysis, the quote says this would be to give grants to States that go beyond the clean power plan?

Ms. McCarthy. We actually have other opportunities in our budget that speak to the issues I was referring to.

Senator Capito. I would say if we are going to talk about economics and environment, if \$4 billion, about 50 percent of what you are asking for today, the EPA and the President believe that is something that will help meet the demands of this new clean power plan. That tells me how explosively expensive something like this would be across the Country. Would that be a safe statement?

Ms. McCarthy. I don't believe so, Senator. I think it is appropriate to look at the proposal that EPA put on the table because we believe it was flexible in terms of individual States and where they are overall in terms of our ability to continue to keep a reliable and cost effective energy system.

We think the goals are achievable for individual States. The standards were set and the overall rule will be very cost effective.

Senator Capito. If the Administration wants an additional \$4 billion in mandatory spending, in my view -- we can move on after this. I would like to say my own DEP has said EPA comments "on the 111(d) proposal notes with the finesse of a bull in a china shop, EPA intends to assert itself broadly into the new regulatory arenas that impact all areas of the Nation's economy."

If we are looking at the impacts of the clean power rule and weaving a balance, you all have talked about this a lot with me and I have a lot of frustrations at home about it. Of those dollars you are committing to this, how much of those dollars are actually used to model the economics?

We have heard a lot about the science. What about the economic effects, the job loss, communities that basically are going to be abandoned in my State because of the poor communities, the rise, 170 percent and that may be high, of 170 percent for that low income person in West Virginia, that senior and their electric bill where they are already at the end of their rope trying to meet their monthly obligations?

How much time, effort and money do you spend to analyze that effect when you are putting together one of these regulations?

Ms. McCarthy. I am happy to try to see if we can decipher

that for you.

Senator Capito. If you could quantify that for me, I would appreciate it.

Ms. McCarthy. I am happy to do that. If you look at the way in which we designed our proposal, if you look at what we are asking in terms of additional resources on climate, you will see we are asking for \$57.7 million, \$25 million of which is technical assistance grants going to States so they can help them with their plans. In excess of \$25 million is to help actually provide technical assistance to be able to work on this issue.

You will see that we are providing in the core of our budget the funding we believe we need to implement the plan and help States implement the plan.

Senator Capito. I understand. Additionally, even though it is a legislative priority, the Administration obviously feels an extra \$4 billion in mandatory spending is going to be what is necessary for the States to meet these challenges.

Let me ask about ozone real quick because again I think there are big economic impacts there. The rule you said went forward in 2008, the previous, and now we are moving to a new standard. This is ozone?

Ms. McCarthy. Ozone, yes.

Senator Capito. We know there are still many States and counties not in compliance. The President withdrew this in 2011,

the same proposal, is that correct, to not move forward. The \$90 billion price tag was something he was really unable to move forward.

Do you believe the economy has changed so much that this \$90 billion price tag is now sustainable and whatever would be on top of the new ozone regulations?

Ms. McCarthy. The way this works, let me explain. The rule being implemented will ask States to look at cost effective opportunities for reducing pollutants that contribute to ozone. We are setting a health protective standard.

The rule we are looking at or the standard we are setting now is actually going to be based on air quality in 2014, 2016, and States will get to 2030 to actually in some cases achieve that. National rules already in place will actually get us most of the way to complying with that more rigorous standard if and when the decision is made to change that standard.

This is not a stop and start process. It is a continued discussion and cost effective actions to us getting at the levels of protection for public health.

Senator Capito. My misunderstanding might be that it was a previous rule that was supposed to meet certain standards. I am interpreting it as a new rule that is moving you to different standards. You are telling me it is sort of a continued rule.

Ms. McCarthy. It is and has been continuing for 20 years

and States have been able to manage through this. Everything you do to comply with the 2008 will provide you a strong foundation to actually achieve what we are proposing.

The exciting thing about these standards is if we decide to reduce the standard to 70, only nine counties in the U.S. outside of California are predicted to actually be out of attainment by 2025.

National rules already on the books are going to get us a significant way there. It may actually get us outside of California and give us the ability to be in attainment almost throughout the entire Country.

Senator Inhofe. We will recognize Senator Rounds. Senator Rounds, would you yield for a unanimous consent request from Senator Vitter?

Senator Rounds. I will.

Senator Vitter. Thank you, Senator.

Very briefly, I just have a UC request to submit to Ms. McCarthy, for the record, my questions, which are on existing source performance standards and economic analysis.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Vitter. Thank you.

Senator Inhofe. Senator Rounds?

Senator Rounds. Thank you, Mr. Chairman.

Administrator McCarthy, I suspect this is something like going to a dental appointment in terms of coming in here and sitting down.

Earlier, you had an opportunity to discuss a little, and I sensed the frustration, with regard to the waters of the United States rules and the comments made. I want to correct it because, if not, we will come back later on and correct it.

The Corps of Engineers basically issued the request. On February 11, Assistant Secretary Darcy told the House Appropriations Committee members that 37 percent of the comments on the proposed "waters of the United States" rule were in favor of the rule and 58 percent were opposed and that others were neutral.

On February 26, you told the House Appropriations Committee members that 87 percent of the comments were positive and said "all they," meaning the Corps, "had completed was a review of 2 percent of the comments and you weren't sure which 2 percent they chose." You said you feel badly there is confusion. You suggested maybe the Corps should review their numbers. Today, you issued a similar suggestion.

I suspect that although there have been over 1 million

comments made, it seems there has also been discussion and there are only about 20,000 of the million that would be considered unique and substantive in terms of comments. It also appears in discussions that these were the comments the Corps had reviewed.

I want to clear up any confusion. When you talk about the substantive comments that have been made which appear to be about 20,000, I don't know there is much disagreement on that.

Out of the 20,000, 7,400 were unique and substantive comments that supported the rule. When you talked about 87 percent of the comments were positive, you were talking about the mass campaigns and the duplicative comments also received in addition to the 20,000 substantive and unique comments that had been there.

Also in that 20,000, there were approximately 11,600 of these substantive comments that were in opposition to the rule. Am I accurate in my assessment?

Ms. McCarthy. I don't have that exact figure, sir.

Senator Rounds. I am trying to clear up that while I think you were using numbers different from the Corps of Engineers, the Corps was talking about the substantive comments and you were looking at the gross number of total comments that have come in overall?

Ms. McCarthy. I would have to refer to the Corps for that. I don't know, sir. I think the point I am really trying to make

is we have probably done a bit of disservice saying what is opposed and what isn't opposed.

It is important to know that people find this rule important and obviously to get it right. We do as well. Every comment is meaningful to us and we look at all of them. It is important for us to do what the science and the law say and to explain ourselves. We need to do the best job we can in the final to have that done.

Senator Rounds. I do agree with you that this is critical. I think this has some far reaching impacts in terms of individuals who before may very well not have to have permitting in order to do the same jobs they were doing before.

I think it is so important that when we start talking about waters of the United States, I think this is a major rule. Although there maybe some discussion or disagreement in terms of the definitions of what a major rule is, there is Executive Order 12866 directing all federal agencies to assess economic effects of economically significant rules. I do think this is one of those rules.

These rules will have a material adverse effect on any sector of the economy such as productivity, competition or jobs. In August 2014, a GAO study reported your agency was writing and implementing regulations based on information that considered the effects of regulations on employment for the years 1979-1991.

This was in 2014.

Additionally, the study was limited to four industrial sectors. As a result, the regulations EPA was crafting for the United States were finalized with the assumptions that the United States economy 20-30 years ago was the same as it is today and involved only four industrial sectors. That is simply not correct today.

The Bureau of Labor statistics breaks down the manufacturing sector into approximately two dozen industries and this does not include other sectors such as retail, hospitality or tourism.

I understand you are no longer using the outdated data when writing regulations but you are required under this Executive Order to consider economic effects whenever you are writing a major rule.

The EPA is in the process of finalizing the clean power plant rules and the NOx ozone rules as well, which is predicted to be one of the most expensive regulations in the EPA's history.

I am curious. What economic factors and how updated are they that you use when you look at any one of these three rules today? How up to date are your economic numbers? What guidelines are you using today?

Ms. McCarthy. I am happy to provide you information on this but EPA, I believe, does a great job in keeping up with the economics we need in order to provide the American public a

really good understanding of what the costs and benefits are of our rules.

I think we do an excellent job. There is always work going on and we try to update as much as we can, but I think we are up to date in what we are doing. I would be happy to share that information with you.

Senator Rounds. Would you provide the committee the current data you are using when you did each of these three rules, please?

Ms. McCarthy. Of course. There is something called the Regulatory Impact Analysis that goes with these rules. All of the methods, methodologies and data is contained in that.

Senator Rounds. I hear you say, and we would like to get, since you are not using the old data, you have updated the data, the most current data that you have to indicate the impact on the economy that all three of these rules would have.

Ms. McCarthy. I will make sure we provide that information to you, Senator.

Senator Rounds. Thank you very much. I appreciate it.

Senator Inhofe. Thank you, Senator Rounds.

We will leave the record open for 24 hours because there are things that both Senator Boxer and I want to submit for the record, questions for the record and also clarifications for the record.

Senator Boxer. Mr. Chairman, can I make an inquiry?

Senator Inhofe. Yes.

Senator Boxer. I asked if I could have a second round and you said, no, I could not. I don't ever remember my ever stopping from a second round. I ask unanimous consent that I have a second round to make some points at this time.

Senator Inhofe. I object.

Senator Boxer. Then I ask unanimous consent that I be allowed to place documents in the record.

Senator Inhofe. We have already done that.

Senator Boxer. No, I want to say what they are. I ask unanimous consent that Senator Markey's first statement be submitted to the record.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. I ask unanimous consent that the National Climate Assessment which was voted on by the Senate 100 to 0 be put in the record that shows that climate change is going to harm human health.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. I have put in the record two documents that show how climate change is fueling our California drought.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. I ask unanimous consent to put in the record a Washington Post article, The Remote Alaskan Village that Needs to Be Relocated Due to Climate Change.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. I ask unanimous consent that put in the record the peer-reviewed study that shows warmer temperatures equal bigger snow storms.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. Lastly, I would ask unanimous consent that I put in a document that shows that Professor Laurence Tribe was hired by Peabody Coal, the world's largest privately-held coal company, to write an opinion that criticized the coal rule.

Senator Inhofe. Without objection.

[The referenced information follows:]

Senator Boxer. Thank you.

Senator Inhofe. Without objection, we are adjourned.

[Whereupon, at 11:04 a.m., the committee was adjourned.]