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U.S. Senate Date: Tuesday, November 19, 2019

Committee on Environment  
and Public Works Washington, D.C.

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HEARING ON S. 1087, THE WATER QUALITY CERTIFICATION IMPROVEMENT  
ACT OF 2019, AND OTHER POTENTIAL REFORMS TO IMPROVE  
IMPLEMENTATION OF SECTION 401 OF THE CLEAN WATER ACT: STATE  
PERSPECTIVES

Tuesday, November 19, 2019

United States Senate

Committee on Environment and Public Works

Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m. in room 406, Dirksen Senate Office Building, the Honorable John Barrasso [chairman of the committee] presiding.

Present: Senators Barrasso, Carper, Inhofe, Capito, Cramer, Braun, Rounds, Sullivan, Boozman, Wicker, Ernst, Cardin, Merkley, Gillibrand, Duckworth, Van Hollen.

STATEMENT OF THE HONORABLE JOHN BARRASSO, A UNITED STATES  
SENATOR FROM THE STATE OF WYOMING

Senator Barrasso. Good morning. I call this hearing to order.

We are honored to welcome the governors of the great States of Wyoming and Oklahoma today to our committee. Governor Gordon and Governor Stitt have joined us to discuss a dangerous trend preventing our Nation from reaching full energy independence.

A group of States are holding critical energy infrastructure projects hostage by abusing a provision in the Clean Water Act. Congress created Section 401 of the Clean Water Act to give States a seat at the table before federal permits are issued. States deserve that seat at the table. The majority of States carry out this role in a responsible way.

Recently, a select group of States have weaponized Section 401 to stop energy projects from moving forward. As the director of the New Jersey Sierra Club said last year, "Section 401 review is probably the most effective tool we have to fight these projects."

Last year, our committee held a hearing on this important issue. Many of the same projects discussed at last year's hearing are still being blocked. The Millennium Bulk Terminal Project in Washington State remains in litigation limbo. This important project would allow cleaner burning coal from Wyoming,

Montana, and other western States to be exported to markets around the world.

The State of Washington has refused to move forward with certifying the project. Washington Governor Jay Inslee denied the certification with prejudice, meaning the project will never receive State approval. Governor Inslee's denial was based on a claim that the project was bad for the environment.

Well, that is just plain wrong. The Millennium Bulk Terminal Project would reduce emissions globally. Washington State is not preventing Japan and others from burning coal. Countries like Japan and others are going to get their coal from somewhere.

Wyoming and our low-sulfur coal is cleaner than coal from other parts of the world. Millennium Bulk is a \$680 million project. If it had been constructed on time, the project would have already generated more than \$12.5 billion in economic activity. The project would generate thousands of good-paying jobs in Washington State. Local officials and labor unions strongly support the project, and they want to see it move forward. It would grow our economy and help protect our environment. Opposing it makes no sense, but it is what happens when policy decisions are made based on emotion and not fact.

But Millennium Bulk is just one example. Since last year's committee hearing, more projects have been delayed. The State

of Oregon denied a 401 certification for a \$9.8 billion liquefied natural gas terminal and pipeline project. This project would export natural gas from the western United States to Asia.

New York has denied multiple natural gas pipeline certifications. Just like with the State of Washington, New York's decisions are hurting the environment. The lack of natural gas is causing more homes and businesses to rely on fuel oil, a fuel that emits 38 percent more carbon dioxide than natural gas. The Environmental Defense Fund recently noted, due to pipeline constraints, more of the dirtier fuel oils have been and will be burned across the Eastern Seaboard.

As the Wall Street Journal observed recently, inadequate natural gas pipeline capacity leads to more pollution and higher energy cost for American consumers. The Journal writes, "The average household that uses natural gas for heating this winter will spend \$580 compared to \$1,501 for heating oil and \$1,162 for electricity."

That is why I introduced the Water Quality Certification Improvement Act of 2019, so that States cannot unfairly block energy projects. President Trump also issued an executive order to update the almost 50-year old regulations. Most States aren't abusing their Clean Water Act authority. States like Wyoming, Oklahoma, and others have found responsible ways to

protect the water within their borders while growing their economies.

The Governors of Wyoming and Oklahoma are here to testify because Section 401 reform is critical to those States. Thank you again for joining us today, and I would now like to turn to Ranking Member Duckworth for opening comments.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF THE HONORABLE TAMMY DUCKWORTH, A UNITED STATES  
SENATOR FROM THE STATE OF ILLINOIS

Senator Duckworth. Thank you, Mr. Chairman. Thank you again for convening this hearing, and welcome to all the witnesses who are here with us today.

Water quality issues are front of mind for Illinoisans, because we and our neighbors are the stewards of the Nation's largest body of fresh water, the Great Lakes. The Clean Water Act is the landmark law that helps us be good caregivers. It is our first line of defense in ensuring the integrity of the Great Lakes and safeguarding the quality of the rivers, streams, and tributaries that feed these national treasures.

The Great Lakes provide drinking water for tens of millions of Americans and support 1.5 million direct jobs. Their commercial, recreational, and tribal fisheries are valued at more than \$7 billion.

In addition to being our main source of drinking water and providing the region with major economic opportunity, the Great Lakes improve our quality of life in the Midwest. They are where we fish and where we swim. Weakening the Clean Water Act would threaten this way of life.

That is why I strongly oppose the Trump Administration's proposal that would degrade Section 401 of the Clean Water Act and gut protections for vast bodies of water that serve

communities throughout the region. Section 401 guarantees that States and tribes have a voice and say in projects that require federally issued permits and licenses. Specifically, it rejects a one-size-fits-all system by establishing a certification requirement that enables States and First Nation tribes to help optimize the conditions that must be met to secure a permit or license for a special project. Very reasonable.

I recognize that developers who fail to meet the requirements identified by States and tribes may be frustrated by denials in earning federal approval for a given project. However, silencing the voices and inputs of those Americans most directly impacted is the wrong approach, especially since these voices often represent the States and the tribes and the tribal governments that are on the front lines working to safeguard their water supplies.

It is disappointing, but not surprising, that the Trump Administration only cares about States' rights when it is to look the other way, allowing corporate polluters to destroy streams and pave over wetlands. During this hearing, we will hear that Section 401 leads to delays on energy projects and that it is abused to stop projects that are unpopular.

However, when I asked the EPA for more information on how much time Section 401 adds to the permitting process, the EPA could not provide any information. Today's proposal would place



highly restrictive requirements on what activities and impacts a State can review, as well as restrictive deadlines on the process. It would also give the Federal Government a veto on projects, and there would be no notice for downstream States for proposed projects.

Many would be shocked to learn that the Clean Water Act was actually passed by a bipartisan majority in Congress and signed into law by a Republican President. However, policy makers and constituents of prior generations had lived through decades of unchecked dumping of untreated sewage, industrial waste, and agricultural runoff into our waters. We must never take for granted how, over the past 50 years, the Clean Water Act has reduced or eliminated pollution in our Nation's waterways and slowed the rate of wetlands loss. Congress should honor this progress by recognizing that more work remains to be done today, tomorrow, and in future years.

Just last year, every beach in Illinois that was tested by the Environmental Protection Agency had to close for at least one day, and South Shore Beach in Southern Chicago was closed for nearly 40 days because of water contamination. My constituents want to swim on these beaches all summer long, and we will never achieve that goal by weakening the Clean Water Act. Simply put, healthy water means healthier families, communities, and economies.

That is why I will continue fighting to preserve and strengthen the Clean Water Act, and always put the health and well-being of my constituents above all other interests.

Mr. Chairman, thank you again for holding this hearing, and I look forward to hearing from our witnesses.

[The prepared statement of Senator Duckworth follows.]

Senator Barrasso. Well, thank you very much, Senator Duckworth, for your opening statement.

Now, we will turn to our witnesses. I am very pleased to introduce Governor Mark Gordon who was sworn in as the State of Wyoming's 33<sup>rd</sup> governor on January 7<sup>th</sup> of this year. Governor Gordon has served the people of Wyoming for years. He is a native of Kaycee, Wyoming, in Johnson County, grew up and worked on his family's ranch, became a very successful rancher and businessman himself.

Prior to his election as governor, he also served as State Treasurer from 2012 until this January. His leadership as State Treasurer resulted in improved returns on State investments, better protection of State savings, and increased transparency for the public.

Governor Gordon's efforts to improve the State's financial portfolio resulted in Wyoming being ranked number one in the Country for transparency. As governor, he is working to make Wyoming's government more accessible, productive, and efficient.

Governor Gordon, we are honored that you are here testifying before the committee, and I know you have much to share about Wyoming, our State's commitment to responsible energy production and the State's strong record of environmental protection.

But before we go to you, and I am looking forward to our

continued partnership to grow Wyoming's economy, before calling on you, I would like to ask Senator Inhofe if he would like to introduce his esteemed governor and first lady.

Senator Inhofe. Thank you, Senator Barrasso.

Mr. Chairman, I am proud to introduce to the committee Oklahoma's First Lady, Sarah Stitt. Sarah, would you stand up, please?

[Applause.]

Senator Inhofe. With her is Governor Stitt.

[Laughter].

Senator Inhofe. Governor Stitt is relatively new to the world of government, but he has been well known for a long time for his accomplishments in the State of Oklahoma. A fourth generation Oklahoman, Kevin spent his life as an entrepreneur, and founded Gateway Mortgage about 20 years ago. That has been a model. Under his leadership, it has gone from a small mortgage company to the national giant, operating in more than 40 States with over 1,200 employees.

Last year, Kevin was elected governor, and his administration is already reforming our State. He is focused on all the right things, with a vision of making Oklahoma a top ten State in all key statistical areas, and he is well on his way by cutting bureaucracy, growing jobs, and improving Oklahoma's roads and bridges.

I have gotten to know him well and am confident that he will continue to make Oklahoma proud, and I look forward to hearing his testimony today. He has accomplished so much in such a short period of time, and it shows that States are relevant.

Thank you, Mr. Chairman.

Senator Barrasso. Well, thank you very much, Senator.

I would also like to welcome to the committee today Laura Watson, who is the Senior Assistant Attorney General and Division Chief for the Washington State Attorney General's Office. Welcome.

I want to remind the witnesses that your full written testimony will be made part of the official hearing record, so please try to keep your statements to five minutes so that we have time for questions. We look forward to hearing your testimony.

Governor Gordon, would you please begin?

STATEMENT OF THE HONORABLE MARK GORDON, GOVERNOR, STATE OF  
WYOMING

Governor Gordon. Thank you, Mr. Chairman, it is a pleasure to be here.

Well done, Senator Inhofe. Thank you also, Ranking Member Duckworth, and members of the committee.

Wyoming is blessed with an abundance of resources and has thus been the center of energy production and a leader in environmental protection. Much of our economy is in fact based on our ability to export energy to heat homes, light cities, and better lives.

We are also home to thriving wildlife and some of the Nation's cleanest air and water. Wyoming is headwaters to three of the Nation's major rivers: the Missouri, the Colorado, and the Columbia. Protecting water quality within our State has always been important to Wyoming. We recognize the value of clean water and earnestly strive to protect it.

This is done, in part, through responsible application of the Clean Water Act Section 401. Regrettably, a recent Clean Water Act Section 401 decision by Washington State imperiled the development of infrastructure that could expedite the way Powder River Coal gets to overseas customers.

In the case of Millennium Bulk Terminal in 2017, Washington State blocked the terminal's construction by inappropriately

denying Section 401 certification, citing several non-water quality-related impacts. This was a protectionist maneuver, based on alleged effects that are outside the scope of Section 401. With a fanciful interpretation of Section 401 processes, Washington State actively prevented coal mined in Wyoming, Montana, Utah, and Colorado efficient access to foreign markets.

The Clean Water Act, particularly Section 401, is designed to allow States to protect water quality within their boundaries. It is not a tool to erect trade barriers based on political or parochial whims, nor a way to preempt interstate commerce.

Reform of Section 401 is not an assault on the environment, a means to prevent States from taking control of their own destiny, or a cloaked attempt at climate change denial. We acknowledge that CO2 concentrations in our atmosphere are an urgent concern for our climate and must be addressed effectively, while we also recognize that the world needs energy.

With commitment, vision, and courage, we can take advantage of all our resources in a responsible manner to solve for both a cleaner and better world. I come to you today with a goal of finding solutions. We can protect water quality, build infrastructure responsibly, address climate change, and promote interstate commerce under Section 401.

Clean Water Act Section 401 reform should be driven by facts and designed to minimize negative externalities and social cost. The Clean Water Act already provides a framework for this by granting broad responsibilities to States under Section 401 while allowing the necessary flexibility to fulfill their roles as co-regulators to protect our Nation's waters.

Unfortunately, the Section 401 certification process has also led to inconsistent interpretation and implementation among States. Loopholes in federal environmental regulations should not be exploited to advance peripheral agendas. Section 401 certification decisions must be focused, efficient, reliable, and appropriately balance the Federal Government's province with State autonomy.

Chairman Barrasso's bill, S. 1087, entitled Water Quality Certification Improvement Act of 2019, recommends real improvements to the Clean Water Act Section 401 certification process, while also respecting the rights of States under the Commerce Clause to the United States Constitution. I emphatically support these efforts.

In Wyoming, our Section 401 certifications are based on water quality and completed within a reasonable time. That is usually around 60 days on average. Elsewhere, some States apparently have found in Section 401 of the Clean Water Act novel ways to block projects rather than using it correctly, as



a regulatory framework to address attendant water quality concerns.

The Congressional purpose of the Clean Water Act was to protect and maintain water quality. However, some certifying authorities have interpreted Section 401 to include tangential, non-water quality-related considerations in their review. In Washington, for example, the Department of Ecology decided to employ the State's open-ended discretionary policy to deny the Millennium Bulk Terminal Section 401 certification. The department's decision was heavily skewed on non-water quality-based impacts, ranging from greenhouse gas emissions, from rail noise and vibration from trains, social and community impacts from noise and air pollution, decreased rail safety, as well as tribal and cultural resource impacts.

The inclusion of these factors is arguably superfluous to the original intent of the Clean Water Act. Properly, the scope of Section 401 review or action must directly connect to addressing water quality impacts from potential discharges associated with a proposed federally licensed or permitted project. The Washington Department of Ecology denial of 401 certification for the Millennium Bulk Terminals was fickle, based on loose if not absent connection to impacts on water quality.

Furthermore, when Washington State denied the project with

prejudice, it precluded the terminal's opportunity to amend its application or ever to reapply. Evidently, Washington found Section 401 useful as a tool to curtail a specific project it found displeasing, rather than allowing the project's applicant the opportunity to address appropriate associated water quality impacts.

The two main areas that I advocate for reform in context with Wyoming's experience relate to one, the scope of environmental reviews, and two, the basis for certification denials. Certification denials must have a clear and reasonable assertion that the project activities would, number one, result in violation or fail to conform to one or more surface water quality standards; two, result in an increase in pollutant loading to a Clean Water Act 303(d) listed water; or three, would not conform to applicable 401 certification conditions or Corps nationwide permit conditions.

Finally, let me speak to the correct implementation of the Clean Water Act, cooperative federalism and the essential rights of States. States must be afforded reasonable authority over land and water resources within their borders. Section 401 is an essential tool granted by Congress which was intended to give States discretion in reviewing and conditioning 401 certifications and to ensure concordance with both Clean Water Act and State surface water quality standards.

Still, proper implementation of Section 401 of the Clean Water Act should line up with the original intent and also recognize the individual jurisdictional rights of States to manage their own affairs and conduct commerce. The draft Water Quality Certification Improvement Act of 2019, sponsored by Chairman Barrasso and Senators Daines, Inhofe, Capito, Enzi, and Cramer offers a much-needed improvement to Section 401 of the Clean Water Act by reducing uncertainty and limiting the potential for misuse. Rules and regulations should be squarely centered on purpose, in this case, water quality. They should not become an all-of-the-above artifice to thwart unwelcome projects with prejudice.

I appreciate your efforts to clarify Section 401 implementation and the EPA's recent efforts to modernize its Section 401 guidance. Both are needed, and I look forward to answering your questions.

Thank you.

[The prepared statement of Governor Gordon follows:]

Senator Barrasso. Thank you very much, Governor Gordon.  
Governor Stitt?

STATEMENT OF THE HONORABLE KEVIN J. STITT, GOVERNOR, STATE OF  
OKLAHOMA

Governor Stitt. Chairman Barrasso, Ranking Member Duckworth, and Senior Member Senator Inhofe, thank you for inviting me to testify on why it has important for my State of Oklahoma to have clarity and certainty around Section 401 of the Clean Water Act.

As you may be aware, I am 11 months into being Governor of the great State of Oklahoma. Less than one year ago, I was in the private sector, building a business in two of the most regulated sectors in the United States, banking and mortgage-lending. I started my company from scratch and built it to over 1,200 employees doing business in 41 States.

I say this because I want to share that as a former CEO, I understand the importance of commonsense regulations. Efficiency and certainty from State and federal regulators allow a CEO to put more of his or her focus on creating jobs and growing the economy. Anything short of regulatory certainty and predictability stifles job creation, chills capital markets, and slows down innovation for advances that make us a better and stronger society.

Today, serving as Governor of the great State of Oklahoma, I have had the honor and opportunity to view the regulatory environment from this side of the government. I can speak with

great assurance that regulations are best left to the States as often as possible. We know our people, we know our geography, we know our economies, and we know best when innovation demands regulatory flexibility, and when protecting our citizens requires action.

Oklahoma is a huge success story for States' rights and federal partnership. I am here today to share with you why we must continue to strike this balance between modernizing and clarifying Section 401 of the Clean Water Act. As you all know, Oklahoma has a long and storied history of leadership and innovation in the production of traditional fossil energy. We are grateful to Senator Inhofe who has been a champion for our State on these issues.

Today, Oklahoma ranks number three in natural gas production. We rank number four in oil production, and we are a leader in natural gas liquids that form the building blocks for the products Americans use every day. We are proud to be considered the pipeline capital of the world.

Oklahoma is top ten in all aspects of energy, as well as in the environment. We are enjoying some of the cleanest drinking water in our State's history. We have the most practical regulatory framework and some of the most efficient permitting review times in the Country. We are meeting our obligations and certifying water quality standards within 60 days of the

application, well under the one-year timeline proposed by the Environmental Protection Agency.

Thanks to Oklahoma-produced natural gas and the shale revolution, my State has also reduced emissions in SO<sub>2</sub>, NO<sub>x</sub>, and CO<sub>2</sub> at more than double the national average. The national average for CO<sub>2</sub> reduction is nearly 15 percent since 2015, while Oklahoma has reduced its CO<sub>2</sub> emissions in the power sector by more than 37 percent, just since 2011.

We have made major advancements in environmental quality while also maintaining the number one ranking and cheapest electricity cost to the customer. As a result, Oklahoma is the leading generator and exporter of power in the Southwest Power Pool, which is our regional transmission organization. In fact, 28 percent of the power produced in Oklahoma is sent out across transmission lines in the SPP, exporting Oklahoma's emission-reducing energy to all of our neighboring States.

Oklahoma is the epicenter of America's energy dominance, and we want our success to be shared with our neighbors and our fellow States as far north as Maine, and as far south as the ports at Houston, Texas. Unfortunately, the misuse of Section 401 threatens Oklahoma's potential and the endless opportunities for our 4 million residents. It prevents Oklahoma from achieving all it can be because of a loophole within Section 401 that is allowing a small handful of coastal States to dictate

the future for all the other 40 States.

Unfortunately, this is just unacceptable. The point was absurdly exemplified the last winter when a Russian tanker of liquefied natural gas was sitting in the Boston Harbor, providing for the Northeast U.S. from losing its heat during last winter's polar vortex. Imagine what that picture communicates to hard-working oil and natural gas employees around the Country. Do we really want our jobs and our tax dollars needlessly going to Russia?

For that purpose, I support the actions taken by EPA and members of this committee to restore certainty to the Clean Water Act permitting and certification process under Section 401. A clear scope and a reasonable timeline are not invasive to States' rights. The current proposed rule, and the opportunity to strengthen this legislatively does nothing to prevent Oklahoma's regulators from properly and scientifically considering whether a project negatively affects water quality in our State.

It has been almost 50 years since this regulation has been reviewed, and I support creating a reasonable baseline for Clean Water Act permitting and certification of interstate infrastructure, whether it is transmission lines, pipelines, or an interstate highway, to get Oklahoma's products to the market.

Once again, thank you for allowing me to be here today. I



look forward to answering your questions.

[The prepared statement of Governor Stitt follows:]

Senator Barrasso. Thank you very much, Governor.

Ms. Watson.

STATEMENT OF LAURA WATSON, SENIOR ASSISTANT ATTORNEY GENERAL AND  
DIVISION CHIEF, WASHINGTON STATE ATTORNEY GENERAL'S OFFICE

Ms. Watson. Thank you Chairman Barrasso, Ranking Member Duckworth, and members of the committee. My name is Laura Watson. I am a Senior Assistant Attorney General of Washington State, and I am honored to be here today to talk about how important a State's role is in protecting against water pollution for all Americans.

Under the Clean Water Act of 1972, Congress empowered States and tribes to serve as co-regulators with the Federal Government. This includes longstanding State authority under Section 401 to ensure that federally permitted activities and projects don't harm State waters.

For the past 50 years, States have successfully implemented Section 401. For example, in the past half-century, Washington State has issued thousands of 401 certifications and approximately 30 denials. Only a few of these decisions have ever been appealed.

Though States have demonstrated a fair and successful implementation of Section 401, today Section 401 is on the chopping block. First, EPA has proposed a rule that would seize control of 401 decisions from States and place those decisions in the hands of federal agencies. EPA's proposed rule would drastically narrow the scope of 401 review. It would severely

restrict the amount of time and information that States have to make their decisions, and it would grant federal agencies veto authority over State decisions.

EPA's proposal crosses the legal line in many ways, which is why it is broadly opposed by States and tribes across the Country and political spectrum. South Dakota says that the rule is a poorly disguised effort by the Federal Government to severely limit State and tribal efforts to enforce water quality standards. West Virginia says that the rule would undermine the authority originally provided to States in the Clean Water Act. Arkansas says that allowing the Federal Government to override a State decision is by no means in the spirit of cooperative federalism. Montana says that Montana's ability to protect water quality should not be weakened by federal rulemaking.

The National Congress of American Indians says that the proposed rule impermissibly threatens Indian tribes' right to self-governance, and the Upper Snake River Tribes Foundation calls the rule a slap in the face of tribal sovereignty.

EPA's rule is only one concern that we face today. Senate Bill 1087 imposes some of the same problematic concepts in the rule and would further threaten to erode State rights. Both proposals run counter to the concept of cooperative federalism and the spirit and letter of the Clean Water Act, and both proposals would inevitably compromise clean water for families

and communities across the Nation.

These extreme changes being proposed are both unfounded and unnecessary. They appear to be based on disagreement with a few State decisions, including Washington State's denial of a Section 401 certification for a proposed coal export facility on the Columbia River. That decision has been improperly cited as an abuse of authority, so I would like to set the record straight.

Washington's 401 denial was based on water quality grounds. Climate change and greenhouse gas considerations were in no way a factor in the State's denial. I understand that the denial decision will be made part of the record today, and you will see that my description of it is 100 percent accurate.

Rather than upending five decades of cooperative federalism and eroding the rights of every State and tribal government over a single 401 decision, we urge this committee to recognize the important role that States and tribes play in protecting water quality, and to uphold the longstanding partnership we share under the Clean Water Act.

I thank you and I look forward to your questions.

[The prepared statement of Ms. Watson follows:]

Senator Barrasso. Thank you very much Ms. Watson. Thank you for the testimony of all of you.

We will now start with rounds of questioning, and I would like to start with Governor Gordon. The Washington blockade of coal exports prevents millions of tons of Wyoming coal from reaching foreign markets. I am going to, without objection, enter into the record a letter in support of today's hearing from the National Mining Association.

[The referenced information follows:]

Senator Barrasso. Governor Gordon, the Association explains that "For every million tons of coal exported, an estimated 1,320 jobs are created." So I would like to ask, how is Washington State's abuse of the certification process hurting Wyoming workers and harming the economy of our home State?

Governor Gordon. Thank you, Mr. Chairman. Washington's blockade has brought a certain amount of uncertainty to coal markets going forward unjustifiably. In Wyoming, we have seen this year in the coal markets, with the work that has been done nationwide, including Washington, several bankruptcies of Westmoreland Coal, Arch, Peabody, Cloud Peak, Blackjewel, with attendant pension challenges, healthcare challenges.

We had 450 workers that were out of work in Gillette as of July 1st when Blackjewel went down. Our State has had to respond dramatically to that to make sure that people found new jobs, to work with companies to try to find a placement for that and also to handle some of the challenges with healthcare.

That is not exclusive to Wyoming. The coal strip also has seen losses of jobs and population, and it is a dramatic loss to the States' revenues.

Let me just say, too, Mr. Chairman, that we do it better. We have the strongest environmental laws in the world. We require the best working conditions in the world. The coal is going to be burned overseas regardless. Washington's own

documentation indicated that, as far as global warming is concerned, that the work that was done to get our coal to market would actually reduce carbons emissions over time.

I just want to make that point once again. We have strong environmental and labor conditions here. Our mining is done better under better reclamation standards and fully bonded, so I think generally speaking it is problematic to have that, what we have seen with the losses of jobs.

Senator Barrasso. So the State of Washington has access to the coast, something that landlocked States like Wyoming do not. What kind of precedent does it set when States that are landlocked can have their lawful products blocked from being exported by coastal States?

Governor Gordon. Well, so, I think this is an issue that, hearing Ms. Watson's testimony where she talked about the erosion of rights, this goes back to the beginning of our Country and certainly part of the Constitution. You can read in The Federalist 6 and 7 that talk about the various rivalries between States.

What happens is when coastal States deny access to products that are either raised or produced in the center of the Country, we lose our marketplace. We lose interstate commerce, we lose our ability to be able to have a good economy, and where does that all end?



If you look whimsically at how you want to apply these rules, natural gas could be one of the issues. We've seen that at Jordan Cove. Perhaps GMO grains become displeasing and we decide we are not going to ship GMO products. Lumber, perhaps that is another thing that could be decided against, or dairy products, any of these things that can be traded internationally.

Mr. Chairman, I think it is about balance. That is exactly what your bill does. It does a very good job of balancing States' rights to co-manage their own affairs with those that have to do with the Commerce Clause of the Constitution.

Senator Barrasso. Governor Stitt, you have a lot of experience with permitting gas pipelines in Oklahoma. How does Oklahoma protect water quality while permitting these critical pipelines?

Governor Stitt. Our DEQ certification process, we look at that and make sure that all of it administratively is complete. Then we look at all the maps, the drawings, the studies, the environmental impact assessments, the plans, information related to endangered, rare, or threatened species. Then we start going through the surface water and the groundwater and the natural resources potentially affected by any of these activities. Then we make sure that it meets with all the Clean Water Acts and then our State quality standards, and we do all this within 60

days.

I would like to just share with you some of the facts that we are so proud of in Oklahoma. Oklahoma was number one in the Nation in phosphorus load reduction in 2018 in our water bodies. Oklahoma was number three in the Nation in nitrogen load reductions in 2018. Oklahoma is number one in the Nation for non-point source success stories, with more water bodies delisted from the impaired list than any other State.

So we have some of the cleanest water, and yet we are the pipeline capital of the world, so the Diamond pipeline that runs just south of Tahlequah, Oklahoma, was just ranked the cleanest and the best-tasting water in the Country. We are very satisfied with our water quality standards and how we review all those 401 applications.

Senator Barrasso. Thank you. Senator Duckworth.

Senator Duckworth. Thank you, Mr. Chairman. From the testimony so far, you would think that this was a hearing about the importance of coal as an energy source, as a global energy source, as well as coal as a major provider of employment, and I could not agree with either more. Illinois is also a major exporter of coal, and we are also a State from the center of the Country that must export through coastal States.

But what this hearing is really about is about States' rights and tribal governments' rights to evaluate the impact of

pollution and really, about the EPA's proposed revision to Section 401. So let's focus ourselves back on the issue at hand. The EPA's proposed revision to Section 401 would narrow the scope of what States can evaluate in reviewing a project's water quality impact, and it only allows them to consider the direct impact of a point-sources discharge on water quality.

However, major infrastructure projects can have both direct and indirect effects on water quality. For instance, pipelines can directly degrade water quality through leaks or spills. They can also indirectly harm water quality through runoff and soil erosion during construction. I am very pleased to hear that Oklahoma has done a wonderful job of safeguarding your water sources and making sure that your pipelines are cleanest and safest. I would think that other States would like to have the ability to safeguard their own water sources.

Ms. Watson, of the State agencies that commented on the rule, nearly 75 percent expressed serious concerns about this provision. Are you concerned about this narrower scope, and how would this impact your State's ability to protect your water resources?

Ms. Watson. Absolutely, Senator, and thank you for the question. The rule would absolutely impact every State's ability to protect water resources, so in Washington, it would be Puget Sound and the Columbia River. In Florida, it would be

the Everglades, and in your lovely State, it is the Great Lakes.

There is no question that there would be greater water pollution, both as a result of the EPA rule and from Senate Bill 1087, because it so drastically narrows the scope of what can be considered. As Governor Stitt was talking about what Oklahoma considers groundwater standards and protections for endangered species, looking at all State water quality requirements, all of those things would be on the chopping block as a result of both the bill and the rule. States would no longer be able to fully protect against water pollution, and that is a big problem.

Senator Duckworth. Thank you. The stated purpose of EPA's proposed rule is to increase the transparency and efficiency of the 401 certification process and to promote timely review of infrastructure projects. Yet, the EPA is imposing new administrative burdens on States as part of this rule, requiring them to provide substantial amounts of new information, including legal citations to the EPA just to justify their decisions to grant certifications with conditions, all under a new constraint application review timeline.

Ms. Watson, considering the number of 401 certification applications that the Washington Department of Ecology receives and processes each year, how do you anticipate these new requirements will affect the State's efficiency in processing applications?

Ms. Watson. Actually, and ironically, Senator Duckworth, I think what would happen is that you would actually see States denying more 401 certifications. So, a rule that is intended to streamline 401 certifications is going to have the unintended consequence of resulting in more denials, because States can't make decisions without full information. Then on top of that, the States have to pad their decisions to convince the federal agency that the decision they have made is the correct one.

I think what you are going to find is more denials across the board. A lot of States raised that in their comment letters as well.

Senator Duckworth. Thank you. It is proposed that the EPA list seven basic components that project proponents must provide in order to constitute a complete certification request and trigger review period. Do you agree that the EPA should constrain the amount of information the project proponents must provide to States?

Ms. Watson. Absolutely not, Senator. The problem is then States will not have the information they need to determine that water pollution will not result from the federal project, and the results would be unclean water, dirtier water, for our families and our communities.

Senator Duckworth. Thank you, and I actually want to say that this is really about these particular changes to this one

rule. This is not a hearing about coal, in fact.

I am proud that Illinois just received a grant for clean coal. I want America to own clean coal, carbon capture sequestration technology. I want to sell American coal overseas. This is actually about States' abilities to safeguard their own water supply under this one particular rule, so let's focus on that.

Thank you, Ms. Watson.

Senator Barrasso. Thank you, Senator Duckworth. Senator Inhofe.

Senator Inhofe. Thank you, Mr. Chairman.

Governor Stitt, as you said in your testimony, Oklahoma has been on the front lines in America's energy independence, and it has worked. America leads the world in oil and gas production, and we have done all this while reducing pollution and leading the world with the cleanest drinking water. You've already talked about that.

Let's talk about the economic impact of energy produced in Oklahoma. One in five jobs are tied to oil and gas production, while an average salary in this industry is over \$94,000. Governor Stitt, what would happen to Oklahoma's electricity and energy prices if natural gas production ceased to exist?

Governor Stitt. Thank you, Senator. It would be devastating to our economy. Our energy costs, our electricity

costs to the consumer would more than double. We get 42 percent of our electricity generation from natural gas. Without natural gas to generate that baseload, when the winds don't blow, when the sun doesn't shine, we would be without power. It would be devastating to the electric grid.

Twenty-eight percent of our revenue comes from the oil and gas industry, so countless numbers of jobs, it would just be devastating to our economy.

Senator Inhofe. Let's talk about other States, how Oklahoma can help lower costs of other States' electricity and energy bills.

Governor Stitt. With the amount of natural gas that we have, we would love to be able to transport that to other States to help with their energy costs, their generation. Natural gas is such a clean-burning fuel that we would love to be able to transport that to other States and help with their low energy costs as well.

Senator Inhofe. Hopefully in the same way that it has been helping us for a long period of time.

Governor Stitt. Absolutely. I just want to tell you one other fact that I think is significant. Since 2011, Oklahoma has reduced its emissions by nearly double the national average. Sulfur dioxide is actually down by 56 percent, nitrogen oxide is down by 69 percent, carbon dioxide is down by 37 percent in

Oklahoma, so we are definitely leading the way in our emissions reductions.

Senator Inhofe. Yes, and we can't overlook the President's policies and how successful they have been. A lot of our colleagues are often claim that Republicans don't care about the environment. It couldn't be further from the truth, as you pointed out.

If you are looking at since 1970, the combined emissions of the six pollutants dropped by 74 percent while the economy grew by 275 percent. Now, this is even more astonishing when you look at since 2005, the U.S. energy-related CO2 emissions fell by 14 percent, while global emissions increased by over 20 percent. It is hardly believable.

Is there anything that you have not spoken to already on what Oklahoma has done to protect water quality? Because we have the best that is out there.

Governor Stitt. I love the stats in our State, and I have already outlined them about the pipeline capital of the world, but yet the cleanest water, and the reduction. We are number one in several categories in reducing non-point and also nitrogen into our water bodies. So, just excellent success stories in Oklahoma.

Senator Inhofe. It really is. In fact, this morning, my wife was pointing out one of the bottled water things. It came



from Tahlequah, Oklahoma.

Anyway, we are doing a great job. Let's try to share that with others. Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Inhofe. Senator Cardin.

Senator Cardin. Well, thank you, Mr. Chairman. I thank all three of our witnesses for their testimony. This is certainly an area of great interest.

I spent 20 years of my life in the State legislature, ended as speaker, so the ability of the States to work in partnership with the Federal Government, federalism to me is very, very essential and important to our system of government.

So Mr. Chairman, I first ask unanimous consent to submit comment letters by the National Governors Association, The Attorneys General of the States of Washington, New York, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Wisconsin, the District of Columbia, the Commonwealth of Massachusetts, Pennsylvania, Virginia, the Maryland Department of Environment and the Waterkeepers Chesapeake, and the Chesapeake Bay Foundation of concern about the chairman's bill.

Senator Barrasso. Without objection. We accept them all.

[The referenced information follows:]

Senator Cardin. I appreciate the chairman's generosity in allowing us to put that in the record, as he is always very generous in listening to all views.

I want to follow up on Senator Duckworth's point about the practical effects, if we restrict the powers of the State under 401 certifications. We just completed, in Maryland, a rather lengthy process in regards to the Conowingo Dam and Exelon Corporation. The Conowingo Dam is the second-largest producer of electricity, hydroelectricity power on the east coast of the United States, a critically important power source for our entire region.

But it is critical to what is happening with the quality of the water in the Chesapeake Bay. It is not just the immediate impact of what goes over the dam, but it is also the impact that it has on upstream and downstream.

There was a lengthy process in negotiating with the different stakeholders. On October 30th, Exelon and the State of Maryland announced an agreement just short of the 12-month limitation period.

There are pros and cons to the agreement that was reached. It does provide for Exelon to contribute some resources, there are some additional aspects in regard to how the migration of fish are handled, so there are some different aspects to this. There are a lot of stakeholders who felt that they should have

been more aggressive, but they were able to reach an agreement, and it will help the Chesapeake Bay Program.

I don't think it would have been possible to do this in a 90-day period. Just too complicated to get done in a 90-day period. So, I am just wondering why we would want to restrict the State's leverage. The State had minimal leverage to start off with because the dam had to operate; it was critically important for electricity.

But they were able to utilize the different stakeholders and come together for a productive conclusion. But if we narrow the period of time, aren't we just making it virtually impossible for the States to utilize this opportunity for clean water?

The Chesapeake Bay Program is one I talk about frequently in this committee. I guess my committee members might be a little bit tired of listening to me, but since Senator Duckworth brought up the Great Lakes, I had to bring up the Chesapeake Bay. The Bay Program was from the ground up. It started with the States and local government and local stakeholders. It wasn't a Federal Government-mandated program, it was a State initiative program, with States taking leadership on it.

Now, if we say the States can't use the tools that they have in an effective manner, aren't we just handcuffing the States' ability to get things done? In this case, Ms. Watson,

it would not have been possible for the State just to deny the application, because we need the electricity. But wouldn't we be compromising the ability of the States to leverage for clean water in our region? The States, I think, know the local circumstances better than the Federal Government.

Ms. Watson. Yes, Senator, absolutely, and thank you for your question. If you are limiting the amount of time that States have to make decisions, you are limiting the ability that States have to be able to reach those important deals, to work with the project proponent, and make sure that a project can go forward with the greatest possible protection for water. That is the system that is been in place for the last 50 years. It has worked very, very effectively.

Senator Cardin. Governors, if you wish to comment, fine. You have to deal with a lot of different players in your States. Ninety days for something as complicated as a multi-jurisdictional body of water like the Chesapeake Bay is virtually impossible.

Governor Stitt. I don't think it would hamper your ability to go after bad actors, come up with a settlement. The 60-day proposal for Clean Water, our State does it in 60 days, so the one-year timeline is just a reasonable time in scope. We think it is very reasonable for this committee and the EPA to revise their rules.

The State of Minnesota has arguably more water than any other State. Oklahoma actually has more manmade lakes and shorelines. They are getting their permits done in 90 days, so just the reasonability of this time in scope, I don't think limits the States' ability to oversee water quality or go after a bad actor.

Senator Cardin. It may be true for your State, but I would put you in the seat of Governor Hogan of Maryland and all the different stakeholders he has to deal with on these issues, and other States that he has to deal with.

Thank you, Mr. Chairman.

Governor Gordon. Mr. Chairman, if I might respond, Mr. Chairman and Senator Cardin. I appreciate the fact that you brought this back to the topic at hand, which is the proper use of the Clean Water Act and Section 401.

As the former chair of our State's independent environmental quality council, which is charged with not only making rules, but also is the first appeal body for any 401 permit that is granted in the State, I have experience with this program. I have to say that Wyoming also has multi-State jurisdictional issues. The Colorado River, for example, involves almost all the Southwest. The Columbia River also has several States on it.

We do our work within 60 days on average, but we are up to

a year. I don't think that is unreasonable, and I think this particular Act actually does two things. One is, it talks about the scope, and as we make the scope larger, of course the job becomes longer. So, this is an attempt to, it seems to me, bring well-needed reform to considering water quality impacts that are associated with a core permit or surface water issue.

Senator Cardin. I will just make a final comment. We are not good examples here, but it is better if we have greater consensus among the governors on the reform before it has brought here to Congress. I would like to have greater consensus among all of us.

This committee usually works in a very consensus way, but it would have been better if we had more of the States in agreement as to how these reforms should take place.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Cardin. Before turning to Senator Capito, I am going to ask unanimous consent to enter into the record a letter from the Kansas Attorney General in support of today's hearing. Attorney General Derek Schmidt states that S. 1087, he said, "would prevent future uses of Section 401 to deny development of constitutionally protected interstate commerce."

I would also like to enter into the record a court filing by eight States, including Oklahoma and Wyoming, who are

opposing Washington's denial in court.

[The referenced information follows:]

Senator Barrasso. Senator Capito.

Senator Capito. Thank you, Mr. Chairman, and thank you for scheduling the hearing on our bill, the Water Quality Certification Improvement Act and efforts to improve implementation of 401 broadly. I am very appreciative of that.

I would like to ask a process question first, Governor Gordon. In the process, the State permits under the 401, but once that permit is granted, there are all kinds of other federal agencies that then weigh in on the permit, like the Corps, Fish and Wildlife. Can you flesh that out a little bit for me? If you don't know the details, I can write it in a written question.

Governor Gordon. Thank you, Mr. Chairman and Senator Capito. You are correct. Section 401 is specifically about water quality. It is not intended to be a catch-all for all environmental regulation, and I think it is important that we keep -- and I think that is what the value of this particular draft bill is, is to make sure that we keep it on topic of water quality. Because as you point out, there are many other agencies that weigh in beyond that, from the Corps of Engineers, to Fish and Wildlife Service, and others. So it is an extensive process that really has to be done both on a State and a federal level.

Senator Capito. Right. So I would like to point out that



this legislation does not violate our States' rights to protect the quality of their water. Everybody here on the dais and in the audience and probably across this great Country are just as invested in water quality and clean drinking water as the next person.

But what we found in a State like West Virginia is, we exert our right under Section 401 and we get sued by other external groups to try to prevent the direction that we want to go. Maybe that is not the direction that Washington State wants to go, but it is the direction that we as West Virginians want to go, and so that is very frustrating.

So I guess in the grand scheme of things, to both governors, does this legislation in any way prevent you from continuing to ensure water quality consistent with the Clean Water Act?

Governor Gordon. Mr. Chairman, Senator Capito, I do not believe it does. As I say, I have extensive experience with the State's regulatory apparatus, having served on the environmental quality council and having actually prosecuted several examples of these permits being issued and being contested. Never did I see the State's opportunity to regulate appropriately interfered with.

As I have mentioned before, I think States have multiple rights, and one of them is certainly the right to commerce.

That, I think, is something being precluded as we see the creep of 401 to include other things.

Senator Capito. Governor Stitt, do you have a comment on that?

Governor Stitt. No, I do not think it limits our ability as a State to regulate our water quality. I just want to address the States' rights issue. Today, we are talking about pipelines, and we are talking about exporting coal. But tomorrow, it may be exporting agricultural goods, or it might be exporting beef. I think that is exactly --

Senator Capito. We might be exporting energy generated by a solar panel.

Governor Stitt. It could be, that is correct. We could. I think we have talked enough here, we are so proud of Oklahoma being the pipeline capital of the world, and yet we have given you the facts on our water quality. This is really an attack on States' rights to be able to export their assets, and that is where one State's rights, where does it impinge on another State?

Senator Capito. Right. As governor, obviously you have stated the robust production of natural gas and oil. My State of West Virginia is new to the natural oil. We are not new to the natural gas business, but we are new to the proliferation through the Marcellus and Utica Shale. I think it is rather

ironic that we have two major pipelines now stopped because of permitting issues.

But we also look where we are situated in this Country, where we could be exporting our gas to New York State and to the Northeast to replace what I think is one of the dirtiest fuels around, and that is fuel oil. I am not sure that we are into genuine arguments here in terms of how to weigh the cost and benefit environmentally and also economically at the same time. I don't know, Governor, if you had a comment on that.

Governor Stitt. I think that is exactly right. The hypocrisy of having a Russian oil tanker sitting in the Boston Harbor, transporting oil and natural gas --

Senator Capito. It had been to Tobago, too. Remember, it came down from London to Tobago, and back up to Boston. How much carbon footprint is that?

Governor Stitt. That is right. Transporting oil and natural gas through pipelines is the safest way to do it, versus truck or train or obviously by ship. We love it. We think it is the right thing, and this is just about time and scope and clarity around 401. That is why we are supportive.

Senator Capito. Thank you.

Senator Barrasso. Thank you, Senator Capito. Senator Merkley.

Senator Merkley. Thank you, Mr. Chairman.

Ms. Watson, how many years did it take for the design to be developed for the Millennium Coal Terminal?

Ms. Watson. That was, of course, several years in the making, Senator, and I am not sure that the designs are completed yet.

Senator Merkley. So it took many, many years for the company to figure out how it has going to address different issues, design the details. In that context, do you feel it was unreasonable for the State to only have a few days to be able to evaluate a design that took many years, and as you have just mentioned, isn't actually complete yet?

Ms. Watson. Yes, absolutely, Senator. One of the problems in particular with that project is the company did not come forward with sufficient information to show how it was going to mitigate against water quality impacts, even at that point.

Senator Merkley. So you had to do an evaluation based on not even the company willing to provide the information?

Ms. Watson. That is correct, that was the problem.

Senator Merkley. I understand you have had 11 quality-based reasons or concerns that you were expressing, and the company never bothered to basically lay out how it was going to address these 11 issues.

Ms. Watson. That is correct, Senator. The company did not come forward with information showing how it would prevent those

water quality issues.

Senator Merkley. Governor Gordon, do you think it is reasonable that you as a governor should have to respond to the company that is not going to give you the information that you need?

Governor Gordon. Thank you, Mr. Chairman, Senator Markey. I think your question is --

Senator Merkley. Senator Markey isn't here, but I am here, and I would like to hear your response.

Governor Gordon. I am sorry. Pardon me.

Senator Barrasso. People confuse Markey and Merkley all the time. It's like Crapo and Carper. We have the same thing.

[Laughter.]

Governor Gordon. Senator Merkley, thank you. Your question is about reasonableness of a short time scale.

Senator Merkley. No, it is trying to respond the way that the power that has been delegated to your State when the company hasn't provided the basic information that you need. You don't need to give me a lengthy response. I would think any governor would be concerned. If you are not concerned, I think many other governors would be concerned about having to respond when they haven't gotten the basic information.

Governor Gordon. Senator Merkley, if I may respond.

Senator Merkley. You have to be very quick.

Governor Gordon. I think the issue is that the Millennium Bulk Terminal actually presented information from the Centralia, Washington on Hanford Creek had exactly the same condition, very similar, and presented their water quality information, which was approved in 2016, one year before the prejudicial dismissal.

Senator Merkley. Let me turn to an Oregon project that was mentioned. That is the LNG potential terminal in Coos Bay, Oregon. The pipeline crosses 485 bodies of water, 7 lakes, 326 waterways, 150 wetlands. I can't see how the State of Oregon can even get out to look at the plans for those locations in 60 days. These things vary so much. You might have a permit that requires crossing one creek, or near one lake. But in this case, you are talking about, well, close to 500 bodies of water, an extraordinarily complex undertaking.

Do you think 60 days is reasonable for the State to be able to even get out and identify and evaluate the concerns for water quality in all those locations?

Governor Gordon. Is that question for me?

Senator Merkley. Yes.

Governor Gordon. Sixty days is probably unreasonable. One year is certainly reasonable, and I think with pre-consultation, there is plenty of opportunity for getting that information correct.

Senator Merkley. Okay. Well, thank you for your

perspective. It looks very different to the State where the impacts are going to be on the ground. Our citizens want a thorough evaluation of the impacts. We value our trout, we value our salmon, we value our crabbing industry, we value our salmon industry. We value all of our offshore activities that are affected, as well as our instate waterways affected by the pipeline.

I was very struck by, when the law was initially written, there was a bipartisan consensus, and it said it right in it, that this recognizes the primary responsibility of the States. This has all the earmarks of an assault on State rights with the heavy hand of Federal Government and federal lobbying. I for one am going to stand up for the people of my State, defend their waterways, and especially when the company won't even provide the basic information needed to evaluate it.

These projects involve trenching, blasting, drilling, damming, and 500 or so waterways impacted. There is no way that that can be done in such a short period of time. There is no way it can be done when the company doesn't even provide the basic information to begin with.

So with that, I stand with the people of Oregon, who want to defend their waterways, and it looks very different, perhaps, than the perspective on your end of the project.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Merkley. Senator Cramer.

Senator Cramer. Thank you, Mr. Chairman. Thanks all of you. I have never confused for Senator Merkley or Markey, although just now, someone could be confused because I think what you are hearing from the two sides of the dais get right to your point, Governor Gordon. We have to find balance, identify scope and creep, and I think we are all trying to do exactly that: find balance.

What is that balance between the State's right to its own environmental protections and its resources, and a State's right to access to interstate commerce and global commerce? I come from North Dakota, a State like yours, where we are landlocked, right in the center of the North American continent, and are rich in resources that the Country and the world wants and needs. Striking the balance, I think is what the bill does.

One of the things that strikes me, and I am just going to opine for a minute, because listening to all this has been fascinating and encouraging. I hope people watching it are encouraged to see an intellectual discussion of peers and experts about, what is the right balance, because I am encouraged by it.

When Congress isn't very prescriptive, it allows the bureaucracy to write the rules, and that almost never turns out



well, from my perspective. It doesn't protect States' rights either to regulate themselves or their resources in order to interstate commerce. So I appreciate us coming back to the scope of 401, what that means, what that section provides in terms of clarity or lack thereof in authority.

I am going to get back to the Millennium Project, because I think it is an interesting one, because it has similar to issues that we in North Dakota have had with the State of Washington's zeal, if you will. So in regard to the Millennium Project, the State of Washington denied the 401 permit, despite the State's own EIS, which stated "there would be no unavoidable and significant adverse environmental impacts on water quality." That is the State's EIS.

So it was not a surprise, in my view, considering that the proposed terminal was only a few miles from the existing Port of Longview, and that moves millions of tons of cargo, as you know, each year. But I thought it interesting the State of Washington proceeded to deny the water quality certification under Section 401 for nine reasons that had nothing to do with water quality. It doesn't mention water, and some of them, it has a very far stretch.

So, Governors first, both of you have spoken a little bit to this, but when you get a DEQ permit, and of course, you have great experience in this, or a 401 permit application, do you

consider a lot of things outside of water quality?

And maybe start with you, Governor Stitt, since you have the background in this.

Governor Stitt. We look, if there's endangered species, we look at that. We look at the groundwater, we look at any kind of impact. We look at the maps, we look at the scope of the project. We make sure that it complies with the Clean Water Act and our own State water standards. But we keep it to, we don't try to play pick winners and losers, we try to keep with the Clean Water Act, and move it forward.

Like I said, we do that in 60 days, so putting parameters of one year, we think, is very reasonable to bring the scope, which you said very well, back to the real issue of 401, which is water quality in the State.

Senator Cramer. Governor Gordon?

Governor Gordon. Mr. Chairman, Senator Cramer, I think you are absolutely on point. As I was thinking about this and a similar opportunity that Wyoming might be presented with, Wyoming is the home of the largest wind farm in the Country. That wind farm is going to require a storm-water quality permit. The customers for that wind farm are going to be all over the Southwest, and including Oregon.

If we were to fancifully apply 401 as Washington did, we might deny a storm-water quality permit with prejudice for the

wind farm with the idea of saying that we are not going to supply customers in the west. Of course, we wouldn't do that, because we would work with the proponents of the wind farm to make sure that the water quality impacts were addressed, only the water quality impacts.

Senator Cramer. With regard to moving oil, for example, Governor Stitt, North Dakota is, of course, the second-largest oil-producing State in the Country, farther from markets, even, than Oklahoma. But your neighbors, your port neighbors, include Texas and Louisiana. Do you see a difference in how they apply 401 to, say, a State like Washington or Oregon that may apply it differently? Does it make sense that we would have a little more of a uniform application?

Governor Stitt. We believe so. Obviously, there are pipelines running through Oklahoma, from your State down to our State. We are the southern leg of the Keystone. We have access to Louisiana. We are building natural gas pipelines to transport LNG down to the ports in Louisiana.

Obviously, we have direct access to the Houston refineries. So I think Texas and Louisiana are interpreting the rule properly. They are following their water standards just like we ask every State to do. This is really about making sure that we don't let certain States politicize this issue for their own biases, and then harm the assets of one State. That is really

what it is about.

Senator Cramer. We think of it as weaponizing. Thank you, Mr. Chairman.

Senator Barrasso. Thank you very much. Senator Van Hollen.

Senator Van Hollen. Thank you, all of you, for your testimony here today. Senator Cardin also comes from my State of Maryland, and he covers some of the territory I mentioned.

We recently had a back-and-forth in Maryland with Exelon Company regarding the Conowingo Dam, which is a dam on the Susquehanna River. I believe that if the EPA knew proposed regulations were in place or this legislation were in place, the State of Maryland would not have been able to reach the agreement it did with Exelon, putting aside the merits of that particular agreement, because this legislation would have undermined the State's leverage in that negotiation.

That is not just my view. That is also the view of the State of Maryland's Secretary of Environment, Ben Grumbles, Secretary of Environment to our Republican governor, Governor Larry Hogan. Secretary Grumbles says the Maryland Department of Environment believes that Maryland's program could be further hindered by the proposed rules, similarly, the legislation.

Ms. Watson, one of the issues that he raised, Secretary Grumbles, regarded the change in the definition of discharge.

Could you talk about that in this context? As Secretary Grumbles points out in this letter, CWA Section 401 requires certification for any federally permitted activity that may result in a discharge to navigable waters. While it is well-established that the term discharge is broader than the term point-source, the proposed rule limits State certification review to discharges from a point source.

Could you elaborate on that concern and talk about how that would impede States like the State of Maryland from taking action to protect our water bodies, including the Chesapeake Bay?

Ms. Watson. Yes. Thank you for your question, Senator. As things stand now and as they have stood for the last 50 years, States have been able to look at the entire federally-permitted activity to make sure that the activity will not cause water pollution. The U.S. Supreme Court affirmed that understanding in the 1994 case PUD number one.

So that has been the way States have implemented 401 for the last 50 years. EPA is not proposing to do, and what this legislation would do, is skinny down what States can actually look at, so that you are looking at just a very narrow discharge into a navigable water.

States couldn't protect their groundwater. States couldn't protect from construction stormwater. States couldn't protect

with sedimentation standards, with erosion standards, for Endangered Species Act standards, couldn't protect tribal fishing access.

So there are all kinds of water quality protections that are protected today and have been for the last 50 years that would be on the chopping block as a result of this rule.

Senator Van Hollen. I appreciate that, and that is exactly what gave rise to this concern. Just to the Governors, you heard the concerns expressed. Would you like to change the regulation so that you could no longer use your permitting authority for groundwater protection, sediment issues, and the other issues that were raised by the other witness?

Governor Gordon. Mr. Chairman, Senator, I don't believe that is what is in front of us today. I would read that differently.

I can't speak to the case of Maryland. I am from Wyoming, but having served in a regulatory capacity for the State prior to being treasurer and now Governor, and having been a citizen who has worked on these issues since the 1980s, I have to say I don't see this as any diminishment of the States's opportunity to regulate waters within its boundaries.

I do see it as a creep to take in issues like rail safety, greenhouse gas emissions, noise, that are not pertinent to water quality issues.

Senator Van Hollen. So you would have no objection then, to amend the legislation in a way that made crystal clear that nothing about this changed a State's ability to regulate discharges? You would support that?

Governor Gordon. Mr. Chairman, Senator, I believe the Clean Water Act was about protecting water, and the 401 provision of that Act allowed States to control the water within their boundaries.

Senator Van Hollen. So you don't think that this new proposal or this legislation impacts that in any way? You don't believe that?

Governor Gordon. I think it narrows it and recenters it on the issue of water quality and allows States the opportunity to regulate those.

Senator Van Hollen. So you disagree with the testimony. But if clarification was required, then you would support that, right, to not diminish that State's authority?

Governor Gordon. I would, clarification, I believe, is in order. I would hope it doesn't diminish the State's authority.

Senator Van Hollen. I mean, you can understand there's a little confusion here, because States usually want to have authority to fully protect their waters and their environment. Yet, this proposal essentially gives the Federal Government ultimate veto and decision-making authority and ability to

second-guess governors, and you are okay with that, I take it?

Governor Gordon. Mr. Chairman, Senator, I believe States have authority to regulate waters within their boundaries. That I stated emphatically over and over again. I also believe that States have a constitutional right to conduct commerce, and if other States use that tool, the 401 permit, to impede the commerce of other States, then I think that is unconstitutional.

Senator Van Hollen. There's obviously a fundamental disagreement as to what this regulation and legislation does, and it seems to me that if there's that much ambiguity, that before we proceed in either way, we would want to make it very clear what the impact is. I hope we can all agree on that.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you very much. Senator Sullivan.

Senator Sullivan. Thank you, Mr. Chairman, and I want to thank the witnesses for their testimony and being here on an important issue, certainly an important issue.

In my State, the great State of Alaska, we have successfully run a Section 401 program for quite some time. But I want to go into the question, particularly for our two Governors, who have a lot of experience in this area, where there seems to be kind of a movement to focus on stopping projects from moving forward not based on clean water, but really trying to delay or kill a class of projects. In



particular, something that matters to my State, I think it matters to your States, are pipelines.

Kind of ironic, because the modern-day pipelines, Keystone for example, created this hysteria when we all know that the studies show that it is actually much more safe to move energy products via pipeline than it is via rail. Yet, for some reason, certain States have really focused, not again on clean water authority, but just a class of projects, pipelines, to kill them.

Let me just give you examples I am sure you are familiar with. The Constitution Pipeline in New York, prime example, where the governor of New York is impoverishing his own citizens by delaying any ability to move natural gas across the State. The U.S. Chamber estimated that the delays to that project is close to \$4 billion in economic output and close to 24,000 jobs. So, that seems, to me, an issue.

Similarly, in Massachusetts, the unwillingness to permit a pipeline for natural gas has created the ironic situation where, as opposed to people in New England having gas from Americans, American gas, by American workers, they are importing LNG from Russia, our geopolitical foe that trashes the environment when they produce gas.

But there you have it, two examples of Section 401 that are not focused at all, in my view, on protecting the water, but

some kind of fundamental, irrational, in my view, opposition to a class of projects, in this case, pipelines.

Can you two, both the governors, expand upon this, or just give us any insights on how we should look to prevent this kind of focusing on just projects themselves, a class of projects, versus the intent, which is to make sure all States have clean water and clean air? In my State, we care more about our water and air than anybody, than anybody in the EPA, anybody. And by the way, we have some of the cleanest water and cleanest air in the world. We care about that.

But this movement toward blocking things, it really hurt the whole Country, not just their own States. I think it is something that Governors in particular can speak to, and I would welcome your views on that, and how we can look at federal law to maybe prevent those kinds of approaches that really, these Governors are harming their own citizens, but they are harming the rest of the Country as well.

Governor Stitt. I totally agree with you. I think that was very, very well said. First point I would like to add to that is that Oklahoma is, you missed it, you weren't here earlier, but we talked about we are the pipeline capital of the world. We have more pipelines running through Oklahoma actually surrounding --

Senator Sullivan. And they are safe?

Governor Stitt. And they are safe. And we have some of the cleanest water, and I read those stats off earlier. It is the safest way to transport oil and natural gas.

Senator Sullivan. Why do you there is this reflexive approach to stopping pipelines? The Keystone Pipeline that the Obama Administration delayed for eight years killed countless, thousands, tens of thousands of jobs. It just makes no sense.

Governor Stitt. I think Oklahomans, or I think Americans need to understand what happened with the Russian tanker that was sitting in the Boston Harbor, trying to bring liquefied natural gas from Russia, exporting our tax dollars and our jobs over there. I think Americans need to understand what is happening.

Senator Sullivan. By the way, the Boston Globe did I think a 3,000-page editorial, Mr. Chairman, I would like to get it for the record here, which really went into this in a damning way for the Massachusetts legislature and how irrational the policy was.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Sullivan. Governor, continue.

Governor Stitt. I will read real quick our water quality and some of our air quality facts in Oklahoma, because if pipelines were the problem, these facts would not be accurate. We are number one in the Nation in phosphorus-load reduction in 2018 in our water bodies. We are number three in the Nation in nitrogen-load reduction in 2018. We are number one in the Nation for non-point source success stories with more water bodies delisted from the impaired list of any other State.

Because of our natural gas generation, we are double the national average in our reduction of emissions. Double the national average. So, sulfur dioxide is down 56 percent since 2011, nitrogen oxide is down by 69 percent since 2011, carbon dioxide is down 37 percent since 2011. So really, the issue is we are weaponizing, we are talking about, States are not talking about water quality, they are talking about their hatred for fossil energy, and that is really the issue. We need to bring time and scope around this issue, so assets of some States are not infringed upon by others.

Senator Sullivan. Governor, do you want to comment real quick? I know we are running out of time, and I apologize, Mr. Chairman.

Governor Gordon. No, thank you, Mr. Chairman, Senator. No, I absolutely agree with my colleague from Oklahoma. This

Act really centers it back on water quality. That is the issue that is at play here.

Your question really went to classes of actions. The example that I gave before was really about if Wyoming were so inclined to, say, look, our wildlife is very important, it is going to affect our migration corridors, you are going to affect our calving populations on various animals. We believe that wind farms are an impediment to that, and the stormwater quality permit that we are going to give is now therefore in peril because of wildlife-associated impacts. That has nothing to do with water, but it is tantamount to using it to say, we don't want wind development for our wildlife.

What I think this Act does is to recenter the conversation, really, on water quality and the opportunity for States to operate lives within those parameters in their own boundaries.

Senator Sullivan. Thank you.

Senator Barrasso. Thank you. Before turning to Senator Carper, I would like to also introduce for the record an editorial similar to the one that you talked about, about the Boston Harbor. This was in yesterday's Wall Street Journal, and it is called Cuomo's Carbon Casualties, where they say the pipeline he vetoed, Governor Cuomo vetoed, below New York Harbor, could reduce annual CO2 emissions by the equivalent of 500,000 cars on the road. His gas embargo is raising State

emissions. Without objection I will introduce this into the record.

[The referenced information follows:]

Senator Barrasso. Senator Carper.

Senator Carper. I want to again, welcome, it was very nice meeting each of you. One of you, I have met previously, the Governor of Wyoming.

But to Ms. Watson, Governor Gordon, and Governor Stitt, thank you all for joining us today. When I was privileged to be Governor of Delaware for eight years, I used to love to testify before Congress. Delaware was close by, it was an easy train ride. So I was always an easy mark. The Governors Association, nobody wanted to come in from Wyoming or some other place, they would say, well, send Carper. I was always happy to go. I hope it is a good experience for you and we welcome you.

I think and speak a lot as a recovering governor. I appreciate the opportunity here, especially from the three of you, and then from States regarding how they feel about proposals to alter State authorities under Section 401 of the Clean Water Act. I just want to thank our Governors for taking the time out of your schedules to share your views with us on what is an important topic, obviously, to your States, and I think to ours as well.

I have a longer statement that I want to submit for the record. But I would like to take a minute, if I could, to reflect on the relationship between the federal and State governments when it comes to clean water. To be honest with

you, if I were a sitting governor, instead of a recovering governor, I would be uneasy about the prospects of changing that federal-State relationship. On the one hand, the current Administration, my colleagues, on the other hand, on the other side of the dais, have great confidence in States' abilities to protect waters in their States, and wants them to do more of it by making them responsible for managing additional bodies of water, as the proposed changes to the definitions of waters of the U.S. on the Clean Water Act would require them to do.

However, when it comes to managing and maintaining the quality of water, some suggest that the rights reserved to States to protect water under the Clean Water Act should be changed. I think this distorted interpretation of cooperative federalism is not just ironic, it is actually pretty unpopular with the majority of States.

I wonder if we are going to be able to reconcile that fundamentally contradicting approach to States' rights. We will see. But I am hopeful that today's hearing can shed some light on that subject.

Next, I would just like to read, if I could, claims I think made by our friends on the other side of the aisle, and I am tempted to call them false claims, but I'll just say questionable claims, and I will hold my punch. But the State of Washington's action is about politics -- this is a claim -- that



the State of Washington's actions about politics has nothing to do with clean water. The State of Washington's own environmental impact study for the project found that there would be no significant impacts to water quality. That is the claim.

And here is a rebuttal. In its 401 submission, the Millennium Bulk Project failed to show that it would adequately mitigate for its water quality impacts. The environmental impact study did not conclude that there would be no impacts to water quality. Rather, the environmental impact study concluded that if the company demonstrated that it could meet all water quality requirements, then there would be no significant impact to water. But the company failed to make that demonstration.

Mr. Chairman, I would ask unanimous consent to submit for the record the actual 401 determination which makes absolutely no reference to climate change and other impacts, just water quality effects. I make that unanimous consent request.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Thank you.

Here is another claim that I would characterize as misleading. "And the State of Washington has abused its authority to block the export of coal mined in Wyoming, Utah, Colorado, and Montana." The rebuttal to that from the State of Washington is the following: "The State of Washington denied the water quality certification to the coal export terminal because it failed to demonstrate reasonable assurance that water quality requirements would be met."

The project's proponent has appealed Washington's decision. Every tribunal that has reviewed it has upheld Washington's decision.

Mr. Chairman, I would ask unanimous consent to offer for the record a letter sent to you and to Ranking Member, me, Carper, on August 15<sup>th</sup>, 2018, from Maia Bellon, Director at Washington Department of Ecology, which states, "The facts of this denial of the Millennium Coal Export Terminal are simple. Millennium failed to meet existing water quality standards, and further failed to provide any mitigation plan for the areas the project would devastate, especially along the Columbia River. To approve this permit under the circumstances would not only have been irresponsible, it would have posed serious health risks to impacted communities and the surrounding environment."

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Thank you, sir.

And finally, a question. This would be a question for our Governors, Governor Gordon and Governor Stitt.

One of the most controversial pieces of the EPA's proposal is that federal agencies would be able to veto or override State-imposed water quality conditions. For the sake of argument, let's say that a State is reviewing an application for a hydroelectric dam, which could have serious impacts on ecologically and economically important fish and species.

As a condition for the dam's 401 certification, the State environment department could require the project to implement fish passage measures to allow spawning fish to swim upstream. Under this new rule, the federal agency permitting or licensing this project could decide this measure is too costly and veto this condition.

And I would just ask a question of both of you, if I could, as Governors of States whose recreational fishing industries support, literally thousands, maybe tens of thousands of jobs, and provides billions of dollars to States' economies, would you support such a federal agency override of your efforts to protect recreational fishing? Governor Gordon? Want to take a shot at that?

Governor Gordon. Thank you, Mr. Chairman, Senator Carper. I would not support a federal override. We are, and I am on the

record stating that I do not believe a federal override is a correct method.

Senator Carper. Thank you. Governor Stitt?

Governor Stitt. I would agree with that. We want certainty. I think businesses want certainty, so we are looking at a time and scope around this proposed rule change, which we agree on.

Senator Carper. All right. Thank you both, thank you, all three of you.

Senator Barrasso. Thank you, Senator Carper.

Before turning to Senator Gillibrand, I would first like to submit for the record a unanimous consent request to enter into the record a brief filed by the Crow Nation and the National Tribal Energy Association, and a number of associations, opposing the State of Washington's denial of the Millennium Bulk Terminal Project.

I would also like to enter into the record the Millennium Bulk's response to the State of Washington's 2018 letter to the committee, which we have just introduced into the record. Without objection, that will also be submitted.

[The referenced information follows:]

Senator Barrasso. Senator Gillibrand.

Senator Gillibrand. Thank you, Mr. Chairman, and Mr. Ranking Member.

We hear a lot about States' rights, particularly from the current Administration. We are told that we should be leaving environmental regulations to the States, that they are in the best position to determine how to protect their environment and natural resources.

We are also told that States, not the Federal Government, should have the primary jurisdiction over regulating the majority of our water bodies, and that the Clean Water Act should be restricted to just traditionally navigable waters. But not surprisingly, when States use the authority legally delegated to them under the Clean Water Act to protect water quality, we hear from those same people that those States have somehow abused their power and must be reined in. That is absurd, and it undermines the foundation principle of cooperative federalism enshrined in the Clean Water Act.

It seems that some policy makers are willing to throw the baby out with the bathwater and restrict the rights of all States under the Clean Water Act, simply because they disagree with the lawful decision of some States, including my own, to deny a very small number of permits. The Trump Administration and Administrator Wheeler have explicitly said that they are

proposing changes to the Section 401 process because of New York's gas blockade. The Administration has cited three high-profile denials by the State of water quality permits for interstate natural gas pipelines as an example of unnecessary delays.

However, in each of those instances, the State's denial was based on relevant water quality standards and subject to judicial review. Additionally, New York State annually receives more than 4,000 applications for Section 401 water quality certifications and, on average, denies approximately eight. That means the State is approving more than 99 percent of the applications it receives every year on time. Hardly the picture of obstruction or an out-of-control State regulator.

So what then is this really about? It is about removing a procedural block to establishing a more industry-friendly regulatory process that gets meddlesome State regulators out of the way so that special interests can build what they want, where they want, even if it means harming water quality and running roughshod over principles of federalism they claim to support. This is bad policy, it is short-sighted, and could have very damaging impacts in our States.

With that, Ms. Watson, I have a couple questions for you. Under the Section 401 process, States can apply conditions on federal permits and licenses to ensure that projects meet

applicable State water quality requirements. However, the Trump Administration's proposed rule would restrict the types of conditions that States can set and give federal permitting agencies the authority to veto them.

Could you describe the types of conditions that States might impose on a project that would not otherwise be included on a federal permit? What impact will this have on wetlands, streams, and other water bodies impacted by the construction or operation of a project?

Ms. Watson. So there are a lot of examples of conditions that States might include in 401 certifications to protect water quality that wouldn't otherwise be covered by the federal permit example. So that would be protection of groundwater, sedimentation standards, erosion standards, best management practices for stormwater, protections for endangered species. These are things that get added through the 401 certification process that have routinely been included in federal permits for the last 50 years without a problem.

These are State-based water quality requirements, and what is being proposed through the bill and through EPA's rule would upend that 50-year State control of water pollution in their States.

Senator Gillibrand. What are the practical implications of reducing the amount of time that States have to make Section 401



decisions? Will this result in more project approvals or improve water quality protection?

Ms. Watson. It will not result in more water quality approvals. It will actually have the unintended consequence of resulting in more denials because States will not have sufficient time to make decisions. But on top of that, EPA is limiting the amount of information that States can consider. So States won't have the tools and the information necessary to be able to, in fact, protect water quality within their States.

Senator Gillibrand. Thank you.

I just wanted to respond to something our other witnesses said. Governor Gordon, I recognize that you want to be able to have the best economy for Wyoming. But the truth is, if you try to remove New York's regulatory authority, you will affect our economy, because our economy is based on clean air and clean water. We have agriculture all across New York that relies on clean air and clean water. We have a tourism industry that is very valuable.

We have New York City, which is 8 million people, that gets clean water from a watershed, unfiltered water. If we had to filter that water, it would cost us tens of billions of dollars.

So I just want to be clear. We know how to protect our State and our economy, and I would just suggest that you would give deference to our Governor in the way that our Governor

would give deference to you in understanding what is best for your economy.

And then Governor Stitt, I just was offended by your statements that you know how to have good water in Oklahoma. I would just like unanimous consent to submit four articles for the record of how challenged your water quality actually is in Oklahoma, which I am sure you are aware. I am grateful that you have made progress in eliminating some contaminants, and that is a good thing, but it may be because you are starting from a worse-off place.

Thank you, Mr. Chairman.

Senator Barrasso. Thank you, Senator Gillibrand.

[The referenced information follows:]

Senator Barrasso. Would any of you like to respond to the comments? And then we will just give each of you a chance to make a final statement as we wrap up the hearings.

Governor Gordon. Mr. Chairman, thank you for that opportunity. With apologies, Ranking Member, I think I have forgotten to recognize you the last couple of times. My apologies for that.

Senator Gillibrand, thank you very much for your comments. I think we live in a Nation, that, going back to our constitution, always has recognized the importance of the federalist principles. If memory serves, one of the big arguments in the original documentation was whether New York would actually expand west beyond its normal boundaries that we perceive today.

So I very much appreciate it. I have a daughter who actually is a beneficiary of that great, clean water.

Wyoming has the largest amount of class one water in the Country -- excuse me, class one air in the Country, and yet, we are affected continually by pollution from Seattle, from Portland, from San Francisco, et cetera. I think we have to recognize these principles and I think my point here is that together, focusing on water quality and our ability to regulate within the State, that is critical.

When that is used as an impediment to commerce, that is a

constitutional issue, and I think this particular Act that is contemplated actually recenters that conversation on what the original intent of the 1972 law was, which was to protect water quality.

Thank you very much.

Senator Barrasso. Governor Stitt, and then Ms. Watson.

Governor Stitt. Thank you, Chairman. I think, Senator, if the American people, if you think that the American people don't know really what is happening when your Governor denies permits based on 401 water quality on Earth Day, on pipeline development, I think American people see right through that.

I think this is about a hatred of the fossil fuel industry. It has nothing to do with water quality.

Senator Barrasso. Ms. Watson, any final comment? Thank you.

Well, I thank all of you. We had 16 Senators show up for this hearing today, 11 had a chance to ask questions, five had other commitments and had to leave before it was their turn, so this has quite a bit of interest. Some of the other members may submit written questions for part of the record.

I am very grateful for all of you being here. The hearing record will remain open for an additional two weeks, but I want to thank all of our witnesses for their testimony today on this very important topic, and the hearing is adjourned.

Senator Carper. Mr. Chairman, before we adjourn, could I just make several unanimous consent requests please? I want to submit for the record a letter dated November 18<sup>th</sup> from the Council of State Governments.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. Another from the State of Washington,  
dated September 26<sup>th</sup>, 2017.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. A third from the American Rivers Connect the U.S. to the letter dated November 18<sup>th</sup>, 2019.

Senator Barrasso. Without objection.

[The referenced information follows:]

Senator Carper. A fourth from the Appalachian Trail  
Conservancy dated Novemeber 19<sup>th</sup> this year.

[The referenced information follows:]



Senator Carper. And the last thing I want to say is, I think all of us are guided by the Golden Rule, whether we think about it or not. We should treat one another the same. I always try to put myself in the shoes of other people and say, how would I want to be treated if I were in their case, right?

I know how important the economy of my State is to me and I am sure the same is true for our Chairman. I live in a little State, we are the 49<sup>th</sup> largest State, so we are a small State. My State is sinking, and the seas around us are rising. It is, as you might imagine, a huge concern for us. There's widespread belief that one of the reasons why it has happening -- I am a native of West Virginia, my dad was a coal miner for a while. My neighbors were coal miners, so we have to understand what it has like to be in the fossil fuel industry, if you will.

But I would just ask that we try to put ourselves in your shoes as you attempt to govern your States, but I want you to put yourself in our shoes. When I was Governor of Delaware, I could shut down my State's economy, literally get every car or vehicle off the road, shut down every business, we would still have been out of compliance for clean air. So just keep that in mind as we go forward, and again, thank you all for being here.

Senator Barrasso. Thank you, Senator Carper, and with that, thank you again for being here, the hearing is adjourned.

[Whereupon, at 11:49 a.m., the hearing was concluded.]