115TH CONGRESS
*2d Session*
HOUSE OF REPRESENTATIVES
REPORT
115–955

# COMMON SENSE PERMITTING ACT

SEPTEMBER 20, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

# R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 6106]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6106) to amend the Energy Policy Act of 2005 to clarify the authorized categorical exclusions and authorize additional categorical exclusions to streamline the oil and gas permitting process, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Common Sense Permitting Act".

**SEC. 2. AMENDMENTS TO THE ENERGY POLICY ACT OF 2005.**

Section 390 of the Energy Policy Act of 2005, (42 U.S.C. 15942) is amended to read as follows:

**"SEC. 390. NEPA REVIEW.**

"(a) NEPA REVIEW.—Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (d) shall be categorically excluded from any further analysis and documentation under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the activity is conducted pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.) for the purpose of exploration or development of oil or gas.

"(b) CATEGORICAL EXCLUSION.—Use of a categorical exclusion created in this section—

"(1) shall not require a finding of no extraordinary circumstances; and

"(2) shall be effective for the full term of the authorized permit or approval.

"(c) APPLICATION.—This section shall not apply to an action of the Secretary of the Interior or the Secretary of Agriculture on Indian lands or resources managed in trust for the benefit of Indian Tribes.

"(d) ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are:

"(1) Reinstating a lease pursuant to section 31 of the Mineral Leasing Act (30 U.S.C. 188).

"(2) The following activities, provided that any new surface disturbance is contiguous with the footprint of the original authorization and does not exceed 20 acres or the acreage evaluated in a document previously prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to such activity, whichever is greater:

"(A) Drilling oil or gas wells at a well pad site at which drilling has occurred previously.

"(B) Expansion of an existing oil or gas well pad site to accommodate additional wells.

"(C) Expansion or modification of an existing oil or gas well pad site, road, pipeline, facilities, or utilities submitted in a sundry notice.

"(3) Drilling of oil and gas wells at new well pad sites, provided that the new surface disturbance does not exceed 20 acres or the acreage evaluated in a document previously prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to such activity, whichever is greater.

"(4) Construction or realignment of a road, pipeline, or utilities within an existing right-of-way or within a right-of-way corridor established in a land use plan.

"(5) The following activities when conducted from non-Federal surface into federally owned minerals, provided that the operator submits to the Secretary concerned certification of a surface use agreement with the non-Federal landowner:

"(A) Drilling oil or gas wells at a well pad site at which drilling has occurred previously.

"(B) Expansion of an existing oil or gas well pad site to accommodate additional wells.

"(C) Expansion or modification of an existing oil or gas well pad site, road, pipeline, facilities or utilities submitted in a sundry notice.

"(6) Drilling of oil or gas wells from non-Federal surface and non-Federal subsurface into Federal mineral estate.

"(7) Construction of up to 1 mile of new road on Federal or non-Federal surface, not to exceed 2 miles in total.

"(8) Construction of up to 3 miles of individual pipelines or utilities, regardless of surface ownership.".

## PURPOSE OF THE BILL

The purpose of H.R. 6106 is to amend the Energy Policy Act of 2005 to clarify the authorized categorical exclusions and authorize additional categorical exclusions to streamline the oil and gas permitting process.

## BACKGROUND AND NEED FOR LEGISLATION

The Council on Environmental Quality (CEQ) defines a categorical exclusion as "a category of actions which do not individually or cumulatively have a significant effect on the human environment . . . and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." [1]

Section 390 of the Energy Policy Act of 2005 authorized five categorical exclusions under the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.) for the exploration and devel-

[1] 40 CFR 1508.4.

opment of oil and gas.[2] Specifically, these categorical exclusions are as follows:

(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

(5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.

Under the Obama Administration, the Department of the Interior often chose not to grant categorical exclusions when processing applications for permits to drill or granting rights-of-way, even when the proposed drilling operations or pipeline placement would qualify for such designations under the Energy Policy Act of 2005. Congress enacted these categorical exclusions to streamline the permitting process for certain activities that would modify or slightly expand existing approved operations. Authorizing such activities would have an insignificant impact on the environment; thus additional analysis under NEPA is not needed to evaluate the merits of the proposed action.

While Congress intended to streamline the permitting process by excluding certain permit applications from higher thresholds of NEPA analysis, the previous Administration's decision not to utilize these categorical exclusions exacerbated delays in the permitting process by requiring extensive NEPA analysis on each and every permit application submitted to the Bureau of Land Management (BLM).

This legislation would clarify the language in the Energy Policy Act of 2005 to ensure that the Secretary of the Interior utilizes the authorized categorical exclusions in processing permit applications when applicable. If a proposed activity included in an application for permit to drill or right-of-way application qualifies for a categorical exclusion, BLM shall not conduct further analysis under NEPA before approving the application.

This legislation would also modify the existing categorical exclusions and authorize additional categorical exclusions to further streamline the permitting process for oil and gas activities. This bill will authorize categorical exclusions for activities that modify or expand existing operations in a limited manner, activities that take place where drilling has already occurred, as well as new activities that were anticipated in previous analyses under NEPA or will result in minimal surface disturbance.

[2] Public Law 109–58.

## COMMITTEE ACTION

H.R. 6106 was introduced on June 14, 2018, by Congressman Stevan Pearce (R–NM). The bill was referred to the Committee on Natural Resources. On June 20, 2018, the Natural Resources Committee met to consider the bill. Congressman Pearce offered an amendment designated #1; it was adopted by voice vote. Congresswoman Nanette Barragán (D–CA) offered an amendment designated 042; it was not adopted by a roll call vote of 17 yeas and 22 nays, as follows:

**Committee on Natural Resources**
U.S. House of Representatives
115th Congress

Date: 06.20.18 Recorded Vote #:1
Meeting on / Amendment on: FC Markup Barragán [042] to HR 6106 (Rep. Stevan Pearce)

| MEMBERS | Yes | No | Pres | MEMBERS | Yes | No | Pres |
|---|---|---|---|---|---|---|---|
| **Mr. Bishop, UT, Chairman** | | X | | **Mr. Cook, CA** | | X | |
| *Mr.Grijalva, AZ, Ranking Member* | X | | | *Mr. McEachin, VA* | X | | |
| **Mr. Young, AK, Chairman Emeritus** | | X | | **Mr. Westerman, AR** | | X | |
| *Mrs. Napolitano, CA* | X | | | *Mr. Brown, MD* | X | | |
| **Mr. Gohmert, TX, Vice Chairman** | | X | | **Mr. Graves, LA** | | X | |
| *Ms. Bordallo, Guam* | X | | | *Mr. Clay, MO* | X | | |
| **Mr. Lamborn, CO** | | X | | **Mr. Hice, GA** | | X | |
| *Mr. Costa, CA* | | X | | *Mr. Gomez, CA* | X | | |
| **Mr. Wittman, VA** | | X | | **Mrs. Radewagen, AS** | | X | |
| *Mr. Sablan, CNMI* | X | | | *Ms. Velázquez, NY* | X | | |
| **Mr. McClintock, CA** | | X | | **Mr. Webster, FL** | | X | |
| *Ms. Tsongas, MA* | X | | | **Mr. Bergman, MI** | | X | |
| **Mr. Pearce, NM** | | X | | **Ms. Cheney, WY** | | | |
| *Mr. Huffman, CA* | X | | | **Mr. Johnson, LA** | | X | |
| **Mr. Thompson, PA** | | X | | **Ms. González-Colón, PR** | | | |
| *Mr. Lowenthal, CA* | X | | | **Mr. Gianforte, MT** | | X | |
| **Mr. Gosar, AZ** | | X | | **Mr. Curtis, UT** | | X | |
| *Mr. Beyer, VA* | X | | | | | | |
| **Mr. Labrador, ID** | | | | | | | |
| *Mr. Gallego, AZ* | X | | | | | | |
| **Mr. Tipton, CO** | | X | | | | | |
| *Ms. Hanabusa, HI* | X | | | | | | |
| **Mr. LaMalfa, CA** | | X | | | | | |
| *Ms. Barragán, CA* | X | | | | | | |
| **Mr. Denham, CA** | | | | | | | |
| *Mr. Soto, FL* | X | | | **TOTAL:** | 17 | 22 | |

Congressman Ruben Gallego (D–AZ) offered an amendment designated 001; it was not adopted by a roll call vote of 18 yeas and 22 nays, as follows:

**Committee on Natural Resources**
U.S. House of Representatives
115th Congress

Date: 06.20.18 Recorded Vote #:2
Meeting on / Amendment on: FC Markup Gallego [001] to HR 6106 (Rep. Stevan Pearce)

| MEMBERS | Yes | No | Pres | MEMBERS | Yes | No | Pres |
|---|---|---|---|---|---|---|---|
| **Mr. Bishop, UT, Chairman** | | X | | **Mr. Cook, CA** | | X | |
| *Mr.Grijalva, AZ, Ranking Member* | X | | | *Mr. McEachin, VA* | X | | |
| **Mr. Young, AK, Chairman Emeritus** | | X | | **Mr. Westerman, AR** | | X | |
| *Mrs. Napolitano, CA* | X | | | *Mr. Brown, MD* | X | | |
| **Mr. Gohmert, TX, Vice Chairman** | | X | | **Mr. Graves, LA** | | X | |
| *Ms. Bordallo, Guam* | X | | | *Mr. Clay, MO* | X | | |
| **Mr. Lamborn, CO** | | X | | **Mr. Hice, GA** | | X | |
| *Mr. Costa, CA* | X | | | *Mr. Gomez, CA* | X | | |
| **Mr. Wittman, VA** | | X | | **Mrs. Radewagen, AS** | | X | |
| *Mr. Sablan, CNMI* | X | | | *Ms. Velázquez, NY* | X | | |
| **Mr. McClintock, CA** | | X | | **Mr. Webster, FL** | | X | |
| *Ms. Tsongas, MA* | X | | | **Mr. Bergman, MI** | | X | |
| **Mr. Pearce, NM** | | X | | **Ms. Cheney, WY** | | | |
| *Mr. Huffman, CA* | X | | | **Mr. Johnson, LA** | | X | |
| **Mr. Thompson, PA** | | X | | **Ms. González-Colón, PR** | | X | |
| *Mr. Lowenthal, CA* | X | | | **Mr. Gianforte, MT** | | X | |
| **Mr. Gosar, AZ** | | X | | **Mr. Curtis, UT** | | X | |
| *Mr. Beyer, VA* | X | | | | | | |
| **Mr. Labrador, ID** | | | | | | | |
| *Mr. Gallego, AZ* | X | | | | | | |
| **Mr. Tipton, CO** | | X | | | | | |
| *Ms. Hanabusa, HI* | X | | | | | | |
| **Mr. LaMalfa, CA** | | X | | | | | |
| *Ms. Barragán, CA* | X | | | | | | |
| **Mr. Denham, CA** | | | | | | | |
| *Mr. Soto, FL* | X | | | **TOTAL:** | 18 | 22 | |

Congresswoman Nydia M. Velázquez (D–NY) offered an amendment designated 002; it was not adopted by a roll call vote of 18 yeas and 22 nays, as follows:

**Committee on Natural Resources**
U.S. House of Representatives
115th Congress

Date: 06.20.18 Recorded Vote #:3
Meeting on / Amendment on: FC Markup Velázquez [002] to HR 6106 (Rep. Stevan Pearce)

| MEMBERS | Yes | No | Pres | MEMBERS | Yes | No | Pres |
|---|---|---|---|---|---|---|---|
| **Mr. Bishop, UT, Chairman** | | X | | **Mr. Cook, CA** | | X | |
| *Mr.Grijalva, AZ, Ranking Member* | X | | | *Mr. McEachin, VA* | X | | |
| **Mr. Young, AK, Chairman Emeritus** | | X | | **Mr. Westerman, AR** | | X | |
| *Mrs. Napolitano, CA* | X | | | *Mr. Brown, MD* | X | | |
| **Mr. Gohmert, TX, Vice Chairman** | | X | | **Mr. Graves, LA** | | X | |
| *Ms. Bordallo, Guam* | X | | | *Mr. Clay, MO* | X | | |
| **Mr. Lamborn, CO** | | X | | **Mr. Hice, GA** | | X | |
| *Mr. Costa, CA* | X | | | *Mr. Gomez, CA* | X | | |
| **Mr. Wittman, VA** | | X | | **Mrs. Radewagen, AS** | | X | |
| *Mr. Sablan, CNMI* | X | | | *Ms. Velázquez, NY* | X | | |
| **Mr. McClintock, CA** | | X | | **Mr. Webster, FL** | | X | |
| *Ms. Tsongas, MA* | X | | | **Mr. Bergman, MI** | | X | |
| **Mr. Pearce, NM** | | X | | **Ms. Cheney, WY** | | | |
| *Mr. Huffman, CA* | X | | | **Mr. Johnson, LA** | | X | |
| **Mr. Thompson, PA** | | X | | **Ms. González-Colón, PR** | | X | |
| *Mr. Lowenthal, CA* | X | | | **Mr. Gianforte, MT** | | X | |
| **Mr. Gosar, AZ** | | X | | **Mr. Curtis, UT** | | X | |
| *Mr. Beyer, VA* | X | | | | | | |
| **Mr. Labrador, ID** | | | | | | | |
| *Mr. Gallego, AZ* | X | | | | | | |
| **Mr. Tipton, CO** | | X | | | | | |
| *Ms. Hanabusa, HI* | X | | | | | | |
| **Mr. LaMalfa, CA** | | X | | | | | |
| *Ms. Barragán, CA* | X | | | | | | |
| **Mr. Denham, CA** | | | | | | | |
| *Mr. Soto, FL* | X | | | **TOTAL:** | 18 | 22 | |

No further amendments were offered and the bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 22 yeas and 18 nays, as follows:

**Committee on Natural Resources**
U.S. House of Representatives
115th Congress

Date: 06.20.18 Recorded Vote #:4
Meeting on / Amendment on: FC Markup Favorably Report HR 6106 (Rep. Stevan Pearce)

| MEMBERS | Yes | No | Pres | MEMBERS | Yes | No | Pres |
|---|---|---|---|---|---|---|---|
| **Mr. Bishop, UT, Chairman** | X | | | **Mr. Cook, CA** | X | | |
| *Mr.Grijalva, AZ, Ranking Member* | | X | | *Mr. McEachin, VA* | | X | |
| **Mr. Young, AK, Chairman Emeritus** | X | | | **Mr. Westerman, AR** | X | | |
| *Mrs. Napolitano, CA* | | X | | *Mr. Brown, MD* | | X | |
| **Mr. Gohmert, TX, Vice Chairman** | X | | | **Mr. Graves, LA** | X | | |
| *Ms. Bordallo, Guam* | | X | | *Mr. Clay, MO* | | X | |
| **Mr. Lamborn, CO** | X | | | **Mr. Hice, GA** | X | | |
| *Mr. Costa, CA* | | X | | *Mr. Gomez, CA* | | X | |
| **Mr. Wittman, VA** | X | | | **Mrs. Radewagen, AS** | X | | |
| *Mr. Sablan, CNMI* | | X | | *Ms. Velázquez, NY* | | X | |
| **Mr. McClintock, CA** | X | | | **Mr. Webster, FL** | X | | |
| *Ms. Tsongas, MA* | | X | | **Mr. Bergman, MI** | X | | |
| **Mr. Pearce, NM** | X | | | **Ms. Cheney, WY** | | | |
| *Mr. Huffman, CA* | | X | | **Mr. Johnson, LA** | X | | |
| **Mr. Thompson, PA** | X | | | **Ms. González-Colón, PR** | X | | |
| *Mr. Lowenthal, CA* | | X | | **Mr. Gianforte, MT** | X | | |
| **Mr. Gosar, AZ** | X | | | **Mr. Curtis, UT** | X | | |
| *Mr. Beyer, VA* | | X | | | | | |
| **Mr. Labrador, ID** | | | | | | | |
| *Mr. Gallego, AZ* | | X | | | | | |
| **Mr. Tipton, CO** | X | | | | | | |
| *Ms. Hanabusa, HI* | | X | | | | | |
| **Mr. LaMalfa, CA** | X | | | | | | |
| *Ms. Barragán, CA* | | X | | | | | |
| **Mr. Denham, CA** | | | | | | | |
| *Mr. Soto, FL* | | X | | **TOTAL:** | 22 | 18 | |

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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

## COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 12, 2018.*

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6106, the Common Sense Permitting Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kim Cawley.

Sincerely,

KEITH HALL,
*Director.*

Enclosure.

*H.R. 6106—Common Sense Permitting Act*

Summary: H.R. 6106 would allow the Bureau of Land Management (BLM) to expedite the approval of applications for permits to drill (APDs) for oil and gas on federal lands by excluding certain environmental analyses currently required by the National Environmental Policy Act (NEPA) from the application process. CBO estimates that enacting H.R. 6106 would accelerate oil and gas production on federal lands and increase royalty payments to the BLM. However, using information provided by the BLM and the Energy Information Administration (EIA), CBO estimates that enacting the bill would have no significant net effect on the federal budget over the 2019–2028 period.

Enacting H.R. 6106 would affect direct spending; therefore, pay-as-you-go procedures apply. The bill would not affect revenues.

CBO estimates that enacting H.R. 6106 would not increase net direct spending by more than $2.5 billion or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6106 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 6106 is shown in the following table. The costs

of the legislation fall within budget function 300 (natural resources and environment).

| | By fiscal year, in millions of dollars— | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2019–2023 | 2019–2028 |
| INCREASES OR DECREASES (−) IN DIRECT SPENDING | | | | | | | | | | | | | |
| Oil and Gas Royalties: | | | | | | | | | | | | | |
| Estimated Budget Authority | 0 | −35 | −60 | −95 | −120 | −30 | 35 | 90 | 125 | 60 | 30 | −340 | 0 |
| Estimated Outlays | 0 | −35 | −60 | −95 | −120 | −30 | 35 | 90 | 125 | 60 | 30 | −340 | 0 |
| Payments to States: | | | | | | | | | | | | | |
| Estimated Budget Authority | 0 | 17 | 29 | 47 | 59 | 15 | −17 | −44 | −61 | −29 | −15 | 167 | 0 |
| Estimated Outlays | 0 | 17 | 29 | 47 | 59 | 15 | −17 | −44 | −61 | −29 | −15 | 167 | 0 |
| Total Changes: | | | | | | | | | | | | | |
| Estimated Budget Authority | 0 | −18 | −31 | −48 | −61 | −15 | 18 | 46 | 64 | 31 | 15 | −173 | 0 |
| Estimated Outlays | 0 | −18 | −31 | −48 | −61 | −15 | 18 | 46 | 64 | 31 | 15 | −173 | 0 |

Components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of 2018.

*Direct Spending*

H.R. 6106 would authorize the BLM to approve APDs for oil and gas development on federal lands without requiring producers to undertake certain environmental analyses listed in NEPA. Using information provided by the BLM, CBO estimates that forgoing those analyses would reduce the time required to approve APDs by about 25 days, which CBO expects would accelerate oil and gas production on federal lands.[1]

Using information from the BLM and EIA, CBO estimates that at the beginning of 2019, the BLM will have about 2,300 pending APDs. CBO expects that under current law the BLM would reduce the backlog of APDs carried over each year to about 600 by the end of 2026, mostly for anticipated submissions of APDs late in fiscal year 2025. Under the bill, CBO expects that expediting the process would allow the agency to reduce the backlog to roughly 600 APDs by 2023, thus reaching the same backlog in about half the time. CBO estimates that accelerating the production of oil and gas by expediting APDs would result in a small net loss of royalty receipts to the government because production would shift from later years, when oil and gas prices are projected to be higher, to an earlier period, when lower prices are anticipated. As a result, CBO expects that oil and gas production would accelerate, thus increasing payments of associated royalties to the federal government by $335 million over the 2019–2023 period; royalties would decline by $340 million over the 2024–2028 period.[2]

However, CBO expects that the small loss would be offset by shifting more receipts into 2019. CBO estimates that reducing the time required for the BLM to approve APDs by 25 days would accelerate production of oil and gas under APDs submitted each year by as many as 10 days. Because for the purposes of this estimate CBO expects that each year a roughly equal amount of production would be shifted into the previous fiscal year, the federal government would receive a net increase in royalties in 2019. Based on its estimates of about $800 per day in royalties from the 1,350 new wells expected to begin production in 2019, CBO anticipates that enacting H.R. 6106 would increase royalties to the federal government by about $5 million for the year.

*Uncertainty*

CBO aims to produce estimates that generally reflect the middle of a range of the most likely budgetary outcomes that would result if legislation was enacted. In estimating that range of effects, CBO had to account for two major sources of uncertainty.

First, although CBO cannot predict future oil and gas prices precisely, this estimate relies on a projected path for the 2019–2028 period that is part of the agency's economic forecast. If prices fall, the forward shift in the timing of oil and gas production would re-

[1] In 2017, the BLM's APD approval process required about 120 days, on average: Drilling operators spent about 70 days on preparation, and review and approval took about 50 days.

[2] CBO estimates that gross royalty payments to the Department of the Interior will total about $10 billion over the 2019–2023 period and $11.5 billion over the 2024–2028 period. Most of those royalties will come from production from wells drilled before 2019.

sult in a net increase in royalties because production volume would be higher when prices were higher and lower when prices were lower. Conversely, if prices increase faster or reach higher amounts than CBO projects, accelerating oil and gas production would result in a net reduction in royalties. Because APD submissions are generally correlated with oil and gas prices, prices that are significantly higher or lower than CBO projects would affect the number of applications the BLM received, which would affect how quickly it could reduce the backlog of pending APDs.

A second source of uncertainty concerns the lack of information on the timing and quantity of oil and gas production from particular wells in many states where such drilling occurs on federal lands. CBO drew on production data from certain other states along with information on royalties from those states and others to estimate the bill's total effect on royalties. Although obtaining more precise information could have strengthened CBO's estimates of royalties under H.R. 6106, CBO does not expect that the information would have significantly changed its estimate of the net budgetary effect of enacting H.R. 6106, given the same projected price paths for oil and gas.

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

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 6106, THE COMMON SENSE PERMITTING ACT, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON JUNE 20, 2018

| | By fiscal year, in millions of dollars— | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028 | 2018–2023 | 2018–2028 |
| | NET INCREASE OR DECREASE (−) IN THE DEFICIT | | | | | | | | | | | | |
| Statutory Pay-As-You-Go Effect | 0 | −18 | −31 | −48 | −61 | −15 | 18 | 46 | 64 | 31 | 15 | −173 | 0 |

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 6106 would not increase net direct spending by more than $2.5 billion or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2029.

Mandates: H.R. 6106 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Kim Cawley; Mandates: Jon Sperl.

Estimate reviewed by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis; Theresa A. Gullo, Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Energy Policy Act of 2005 to clarify the authorized categorical exclusions and authorize additional categorical exclusions to streamline the oil and gas permitting process.

EARMARK STATEMENT

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

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

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

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**ENERGY POLICY ACT OF 2005**

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# TITLE III—OIL AND GAS

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## Subtitle G—Miscellaneous

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**[SEC. 390. NEPA REVIEW.**

[(a) NEPA REVIEW.—Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (b) shall be subject to a rebuttable presumption that the use of a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA) would apply if the activity is conducted pursuant to the Mineral Leasing Act for the purpose of exploration or development of oil or gas.

[(b) ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are the following:

[(1) Individual surface disturbances of less than 5 acres so long as the total surface disturbance on the lease is not greater than 150 acres and site-specific analysis in a document prepared pursuant to NEPA has been previously completed.

[(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within 5 years prior to the date of spudding the well.

[(3) Drilling an oil or gas well within a developed field for which an approved land use plan or any environmental document prepared pursuant to NEPA analyzed such drilling as a reasonably foreseeable activity, so long as such plan or document was approved within 5 years prior to the date of spudding the well.

[(4) Placement of a pipeline in an approved right-of-way corridor, so long as the corridor was approved within 5 years prior to the date of placement of the pipeline.

[(5) Maintenance of a minor activity, other than any construction or major renovation or a building or facility.]

***SEC. 390. NEPA REVIEW.***

*(a) NEPA REVIEW.—Action by the Secretary of the Interior in managing the public lands, or the Secretary of Agriculture in managing National Forest System Lands, with respect to any of the activities described in subsection (d) shall be categorically excluded from any further analysis and documentation under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if the activity is conducted pursuant to the Mineral Leasing Act (30 U.S.C. 181 et seq.) for the purpose of exploration or development of oil or gas.*

*(b) CATEGORICAL EXCLUSION.—Use of a categorical exclusion created in this section—*

*(1) shall not require a finding of no extraordinary circumstances; and*

*(2) shall be effective for the full term of the authorized permit or approval.*

*(c) APPLICATION.—This section shall not apply to an action of the Secretary of the Interior or the Secretary of Agriculture on Indian lands or resources managed in trust for the benefit of Indian Tribes.*

*(d) ACTIVITIES DESCRIBED.—The activities referred to in subsection (a) are:*

*(1) Reinstating a lease pursuant to section 31 of the Mineral Leasing Act (30 U.S.C. 188).*

*(2) The following activities, provided that any new surface disturbance is contiguous with the footprint of the original authorization and does not exceed 20 acres or the acreage evaluated in a document previously prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to such activity, whichever is greater:*

*(A) Drilling oil or gas wells at a well pad site at which drilling has occurred previously.*

*(B) Expansion of an existing oil or gas well pad site to accommodate additional wells.*

*(C) Expansion or modification of an existing oil or gas well pad site, road, pipeline, facilities, or utilities submitted in a sundry notice.*

*(3) Drilling of oil and gas wells at new well pad sites, provided that the new surface disturbance does not exceed 20 acres or the acreage evaluated in a document previously prepared under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) with respect to such activity, whichever is greater.*

*(4) Construction or realignment of a road, pipeline, or utilities within an existing right-of-way or within a right-of-way corridor established in a land use plan.*

*(5) The following activities when conducted from non-Federal surface into federally owned minerals, provided that the operator submits to the Secretary concerned certification of a surface use agreement with the non-Federal landowner:*

*(A) Drilling oil or gas wells at a well pad site at which drilling has occurred previously.*

*(B) Expansion of an existing oil or gas well pad site to accommodate additional wells.*

*(C) Expansion or modification of an existing oil or gas well pad site, road, pipeline, facilities or utilities submitted in a sundry notice.*

*(6) Drilling of oil or gas wells from non-Federal surface and non-Federal subsurface into Federal mineral estate.*

*(7) Construction of up to 1 mile of new road on Federal or non-Federal surface, not to exceed 2 miles in total.*

*(8) Construction of up to 3 miles of individual pipelines or utilities, regardless of surface ownership.*

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## DISSENTING VIEWS

We oppose H.R. 6016 because it provides reckless environmental waivers for the benefit of an industry that does not need them at all.

Under National Environmental Policy Act (NEPA) regulations, federal actions that are categorically excluded from further review are subject to a screen for extraordinary circumstances that would require a harder look at the impacts of that action. The idea behind this is simple: even seemingly harmless actions may, in certain situations, actually have the potential to cause real harm, and commonsense precautions should be taken to ensure that this does not occur through federal actions that otherwise would be performed without a second thought.

This legislation would eliminate the ability to perform such basic checks for an activity that generally does have significant environmental impacts: the drilling of an oil or gas well. It is bad enough that the Energy Policy Act of 2005 created inappropriate categorical exclusions for oil and gas drilling in the first place. Eliminating even the most cursory review of the public health and environmental impacts of oil and gas drilling is foolhardy and unnecessary.

Two Democratic Members, Mr. Gallego and Ms. Velázquez, offered amendments that would have reinstated several of the most basic extraordinary circumstances: checking for risks to public health or safety, highly uncertain or potentially significant environmental effects, highly controversial environmental effects, unresolved conflicts with the use of other resources, and disproportionately high and adverse effects on low income or minority populations. Both amendments were taken straight from existing federal regulations at 43 C.F.R. 46.215, yet during debate on the amendments the Majority argued that the language was too vague and could never be used effectively. It is clear that the Majority is not aware of what extraordinary circumstances are, or how they are used under the law, which makes it even more unfortunate that they would report a bill that would do away with them for drilling oil and gas wells.

Another Democratic amendment, offered by Ms. Barragán, would have exempted from the bill wells that would be drilled within one mile of homes, schools, or other buildings that would require special protection. Despite the fact that this would not actually block any wells from being drilled, and would only ensure that additional scrutiny was paid to wells that would be close to homes and schools, even this was deemed too burdensome for the oil and gas industry by the Majority and voted down.

One particularly concerning talking point that the Majority used repeatedly during the markup was the idea that the categorical exclusions would only be available for areas where there had already been NEPA review performed twice. While technically true, this is

exceptionally misleading and potentially betrays a deep misunderstanding of how NEPA works. The first NEPA review is for a Resource Management Plan (RMP), which typically covers millions of acres and looks only at broad cumulative impacts of potential oil and gas development scenarios. The second NEPA review is for the lease sale, which is all too often (particularly under this administration) treated as a purely administrative action that causes no actual on-the-ground impacts. The Bureau of Land Management (BLM) will invariably issue a Finding of No Significant Impact, or, more likely, a "Determination of NEPA Adequacy," which is a finding that NEPA was already sufficiently performed at the RMP stage, and is peppered with phrases like, "additional site-specific analysis would be conducted prior to the development of these parcels." Only at the drilling permit stage does BLM actually consider the conditions on the ground at the site where a company wants to drill, but this legislation would mean that in a huge number of cases, those conditions would never and could never be considered. We find it ironic that Members who decry "one-size-fits-all" management in favor of more local control and taking into account specific conditions on the ground would support legislation that forbids land managers from actually taking into account specific conditions on the ground.

Performing site-specific environmental analyses is far more than the redundant paperwork exercise that the Majority makes it out to be. First of all, NEPA is often the only way that communities living near proposed drill sites learn anything about drilling plans and have any way to comment on them. By categorically excluding drilling applications, families will be left in the dark and unable to have their voices heard on issues that impact the health of their communities and the level of pollution in their air, water, and soil. Second, there are demonstrable environmental benefits to performing site-specific reviews. The Government Accountability Office found in 2010 that the use of categorical exclusions provides incentives for companies to do piecemeal development that could lead to larger and more damaging impacts on the surface.[1] A recent review of wells in one Wyoming field office found that wells approved using a categorical exclusion created 87 percent more surface disturbance than wells approved using an environmental assessment, and three times the amount of surface disturbance than wells approved using an environmental impact statement.[2]

Finally, there is no compelling reason to pass a bill to try to speed federal permitting by eliminating environmental reviews. Recently the Committee was informed that companies hold over 7,200 approved permits to drill that they haven't used, and that BLM has gotten permit processing time down to under sixty days. While the Majority and hearing witnesses from right-wing think tanks have claimed that production on federal lands has been stagnant or declining, the facts show otherwise. From 2008 through 2016, oil production on federal onshore lands went up nearly 60 percent; in

[1] U.S. Government Accountability Office, Energy Policy Act of 2005: Greater Clarity Needed to Address Concerns with Categorical Exclusions for Oil and Gas Development under Section 390 of the Act, GAO–09,872, September 2009.

[2] M.K. Capone and J.C. Ruple, *NEPA and the Energy Policy Act of 2005 Statutory Categorical Exclusions: What Are the Environmental Costs of Expedited Oil and Gas Development?*, 18 Vt. J. Envtl. L. 371

New Mexico, production growth on federal lands far outpaced non-federal lands in that same time period.

The arguments made on behalf of this legislation by the Majority are based on the idea that the importance of U.S. public lands is limited to the number of oil and gas rigs that are currently drilling on them. Making things cheaper and easier for the oil and gas industry is, therefore, their only goal. We believe that public lands belong to all Americans, and should be managed in a balanced and responsible way to support recreation, wildlife habitat, grazing, conservation, and other uses in addition to energy development. For those reasons and more, we strongly oppose H.R. 6106.

RAÚL M. GRIJALVA,
*Ranking Member, Committee on Natural Resources.*
NYDIA M. VELÁZQUEZ.
JARED HUFFMAN.
A. DONALD MCEACHIN.

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