

EXECUTIVE SESSION

the root of our larger fiscal problems. Unless we act now, these programs will no longer be sustainable, and spending and debt will continue to spiral out of control.

The good news is that a solution actually exists. As I have said many times before, the best way to address this crisis is the Conrad-Gregg proposal, which would provide an expedited pathway for fixing the long-term challenges of entitlement spending and our unprecedented national debt—challenges that the Democratic budget and their economic policies of the past few months completely ignore.

There has never been a better time to adopt this sensible bipartisan proposal. This week we learned that the deficit for the current fiscal year will be nearly \$90 billion higher than previously estimated—bringing the deficit for this year to \$1.8 trillion. This is nearly four times—four times—higher than the record set last year. It also means that this year's deficit is higher than those of the past 5 years combined.

The danger of all this debt is simple: higher inflation that threatens to derail an economic recovery, and trillions in debt that our children and grandchildren will have to repay to countries such as China and nations in the Middle East.

Secretary Geithner said yesterday that when it comes to reforming Social Security, the administration will build a bipartisan consensus to ensure Social Security remains solvent. I welcome the statement, and I urge the administration to support the Conrad-Gregg proposal which is the best way and, I would argue, the only way to address entitlement spending and our unprecedented national debt. After yesterday's report, it is clear we cannot wait any longer to address this crisis.

Americans have relied on programs such as Medicare and Social Security for decades. It would be dishonest and unfair not to tell them the truth about these programs—that they are near collapse and that urgent reform is needed to bring them back to sustainability. More than 800,000 Kentuckians receive Social Security benefits, and nearly that many are enrolled in Medicare. They deserve our honesty. And they deserve action from lawmakers on both sides of the aisle. We need to make sure programs such as Social Security and Medicare remain viable for them and for their children and their grandchildren.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

NOMINATION OF DAVID J. HAYES TO BE DEPUTY SECRETARY OF THE INTERIOR

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of David J. Hayes, of Virginia, to be Deputy Secretary of the Interior.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 1 hour of debate equally divided and controlled between the two leaders of their designees.

The Senator from Utah.

Mr. BENNETT. Mr. President, I rise in opposition to the Hayes nomination. I am here with the Senator from Alaska, and I wish to be told after I have consumed 15 minutes so the Senator from Alaska and I can coordinate our presentations.

The ACTING PRESIDENT pro tempore. The Chair will do so.

Mr. BENNETT. Mr. President, I listened with interest to the statement of the majority leader with respect to David Hayes, and I agree with much of what he had to say. I feel compelled to correct some of the things he had to say because they are some of the same things the Department of the Interior has been saying that I find are, in fact, not factual.

I agree with him that the President should be entitled to appoint whomever it is he wants. And I agree with him that David Hayes is qualified for this position. I also believe, however, that Members of this body, who have the responsibility of the confirmation vote, are entitled to clear answers to their questions before the confirmation should proceed.

It is my opinion we have been asking for clear answers to those questions—to legitimate questions—and those answers have not been forthcoming. Therefore, I am not willing to proceed with the confirmation vote until we get those answers.

This is not to say I am opposed to David Hayes and will do everything to see to it he is not confirmed. Indeed, I want to do everything I can to see that he is confirmed as rapidly as possible. But "as rapidly as possible" does not mean I must give up my rights to receive clear answers to legitimate questions.

Let me go to some of the items the majority leader covered in his statement because they are the same items the Secretary of the Interior has used, and that others have used in press releases, that I believe need to be set straight. They are simply not factually true.

Let's start with the question of leases. Numbers. How many leases were put up and sold by the BLM in the last month of the Bush administration in

the State of Utah? The answer to that question is 128. Not 77; 128. All of those 128 leases were subject to exactly the same kind of procedure. All of them went through the same kind of review. All of them were handled by the same team of experts: career people within the Department. And all of them ultimately were sold.

The majority leader said this happened in the midnight hours of the Bush administration, as if this whole thing were cobbled together in the last minute. In fact, much of the activity dealing with the sale of these leases occurred over a 7-year period. Why? Because all of the parties involved wanted to make sure they complied with all of the rules. If it had been handled in a "rush it through," "get it done during our political circumstance" sort of manner, they could have been granted in 2004 or 2007; it did not have to wait until the last months of 2008. The reason it waited until the last months of 2008 was because the plans were so meticulously reviewed to make sure they complied with every rule that it took that long. So let's get rid of the idea that this was a political decision on the part of the Bush administration. The record is very clear it was not.

All right. After the Obama administration took over, out of the 128 leases that were granted, suddenly 77 were withdrawn by the Secretary of the Interior. Why? If there was a flaw in the way these leases were handled, the entire 128 should have been withdrawn because they were all handled in exactly the same manner. The 77 were withdrawn because an environmental group filed a lawsuit. The environmental group decided which leases should be challenged, not the Department of the Interior. It was not a review by any career officer in the Department of the Interior that said these leases were flawed. It was a political decision by an environmental group that said we are going to file a lawsuit; and in response to that lawsuit, the Secretary of the Interior said: I am going to pull these 77 leases, and then gave the same justification for his actions that the majority leader has given here on the floor today; that is, they are right next door to the national parks and no one wants an oil rig next to a national park.

No. 1, most of the leases are natural gas; there are not oil rigs involved at all. And, No. 2, they are not right next door to the national parks. Some of them are as far as 60 miles away.

Let's look at a map I have in the Chamber and see where these leases are. On this map, shown in yellow are the national parks. This one is Arches National Park, and this one is Canyonlands National Park. Shown in green is existing oil and gas leases that were in place long before the December lease sale. Shown in red are the leases that were granted in the so-called midnight hours of the Bush administration.

A quick glance at the map makes it very clear that the challenged leases

alleged to be “right next door to a national park” are surrounded by existing leases that are closer to the national park than the leases that are being challenged.

The facts simply are not there to support the position the Secretary of the Interior has taken and the majority leader has repeated here today. The majority leader has depended upon the Secretary for his facts. The majority leader made a mistake in depending on the Secretary because the Secretary is wrong. That is one of the things that has caused me to raise this issue.

What is the real motivation behind this? Because to say the motivation is “they are too close to the national parks” simply does not apply.

There are some leases shown in red on the map that do not have any existing leases between them and the national park. But they do have a highway. If you are concerned about the national park experience being degraded by having leases where there may be some natural gas activity going on—that this activity will somehow that will destroy your experience in the national park—how about a highway destroying the experience of a national park? They are separated from the national park by a highway.

Let's look at another map, this one having to do with the Dinosaur National Monument. This is the one where some leases are 60 miles away. Yet the Secretary of the Interior would have you believe they are right next door, that they abut the existing boundaries of a national park.

Look at the green on the map which does, in fact, abut the boundaries of the Dinosaur National Monument. No one has ever complained about that. This was a purely political decision based on the lawsuit filed by an environmental group rather than by any kind of review.

I have asked the Department of the Interior: Justify your actions. Appoint a team that will give us the information we need and will tell us why these 77 leases are different than the rest of the 128 leases.

This is the reaction, this is the response I have received from the Department of Interior to my questions.

The first response that came from David Hayes was a supplemental answer to one of my questions regarding the review Secretary Salazar had committed to undertake. The next day, David Hayes followed up with a letter that came on Department of the Interior letterhead, and he signed it: David Hayes, Deputy Secretary Designee. This is as official a statement as we are going to get, and this is what he says in his response: “If confirmed, David Hayes will have overall responsibility for undertaking the review of the 77 parcels that were withdrawn from the Utah lease sale. Pending Mr. Hayes' confirmation”—not dependent upon, but pending Mr. Hayes' confirmation—“the review team will consist of the Acting Assistant Secretary for Policy,

Management and Budget, the Acting Directors of the BLM and the National Park Service, and their designees. The Acting Solicitor, Art Gary, will provide legal support to the extent needed.”

In the document where this team was named and laid out, the commitment was made that there would be preliminary work done on the report by the first of May and that the entire matter would be resolved by the 29th of May. And when the first of May came along, and we expected some kind of preliminary report from the Department, Secretary Salazar said: “We have done nothing, and we can do nothing until David Hayes is confirmed”—directly contradicting the statement we have in writing over the signature of David Hayes. I think we are entitled to raise a question about this kind of procedure.

The majority leader talked about the real issue in this matter. The real issue in this matter is the credibility of the Department of the Interior. If we are going to deal with the Department in the coming 4 or 8 years—whatever the electorate decides—we need to have some confidence that when the Department sends us a document and makes a promise, and names the specific people who will be involved in fulfilling that promise, that will happen. One final comment. The majority leader and the Secretary have said this happened without consulting the National Park Service. On that I have two points. No. 1, it is a matter of law that the BLM is not required to consult with the National Park Service on lease sales. They could have done this whole thing without talking to anybody at the National Park Service and been completely proper in terms of the law. They went beyond the requirements of the law and consulted with the Park Service to make sure there was no interference with national parks.

Here is what Mike Snyder, the National Park Service Regional Director for the Intermountain Region, had to say about that kind of cooperation and coordination:

I would like to personally extend my appreciation to the BLM field office managers who worked with the Park Service on the parcel-by-parcel review of these oil and gas lease parcels. They did an outstanding job working in collaboration with us.

Secondly—Mr. Snyder said:

Working with Selma Sierra, the BLM Utah State Director, has resulted in the kind of resource protection that Americans want and deserve for their national parks.

The BLM didn't consult with the national parks? The BLM did not discuss this with the national parks, when the National Park Service makes a statement of this kind for the record?

I repeat: The problem has to do with the credibility of the Department of the Interior. They have made a series of statements that are not true. They say these leases are too close to the national parks. Sixty miles away is not too close. They say there was no consultation with the National Park Serv-

ice. The National Park Service is on record as saying it is done. They made a promise on official letterhead from the Department of the Interior that a team would be appointed and a date would be met and the team was not appointed and the date was not met.

I am perfectly willing to vote for the confirmation of David Hayes as soon as the Department of the Interior lives up to the promises they have made and acknowledges that the statements they made about these leases are factually incorrect. It is not a matter of interpretation. It is not a matter of opinion. The maps are here. The documents are here. The statements are here. Let's have an honest discussion of it, and when that discussion is taken care of and a commitment made by Mr. Hayes on Department of the Interior letterhead is met, I will be happy to remove my hold and vote for his confirmation and urge all my colleagues on this side of the aisle to do the same. That is the issue with which we are faced.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from Alaska is recognized.

Ms. MURKOWSKI. Mr. President, I appreciate the opportunity to follow my colleague from Utah, as he has so clearly laid out the grounds upon which he has placed a hold on the Department of the Interior nominee, David Hayes. I wish to make a comment at the outset: I don't think that either the Senator from Utah, and certainly not myself, in also placing a hold—this is not a situation where there is disagreement about Mr. Hayes' qualifications. This is not a personal matter or anybody out to get Mr. Hayes, if you will. This is about what is happening within the Department, as my colleague from Utah has mentioned, about the credibility within the Department of the Interior at this moment in time. The actions taken by Senator BENNETT in placing a hold and subsequently my actions in also placing a hold on Mr. Hayes and his nomination are strictly in keeping with the practice of being able to ask a potential nominee—whether it is within the Department of the Interior or any other position within the administration—questions and expecting to receive a response from that individual.

So I, too, rise to oppose the cloture motion for the nomination of David Hayes to be the Deputy Interior Secretary. From my perspective, this vote is over a very simple issue and it can be distilled quite easily and that is: Will this administration answer legitimate questions from Republican Senators? Before I give the background of my situation, I also wish to say I do regret being on the floor at this moment and having to make this statement. I believe this whole process we have gone through has been unnecessary, and at any point leading up to this, the Department of the Interior could very easily have cleared the way for this nominee without having to force a cloture vote. I will explain why.

It was 2 weeks ago that I added my name to the procedural hold placed by the junior Senator from Utah on this nominee, and I did so very reluctantly. I did not do it to be obstructive, to be an obstructionist in any way but, rather, to constructively obtain an understanding of the actions by the Department of the Interior that seemed to be, at least in my opinion, dramatically at odds with statements made by Secretary Salazar and President Obama regarding domestic energy production. I will make a statement for the record that neither I nor Senator BENNETT have asked the Department of the Interior to adopt or to repeal any specific rule or policy or take or repeal any specific administrative action.

The Senator from Utah has laid out, very clearly, his concerns, and I will only summarize for those who are listening to what we are talking about that the Interior Department, very shortly after the beginning of this administration, canceled the 77 oil and gas leases in Utah and gave factually incorrect justifications for its actions. All the Senator from Utah is asking for is a review of this very same issue.

Following the decision on the Utah leases, the administration announced a 180-day delay of the 5-year Outer Continental Shelf leasing plan. There was also a delay of the scheduled round of oil shale research, demonstration, and development leases. There was also a finding for justification of listing the yellow-billed loon, whose range extends through major oil and gas regions in my State in Alaska. There was also the determination that the Bush administration's mountaintop coal mining rule is considered legally defective. Finally, there was the unilateral reversal of the previous administration's Endangered Species Act consultation rules, and this was done without public hearing and without public comment.

It was this last issue—this issue that relates to the Endangered Species Act—that, in my opinion, was the straw that broke the camel's back. When the Bush administration listed the polar bear as a threatened species due to loss of sea ice, the world changed insofar as there had to be clear guidelines for keeping normal activities out of the purview of a huge and impossible regulatory scheme. We have cautioned against an overbroad interpretation of the polar bear rule, and Interior, to their credit, has taken the correct path on some of the most important rulemakings. I truly do appreciate that, and I have had an opportunity to convey my appreciation to Secretary Salazar. We are thankful for that. However, my larger concern remains that consultations could still be required for a host of energy projects, and in any event, that the Endangered Species Act's citizen suit provisions are still going to give rise to a multitude of lawsuits on when and where consultation with the Fish and Wildlife Service is mandated.

All this combined—all these various actions within the Department of the

Interior within a very short time period—caused great concern about the direction of our Nation's energy policy.

I have been very pleased about some of the comments I have heard from the President and from Secretary Salazar. They, themselves, have very clearly stated we do need oil and gas, and we should be producing more of it domestically. But what has been happening is the statements that have been made and the rulemaking and the policy directives have been at odds with one another. I will give a couple quotes from both the Secretary and the President.

Secretary Salazar has said: There is no—he was talking about renewable energies, but he goes on to state:

There is no question that the Nation will need to continue to produce oil and gas as a bridge to this energy future.

I absolutely agree with the Secretary.

The President a couple of weeks ago said:

As I've often said, in the short term, as we transition to renewable energy, we can and should increase our domestic production of oil and natural gas. We're not going to transform our economy overnight. We still need more oil, we still need more gas. If we've got some here in the United States that we can use, we should find it and do so in an environmentally sustainable way . . .

That is the end of the President's quote. I couldn't agree with him more.

But there is an inconsistency, as I have said, in the statements that have been coming from the administration and the actions as evidenced through the rulemaking or the policy directives.

I still have questions about whether this administration does indeed want to include increased domestic conventional energy production as one of the legs of our comprehensive energy policy or if the administration is going to say one thing and do another. If this President and his Interior Department want to scale back production, that is their prerogative, and we can certainly talk about that, but that is something I need to know, both as the ranking member on the Energy Committee and as a Senator coming from the State that has the greatest onshore and offshore oil and gas prospects left in North America. This is important that we know and understand where this administration is coming from.

I sent a letter to the Secretary when I placed a hold on Mr. Hayes, and I outlined my concerns. All my questions in that letter focused on how Interior will implement the policies it has announced and how it will defend against things such as the third-party lawsuits to which we believe they have made themselves pretty vulnerable. The White House and the Interior Department have communicated with me and my staff since I wrote that letter. Initially, we were told DOI doesn't want to answer the questions because they are too hard, there are too many of them, and they are too mean. Since that time, my staff has received a draft

of a letter. I received it last night about 7 o'clock. I appreciated their response, but in many ways it avoids many of the specific questions. I think there is an opportunity for us to go through my series of questions, have that discussion in a meaningful way, and get the clarity I am seeking which, as a Senator, I believe I am entitled to.

I will ask: If we can presume the Interior Department has been making its decisions and policies based on rational and well-thought-out facts and science, how hard can it be to question the decisions and the policies behind it?

Mr. President, I ask unanimous consent to submit for the RECORD the letter I sent to Secretary Salazar. I think my colleagues will see there are indeed some very hard questions contained in my letter, but at this level of Government, I would suggest there aren't very many easy questions left.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC.

Hon. KENNETH L. SALAZAR,
Secretary, Department of the Interior,
Washington, DC.

DEAR SECRETARY SALAZAR: I appreciate the comments that you and other members of the Department of the Interior have made on the importance of domestic energy production. As you are aware, however, this past Thursday, April 30th, at a business meeting held by Senate Energy and Natural Resources Committee, I expressed my strong concern over the widening disparity between those statements and the Interior Department's actions. At that meeting I announced my procedural hold on the nomination of David Hayes for Deputy Secretary of the Interior.

I trust my announcement was not a surprise. On Friday April 24th, Will Shaffroth, your Principal Deputy Assistant Secretary for Fish, Wildlife and Parks met with my staff regarding potential repeal of regulations for consultations under the Endangered Species Act (ESA). My staff noted that these regulations were adopted in full compliance with the Administrative Procedure Act, including public hearings and extensive public comment. Staff strongly urged Mr. Shaffroth that if you were determined to repeal the regulations, you also comply with the Administrative Procedure Act. Instead, you and Secretary Locke chose to repeal the regulations without public hearings or public comment. Last week, prior to my announcement, my staff talked to yours and informed them what would happen at the hearing.

It is my sincere hope and expectation that we can advance our respective understandings of the issues set out in this letter as quickly and honestly as possible. My intention is not to make your job more difficult. My intention is, however, to get clear answers and commitments with regard to what I and the American people should expect from our Interior Department when it comes to the pressing and fragile issues surrounding the stewardship of energy and natural resources on federal public lands under your jurisdiction and mine.

In my official statement on April 30, I expressed my cumulative frustration with, among other things, the cancellation of the 77 oil and gas leases in Utah; the 180-day delay of the 5-year outer Continental Shelf leasing plan; the delay of the new round of oil shale research, demonstration, and development

leases: the finding for justification of listing the yellow billed loon only one day after Tom Strickland's confirmation hearing; the determination that the Bush Administration's mountaintop coal mining rule is "legally defective"; and, finally, the reversal of the previous administration's Endangered Species Act consultation rules.

In reality, my decision to place the hold on Mr. Hayes is a reflection of concerns that extend beyond these publicly-stated issues and include my dissatisfaction with the questions for the record which I submitted to Mr. Hayes, as well as Mr. Strickland and Ms. Hilary Tompkins, the designate for Solicitor General. I have attached several examples of what I consider to be vague, equivocal, and ultimately meaningless responses to substantive questions which deserved and frankly require significantly more thought, effort, and specificity.

Finally, I am troubled by Interior's lack of a swift and assertive response to the DC Circuit Court's decision on April 17th to vacate your department's outer Continental Shelf Leasing Program. This decision alone could, depending on its interpretation, have sweeping impacts upon the Obama Administration's stated policy of including increased oil and gas production as a meaningful part of the nation's comprehensive energy policy.

The compounding nature of these acts and omissions demonstrates a consistent pattern of steps that are nearly certain to make domestic energy production more difficult, more time-consuming, and more expensive. This is fundamentally inconsistent with the repeated promises of the President and yourself to actively advance increased production of conventional energy sources. You are aware of my full support for and strong record of aggressively pursuing the technologies and infrastructure necessary to dramatically increase America's renewable energy capacity, but I am concerned that elements within the Administration are meanwhile acting upon a misguided belief that quietly but systematically and rapidly scaling back—or shutting down—domestic oil, gas, and coal production will somehow force a faster and smoother transition to a clean and secure energy future. It will not, and I trust you agree that the ultimate consequences of such a policy would be devastating to our Nation's economy and security, as well as the world's environment.

Given this fact pattern, I worry about what might be next. So, I am left with no option other than exercising my procedural remedies in order to obtain what I hope and presume will be authoritative, binding, and realistic responses to my concerns. To supplement the issues stated above and the attached questions for the record, the latter of which I would like to resubmit, please provide responses to the following items in substantive detail. Though the questions are detailed, I trust that all are issues that you and your staff have already thought about extensively, before you made the policy decisions referred to above.

ENDANGERED SPECIES ACT MODIFICATIONS AND CLIMATE CHANGE GENERALLY

Interior's basis for listing the polar bear as a threatened species was based in significant part upon 7 of 10 climate models showing a 97 percent loss in September sea ice by the end of the 21st century, presenting threatened destruction, modification, or curtailment of polar bear habitat. The previous Administration's change to the subsequent consultation rule attempted to ensure that a causal connection between harm to listed species or their habitats not be drawn from greenhouse gas emissions from a specific facility, resource development project, or government action. The rationale for this was that such

connections are manifested through global processes and cannot be reliably predicted or measured at the scale of a listed species' current range; or, would result at most in an extremely small, insignificant impact on a listed species or critical habitat; or, are such that the potential risk of harm to a listed species is remote. Reversal of this rule-making as regards consultation procedures, both formal and informal, risks resetting the required consultations to an all-encompassing level which I do not believe is sustainable, and prompts the following questions:

1. Since the Supreme Court has afforded Interior considerable discretion in enforcing what it termed a Congressional purpose and intent in ESA to provide "comprehensive protection" to species, including protection from significant habitat modification or degradation, please describe in substantive detail how the Interior Department will apply its discretion in deciding whether to require FWS consultation and concurrence specifically for each of the following federal actions, some of which will result, directly and indirectly, in the emission of various amounts of greenhouse gases upon completion, and most of which will require major levels of operation of heavy equipment; transportation of persons and goods; and large amounts of concrete, steel, aggregate, and other products produced through highly carbon-intensive processes:

I. Clean Air Act permits for any or all of the 28 coal-fired power plants now under construction, as listed by the Department of Energy's tally.

II. Corps of Engineers permit for development and construction of a pipeline to convey water from Dixie Valley to Churchill County, Nevada.

III. Department of Transportation permitting for a high-speed rail construction between Las Vegas, Nevada and Southern California.

IV. Federal funding of "Pavement rehabilitation" at Denver International Airport.

V. Federal funding to Caterpillar, Inc. for high-speed diesel fuel combustion technology.

VI. Department of Transportation funding of the Milwaukee Avenue Reconstruction project in Chicago, Illinois.

VII. Department of Transportation funding of the New Jersey Trans-Hudson Midtown Corridor.

VIII. NEPA documentation on grazing permit renewals.

IX. Hazardous fuels reduction projects on federal lands (resulting in changes in vegetation patterns.)

2. In the event that the Interior Department does not exercise its authority to mandate FWS consultations for the federal actions necessary for the projects stated under (1), does Interior anticipate multiple invocations of the citizen suit provisions under ESA Sec. 9(g) to compel consultations?

a. If so, to what extent is Interior prepared, equipped, and funded to defend against the multitude of citizen suits likely to be filed?

3. Does the reversal of the ESA consultation rule provide, in essence, for mandatory second-guessing on an intradepartmental level, suggesting that any biologists on staff at BLM, MMS, and other agencies are somehow less qualified (or unqualified) to evaluate potential impacts from and mitigation techniques for the activities which they specifically oversee than are FWS biologists?

a. If the non-FWS biologists are qualified, why is it necessary to compel mandatory FWS consultation?

b. If they are not qualified, what is the justification for their continued employment?

4. In science-based decisionmaking, what will be, in substantive detail, the procedural

process for moving forward for those occasions when scientific consensus does not exist at the departmental level?

5. How will Interior deal with a lack of broad scientific consensus outside of the Administration; i.e. new and independent scientific reports in direct conflict with Interior's scientists?

6. Given the reversal of the ESA rule, regarding development of the outer Continental Shelf, does the Department intend to formally consult on the polar bear and listed corals for every scheduled lease sale, exploration plan, and other federal action necessary to advance offshore development?

a. If so, what are the minimum and maximum amounts of time that this might take?

b. Are you able to show the proximate causal connection between the direct and local effects of oil and gas activity and the species in question?

c. Will the consultation requirement be based, in any scenario, on indirect global effects of these activities?

7. Is Interior presently conceptualizing, planning, or formalizing any further modifications to or reversals of any of the Bush Administration's ESA rules?

CLIMATE CHANGE AND SCIENCE-BASED DECISIONS GENERALLY

8. In the science-based decisions which FWS must make, will scientists and only scientists select from the multiple climate change output models available with an ability to do so independent of political and professional influence and incentives?

a. Will Interior commit to a stated policy that such scientists must refrain from basing any part of the selection of climate models upon the model's congruence with the Department's desired administrative outcome?

9. In the world of academic research, the difference between a 4% and 7% probability of error can mean the difference of a scientific paper being published or not. But in the world of government science, as with the Intergovernmental Panel on Climate Change, anything above a probability of 66% is "likely". Does Interior agree that regulatory decisions affecting real lives and livelihoods ought to be held to and based on a standard commensurate or approximate to those of academic research, or is a 66% likelihood "close enough for government work"?

10. Regardless of the scientific standards, will Interior commit to affording full transparency into, and disclosure of, the uncertainty behind all "science-based" decisions?

11. What is Interior presently doing to standardize how it interprets uncertainty in scientific analyses?

12. Will regulatory decisions, regardless of their economic implications, move forward so long as one of the many climate models suggests an impact has a 66% probability?

13. How will Interior balance contradictory evidence of competing climate models and will Interior establish a priori as its preferred model?

14. How will Interior avoid post-hoc decisions on which model to choose based on an individual scientist's preferred outcome?

OCS LEASING AS RELATES TO THE 5-YEAR PLAN AND 4/17 DC CIRCUIT OPINION

15. Please describe in substantive detail the particular process and timing it will take to remedy the issues cited by the DC Circuit with regard to the 5-year plan?

16. Please describe in substantive detail the factors and the criteria Interior will be using to evaluate that it has reached the "... proper balance between the potential for environmental damage, the potential for the discovery of oil and gas, and the potential for adverse impact on the coastal zone"?

17. As Interior conducts a more complete comparative analysis of the environmental

sensitivity of different areas of the outer Continental Shelf, attempting to identify those areas whose environment and marine productivity are most and least sensitive to OCS activity, will you commit to specifically taking into account all existing statutes and regulations that provide for coastal and ocean protection and restoration, and will you presume all of those inherent associated mitigations in your assessment of potential impacts and sensitivities?

18. What specific and detailed factors will the Interior Department be weighing in assessing and reconsidering the Leasing Program's relative assessment of the environmental sensitivity and marine productivity of the various planning areas?

19. Presuming the eventual advancement of the exploration and development of the Chukchi Sea planning area 193, what specific factors will Interior require and/or take into account in evaluating exploration plans for approval? Please make this list of factors as comprehensive and exhaustive as possible.

20. Since the petitioners in the DC Circuit case were focused on the Alaskan areas of the OCS leasing program, will Interior reconsider the entire program or instead make modifications only on those more controversial areas?

21. At which individual stage of the Leasing Program, in which Interior is required to conduct additional and more detailed assessments of the Program's potential effect on the proposed leasing areas, does Interior anticipate legal "ripeness" for the Center for Biological Diversity to survive threshold challenges to the justiciability of their remaining claims?

22. How will you ensure a timely turnaround on these issues given the lack of extensive baseline data for many of the areas?

GULF OF MEXICO LEASING AND ROYALTY RELIEF

23. Is it within any official or unofficial policy of Interior to support efforts to require companies that paid a premium to acquire 1998 and 1999 leases in the U.S. Gulf of Mexico to now be required by legislation to agree to include price thresholds in the leases they continue to hold as a condition of acquiring additional leases?

24. With such major projects as Shenzi and Tahiti now coming on line, does Interior agree with the oil and gas industry's assessment that the 1995 Outer Continental Shelf Deep Water Royalty Relief Act provided an effective mix of incentives to encourage the industry to invest billions of dollars for the benefit of the American consumer? If so, does Interior foresee any potential negative impact upon exploration, development, and production of oil and gas as a result of legislatively changing the terms of the deal struck in 1995?

25. In opposing various bills before the Congress last year, the oil and gas industry took the position that the legislation would, if enacted, constitute a breach of contract and an unconstitutional taking of property without compensation under the Fifth Amendment. Does Interior hold a similar view of the contract and constitutional law implications of such a material change in government terms?

26. In the 110th Congress, Ambassadors from five allied Nations (Norway, Spain, France, Canada, and Australia) expressed their official opinions in writing about the potential to modify the lease terms—including contravention of treaty obligations and violation of numerous international trade agreements. Do you believe the Ambassadors had a reasonable basis for these concerns?

a. If Interior considers the concerns of the Ambassadors anything short of reasonable, does Interior anticipate a situation where

litigation or legislation may lead to either strained foreign relations or reciprocal treatment of U.S. investments in the corresponding nations?

b. If Interior considers the concerns of the Ambassadors to be valid, is it Interior's position that their added complications warrant separate and distinct treatment than domestic companies with similar interests in the Gulf?

27. If Congress were to enact legislation comparable to the excise tax proposal put forward last year by the Senate Finance Committee, would you be concerned about the likelihood of litigation and the diversion of the Department's resources with respect to that litigation?

28. Now that the U.S. Court of Appeals for the Fifth Circuit has denied rehearing in the Kerr-McGee litigation, would you consider it reasonable for Members of Congress to oppose any legislation that would now seek royalties from 1996–2000 leaseholders on the basis of a price threshold?

MTR COAL MINING RULE

29. On December 3, 2008 the Office of Surface Mining Reclamation and Enforcement (OSM) issued a final rule clarifying the treatment of excess spoil disposal from coal mining operations after 7 years, 43,000 comments, and 4 public hearings. The rule requires mine operators to avoid disturbing streams to the greatest extent possible and clarifies when mine operators must maintain an undisturbed buffer between a mine and adjacent streams, thereby clarifying a long-standing dispute over how the Surface Mining Control and Reclamation Act of 1977 should be applied. Just last week Interior reversed its position on this issue asking the Department of Justice to file a plea with the U.S. District Court requesting that the rule be vacated as "legally defective." Please describe, in substantive detail, the criteria for avoiding the apparent insufficiencies in future rulemakings on this particular issue.

a. In reshaping a legally sufficient rule, what specific steps will Interior take to ensure it observes the proper administrative rulemaking process including issuing a draft rule and opening it up for a comment period?

b. What specific safeguards does Interior intend to put in place to ensure that this change does not halt or delay coal mining operations, jeopardize jobs, and reduce domestic energy production?

GENERAL POLICY

30. If, at the close of the current four-year Presidential term, America's overall oil production has decreased in terms of pure volume, will Interior consider this fact a success or a failure?

31. If, at the close of the current four-year Presidential term, America's overall oil production has decreased as a percentage relative to foreign imports, (e.g. 25% of domestic consumption as opposed to 35% of domestic consumption) will Interior consider this fact a success or a failure?

Again, thank you for your time, patience, and prompt attention to these issues and questions. It is my hope that the stated energy intentions of this Administration will begin to track more closely with its day-to-day actions. In the meantime, your careful consideration of this letter ought to help inform the Interior Department's still-forming policy. Your leadership will be critical, and it will be appreciated well into the future.

Sincerely,

LISA MURKOWSKI,
United States Senator.

Ms. MURKOWSKI. As I indicated in my initial comments, I am not trying to be an obstructionist. In response to DOI's complaints, I have offered to sit

down with them, in good faith, and go through the questions one by one. The standard I would use would be if any Member of this body were to be Secretary of Interior, which of the questions would they have insisted that their staff extensively analyze prior to taking the actions the Department has taken? I do believe my questions will be answered, but it is clear that in the short term, these questions are being answered because of this cloture motion. That troubles me because I believe the Senate, in its role to advise and consent on Presidential nominees, is entitled to answers from the administration about what its policy is as we move forward.

It should not matter whether these questions come from Republicans or Democrats. It is reasonable to expect that any one of us in this body can get honest answers about how this administration is going to pursue and implement an energy policy.

I hoped we would have an opportunity to sit down and go over the questions, but, instead, this morning we are going to see a vote on the floor.

My hold on David Hayes didn't come attached with demands to change a rule, make a rule, or approve a plan or policy. I just want some answers as to what the administration's policies are going to be. My commitment is to get those answers.

Regardless of what happens with this vote today, I am certainly going to pursue actively the development of all forms of energy in this country because we are going to need all of them in high volumes. I do look forward to working in good faith with the Interior Department, whatever its makeup, because we have a lot of work to do. We know that. We need to commit to that level of activity.

With that, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, David Hayes is a superbly qualified individual who has been nominated by the President to be the Deputy Secretary of the Interior. We know for a fact that he is superbly qualified because the Senate has already confirmed him for that exact office once before. That was 9 years ago. He served in that office with great distinction during the Clinton administration.

Mr. Hayes also served as counselor to Secretary Babbitt for several years before being appointed Deputy Secretary. In those roles, he handled many of the most challenging issues facing the Department of the Interior, ranging from the acquisition of the Headwaters redwood forest in California, the restoration of the California Bay-Delta ecosystem, the negotiation of habitat conservation plans under the Endangered

Species Act, Indian water rights settlements, and energy development on the public lands.

In addition, Mr. Hayes has had a distinguished legal career, focusing primarily on environmental and natural resource matters. He has served as a senior fellow for the World Wildlife Fund, a consulting professor at Stanford University's Environmental Institute, chairman of the board of the Environmental Law Institute, and chairman of the board of visitors for the Stanford Law School.

Those of us who know Mr. Hayes and had the opportunity to work with him when he was the Deputy Secretary before know him as a man of great knowledge, ability, and integrity, and as someone who strives hard to find constructive, progressive, and consensus solutions to difficult environmental challenges.

But the debate this morning is not really about Mr. Hayes or his qualifications for the office to which the President has nominated him. It is about certain actions that have been taken by the Bush administration during its final weeks in office and whether the Obama administration will be allowed to reconsider those actions.

During its final weeks, the previous administration took a number of controversial actions on endangered species, land withdrawals, mountaintop mining, and oil-and-gas development. It is no secret that in its rush to lock in these actions before it left office, the previous administration didn't give adequate consideration to environmental concerns and legal requirements. Several of these actions have already been overturned by the courts.

Secretary Salazar has inherited this legacy. He is doing his best to address the situation in a fair and balanced way but one that reflects the new administration's commitment to openness and to transparency and to strict adherence to the law.

Among other things, this has meant having to withdraw 77 oil and gas leases issued by the Bush administration in Utah that a Federal court has enjoined because it appears that the previous administration failed to comply with the National Environmental Policy Act, the Federal Land Policy and Management Act, and the National Historic Preservation Act.

It has also meant having to try to salvage the current 5-year plan for oil and gas development on the Outer Continental Shelf after an appeals court found that the previous administration had failed to follow legal requirements when it adopted that plan.

I can understand why some Senators might be concerned about the new administration reviewing the policy decisions of the previous administration. But what I cannot understand is why they would want to obstruct the nomination of David Hayes.

No one can seriously question Secretary Salazar's commitment to the responsible use and development of our

natural resources or his commitment to protecting the public interest, basing his decisions on sound science and complying with the law. But more than 100 days into his tenure, Secretary Salazar remains only one of the two Presidential appointees in the Interior Department who has been confirmed by this Senate. We need to send him help. We need to confirm David Hayes.

The Constitution entrusts this body with the power to advise and consent to the President's nominations. As former majority leader Mike Mansfield, said:

Our responsibility is . . . to evaluate the qualifications of the nominee and to record our pleasure or displeasure, to give our advice and consent or our advice and dissent.

I believe David Hayes is extremely well qualified to be Deputy Secretary again. Any fair evaluation of his qualifications on the merits warrants our advice and consent. If Senators wish to dissent, then they should do so, but they should go ahead and invoke cloture so we can vote on this nomination.

Mr. President, at this point I yield the floor.

Mr. SESSIONS. Mr. President, I share the deep concerns about the decision of the Secretary of the Interior not to go forward with cancelling certain oil and gas leases. I am afraid this represents yet another action that irrationally reduces America's production thus forcing the country to send wealth abroad to purchase oil from foreign nations to the detriment of our economy.

While I had no particular objection to the nominee, I do believe that Senator BENNETT and others deserve a complete hearing on their concerns and this is why I choose to oppose cloture at this time.

Mrs. FEINSTEIN. Mr. President, I rise today to support the nomination of David Hayes to be Deputy Secretary for the Department of the Interior. I think extraordinarily highly of him.

At a time when western water issues are at a crisis point, we need someone with experience and knowledge at the Department of the Interior. Many of our great rivers and estuaries are locked in conflict, and I can think of no one better than David Hayes to work to resolve these issues.

He is smart, he is well respected, he gets into the details, and he can close a deal.

David Hayes has been nominated for the No. 2 position at the Department of the Interior. This is an important job. As Deputy Secretary, he would work closely with Secretary Salazar and have management responsibilities over the entire Department, as well as policy responsibilities over the entire Department.

He would have statutory responsibility as the chief operating officer to help lead a department of 67,000 employees and an annual budget of approximately \$16 billion, including annual and permanent funding.

The Deputy Secretary is the day-to-day administrative manager of the Department and an integral part of the policy decisions.

His prior experience in the Clinton administration in the job means he can hit the ground running.

We need him to be confirmed so we can move on issues like climate change, public lands management, and resolve some of the longstanding water conflicts, including the Bay-Delta in my home State.

I believe he has the confidence of Secretary Salazar, and he has my confidence, and I think very highly of him.

He has been able to take critical land and water issues and work out agreements. His great strength is his ability to negotiate.

When it comes to western water, energy, Indian affairs, and many of the other issues that face Interior, having someone who can consult with the key parties and earn their support on a way to move forward is essential.

David Hayes also was key to resolving a decades-old conflict about the Colorado River.

The Quantification Settlement Agreement enabled California to reduce its overdependence on the Colorado River to its 4.4 million acre-foot apportionment over a 15-year grace period and assures California up to 75 years of stability in its Colorado River water supplies.

Without the agreement, California risked being suddenly cut off from the excess of almost 5 million acre-feet of Colorado River water it had been taking, instead of having 15 years to get there.

David Hayes was instrumental in working out the Headwaters Agreement, which converted 75,000 acres of the largest private old-growth redwood grove to the public lands, protected forever.

David Hayes worked very hard to bring the parties together and negotiate a path forward for the timber company on its remaining lands and to preserve the old-growth redwoods—a large, virtually untouched tract land with 1,000- and 2,000-year-old trees.

David Hayes also worked on the historic Cal-Fed agreement, which affected the urban environmental and agricultural needs of the entire California Bay Delta region. We are again in crisis, and we need him back to help resolve it.

All of these were difficult and sophisticated agreements which needed the determined and steady hand that David Hayes provided. Time and again he was able to bring people together behind a broadly agreeable plan.

David Hayes has been well respected since his days at Stanford Law School in the late seventies, where he was recognized for his outstanding editorial contributions to the Stanford Law Review.

He has a long and distinguished career in private practice, which has always focused on environmental, energy, and natural resources matters

and the interconnectedness between the three.

From 1997 to 1999, David Hayes served as the counselor to the Secretary of the Interior, and from 1999 to 2001, he served in the very position that we are considering him for here today.

So there is no doubt that he is extremely well qualified to fill this position.

David Hayes is well positioned to negotiate the many complex issues that face the Department of the Interior today, including the proposed removal of dams on the Klamath River, the development of renewable energy and conservation of the deserts, and the management and conservation of California's Sacramento-San Joaquin River Delta for habitat restoration and water supply goals.

I know that there are some who believe that one cannot understand the West without being from the West. I can only say that there is no one whom I know of who is a candidate for this office who brings more experience in western issues than David Hayes. He is really unparalleled in the arena of Federal officials.

I believe he would be a real asset to the administration, and I hope you will join me in supporting him. I urge my colleagues to vote to confirm David Hayes.

Mr. MERKLEY. Mr. President, I rise today to speak in support of confirming David Hayes to be Deputy Secretary of the Interior. Mr. Hayes is supremely qualified—he has in fact held this exact position before, in the Clinton administration. He has an impressive track record of handling controversial issues and doing so by building consensus among diverse constituencies.

He has successfully used this approach with some of the most pressing issues facing our western states. He worked closely with Senator JON KYL and a range of water and environmental interests to negotiate the framework for the Arizona Water Settlements Act—a historic settlement of water rights disputes involving municipal, agricultural and tribal water users in the State of Arizona. There are pressing water rights issues in the West and across the Nation that need resolution today.

In addition, he worked with Senator DIANNE FEINSTEIN to negotiate the acquisition and protection of the old-growth redwood Headwaters Forest in northern California, along with an accompanying habitat conservation agreement that continues to protect endangered salmon and bird populations on 200,000 acres of adjacent, privately held forest lands in northern California. There are pressing needs to resolve forest management issues today—to protect old-growth habitat while restoring forest health and creating jobs in our forests.

We need Mr. Hayes on the job.

Over the last 4 months, Secretary Salazar has faced a difficult task of

cleaning up the mess the previous administration left at the Department of the Interior.

The American people remember the Department of the Interior under the Bush administration as a Department where “anything goes.” It is the Department the American people associate with Jack Abramoff. It is the Department where agency employees were serving the oil companies instead of the public. And it is the Department where the former assistant secretary in charge of fish and wildlife tampered with the science behind Endangered Species Act decisions.

Again and again, the courts have thrown out the decisions of the Bush administration Interior Department because they didn't pass the smell test.

Last month, for example, a Federal court vacated the entire 5-year plan for oil and gas leasing because the Bush administration didn't do the environmental review properly. So Secretary Salazar and the Obama Interior Department have had to go back to the court and ask for permission to fix it, so that current oil and gas activities aren't disrupted by the bad judgment of the previous administration.

Before that, a court in Utah froze last-minute leases that the Bush administration had granted near Arches and Canyonlands National Parks because the Park Service hadn't been consulted. So Secretary Salazar and the Obama Interior Department have had to go back and review the leases, one by one, to see if any of them are appropriate for development.

It is not a matter of politics in the decisions the Interior Department is making, it is a matter of fixing broken processes and restoring the trust of the American people in the Department that manages one-fifth of the Nation's landmass and 1.7 billion acres off the coasts.

And Secretary Salazar is taking the decisions one by one.

Where Interior is finding good decisions from the Bush administration, they are keeping them in place. Where they are broken, they are fixing them. And when they can't be fixed, they are going back to the drawing board.

Not everyone in this—chamber will agree with every decision that the Interior Department will make. But wouldn't it be a breath of fresh air to see Interior following the rules; fixing problems; making decisions based on the public interest, the best scientific data available, and the rule of law.

David Hayes has served his country under the Clinton administration as Deputy Secretary of the Interior, and served well. He earned a reputation as a problem solver—as someone who will listen and find common ground.

He will help our Nation tackle the complex natural resource challenges we face. There is much work to be done—on water rights, on forest health, on a number of critical issues.

I urge my colleagues to vote in support of Mr. Hayes.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, how much time remains on the Democratic side?

The PRESIDING OFFICER. There is 15½ minutes remaining.

Mr. DURBIN. Thank you. Mr. President, I rise today to discuss the long list of nominees for the Obama administration who are being held up by the Republican Party of the Senate. The Republican Party has been characterized now as a “party of no.” It is a phrase we have been hearing a lot. Consistently, when President Obama has reached out in a bipartisan fashion to ask the Republicans to join him in changing the culture in Washington, in addressing the major issues of our day, in working with him to find compromise legislation, the answer has almost exclusively been “no, not interested.”

Why? Because despite our best efforts to work together, we have been met at every turn by a Republican negative response. Now the party of no—the Republicans in the Senate—has decided to filibuster the nomination of David Hayes to be the No. 2 person in the Department of the Interior.

You must think that is a pretty controversial position, right? Senators on the Republican side, who have made long speeches against filibustering nominees, are breaking their word and now initiating these filibusters. This must be some red-hot controversial position that this man is clearly unqualified to fill. That is not the case.

The Deputy Secretary of the Interior manages the day-to-day operation of the Department of the Interior and works closely with the Secretary on key policy decisions.

David Hayes's previous 2-year tenure in the same position as Deputy Secretary of the Interior and his career of experience give him the knowledge and ability to immediately hit the ground running in this demanding position.

The Secretary of the Interior, Ken Salazar, a former Member of this body, personally reached out to the Republican side of the aisle, telling them he needs to have David Hayes confirmed to make headway on the administration's and the Nation's priorities, including renewable energy production on Federal lands, the effects of climate change on the natural landscape, and reengagement in the resolution of challenging water issues.

David Hayes has a long track record of negotiating solutions to difficult natural resource issues and working cooperatively with Members of Congress.

When he was Deputy Secretary under the Clinton administration, he worked closely with the Republican whip, Senator JOHN KYL of Arizona, on a range of water and environmental interests to negotiate the framework for the Arizona Water Settlements Act.

He worked with Senator FEINSTEIN, on the Democratic side, to negotiate

the acquisition and protection of old-growth redwood Headwaters Forest in northern California.

He partnered with Senator MARY LANDRIEU of Louisiana to secure Land and Water Conservation Fund monies to preserve bayou lands in Louisiana.

This man has experience. He has worked with both sides of the aisle. He has 30 years of experience in natural resources and environmental law, with special expertise in resolving complicated issues. Apparently, 30 years of experience, having held the same job, and having worked with both sides of the aisle is not good enough for the party of no.

On May 6, Senator MURKOWSKI sent a letter to Secretary Salazar raising concerns about the decisions the administration has made in the last few months. The three issues are revisions that the administration has proposed to the Endangered Species Act, regulations relating to future leases in offshore drilling, and the administration's withdrawal of 77 oil and gas leases in Utah.

Senator BENNETT, who is on the Senate floor, continues to object to the administration's withdrawal of 77 oil and gas leases. These leases were withdrawn as a result of a court-ordered injunction, and they are currently under review by the Department.

They are blaming David Hayes for this? Blame the court for this. Give this man a chance to serve our country.

Well, he is not the only nominee held up by the party of no in the Senate. This year, 17 nominees have had to wait and wait and wait for a rollcall vote to be confirmed. In most years, these nominees would have been approved by unanimous consent. Not this year.

Apparently, the Republicans in the Senate don't believe that President Obama has a mandate to lead this country. They are challenging his assemblage of a team of people to make this Federal Government run more efficiently and effectively. This year, the Republican minority demanded rollcall vote after rollcall vote on what were routine appointments by the Obama administration. They would threaten filibusters, force 2 and 3 days of delay, require a 60-vote margin, and then what happened?

Here is one of the controversial nominees. Listen to his vote. Gil Kerlikowske, nominated to be Director of National Drug Control Policy, was held up, debated, and threatened. His confirmation vote was 91 to 1. Thomas Strickland, nominated to be Assistant Secretary for Fish and Wildlife, Department of the Interior, was confirmed 89 to 2. Kathleen Sebelius, nominated to be Secretary of Health and Human Services, was confirmed 65 to 31. Christopher Hill, Ambassador to Iraq, confirmed 73 to 23; Tony West, Assistant Attorney General, confirmed 82 to 4; Lanny Breuer, Assistant Attorney General, confirmed 88 to 0; Christine

Anne Varney, Assistant Attorney General, confirmed 87 to 1; David Kris, Assistant Attorney General, confirmed 97 to 0.

They made us wait for days and weeks and months to bring these names up before the Senate because of the controversy, and listen to the votes: 97 to 0, 87 to 1, 88 to 0. This isn't about the nominee. This isn't about controversy. This is about slowing down the assembly of President Obama's team to bring real change to Washington. That is what this resistance to David Hayes is about as well.

This list goes on. I won't read them all. I will put them in the RECORD. But to put this in historical context, at the start of 2001, when the Senate was controlled by the President's party until May 24, there wasn't a single filibuster of a nomination. The Democratic minority didn't filibuster a single Bush nominee at the start of 2001. This time, we have had to file cloture six times because of threatened filibusters. The following nominees were at least initially filibustered and required a cloture motion: David Ogden, Austan Goolsbee, Cecilia Rouse, and Hilda Solis, for the sole and exclusive purpose of slowing down the assembly of President Obama's administration so there could be an effective and efficient handing over of power.

These Senate Republicans are still negotiating the last election. They want another chance at it. Well, the American people had their day. On November 4 of last year, they elected a new President and asked him to do his best to lead our Nation in troubled times. Sadly, the Republican Party that lost that election will not face the reality that this President needs a team of skilled professionals to stand by him and deal with the real challenges we face in this country. They are slowing down and stopping nominations of well-qualified people who, when they are ultimately called to the floor for a vote, get overwhelming rollcall support.

We have surpassed the number of cloture motions filed on nominations during President Bush's entire first term—four. When President Reagan was elected, in a landslide, a Democratically controlled Senate worked with him to confirm his nominees. So far, the Senate has confirmed 104 Obama nominations. At the same point in 1981, with President Reagan and a Democratic Congress, it confirmed 125 Reagan nominations. The largest gap between nominations and confirmations during this point in the Reagan administration was 71. The largest gap between nominations and confirmations during the Obama administration is 124, a number reached last week.

Unfortunately, this Republican delay is not likely to end soon. There are currently 18 nominees sitting on the Executive Calendar. By our count, there are almost 12 holds on the Republican side of the aisle. A couple of them are worth noting. Senator John Kerry's

brother, Cam Kerry, a well-qualified man, has been nominated to be general counsel of the Department of Commerce, but the Republicans have refused to move his nomination, with no stated reason, no objection to this good man. Regina McCarthy, to be Assistant Administrator of the EPA for Air and Radiation, has been held up because two Senators want her to repudiate the administration's position on climate change.

Once again, they want to renegotiate the November 4 election. Many of the holdups are the result of Republicans asking for policy changes to reinstate George W. Bush policies. Didn't we have an election to decide that?

The nomination of David Hayes is an example. The holds have nothing to do with him. The Republicans holding up his nomination simply want to reinstate George W. Bush-era policies. They long for those good old days under President George W. Bush. They are going to resist change, resist this President, and hold up as many people as they can that he needs to be a success.

Well, elections have consequences. Americans voted for change. But the party of no is holding up the President's agents of change. I urge my colleagues on the other side of the aisle to change their approach and to work with us to confirm a well-qualified man and much-needed person, David Hayes, and the rest of the Obama administration's nominations.

Mr. President, how much time is remaining on the Democratic side?

The PRESIDING OFFICER (Mr. BENNETT of Colorado). There is 4½ minutes remaining.

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

I am sorry, I withdraw that. I see Senator BENNETT is on his feet.

Mr. BENNETT. Mr. President, is there any time remaining on the Republican side?

The PRESIDING OFFICER. There is no time remaining on the Republican side.

Mr. BENNETT. I ask the assistant Democratic leader if he would respond to a single question?

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Let me do this: I want to yield 1 of our 4 minutes to the Senator from Utah, and then I will respond.

Mr. BENNETT. I thank my colleague.

I have listened with interest to the comments of my friend from Illinois—and we use that term loosely around here, but he really is my friend—and I would simply like to add this one historical postscript: Two of the Deputy Secretaries for Interior were held up by Democratic holds in the Bush administration, one for 6 months and one for 8 months, both on issues I consider to be less significant than the issue I have discussed here today. Senators have a right to get answers to their questions

before they make their confirmation votes, as demonstrated by the Democratic Senators who held up these two Deputy Secretaries. My hold of this Deputy Secretary for Interior is nowhere near the amount of time Democrats used when they were holding them up. I would like that historic footnote added to the Senator's comments.

Mr. DURBIN. Mr. President, I acknowledge what my colleague said, and I don't dispute it. I don't recall those particular deputies or their names, but I certainly don't question the facts he has given.

How can you look at David Hayes for this spot, after 30 years of experience, after having held the job before, after actively working with Republicans and Democrats to resolve contentious issues, and say this man is not qualified for the job? I don't get it. I am waiting for the smoking gun to come out. What is this explosive issue that the Republicans know that would hold up this nomination, and they can't come up with it?

Unfortunately, it is part of a pattern. This isn't just about David Hayes, it is about another 18 names sitting on our calendar here—18 names of individuals who are willing to give up their private careers, willing to come to work here in Washington, sometimes for a cut in pay, under difficult circumstances, to serve this new administration and try to change this country. They make the commitment, they get the decision by the family, they come forward, they go through the nomination process, they fill out reams of paper, they sit through the committees and finally get approved by the committees, they get on the calendar, and what happens, usually? Not in this case because Senator BENNETT has been very public about his opposition. Usually it is an anonymous hold by some Republican Senator, fearful of using his name publicly, who will hold up the nomination indefinitely. These poor people languish on this calendar. I commend Senator BENNETT for standing up and stating his opposition. Although I don't agree with it, at least he has had the courage to come forward. That is not the case on many of these.

This is the pattern that is emerging: Slow things down, force us to a vote, and when the vote finally comes, it is an overwhelming vote in favor of the nominee. The sole purpose is to try to stop the new Obama administration from putting in place the team they need to bring real change to America. President Obama said repeatedly during his campaign that real change is hard to come by, that it takes time and there will be people who will fight it every step of the way. We are seeing one of those battles on the floor of the Senate today when it comes to David Hayes.

For goodness' sake, give President Obama and Secretary Salazar the people they need to be successful in the Department of the Interior. I urge my

colleagues to support the cloture motion and to move this nomination forward.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I rise today to speak in support of confirming David Hayes to be Deputy Secretary of the Interior. Mr. Hayes is supremely qualified. He has, in fact, held this exact position before in the Clinton administration. He has an impressive track record of handling controversial issues and doing so by building consensus among diverse constituencies. He has successfully used this approach a number of times working in our Western States. He worked closely with the Senator from Arizona on a range of water and environmental interests and negotiated the framework for the Arizona Water Settlements Act, a historic settlement of water rights disputes involving municipal, agricultural, and tribal water users in the State of Arizona. And that is no small matter. You know, they say in the West that whiskey is for talking, but water, that is for fighting. That is how important it is, that is how difficult it is, and it took a good man like this to bring diverse interests together to solve those problems and move forward.

In addition, Mr. Hayes worked with Senator FEINSTEIN to negotiate the acquisition and protection of old-growth redwood Headwaters Forest.

Mr. President, I ask that we have a strong, affirmative vote to fill out the Department of the Interior and put it to work on the issues facing our Nation.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order and pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of David J. Hayes, of Virginia, to be Deputy Secretary of the Interior.

Harry Reid, Mark Begich, Jeff Merkley, Max Baucus, Patty Murray, Jon Tester, Jack Reed, Jeanne Shaheen, Barbara A. Mikulski, Debbie Stabenow, Tom Harkin, Robert Menendez, Byron L. Dorgan, Mark Pryor, Bernard Sanders, Sherrod Brown, Barbara Boxer.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of David J. Hayes, of Virginia, to be Deputy Secretary of the Interior shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KEN-

NEDY), the Senator from Massachusetts (Mr. KERRY), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The yeas and nays resulted—yeas 57, nays 39, as follows:

[Rollcall Vote No. 189 Ex.]

YEAS—57

Akaka	Feinstein	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Hagan	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Rockefeller
Boxer	Kaufman	Sanders
Brown	Klobuchar	Schumer
Burris	Kohl	Shaheen
Byrd	Kyl	Snowe
Cantwell	Landrieu	Specter
Cardin	Lautenberg	Stabenow
Carper	Leahy	Tester
Casey	Levin	Udall (CO)
Conrad	Lieberman	Udall (NM)
Dodd	Lincoln	Warner
Dorgan	McCaskill	Webb
Durbin	Menendez	Whitehouse
Feingold	Merkley	Wyden

NAYS—39

Alexander	Crapo	Martinez
Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Bond	Enzi	Murkowski
Brownback	Graham	Reid
Bunning	Grassley	Risch
Burr	Gregg	Roberts
Chambliss	Hatch	Sessions
Coburn	Hutchison	Shelby
Cochran	Inhofe	Thune
Collins	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Lugar	Wicker

NOT VOTING—3

Kennedy	Kerry	Mikulski
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The PRESIDING OFFICER. On this vote, the yeas are 57, the nays are 39. Three-fifths of the Senators duly chosen and sworn having not voted in the affirmative, the motion is rejected.

Mr. DURBIN. Mr. President, I ask unanimous consent that the motion to reconsider the vote by which cloture was not invoked on the David Hayes nomination be considered entered by the majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

● Mr. KERRY. Mr. President, I was necessarily absent for the vote today on the motion to invoke cloture on the nomination of David Hayes to be Deputy Secretary of the Interior because I was attending a funeral. If I were able to attend today's session, I would have supported cloture on the Hayes nomination.●

Ms. SNOWE. Mr. President, I rise to expand on my vote in favor of Mr. David Hayes to be Deputy Secretary of the Interior. It is my understanding that Senator BENNETT has requested answers to a series of substantive questions regarding the Department of the Interior's decision to withdraw 77 parcels in Utah from an oil and gas lease sale. I strongly believe that it is the prerogative of any Member of the Senate to have his or her questions answered in detail, especially concerning an issue relevant to their home State. I further understand that the Secretary of the Interior has indicated

that there will be a thorough review of the administrative record concerning the 77 lease parcels and the Department will provide a report with recommendations by May 29, 2009. I believe that this is a reasonable path forward on the issues at this time. With that said, if Senator BENNETT's questions are not sufficiently addressed by that date, I reserve my right to object to future executive nominations to the Department of the Interior. I look forward to successful resolution of Senator BENNETT's concerns.

Mr. DURBIN. Mr. President, I ask unanimous consent that following the statement by Senator LANDRIEU of 4 minutes, the Senate resume legislative session and resume consideration of H.R. 627.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I would amend that unanimous consent request. I wish to amend that to allow 5 minutes for the Senator from Louisiana, and 5 minutes for Senator CRAPO, and then the Senate resume legislative session and resume consideration of H.R. 627; and at that point, Senator MENENDEZ be recognized for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I wanted to take a few minutes in reference to the vote we just had. I cast my vote for the nominee, based on not only his experience with the Department, but based on my confidence in the Secretary that the President has appointed to help lead this country to a position of energy security, a position we do not enjoy at this very moment.

Despite the work that has been done here and on the other side of the Capitol in the last couple of years, despite the rhetoric of several decades, we do not enjoy energy security. We have environmental issues, but we have security issues.

I wanted to express this, because there was obviously some hesitancy about this nominee based on an issue, I believe, involving domestic oil and gas production. That is what this vote was about, not about this personal nominee.

This was a vote to express concern, which I share to some degree, that this administration has not positioned itself appropriately and aggressively enough in the area of domestic energy production, of traditional as well as alternative and new sources.

Here I want to express that while I voted yes on this nominee, that I plan, and Members on the Republican and Democratic side plan, to be more vocal in expressing our concern to this administration that the tax proposals on the oil and gas industry are not going to create jobs. We are going to lose jobs, 1.8 million.

While we move to alternative fuels, we are turning our back on traditional

natural gas, which is plentiful, which makes money for lots of people, which secures America, strengthens our industry and creates jobs.

So this was a vote to indicate an unsettling on this floor, both from the Republican side and among some Democrats, that this issue needs to be addressed more directly and more aggressively.

I have all the confidence, as I close, in Secretary Salazar. He served right here with us a few years ago. I know he seeks a balance. So I trust that we will start seeing some aggressive comments coming out from the administration as we push forward to keep leasing up in the gulf off the coast of Alaska, opening up Virginia, other parts of the Continental Shelf, as well as the plentiful gas in your own State, and in places such as Pennsylvania and Ohio, where our industries are desperate for this cheap, clean energy source.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. Mr. President, I wish first to indicate to the Senator from Louisiana that I agree with her comments. I think the last time I got up to speak on this energy issue she was here on the floor as well. I share her sentiments about the need for us to continue to focus on developing a rational national energy policy for our Nation.

On July 30 last year, I stood before this body to talk about the No. 1 issue in the country to the people at that time: energy. Gasoline prices were over \$4 a gallon and surging, and Americans were wondering what their leaders in Washington, DC, were going to do to help. I place tremendous faith in the opinions and ideas of Idahoans. So in early July I asked my constituents to write to me and tell me what they thought we ought to do and to describe to me what the impact of our failure to have a reasonable national energy policy was having on their lives. Then I made a promise that I would submit their stories to the CONGRESSIONAL RECORD, a process I vowed to continue until all of their stories had been submitted. In total, I received over 1,200 responses from my State, 600 almost overnight. It has taken me nearly 10 months to get all of these stories entered into the CONGRESSIONAL RECORD due to the requirements of the CONGRESSIONAL RECORD limitations as to how much can be submitted each day.

Today I submit the last of those stories, and I want to share with you what we have learned. I received touching stories from Idahoans about how they have been negatively impacted by higher energy prices, and the stories indicate that high energy prices had impacted every aspect of their lives. Idahoans had to cut back on family time. Many were unable to visit elderly relatives and had to cut back on family activities together outside of the home such as sports or music lessons. But those were just some of the less serious challenges Idaho families faced. Many

had to cut back on their home repairs, their air conditioning, and their contributions to their retirements plans. Many had to make a decision between whether to eat food or to pay for the gasoline they needed to get to their work and keep their job or to purchase needed medications.

I can remember one story of a young mother telling me how she and her husband had started eating much less so that their children could have enough to eat, and they could still have enough gasoline each week to get to work and keep their jobs.

Many of their stories were heart wrenching. Many talked about losing their jobs and being forced to relocate or to make decisions between, as I indicated, purchasing gas or eating their next meal. Many reduced their expenses, cut their luxuries and found ways to economize. But the dramatic increase we experienced last year brought Idaho families, as many in other States, to their knees asking for help.

They offered explanations about what has happened and offered links to various publications and videos they found helpful. They attached photos of their circumstances. They sent legislative resolutions from national, State and local entities to remind us that other legislators around the country were interested in finding solutions to this issue as well. Many of them have spent a lot of time and energy on this subject, researching energy options and sharing their opinions on what they have learned. They offered solutions. My constituents suggested we need more conservation, that we need more domestic drilling. They wanted more public transportation and more nuclear power options. They pushed for additional renewable and alternative energy sources and research.

In short, they came through with the kind of common sense that people all across this country have been sharing with this Congress on the need for energy solutions. They want us to be less dependent on petroleum, and they want us to be less dependent on foreign sources of this petroleum. They want us to have a broad, diverse energy base of renewable and alternative fuels, including strong support for nuclear power. But above all, they were angry at Congress for not dealing with the issue of high energy prices. They couldn't believe the country had been through an energy crisis before but that Congress still has not managed the issue and come up with a solution. Idahoans expressed frustration with partisan politics and the inability to move past the age-old arguments and reach consensus on a comprehensive energy policy. Many said they were grateful I had asked for their thoughts.

I come before the Senate to echo my constituents' comments and concerns about our energy policy and to offer solutions. As I stand before the Senate, we are no closer to a comprehensive energy policy than we were last July. Yet

economic indicators point to a rally in crude oil prices. Oil is now above \$58 a barrel and gas prices are the highest they have been in 6 months. We don't need a repeat of last summer. We need to work together to craft a comprehensive energy policy that promotes domestic security and creates American jobs while providing energy at the lowest cost possible to consumers.

The key to the energy future is to take a balanced approach that includes domestic production, conservation, renewables, nuclear, and alternative fuel development.

I would like to conclude my remarks by repeating my constituents' desire for the kind of bipartisanship that can transform this country's energy policy. I welcome the opportunity to work with all my colleagues on this issue. I encourage us not to get into another energy crisis such as we faced last summer, with Congress having failed to take the important steps it can to help America become energy independent and a strong supplier of its own energy resources.

I yield the floor.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

CREDIT CARDHOLDERS' BILL OF RIGHTS ACT OF 2009—Resumed

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 627) to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

Pending:

Dodd-Shelby amendment No. 1058, in the nature of a substitute.

McConnell (for Gregg) amendment No. 1085 (to amendment No. 1058), to enhance public knowledge regarding the national debt by requiring the publication of the facts about the national debt on IRS instructions, Federal Web sites, and in new legislation.

Vitter amendment No. 1066 (to amendment No. 1058), to specify acceptable forms of identification for the opening of credit card accounts.

Sanders amendment No. 1062 (to amendment No. 1058), to establish a national consumer credit usury rate.

Gillibrand amendment No. 1084 (to amendment No. 1058), to amend the Fair Credit Reporting Act to require reporting agencies to provide free credit reports in the native language of certain non-English speaking consumers.

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized.

Mr. MENENDEZ. Mr. President, we see gathering clouds in this economic storm and those clouds are credit card debt. At the very same time that it is becoming harder to get new credit, Americans have almost a trillion dollars of credit card debt outstanding.

Defaults are rising and delinquencies are at a 6-year high. It is clear this isn't only a question of consumers overspending. Credit card companies are trying to boost their profit with deceptive practices and making the situation worse. People are seeing so much of their paychecks eaten up by late fees, over-the-limit fees, and interest payments that today companies can unilaterally increase at any time. Credit card companies are pushing cards on college students who can't afford them and teenagers are winding up with a lifetime of debt.

Companies are raising interest rates on consumers and customers who have a perfect record with their credit card but miss a payment with some other creditor. Maybe worst of all, if you have a credit card, chances are there is a line in the fine print that says the company can change the rules at any time. Considering some of the changes companies have made already, who knows what they could do tomorrow.

I have heard from thousands of people in New Jersey who feel their credit card contracts are booby-trapped, that their credit card agreements conceal all kinds of trapdoors behind a layer of fine print. Take one false step and your credit rating plummets and your interest rate shoots through the roof.

These are the same kinds of stories we started hearing as the foreclosure crisis began. Right now there is nothing stopping credit card companies from doing this to consumers—no law, no level playing field, no protection for the average American, no way to get the kind of fair treatment we expect as a matter of common sense.

When some people see that their interest rate has shot through the roof for no apparent reason, they call and plead with their companies for help, but their fate lies solely in the hands of the credit card companies. If the companies don't want to help, they are out of luck and stuck with an even bigger mountain of debt. Meanwhile, credit card companies are still making multi-billion-dollar profits. This isn't just impacting the lives of individual Americans and families trying to make ends meet; it has major ramifications for the entire economy.

One of our major economic challenges right now is getting credit flowing again but not at the high price credit card companies are imposing. The economy is never going to get running at full speed again if consumers can't get their bearings because they have fallen behind on a payment treadmill that credit card companies keep speeding up. If there is any time to end deceptive practices and level the playing field, it is now.

Credit card reform is something I have been calling for since I set foot in the Senate. In 2006, one of the first pieces of legislation I introduced was an effort to reform credit card practices. Even then it was clear credit card debt was a looming problem that had the potential to wreak havoc on

American families unless we achieved commonsense reforms. If there is one thing we have learned from this economic crisis, it is that we can't wait for a dangerous situation to reach full-blown crisis proportions before we act.

This Congress, as I have done for several Congresses, I introduced the Credit Card Reform Act to tackle essentially the same issues this current bill deals with, including banning retroactive rate increases, protecting young consumers from being sucked into the cycle of debt, reasonably tying fees to costs, and prohibiting unilateral changes to agreements.

We have \$1 trillion collective debt in credit cards. That is how big this issue is. I am proud to see Chairman DODD's credit card reform bill includes many of the provisions I included in my bill and have championed for years. His leadership is what has brought us to the floor today. I included in my bill many of those provisions, and we have championed them together.

Though in some cases I would like to see different provisions that I think would make for stronger legislation, I still look forward to working with the chairman on one or two of those. But this bill represents one of the strongest, most comprehensive efforts yet to end some of the most egregious practices of credit card issuers, while making sure that Americans young and old don't fall so easily into financial traps.

The principle behind this bill is simple: Companies should be clear about the rules upfront, and they should not change them in the middle of the game. The bill says, similar to a provision I have been pushing, if companies want to change the terms of credit card agreements, they have to give reasonable notice before they do so. It will end an industry practice known as universal default on existing credit balances so companies don't raise interest rates on customers' outstanding debt when they have a perfect record with that credit card but maybe miss a payment by a few days with some other creditor.

I called for this in my bill, and I am proud to see Chairman DODD has it in his. I am also proud he included a provision I called for in my bill to make sure that when fees are imposed, they are reasonably tied to the original violation or omission that triggered the fee, not just the companies' desire to increase profits.

This bill will discourage the bait-and-switch tactics behind the preapproved offers that almost every American consumer has seen come into their mailbox, an idea I also put forward strongly in my own bill. When you get a card offer, the offer should be real. The terms should not be so good to be true that it fades away once you apply for the card. This legislation will provide recourse for consumers, if a card issuer tries a sleight of hand and changes the terms in the fine print.

One of the things I have been focused on—and I am glad to see it in this