

**THE IMPORTANCE OF PUBLIC DISCLOSURE
REQUIREMENTS FOR PROTECTING HUMAN
HEALTH, THE CLIMATE, AND THE ENVIRONMENT,
ON THE FOLLOWING BILL, AND OTHER RELATED
MEASURES: H.R. 5636, “TRANSPARENCY IN
ENERGY PRODUCTION ACT OF 2020”**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND
MINERAL RESOURCES

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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OF PUBLIC DISCLOSURE REQUIREMENTS
FOR PROTECTING HUMAN HEALTH, THE
CLIMATE, AND THE ENVIRONMENT, ON THE
FOLLOWING BILL, AND OTHER RELATED
MEASURES: H.R. 5636, TO PROVIDE FOR THE
ACCURATE REPORTING OF FOSSIL FUEL
EXTRACTION AND EMISSIONS BY ENTITIES
WITH LEASES ON PUBLIC LAND, AND FOR
OTHER PURPOSES, “TRANSPARENCY IN
ENERGY PRODUCTION ACT OF 2020”**

**Tuesday, January 28, 2020
U.S. House of Representatives
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 10:04 a.m., in room 1334, Longworth House Office Building, Hon. Alan S. Lowenthal [Chairman of the Subcommittee] presiding.

Present: Representatives Lowenthal, Levin, Cunningham; Gosar, Westerman, and Hern.

Also present: Representative Luján.

Dr. LOWENTHAL. The Subcommittee on Energy and Mineral Resources will come to order.

Today, the Subcommittee is holding its first hearing of the 2020 year, and it is on H.R. 5636, Transparency in Energy Production Act of 2020. This is legislation that I introduced earlier this month.

Under Committee Rule 4(f), any oral opening statements are limited to the Chair and the Ranking Minority Member or their designee. I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Subcommittee Clerk by 5 p.m. today.

Hearing no objection, so ordered.

I am also asking for unanimous consent for Congressman Ben Ray Luján to sit on the dais and participate in this morning's hearing.

Hearing no objection, so ordered.

STATEMENT OF THE HON. ALAN S. LOWENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Dr. LOWENTHAL. First, I would like to welcome our witnesses and particularly thank those of you who have traveled great distances to be here with us today.

My bill, on its face, is simply about transparency. It is about making sure that companies operating on America's public lands tell the public the basic information about how they run their operations.

But it is actually more than that. The bill is about protecting public health, safeguarding the environment, and trying to keep the devastating impacts of climate change in check.

The oil and gas industry has, for years now, touted natural gas as the solution to climate change. They point out, quite rightly, that burning natural gas produces fewer carbon emissions than burning coal. But they don't point out that there is also a catch. Methane, the main component of natural gas, is a powerful greenhouse gas, much worse for our climate than carbon dioxide.

In fact, over a 20-year period, it is 86 times stronger or more powerful than carbon dioxide at trapping heat. That means that once a little bit of methane leaks, as little as 3 percent, you are no better off for the climate than going back to coal.

And it is not just about the climate. Methane is the main component of natural gas, but it is not the only component of natural gas. When methane leaks from oil and gas production, benzene leaks, hydrogen sulfide leaks, and other toxic volatile organic chemicals also leak.

And the people who live near oil and gas sites breathe these in, or they breathe in the ozone that these chemicals help to create. They complain of nosebleeds, nausea, and more serious health problems, and their children have to go to the emergency room because of asthma attacks.

I saw and smelled some of this firsthand last year when I visited and this Committee held a hearing in New Mexico. I went to a well pad not far from Chaco Canyon on a beautiful, clear spring day, and I saw some pipes and wellheads and storage tanks, and nothing seemed out of the ordinary.

But then I looked through an infrared camera. Instead of a beautiful landscape, I saw billowing clouds of gas pouring out of all of this equipment. Methane, clear as day but invisible to the naked eye, was leaking unchecked into the air.

Methane has no odor, but as I got closer, I could smell some other chemicals that felt like they were making me sick. I was able to get into our car and drive away. The people who live there don't have that option of driving away as soon as they smell it.

The oil and gas industry likes to say they have this issue completely under control. It is just a few bad actors, or we are exaggerating it, and don't worry, they are going to take care of it. They have it under control.

The industry shows us data from the Environmental Protection Agency saying that methane emissions are down 14 percent since 1990, even as natural gas production has more than doubled. They don't like looking closer at the data, though, because it shows that all of the reductions in methane emission have come from better practices in transmission and in distribution.

What we are talking about here today, the emissions of methane from wells and equipment in the field, the EPA data shows that when we just look at the emissions from the field, these emissions have increased by over 30 percent since 1990.

Unfortunately, the EPA estimates are just that, an estimate. We don't know exactly how much methane companies are leaking, because there is no requirement for them to find out. And even if these companies look into it, there is no requirement to let the local communities nearby know what that data is.

That is why we need the Transparency in Energy Production Act, and it is not just about methane. It is about transparency across the board.

In 1986, President Reagan signed the Emergency Planning and Community Right-to-Know Act. The name of that law says it clearly: communities have a right to know what is being released into their own backyards.

And the evidence has shown that requiring public disclosure helps drive down pollution. In the first 20 years after the law was signed, pollution releases dropped 59 percent.

So, if the oil and gas industry and my friends on the Republican side are going to oppose strong regulations to cut down on methane emissions and claim that the data supports them on that, I hope they will support getting better data and giving it to the public.

[The prepared statement of Dr. Lowenthal follows:]

PREPARED STATEMENT OF THE HON. ALAN S. LOWENTHAL, CHAIR, SUBCOMMITTEE ON
ENERGY AND MINERAL RESOURCES

First, I would like to welcome our witnesses and particularly thank those of you who traveled great distances to be here today.

My bill, on its face, is simply about transparency. It's about making sure that companies operating on America's public lands tell the public basic information about how they run their operations.

But it's actually about much more than that. The bill is about protecting public health, safeguarding the environment, and trying to keep the devastating impacts of climate change in check.

The oil and gas industry has, for years now, touted natural gas as the solution to climate change. They point out, quite rightly, that burning natural gas produces fewer carbon emissions than burning coal. But they don't point out that there's a catch. Methane, the main component of natural gas, is a powerful greenhouse gas—much worse for our climate than carbon dioxide.

In fact, over a 20-year period, it's 86 times stronger than carbon dioxide at trapping heat. This means that once a little bit of methane leaks—as little as 3 percent—you're no better off for the climate than going back to coal.

And it's not just about the climate. Methane is the main component of natural gas, but it's not the only component of natural gas. When methane leaks, benzene leaks. Hydrogen sulfide leaks. Other toxic volatile organic chemicals leak.

And the people who live near oil and gas sites breathe these in. Or they breathe in the ozone that these chemicals help create. They complain of nosebleeds, nausea, and more serious health problems, and their children have to go to the emergency room because of asthma attacks.

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because it shows that all of the reductions in methane emissions have come from better practices in transmission and distribution.

What we're talking about—the emissions of methane from wells and equipment in the field—the EPA data shows those emissions have increased by over 30 percent since 1990.

Unfortunately, even that EPA data is largely an estimate. We don't know exactly how much methane companies are leaking, because there's no requirement for them to find out. And even if these companies look into it, there's no requirement to let nearby communities know.

That's why we need the Transparency in Energy Production Act, and it's not just about methane. It's about transparency across the board.

In 1986, President Reagan signed the Emergency Planning and Community Right-to-Know Act. The name of that law says it clearly: communities have a right to know what is being released into their own backyards.

And the evidence has shown that requiring public disclosure helps drives down pollution. In the first 20 years after that law was signed, pollution releases dropped 59 percent.

So, if the oil and gas industry and my friends on the Republican side are going to oppose strong regulations to cut down directly on methane emissions, and claim that the data supports them on that, then I hope they'll support getting better data and giving it to the public.

Dr. LOWENTHAL. With that, I look forward to the testimony of our witnesses, and I now recognize Ranking Member Gosar for his opening statement.

STATEMENT OF THE HON. PAUL A. GOSAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Dr. GOSAR. Thank you, Chairman.

Today, the Subcommittee will consider H.R. 5636, the Transparency in Energy Production Act of 2020, sponsored by my friend, Chairman Lowenthal.

This bill mandates that energy operators on Federal lands and waters must submit numerous reports based on the so-called sustainability accounting standards produced by the Sustainability Accounting Standards Board, or SASB, if they wish to bid on or operate a Federal lease.

While we can all agree that we should be promoting transparency at all levels of government, especially concerning the multiple use management of our Federal lands, this bill misses the mark and instead places Federal transparency requirements in the hands of a non-profit organization.

The SASB, which develops the rules for information that companies would be forced to disclose under this bill, is a non-governmental organization with no oversight from the Administration nor Congress.

This is not to say that the experts employed by the Board are not credible or well meaning, but they are unaccountable, unelected, and have no official responsibility to the public.

Furthermore, it is hard to argue that this Board is unbiased or apolitical as its top donors include 2020 presidential candidates Michael Bloomberg and Tom Steyer, both of whom have been very transparent about their goals to end conventional energy development on Federal lands. Bloomberg even served as Chairman of the Board for several years and, according to the SASB website, remains very involved in leading the organization.

This bill requires companies to issue reports based on SASB standards before bidding on a lease and issue additional reports annually on any active Federal leases they hold. If they fail to do so, the BLM can choose not to issue a lease or halt all production on a lease with no warning.

Because the bill is unclear regarding how BLM must evaluate these reports, the BLM could claim that a report is deficient for any reason at all and shut down individual leases or even the entire leasing program.

Further, if BLM decides to shut down operations because they deem a producer's report is incomplete, the affected entities may have valid takings claims against the Federal Government.

Because this Board is unelected and unaccountable and this bill would make their standards law, the Board could theoretically make changes to their standards at any point, forcing companies to issue new reports or risk BLM shuttering their operations.

Further, there is no mechanism in the bill for the Administration or Congress to amend the standards if the Board makes an unwelcome and unworkable change, or to account for implementation challenges.

The sustainability accounting standards imposed by this bill include a multitude of disclosure topics and accounting metrics which companies must cover in their reports. Operations on Federal lands are already subject to numerous Federal regulatory requirements under several statutes and are accountable to multiple agencies before, during, and after operations take place.

For example, the SASB requires companies to disclose information regarding greenhouse gas emissions and air quality, which operators must already report annually to the EPA.

The standards call for information about impacts on biodiversity and Indigenous peoples, which are thoroughly considered throughout the NEPA process.

The standards also ask for companies to report to BLM about their labor practices, which are rightfully regulated through the Department of Labor.

Any aspect of responsibility executing and producing on Federal lease is accounted for and mandated through the Federal regulatory process, which includes reporting requirements and transparency. However, if this body determines that more accountability and transparency are needed, then that authority should remain with the relevant Federal agencies and with Congress.

We should not be outsourcing our Federal regulatory requirements to a liberal non-profit group that has not been elected by the people or appointed by elected officials. I highly doubt that any of my colleagues would want to do the same for groups with ties to well-known conservative organizations or conservative presidential candidates.

The mandate in this bill would not increase transparency or provide additional benefits to the public but would undoubtedly serve as fodder for lawsuits from anti-energy activists aimed at stymying domestic energy progress.

The authority to regulate our natural resources should remain with the Administration and with Congress, not with non-profits by those who wish to end multiple use altogether.

With that, I yield back.

Dr. LOWENTHAL. Thank you, Ranking Member Gosar.

Now I am going to introduce today's witnesses. Our first witness is Ms. Susan Mason, Managing Partner at Aligned Partners and a Founding Member of the Business Coalition for Conservation and Climate. Our second witness is Mr. Victor Snover, the Mayor of Aztec, New Mexico, a former United States Army officer and a current high school Junior ROTC instructor. Our third witness is Mr. Kenneth Stein, the Policy Director for the Institute for Energy Research. And our final witness is Dr. Gretchen Goldman, the Research Director at the Center for Science and Democracy at the Union of Concerned Scientists.

Let me remind the witnesses that they must limit their oral testimony to 5 minutes, but that their entire testimony will appear in the hearing record.

When you begin, the lights in front of you on the witness table will turn green, but after 4 minutes, the yellow light will come on. Your time will have expired when the red light comes on, and I will ask you to please complete the statement that you are making.

I will let you go on a little bit, but you know that you have reached the end.

I am going to allow the entire panel to provide their testimony before we have any questioning of witnesses.

The Chair now recognizes Ms. Mason to testify for 5 minutes.

Welcome to the Committee.

STATEMENT OF SUSAN MASON, MANAGING PARTNER, ALIGNED PARTNERS; AND FOUNDING MEMBER, BUSINESS COALITION FOR CONSERVATION AND CLIMATE, SAN FRANCISCO, CALIFORNIA

Ms. MASON. Good morning, Chairman Lowenthal, Ranking Member Gosar, and members of the Subcommittee.

Thank you for inviting me to testify today regarding the importance of public disclosure requirements for protecting human health, the climate, and the environment. I sincerely appreciate the opportunity to be here.

My name is Susan Mason, and I am a founder and managing partner of Aligned Partners, a venture capital firm based in Menlo Park, California. I am also a founding member of the Business Coalition for Conservation and Climate, an organization of leading business executives, investors, and venture capitalists, who feel strongly that the transparency and accountability within the oil and gas sector is critical to addressing climate change in the United States.

For three decades, I have worked in the venture capital space and founded my own fund in 2011. Throughout this time, I have seen a remarkable transformation occur. After avoiding it for years, investors of all political stripes have come to realize that climate change is not only occurring but poses a real and clear threat to our economy.

This transition is born out of absolute necessity. Studies have estimated the value of capital assets at risk of climate regulation or physical impacts could range from \$4.2 trillion to \$4.3 trillion by 2100.

This realization has created a demonstrable shift in the investment strategy of leading banks and the management practices of some of the world's most notable polluters. We saw a tangible example of this tectonic shift earlier this morning when Larry Fink, Chief Executive Officer of BlackRock, the world's largest asset manager with over \$7 trillion under management, informed the firm's clients that it would be altering its energy investment strategy to account for the risk posed by climate change.

Not only would it be divesting from thermal coal altogether, the company would be applying newer, more rigorous screening for investments within the energy sector. In applying these new measures, Fink said that investors, along with regulators, insurers, and the public needed a clearer picture of how companies are managing sustainability-related questions.

I could not agree more because a company's long-term prospects for success are completely dependent on its ability to sustain itself.

BlackRock's example is one of countless I am seeing in the investment space. Leading oil and gas companies like BP and Exxon have all been required to modify their climate impacts because shareholders demanded action.

In the most stark action to date, beginning this year, compensation for executives at Royal Dutch Shell will partially be tied to the company achieving short-term carbon emission targets.

I am often asked why these changes are occurring, and the reason is that as access to information has improved, the investors in these companies have demanded that the companies in which they are invested in operate in their long-term best interest.

While this shift is critically important for the long-term sustainability of our planet and the economy, it has not had a similar impact on the way our Federal lands are managed, which remains unchanged.

The reason, I surmise, in part, is because the American people don't have the same level of access to information about the types of energy being developed on public lands and what the climate impact is of that development.

As owners and caretakers of our Nation's resources, we should all strive for greater transparency and accountability from our Federal Government, particularly when it comes to our most cherished national resources, our public parks and monuments.

Fortunately, legislation has recently been introduced by several members of this panel that would take important steps toward bringing greater transparency related to energy developed on public lands.

The aptly named Transparency in Energy Production Act, or TEPA, would impose common-sense measurement standards on oil and gas companies holding or seeking a lease to acquire energy on public lands.

I used the term "common-sense" because the bill uses a brilliantly eloquent solution, adopting the industry developed standards created by the Sustainability Accounting Standards Board, or SASB.

SASB was created in 2011 by some of the Nation's largest banks and institutional investors to create a streamlined and administratively easy set of measures companies could use to report to their investors on sustainability risks and opportunity.

Today, over 120 publicly traded companies use SASB to report to their investors and the public. This list includes oil and gas companies, like Apache, Baytex, GS Caltex, Halliburton, and others.

TEPA does not mandate a change in the types of energy developed, but rather gives the American people the data they need to make informed decisions and compel them to manage these areas in the national interest. Just as publicly traded companies are required to share critical information with their shareholders, as owners of these lands the American people are entitled to that information. And as the private sector is already demonstrating, money can be made without degrading our health and environment.

I want to thank this Committee for holding today's hearing on the vital role transparency should play in the management of public lands and urge support for H.R. 5636.

Thank you.

[The prepared statement of Ms. Mason follows:]

PREPARED STATEMENT OF SUSAN MASON, MANAGING PARTNER OF ALIGNED PARTNERS AND FOUNDING MEMBER OF THE BUSINESS COALITION FOR CONSERVATION AND CLIMATE

Chairman Lowenthal, Ranking Member Gosar, and members of the Subcommittee, thank you for inviting me to testify today regarding "The Importance of Public Disclosure Requirements for Protecting Human Health, the Climate, and the Environment." I sincerely appreciate the opportunity to be here.

My name is Susan Mason, I am a founder and Managing Partner of Aligned Partners, a venture capital firm based in Menlo Park, California. I am also a founding member of the Business Coalition for Conservation and Climate, an organization of leading business executives, investors, and venture capitalists who feel strongly that the transparency and accountability within the oil and gas sector is critical to addressing climate change in the United States.

For three decades, I have worked in the venture capital space and founded my own fund in 2011. Throughout this time, I have seen a remarkable transformation occur. After avoiding it for years, investors of all political stripes have come to realize that climate change is not only occurring, but poses a real and clear threat to our economy.

The transition is born out of absolutely necessity. Studies have estimated the value of capital assets at risk of climate regulation or physical impacts could range from \$4.2 trillion to \$4.3 trillion by 2100. This realization has created a demonstrable shift in the investment strategy of leading banks, and the management practices of some of the world's most notable polluters.

We saw a tangible example of this tectonic shift earlier this month when Larry Fink, Chief Executive Officer of BlackRock, the world's largest asset manager with over \$7 trillion under management, informed the firm's clients that it would be altering its energy investment strategy to account for the risk posed by climate change. Not only would it be divesting from thermal coal altogether, the company would be applying newer, more rigorous screening for investments within the energy sector.

In applying these new measures, Fink said that investors, along with regulators, insurers, and the public, need a clearer picture of how companies are managing sustainability-related questions. I could not agree more because a company's long-term prospects for success are completely dependent on its ability to sustain itself.

BlackRock's example is one of countless I am seeing in the investment space. Leading oil and gas companies like BP and Exxon have all been required to modify their climate impacts, because shareholders demanded action. In the most stark action to date, beginning this year, compensation for executives and Royal Dutch Shell will partially be tied to the company reaching short-term carbon emissions targets.

I am often asked why these changes are occurring and the reason is that as access to information has improved, the investors in these companies have demanded that the companies in which they are invested are operating in their long-term best interests.

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As owners and caretakers of our Nation's resources, we should all strive for greater transparency and accountability from our Federal Government, particularly when it comes to our most cherished natural resource, our public parks and monuments. Fortunately, legislation was recently introduced by several members of this panel that would take important steps toward bringing greater transparency related to energy developed on public lands.

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Today, over 120 publicly traded companies use SASB standards to report to their investors, and the public. This list includes oil and gas companies like Apache, Baytex, GS Caltex, Halliburton, Hess, Kinder Morgan, NRG, Southern Company, Southwestern Energy and TC Energy.

TEPA does not mandate a change in the types of energy developed, but rather gives the American people the data they need to make informed decisions and compel to manage these areas in the national interest. Just as publicly traded companies are required to share critical information with their shareholders, as owners of these lands, the American people are entitled to that information, and as the private sector is already demonstrating, money can be made without degrading our health and environment. I want to thank this Committee for holding today's hearing on the vital role transparency should play in the management of public lands and urge support for H.R. 5636.

Dr. LOWENTHAL. Thank you, Ms. Mason.
Now I turn to Mr. Snover for your testimony. Welcome.

**STATEMENT OF VICTOR SNOVER, MAYOR, AZTEC,
NEW MEXICO**

Mr. SNOVER. Good morning, Chairman Lowenthal, Ranking Member Gosar, and members of the Subcommittee. Thank you for inviting me to testify today in support of H.R. 5636. I sincerely appreciate the opportunity to be here.

My name is Victor Snover, and I am the elected City Commissioner and Mayor of Aztec, New Mexico. I am also a current high school Junior ROTC instructor and former U.S. Army noncommissioned officer.

I come before you today advocating for the people of Aztec, New Mexico, many of whom are disproportionately impacted by fossil fuel emissions leading to short- and long-term impacts on their health, community, and livelihoods.

The legislation before us today would help communities like mine make informed decisions regarding the impacts of harmful oil and gas emissions ranging from how we spend our small local budgets, from health care to infrastructure, education and mitigation from local oil and gas pollution, to simply if our kids should spend time

outside on a particular day due to high rates of pollutants in the air.

In my day job as a public high school teacher at Aztec High School, anecdotally, I would estimate approximately half of my students suffer from some sort of respiratory issue.

I also recognize that there can be other mitigating factors for this, but I believe that we should be doing everything and anything within our power as elected officials and policy makers to reduce as many of those mitigating factors as we possibly can.

Maximizing profits should never be a factor when it comes to public health and safety. At a minimum, our communities should know what kinds of emissions are being pumped into our atmosphere from the oil and gas industry.

In 2014, NASA discovered what has often been described as the Delaware size methane cloud in the upper atmosphere above the Four Corners region of the United States. My community of Aztec is in the very heart of this region nestled in the far northwest corner of the beautiful state of New Mexico.

Covering approximately 2,500 square miles of our region, the Four Corners methane hot spot is the most concentrated area of methane pollution in the entire United States. That bears repeating—the entire United States.

This problem affects tens of thousands of people in the region living in communities like Farmington, New Mexico just up the road from me; Bloomfield; and my home of Aztec, New Mexico, along with many other towns around us.

This methane cloud did not just suddenly appear. It is the result of years of companies polluting our air without detailing the full extent of their projects' impacts. H.R. 5636 would begin to remedy this problem.

Colorado has become a model for us to emulate. In 2014, they placed limits on methane emissions, and even still their oil and gas industry is still going strong. Proof of the concept that reducing waste in emissions does not harm the industry, but it can help the health, well-being, and quality of life of the people living in and around extraction sites while still creating jobs.

The states are leading the way, but we need alignment with the Federal Government.

In New Mexico, under current regulations and rules, there is an annual loss of \$275 million in energy resources and an additional \$43 million in state tax and royalty revenue that we could and that we should be investing in our school systems.

In a state where our education system consistently ranks in the lower tier nationally, any opportunity to increase revenue for educational programs should be explored.

New Mexico's methane emissions are said to have the same short-term impacts on our climate as 22 coal-fired power plants or 28 million internal combustion engine automobiles.

Beyond resource and revenue losses, the unnecessary leaks of methane are allowing other harmful forms of pollution to escape that lead to ozone smog. The state's air quality data shows that San Juan County, which is the county in which Aztec is located, is at risk of violating Federal ozone standards.

We should not be willing to accept outcomes that put industry profit over the general health and clean air standards that we need to live productive lives. In areas with diminished air quality, it is often the youngest and the oldest amongst us that suffer disproportionately more.

It is the poorest of us that suffer most because they do not possess the resources to move further away from well sites or to seek the needed medical treatment to help with their respiratory issues, like emphysema and asthma.

Thankfully, the state of New Mexico is now turning the corner to be on the leading edge of working to reduce emissions and understand the actual level of emissions that are resulting from oil and gas. But, unfortunately, the Federal Government, mainly the Bureau of Land Management, or BLM, is failing to do so, thus taking us backward and risking our public health and livelihood in the process.

The legislation before us today is a good first step at addressing these environmental injustices and the climate crisis, and helping state and local leaders make informed decisions about their communities' energy needs.

With greater information, we have a more informed citizenry who can make better decisions about their future. As Thomas Jefferson once said, "An educated citizenry is a vital requisite for our survival as a free people." I believe that holds true today.

I look forward to answering any questions you may have today, and thank you again.

[The prepared statement of Mr. Snover follows:]

PREPARED STATEMENT OF VICTOR SNOVER, MAYOR, AZTEC, NEW MEXICO AND
FORMER U.S. ARMY OFFICER

INTRODUCTION

Chairman Lowenthal, Ranking Member Gosar, and members of the Subcommittee, thank you for inviting me to testify today regarding "The Importance of Public Disclosure Requirements for Protecting Human Health, the Climate, and the Environment." I sincerely appreciate the opportunity to be here.

My name is Victor Snover, and I'm the Mayor of Aztec, New Mexico. I'm also a current high school Army JROTC instructor, and after 22 years of service, a retired United States Army Non-Commissioned Officer. I come before you today to advocate for the hardworking people of Aztec, New Mexico, many of whom are disproportionately impacted by fossil fuel emissions leading to short- and long-term impacts on their health, community and livelihoods. The legislation before us today would help communities like mine make informed decisions regarding the impacts of harmful oil and gas emissions. Ranging from how we spend our small local budget—from health care to infrastructure, education and mitigation from local oil and gas pollution—to if our kids should spend time outside on a particular day due to the high rates of pollutants in the air.

BACKGROUND

I am an elected City Commissioner, the Mayor of Aztec, but my day job is as a public high school teacher at Aztec High School. Anecdotally, I would estimate approximately half of my students suffer from some form of respiratory issues. I recognize that there can be other mitigating factors for this, but I also believe that we should be doing everything within our power, as elected officials and policy makers, to reduce as many of those contributing factors as we possibly can. That means having the courage to hold those contributors to these issues, like the oil and gas industry, accountable. Maximizing profits should never be a factor when it comes to public health and safety. At minimum, our community should know what kinds of emissions are being pumped into our atmosphere from the oil and gas industry.

In 2014, NASA discovered what has often been described as a “Delaware sized methane cloud” in the upper atmosphere above the Four Corners region of the United States.¹ My community of Aztec is in the heart of this region nestled in the far northwest corner of the beautiful state of New Mexico.

Covering approximately 2,500 sq.mi. of our region, the Four Corners methane hot spot is the most concentrated area of methane pollution in the entire United States.² This problem affects tens of thousands of people in this region living in communities like Farmington, Bloomfield and my home of Aztec along with many other towns in New Mexico. This methane cloud did not just suddenly appear, it’s the result of years of companies polluting our air without detailing the full extent of their project’s impacts. H.R. 5636, the Transparency in Energy Production Act of 2020 would begin to remedy this problem.

Take Colorado, which has become a model for us to emulate. In 2014, they placed limits on methane emissions, and their oil and gas industry is still going strong. Their example provides proof of the concept that reducing waste and emissions does not harm the industry, but more importantly that it can help the health, well-being, and quality of life of the people living in and around extraction sites, while still creating jobs. Many states are leading the way, but we need alignment with the Federal Government.

In New Mexico, under current regulations and rules, there is an annual loss of \$275 million in energy resources and an additional \$43 million in state tax and royalty revenue that we could and that we should be investing in our school systems.³ In a state where our education system consistently ranks in the lower tier nationally, any opportunity to increase revenue for educational programs should be explored.

New Mexico’s methane emissions are said to have the same short-term impacts on our climate as 22 coal-fired power plants or 28 million internal combustion automobiles.⁴

Beyond resource and revenue losses, the unnecessary leaks of methane are allowing other harmful forms of pollution to escape that lead to ozone smog. The state’s air quality data shows that San Juan County, which is the county in which Aztec is located, is at risk of violating Federal ozone standards.⁵ We should not be willing to accept outcomes that put industry profit over the general health and clean air standards that we need to live healthy and productive lives. In areas with diminished air quality, it is often the youngest and the oldest among us that suffer disproportionately and it’s the poorest of us that suffer most because they don’t possess the resources to move further away from well sites and/or seek the needed medical treatment to help with their respiratory issues like emphysema and asthma.

Thankfully the state of New Mexico is now turning the corner to be on the leading edge of working to understand and reduce emissions resulting from oil and gas. But unfortunately, the Federal Government—mainly the Bureau of Land Management (BLM)—is failing to do so, thus taking us backward, and risking our public health and livelihood in the process.

The legislation before us today is a good first step at addressing these environmental injustices and the climate crisis. It will empower state and local leaders to make informed decisions about their communities’ energy needs. With greater information, we will have a more informed citizenry, who can make better decisions about their futures. As Thomas Jefferson once said, “an educated citizenry is a vital requisite for our survival as a free people.”⁶ I believe that holds true here today, perhaps, more than ever.

EMISSIONS FROM U.S. PUBLIC LANDS

Our Federal lands play an important role in climate change and should also play a role in the solutions. The U.S. Government is one of the largest energy asset managers in the world, and yet it has done little to inform its shareholders—American taxpayers—about the Federal energy program and its associated climate related risks.

Where there is fossil fuel production there are emissions. Emissions associated with oil, gas and coal production from Federal lands are equivalent to more than 20 percent of total U.S. greenhouse gas emissions. For comparison, if Federal lands

¹ https://science.nasa.gov/science-news/science-at-nasa/2014/09oct_methanehotspot/.

² https://science.nasa.gov/science-news/science-at-nasa/2014/09oct_methanehotspot/.

³ <http://blogs.edf.org/energyexchange/files/2019/09/Synapse-Methane-Cost-Benefit-Report.pdf>.

⁴ <http://blogs.edf.org/energyexchange/files/2019/09/Synapse-Methane-Cost-Benefit-Report.pdf>.

⁵ <https://www.sanjuancitizens.org/oil-and-gas/new-epa-ozone-standard-does-not-go-far-enough>.

⁶ Wagoner, Jennings. *Jefferson and Education*. Charlottesville, VA.: Thomas Jefferson Foundation, 2004.

were a country, it would rank 5th in the world in total emissions behind China, India, the United States and Russia.⁷

Until recently, the Federal Government was not tracking emissions from fossil fuel production on Federal lands, and is still not developing a plan to reduce them. The government does not have one, centralized publicly accessible database for all data related to Federal oil, natural gas and coal. The data that is available, while useful, is incomplete. Further, there are no sources available that provide a comprehensive accounting of greenhouse emissions from Federal lands.

America's public lands belong to the American people and they, as a result, have a right to know how much energy is being developed and the associated climate risks. Just as shareholders of publicly traded companies receive key information regarding financial risk to their portfolios, taxpayers deserve to know how their energy assets are being managed and have a say in the direction of the Federal energy program moving forward.

We have a solution to fight climate change. It's our public lands. While current management of our Nation's public lands makes them a significant contributor to the U.S. climate change problem, they have the potential to play an even bigger role in climate solutions.

REQUESTS

To make our Nation's public lands part of the climate solution instead of the problem, the Federal Government should immediately reduce fossil fuel emissions from public lands. We must reduce emissions tied to energy development on public lands and waters at or ahead of the pace dictated by climate science. Emissions from coal, oil and gas produced on public lands and waters make up more than 20 percent of the United States' total greenhouse gas emissions. As such, policy makers must establish an ambitious goal of net zero emissions from public lands and waters by 2030.

While driving down fossil fuel emissions, we must simultaneously unlock the potential of the United States' public lands and waters to help achieve a clean energy future. Some of our Nation's best solar, wind and geothermal resources are found on public lands. Carefully choosing the best sites and expanding renewable energy development on public lands can help boost local economies, provide new job opportunities across a range of skill levels, and generate additional revenue streams for state and local governments.

As the U.S. Federal Government is one of the largest energy asset managers in the world, and yet still does not sufficiently track or make available the data associated with the production and emissions from fossil fuels developed on Federal lands and waters, we need a better way. H.R. 5636—the Transparency in Energy Production Act of 2019 (TEPA) takes a first step by directing companies seeking or holding a lease to drill on public lands to track and report the amount of energy production and resulting emissions from Federal lands and waters, and more specifically, the following:

1. Uses standards established by nationally recognized Sustainability Accounting Standards Board (SASB) to report the amount, type, and source of fossil fuels produced under Federal leases, including the methane gas released by venting, naring, and fugitive release on Federal lands.
2. Reports the amount of energy produced by renewable energy projects on Federal lands.
3. Makes information publicly available through database created and maintained by the Department of the Interior.

By beginning to implement policies that reduce our dependence on fossil fuels, curb emissions, promote renewable energy all under a transparent process then we can transition our economy into a clean energy future where no one gets left behind because we have all the necessary information up front. Our public lands are a great first place to start.

Dr. LOWENTHAL. Thank you, Mr. Snover.
The Chair now recognizes Mr. Stein for your testimony.
Welcome.

⁷ <https://www.wilderness.org/articles/article/federal-lands-emissions-accountability-tool>.

**STATEMENT OF KENNETH STEIN, POLICY DIRECTOR,
INSTITUTE FOR ENERGY RESEARCH, WASHINGTON, DC**

Mr. STEIN. Mr. Chairman, Mr. Ranking Member, thank you for the opportunity to participate in this Subcommittee hearing.

My name is Kenny Stein, and I am the Policy Director for the Institute of Energy Research. We are a free market think tank covering energy and environment policy here in DC.

The legislation under discussion at this hearing suffers from a number of infirmities. It disregards basic structures of administrative law and, indeed, constitutional law. It duplicates existing regulations and disclosure requirements, and in practice, it would merely serve to increase the costs and barriers to energy development on Federal lands.

I will begin with the most egregious of this bill's deficiencies, which is the outsourcing of Federal regulatory power to a non-government entity with a clear ideological agenda.

Section 2 of the legislation cites disclosure standards created by the SASB, as discussed, and proposes to mandate that entities seeking or holding leases on Federal land file reports which comply with the SASB standards in effect at the date of the filing of that report.

Thus, if and when the SASB makes changes to its standards, the disclosure requirements for Federal leaseholders and seekers will automatically change by action of law. This means that the SASB would have the regulatory power to set disclosure standards for Federal leasing.

The SASB is not a government agency. Its board is not appointed by the President or confirmed by the Senate. It is entirely independent of the Federal Government.

Put simply, this is an unconstitutional delegation of Federal regulatory power. While the Supreme Court historically has been very lenient about delegations of congressional authority to executive branch agencies, it has been unequivocal that delegation of legislative powers to private entities is unconstitutional.

The delegation of the regulatory power to set disclosure standards to the SASB cannot pass constitutional muster.

The reasoning for this blanket constitutional bar is made obvious by the situation we see before us. The SASB is an explicitly ideological organization. It seeks to promote adoption of its views of what constitutes sustainability.

It was founded and funded by organizations like the Rockefeller Foundation and Bloomberg philanthropies and, as previously discussed, Michael Bloomberg is a former chairman of the organization, and he remains chairman emeritus today, even as he runs for President on a platform of halting fossil fuel development on Federal lands.

The legislation would give this ideological organization the unchecked power to set regulatory standards for Federal leasing.

The conflict here is obvious. Handing regulatory authority to the SASB as proposed in this bill is analogous to a conservative Member of Congress proposing a bill to hand over some aspect of Federal regulatory authority to the Heritage Foundation.

Both the title of this legislation and the press release and discussion from its sponsors imply that there is a lack of transparency

about the current leasing process on Federal lands, but this is very misleading.

The disclosures contemplated in the SASB guidelines are in many instances duplicates of information that leaseholders already report to Federal agencies, while other parts of the guidelines are completely irrelevant to the operation of a Federal lease.

For example, leaseholders already report emissions to the EPA, including for greenhouse gases. However, unlike existing reporting requirements, the SASB doesn't actually include any metrics for how compliance with their reports can be assessed.

Likewise, the SASB standards include disclosures about biodiversity impacts, but Federal leases are already subject to the NEPA process.

For additional SASB sections like business ethics, community relations, and security and human rights, besides those being vague concepts, it is not clear what bearing those subjects have on a company's competency to manage a lease on Federal lands.

So, rather than a genuine bid for transparency, this legislation is more accurately described as an effort to impose higher costs on energy leasing on Federal land. The vagueness of many of the SASB guidelines serves a dual purpose in this raising of cost.

On the front end, the company has to come up with new accounting and compliance processes in order to collect and produce the information demanded, and then on the back end, the vagueness opens up new avenues for litigation from anti-development organizations over judgment call calculations or assertions that one of the extraneous disclosure categories has not been completed satisfactorily.

Use of the SASB guidelines is also a backdoor effort to achieve regulatory goals under the guise of transparency that otherwise could not pass Congress.

For example, one of the primary criticisms of the Obama administration's proposed methane regulations was the steep cost of new monitoring equipment needed to comply with the rules.

Requiring the SASB disclosures would impose those same monitoring costs, though this time not even with the justification of trying to reduce methane emissions.

As drafted, the legislation is poorly constructed. It is expensive, duplicative, and frankly, unconstitutional. Mandating the SASB standards looks suspiciously like using Federal power to coerce participation in a private NGO's pet project.

If Congress wishes to create standards for sustainability for Federal leasing or for any other Federal contracting, the appropriate process is to try to mandate to relevant Federal agencies to develop standards through the administrative process.

In addition to having the advantage of being constitutional, such a process has long-standing administrative procedure and legal principles that ensure the rights of the companies and individuals impacted by the standards are protected.

Thank you for this opportunity. I look forward to your questions.

[The prepared statement of Kenneth Stein follows:]

PREPARED STATEMENT OF KENNETH STEIN, POLICY DIRECTOR, INSTITUTE FOR
ENERGY RESEARCH

Mr. Chairman, thank you for the opportunity to participate in this Subcommittee hearing.

My name is Kenny Stein, I am the Policy Director for the Institute for Energy Research, a free-market organization that conducts research and analysis on the function, operation, and regulation of energy markets.

The legislation (H.R. 5636) under discussion at this hearing suffers from a number of infirmities. It disregards basic standards of administrative law, and indeed constitutional law, it duplicates existing regulations and disclosure requirements, and in practice it would merely serve to increase the costs and barriers to energy development on Federal lands.

UNCONSTITUTIONAL

I will begin with the most egregious of this bill's deficiencies: the outsourcing of Federal regulatory power to a non-governmental entity with a clear ideological agenda. Section 2 of the legislation cites disclosure standards created by the Sustainability Accounting Standards Board (SASB) and proposes to mandate that entities seeking or holding leases on Federal lands file reports which comply with the SASB standards in effect "*at the date*" of the filing. Thus, if and when the SASB makes changes to its disclosure standards, the disclosure requirements for Federal leaseholders and seekers will also change automatically by action of law. This means that the SASB would have the regulatory power to set disclosure standards for Federal leasing. The SASB is not a government agency. Its board is not appointed by the President or confirmed by the Senate. It is entirely independent of the Federal Government.

Put simply this is an unconstitutional delegation of Federal regulatory power. While the Supreme Court has historically been very lenient about delegations of congressional authority to executive branch agencies, it has been unequivocal that delegation of legislative powers to private entities is unconstitutional. The delegation of the regulatory power to set disclosure standards to the SASB cannot pass constitutional muster.

The reasoning for this blanket constitutional bar is made obvious by the situation we see before us. The SASB is an explicitly ideological organization. It seeks to promote adoption of its views of what constitutes "sustainability." It was founded and is funded by foundations like the Rockefeller Foundation and Bloomberg Philanthropies, which are ideologically hostile to conventional energy development. Michael Bloomberg was the chairman of the organization from 2014–2018, and remains a chairman emeritus today even as he runs for President on a platform of halting fossil fuel development on Federal lands. The legislation would give this ideological organization the unchecked power to set regulatory standards for Federal leasing. The conflict here is obvious. Handing regulatory authority to the SASB as proposed in this bill is analogous to a conservative Member of Congress proposing a bill to hand over some aspect of Federal regulatory authority to the Heritage Foundation.

DUPLICATION NOT TRANSPARENCY

Both the title of this legislation and the press release from its sponsors imply that there is a lack of transparency in the current leasing process on Federal lands, but this is misleading. The disclosures contemplated in the SASB guidelines are in many instances duplicates of information that leaseholders already report to relevant Federal agencies, while other parts of the guidelines are completely irrelevant to the operation of a Federal lease.

For example, leaseholders already report emissions to the EPA, including for greenhouse gases. Unlike existing reporting requirements, though, the SASB does not have any metrics by which compliance can be assessed. Likewise the SASB standards include disclosures about biodiversity impacts, but Federal leases are already subject to the National Environmental Policy Act process. For additional SASB sections like business ethics, community relations, and security and human rights, besides being vague concepts, it is not clear what bearing those subjects have on a company's competency to manage a lease on Federal lands.

Additionally, the global nature of these disclosures is of questionable necessity. The SASB guidelines are designed for investors interested in sustainability to evaluate a company holistically on its global operations. The question is what relevance these extraneous disclosures have on the operation of a Federal lease. To take one disclosure category from the SASB guidelines, what does the "percentage of proved

and probable reserves in or near areas of conflict” have to do with seeking a lease in Utah?

IMPOSING UNNECESSARY COSTS

Rather than a genuine bid for transparency, this legislation is more accurately described as an effort to impose higher costs on energy leasing on Federal lands.

The vagueness of many of the SASB guidelines serves a dual purpose in raising costs. On the front end, a company has to come up with new accounting and compliance processes in order to collect and produce the information demanded. On the back end, the vagueness opens up new avenues for litigation from anti-development organizations over judgment call calculations or assertions that one of the extraneous disclosure categories is not completed satisfactorily.

Use of the SASB guidelines is also a backdoor effort to achieve regulatory goals under the guise of transparency that otherwise could not pass Congress. For example, one of the primary criticisms of the Obama administration’s proposed methane regulations was the steep cost of new monitoring equipment to comply with the rules. Requiring SASB disclosures could impose those very same monitoring costs, though this time not even with a justification of trying to reduce methane emissions.

CONCLUSION

As drafted, the legislation is very poorly constructed: expensive, duplicative and frankly unconstitutional. Mandating the SASB standards looks suspiciously like using Federal power to coerce participation in a private NGO’s pet project. If Congress wishes to create standards for sustainability, for Federal leasing or any other Federal contracting, the appropriate process is to provide a mandate to the relevant Federal agencies to develop standards through the administrative process. In addition to having the advantage of being constitutional, such a process has long-standing administrative procedure and legal principles that ensure that the rights of companies and individuals impacted by the standards are protected. The approach taken by this legislation should be rejected.

Thank you for this opportunity and look forward to your questions.

Dr. LOWENTHAL. Thank you, Mr. Stein.

The Committee now recognizes Dr. Goldman for your testimony. Welcome to the Committee, Dr. Goldman.

STATEMENT OF DR. GRETCHEN GOLDMAN, RESEARCH DIRECTOR, CENTER FOR SCIENCE AND DEMOCRACY, UNION OF CONCERNED SCIENTISTS, WASHINGTON, DC

Dr. GOLDMAN. Thank you, Chairman Lowenthal and Ranking Member Gosar, for the opportunity to testify at this important hearing.

My name is Dr. Gretchen Goldman, and I serve as the Research Director in the Center for Science and Democracy at the Union of Concerned Scientists.

For nearly a decade, I have been working on corporate engagement on climate science and policy, community right to know, and public access to scientific information.

Communities around the country have long been affected by the activities of the fossil energy industry. These communities endure environmental hazards and health impacts without even knowing what is in the air they breathe or the water they drink.

This is the reason regulatory safeguards and disclosure requirements exist, to protect people. Energy companies have an obligation to disclose the social and environmental impacts of their operations. These are common-sense expectations.

Yet, current disclosure by the fossil energy industry is woefully inadequate. Companies continue to operate on public lands close to

residential areas and with minimal oversight. This lack of disclosure leaves decision makers, investors, and communities in the dark, costing taxpayers and threatening public health and safety.

This is why we need legislation like the Transparency in Energy Production Act of 2020. H.R. 5636 would help ensure access to vital information that can protect the public and promote responsible corporate governance.

A record of bad behavior demonstrates that the fossil energy industry needs our oversight, not our trust. Fossil energy companies have consistently failed to report sufficient details on their social and environmental impacts. This is despite requirements by the U.S. Securities and Exchange Commission and despite investor and public pressure.

If companies are not honest about what is happening in their backyards, how can we trust them to be honest about what is happening in ours?

Companies' social license to operate is contingent upon their being a transparent and responsible actor. Unfortunately, from refusals to share basic information with decision makers and medical personnel, to preventable explosions that have evacuated entire communities, to illegal dumping and unsafe practices, fossil energy companies have lost the public trust.

This is not just about disclosure. It is about the rights of communities to know about public health threats and to have the information they need to protect themselves. When this information is concealed, people are unable to make informed decisions about their daily lives.

Should my child play in our yard? Is our water safe to drink? Is it safe to breathe the air?

The answers to these simple questions can mean the difference between an uneventful day and another trip to the emergency room.

Increasingly and disproportionately, it is low income communities, communities of color and Indigenous communities, living, working, and going to school near energy production sites. It is these communities that must ask these simple questions and face companies' insufficient answers.

Continued lack of disclosure by the fossil energy industry has meant communities have had to advocate for themselves, negotiating with companies, conducting community science, and fighting in the courts, all to access information that should be public.

The disclosures outlined in H.R. 5636 are feasible and long overdue. Fossil energy companies routinely collect data on well sites, chemicals, wastewater, and other environmental monitoring. It is reasonable and necessary that these data be shared in an open, timely, and accessible way.

The Sustainability Accounting Standards Board disclosures requested in the bill were produced working closely with the extractives industry and align with the disclosures that public companies must make annually to the U.S. Securities and Exchange Commission anyway.

When energy companies fail to disclose their human and environmental footprints, it is others who will pay the price. The public pays in tax dollars when first responders, healthcare workers, local

governments, and Federal aid services must respond to the disasters at fossil energy facilities. And nearby communities pay every day when they are exposed to harm from routine emissions, leaks, and other damages made worse by poor disclosure and management.

Companies owe it to all of us to be responsible actors. The Transparency in Energy Production Act will help keep families informed, corporations held accountable, and the public safe. This is a future worth striving for.

Thank you.

[The prepared statement of Dr. Goldman follows:]

PREPARED STATEMENT OF DR. GRETCHEN T. GOLDMAN, RESEARCH DIRECTOR,
CENTER FOR SCIENCE AND DEMOCRACY, UNION OF CONCERNED SCIENTISTS

Thank you, Chairman Lowenthal and Ranking Member Gosar, for the opportunity to testify at this important hearing. My name is Gretchen Goldman, and I serve as the Research Director in the Center for Science and Democracy at the Union of Concerned Scientists. For nearly a decade, I have been working on corporate engagement on climate science and policy, community right to know, and public access to scientific information.

Communities around the country have long been affected by the activities of fossil energy companies, enduring environmental hazards and health impacts without knowing precisely what is in the air they breathe or the water they drink. This is the reason regulatory safeguards and disclosure requirements exist: To protect people. Energy companies have an obligation to disclose the social and environmental impacts of their operations. These are common-sense expectations, but current disclosure by the fossil energy industry is woefully inadequate. Companies continue to operate on public lands, close to residential areas, with minimal oversight. This leaves decision makers, investors, and communities in the dark, costing taxpayers and threatening public health and safety. This is why we need legislation like the “Transparency in Energy Production Act of 2020.” H.R. 5636 would ensure access to the vital information that can protect the public and promote responsible corporate governance.

VOLUNTARY DISCLOSURE IS INSUFFICIENT

A record of bad behavior demonstrates that the fossil energy industry needs our oversight, not our trust. Historically, many companies in carbon-intensive industries have opted out of voluntary Environmental, Social, and Governance (ESG) reporting and commitment initiatives, and there is little reason to believe this would change with new voluntary initiatives.¹ Even initiatives created with industry input, such as the Task Force for Climate-related Financial Disclosures, or backed by investors, such as CDP,² have seen lackluster participation from the oil and gas industry.^{3,4}

Moreover, voluntary reporting is rarely timely and accessible. Disclosures are often released well after the time period in which they are useful, in formats that are not machine-readable, and in language that is inaccessible to non-experts.⁵ In particular, privately held companies, which have no obligations to shareholders, have been conspicuously absent from voluntary disclosure regimes.

Even when disclosure is legally mandated, companies have demonstrated an unwillingness to provide enough—or any—information, shifting the burden to government agencies to conduct oversight with incomplete records. In 2010, the U.S.

¹ Goldman, G.T., K. Mulvey, P. Frumhoff, et al. 2017. A Methodology for Assessment of Corporate Responsibility on Climate Change: A Case Study of the Fossil Energy Industry. *Journal of Environmental Investing*. 8 (1) Online at <http://www.thejei.com/jei-vol-8-no-1-2017/>.

² CDP, formerly The Carbon Disclosure Project, is a non-profit organization that works with cities and companies to enhance disclosure of environmental, social and governance metrics.

³ CDP. 2019. Explore the Scores. Online at: <https://www.cdp.net/en/companies/companies-scores>.

⁴ Task Force on Climate-related Financial Disclosures. 2019. TCFD Supporters. Online at: <https://www.fsb-tcfd.org/tcfd-supporters/>.

⁵ Konschnik, K., M. Holden, and A. Shasteen. 2013. Legal Fractures in Chemical Disclosure Laws. Why the Voluntary Chemical Disclosure Registry FracFocus Fails as a Regulatory Compliance Tool. Harvard Law School. Environmental Law Program. April 23. Online at <http://eelp.law.harvard.edu/wp-content/uploads/legal-fractures-voluntary-chemical-disclosure-registry-fails-regulatory-compliance-tool.pdf>.

Securities and Exchange Commission (SEC) issued guidance asking companies to disclose climate-related material risks in their annual form 10-Ks.⁶ However, a 2018 Government Accountability Office report found that the SEC faces constraints in their efforts to collect, verify, and analyze company responses on climate-related risk.⁷ Fossil energy production companies in particular have consistently failed to report details on their climate-related risk, including information on the facilities that are vulnerable to the physical impacts of climate change and the actions companies are, or aren't, taking to mitigate those risks.⁸

For example, after Hurricane Katrina in 2005, a refinery sitting on private land below sea level in Meraux, Louisiana spilled 25,000 barrels of oil, contaminating city canals and more than a square mile of neighborhood.⁹ The refinery was shut down for several months, and Murphy Oil, which owned the facility, agreed to a \$330 million settlement.¹⁰ The refinery was damaged again from the 2008 hurricane season and shut down for many days.¹¹ Following this incident, in 2010 Murphy Oil disclosed to the SEC that "the physical impacts of climate change present potential risks for severe weather (floods, hurricanes, tornadoes, etc.) at our Meraux . . . refinery in southern Louisiana and our offshore platforms in the Gulf of Mexico."¹² Yet, Valero Energy Corporation, which acquired the Meraux facility from Murphy Oil in 2011, has not disclosed any climate risks at the facility. Valero's 2018 SEC filing noted only that there could be "If climatic events [such as increased frequency and severity of storms, droughts, and floods] were to occur, they could have an adverse effect on our assets and operations."¹³ If we can't trust companies to be honest about what is happening in their own backyards, how can we trust them to be honest about what is happening in ours? Voluntarily disclosure is not enough.

Companies' own investors are speaking up, too. In recent years, shareholders at major fossil energy companies, including ExxonMobil and Chevron, have demanded, through shareholder resolutions and investor requests, more disclosure of climate-related risks and plans, and expressed dissatisfaction with current levels of disclosure.¹⁴ A 2019 report by McKinsey found that 82 percent of investors and 66 percent of executives agreed or strongly agreed that companies should be required by law to issue sustainability reports.¹⁵ Currently, voluntary disclosures, company annual reports, and SEC guidance are the only resources investors have to make informed investment decisions, and details on climate-related risk are variable and often sparse.

DISCLOSURE IS REASONABLE AND LONG OVERDUE

The disclosures outlined by H.R. 5636 are feasible. The bill relies on disclosure metrics set by the Sustainability Accounting Standards Board (SASB), a leader in corporate disclosure and a reporting regime with robust and detailed industry-specific disclosure standards. SASB standards for the Extractives & Mineral Processing Industry and Renewable & Alternative Energy Industry were produced

⁶U.S. Securities and Exchange Commission. 2010. Commission Guidance Regarding Disclosure Related to Climate Change. Washington, DC. Online at <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.

⁷Government Accountability Office. 2018. Climate-Related Risks: SEC Has Taken Steps to Clarify Disclosure Requirements. February. GAO-18-188. Online at: <https://www.gao.gov/assets/700/690197.pdf>.

⁸Carlson, C., G. Goldman, and K. Dahl. 2016. Stormy Seas, Rising Risks: Assessing Undisclosed Risk from Sea Level Rise and Storm Surge at Coastal U.S. Oil Refineries. In: Drake J., Y. Kontar, J. Eichelberger, et al. (eds) Communicating Climate-Change and Natural Hazard Risk and Cultivating Resilience. Advances in Natural and Technological Hazards Research, vol 45. Springer, Cham, Switzerland.

⁹Environmental Protection Agency. 2006. Murphy Oil USA refinery spill: Chalmette and Meraux, LA. Region 6 Oil Response Team U.S. EPA. Archive document: Presentation. Online at https://www.epa.gov/oem/docs/oil/fss/fss06/franklin_2.pdf.

¹⁰MSNBC.com News Services (MNS). 2006. \$330 million settlement deal in Katrina oil spill. MSNBC.com, September 25. Online at http://www.nbcnews.com/id/15004868/ns/us_news-environment/t/million-settlement-deal-katrina-oil-spill/.

¹¹Department of Energy. 2009. Comparing the Impacts of the 2005 and 2008 Hurricanes on U.S. Energy Infrastructure. Online at <https://www.oe.netl.doe.gov/docs/HurricaneComp0508r2.pdf>.

¹²Murphy Oil. 2011. 2010 SEC Form 10-K filing. Online at <https://www.sec.gov/Archives/edgar/data/717423/000119312513082919/d446290d10k.htm>.

¹³Valero Energy. 2018. 2018 SEC Form 10-K filing. Online at <https://www.sec.gov/Archives/edgar/data/1035002/000103500219000008/vloform10-kx12312018.htm>.

¹⁴Ceres. 2019. The Role of Investors in Supporting Better Corporate ESG Performance. Online at [https://www.ceres.org/sites/default/files/reports/2019-04/Investor Influence report.pdf](https://www.ceres.org/sites/default/files/reports/2019-04/Investor%20Influence%20report.pdf).

¹⁵McKinsey & Company. 2019. More than values: The value-based sustainability reporting that investors want. Online at: <https://www.mckinsey.com/business-functions/sustainability/our-insights/more-than-values-the-value-based-sustainability-reporting-that-investors-want>.

hand-in-hand with industry participation, and they align with the reporting that public companies must anyway report annually to the SEC. Moreover, fossil energy companies already collect data on well sites, chemicals used, wastewater contents, and other activities on a routine basis. It is reasonable and necessary to ask that these data be shared in a timely and accessible way.

Further, such disclosure is long overdue. As has been documented, other industries are subject to similar reporting requirements.¹⁶ For example, the locations of hazardous waste sites, the smokestack emissions of power plants, and the composition of wastewater released from industrial activities all have public disclosure requirements. Though there are limitations on the details disclosed in these cases, much of the information is available through the U.S. Environmental Protection Agency (EPA), so the public can learn about environmental impacts and potential health risks. However, the fossil energy industry has avoided this level of mandatory disclosure.

The activities and plans of companies extracting fossil energy on public lands are largely a black box. Companies are subject to public reporting requirements under the National Environmental Policy Act when they bid to develop public lands and there are some ongoing enforcement and inspection of operations by the Bureau of the Land Management and EPA, but no comprehensive reporting on ongoing operations exists and very little information is publicly available at the bidding stage. And while companies must regularly report the quantity of extracted minerals, communities are left in the dark about air quality, water quality, and other measures critical to assessing public health impacts.

H.R. 5636 provides an important opportunity for the public, especially those living adjacent to fossil energy facilities, to access information that has long been unavailable. For example, the SASB Water Management Disclosures mandated in the bill would require companies disclose details on the backflow and produced water associated with hydraulic fracturing activities. Such information, if publicly accessible and reliably available, would be invaluable for affected communities and researchers who have long sought to understand the public health and environmental impacts of these steps in the production process.¹⁷

LACK OF DISCLOSURE HARMS THE PUBLIC

When people are kept in the dark about environmental and public health risks, they are unable to answer simple, crucial questions: Can my family drink our tap water? Should my children play in the yard? Is our air safe to breathe? The answers to these questions can mean the difference between an uneventful day or another trip to the emergency room. Increasingly and disproportionately, it is low-income communities, communities of color, and Indigenous communities that live, work, and send their kids to school near energy production sites. It is these communities that must ask these questions and face companies' insufficient answers.^{18,19} As a result, communities have had to advocate for themselves, negotiating with industry, conducting community science, and fighting in the courts—all to access information that should be public.

For example, in 2014, a group of concerned residents, startled by companies' lack of disclosure, worked with scientists to collect data and publish a study on air quality at the fence lines of oil and gas facilities in six states (Arkansas, Colorado, New York, Ohio, Pennsylvania, and Wyoming).²⁰ The researchers found elevated levels of benzene, formaldehyde, and hydrogen sulfide—in some cases, at levels exceeding 100 times the EPA guidelines. Communities have a right to know about these risks, and energy producers have a responsibility to disclose them, adequately and proactively.

Lack of disclosure can have serious health consequences. In 2008, Cathy Behr, an emergency room nurse in Durango, Colorado, was caring for a gas-drilling worker

¹⁶Goldman, G., D. Bailin, P. Rogerson, et al. 2014. Toward an Evidence-Based Fracking Debate. Online at: <https://www.ucsusa.org/hfreport>.

¹⁷Rosenberg, A., P. Phartiyal, G. Goldman, et al. 2014. Exposing Fracking to Sunlight. *Issues in Science and Technology* 31(1):74–79.

¹⁸National Association for the Advancement of Colored People and Clean Air Task Force. 2017. Fumes Across the Fence-Line. Online at: http://www.naacp.org/wp-content/uploads/2017/11/Fumes-Across-the-Fence-Line_NAACP_CATF.pdf.

¹⁹Silva, G.S., J.L. Warren, and N.C. Deziel. 2018. Spatial Modeling to Identify Sociodemographic Predictors of Hydraulic Fracturing Wastewater Injection Wells in Ohio Census Block Groups. *Environmental Health Perspectives*. 126 (6). <https://doi.org/10.1289/EHP2663>.

²⁰Macey, G.P., R. Breech, M. Chernaik, et al. Air concentrations of volatile compounds near oil and gas production: a community-based exploratory study. *Environ Health* 13, 82 (2014), doi:10.1186/1476-069X-13-82.

who had developed a headache and nausea after spilling hydraulic fracturing fluid on himself. The company refused to reveal the chemicals in the fluid, citing trade secrets.²¹ Days later, Behr herself was admitted to the hospital and diagnosed with liver, respiratory, and heart failure. Behr survived, but her doctors were forced to treat her without knowing the chemicals she had been exposed to.

Lack of oversight of methane facilities can also have disastrous consequences. In 2015, at an underground methane storage field outside Los Angeles, a corroded pipe casing and safety failures caused the largest known methane leak.²² Over a 4-month period, the leak displaced more than 8,300 households, who left to avoid the smell and potential health effects, including nosebleeds, nausea, and headaches. In 2018, the company responsible, Southern California Gas Co., reached a \$119.5-million settlement of claims from the incident.²³

Moreover, these large-scale incidents don't tell the whole story. Between October 1, 2011 and September 1, 2016, the Bureau of Land Management documented more than a thousand "Major Undesirable Events," the agency's term for spills and accidents on oil and gas leases.²⁴ These examples represent irresponsible corporate behavior that can endanger communities and erode public trust.²⁵ We should expect better.

RESEARCHERS FACE HURDLES TO STUDYING ENVIRONMENTAL HEALTH FROM LACK OF DISCLOSURE

Researchers have struggled to access the data they need to study key questions about the social and environmental impacts of the energy industry. For example, scientists researching the effects of unconventional oil and gas development have been hindered by restricted access to well sites, limited data-sharing by industry and government officials, data concealed by legal settlements, and trade secret exemptions in chemical disclosure laws.^{26,27} These restrictions impede researchers' ability to determine how frequently spills, leaks, and other environmental impacts occur and gauge what steps might mitigate risks to communities and workers.²⁸ Greater disclosure requirements would remove barriers to our understanding of energy production's impact on people and the environment.

COMPANIES MUST BE RESPONSIBLE CLIMATE ACTORS

Leakage of methane and other greenhouse gases at fossil energy production sites contributes substantially to U.S. greenhouse gas emissions. A 2018 analysis published in *Science* found that routine flaring contributed 18 percent of the total volume-weighted-average carbon intensity for the United States.²⁹ The Department of the Interior is required by law to prevent energy waste like this, and to ensure that resource extraction on public lands is conducted in a safe and responsible manner.³⁰ In order to properly manage such emissions, companies must adequately monitor activities, and fully disclose emissions. This is necessary to minimize the

²¹Greene, S. 2008. Oil secret has nasty side effect. The Denver Post. July 24. Online at <https://www.denverpost.com/2008/07/23/oil-secret-has-nasty-side-effect/>.

²²California Public Utilities Commission. 2019. Root cause analysis of the uncontrolled hydrocarbon release from Aliso Canyon SS-25. May 16.

²³Barboza, T. 2018. SoCal Gas agrees to \$119.5-million settlement for Aliso Canyon methane leak—biggest in U.S. history. Los Angeles Times. August 8. Online at: <https://www.latimes.com/local/lanow/la-me-aliso-canyon-settlement-20180808-story.html>.

²⁴Bureau of Land Management. 2017. "BLM's MAJOR UNDESIRABLE EVENTS (MUEs) from 10-1-2011 to 9-1-2016." Administrative record for the Bureau of Land Management, Rescission of 2015 Hydraulic Fracturing Rule, 82 Fed. Reg. 61924 (Dec. 29, 2017).

²⁵Rosenberg, A., P. Phartiyal, G. Goldman, et al. 2014. Exposing Fracking to Sunlight. *Issues in Science and Technology* 31(1):74–79.

²⁶Colborn, T., C. Kwiatkowski, K. Schultz, et al. 2011. Natural Gas Operations from a Public Health Perspective. *Human and Ecological Risk Assessment: An International Journal*. 17(5):1039–1056. October. Online at https://www.biologicaldiversity.org/campaigns/fracking/pdfs/Colborn_2011_Natural_Gas_from_a_public_health_perspective.pdf.

²⁷Zielinska, B., E. Fujita, and D. Campbell. 2011. Monitoring of emissions from Barnett Shale natural gas production facilities for population exposure assessment. Final report to the National Urban Air Toxics Research Center. NUATRC number 19. Online at <https://sph.uth.edu/mleland/attachments/DRI-Barnett%20Report%2019%20Final.pdf>.

²⁸Environmental Protection Agency. 2012. Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources. Progress report. EPA 601/R-12/011. December. Online at <https://www.epa.gov/sites/production/files/documents/hf-report20121214.pdf>.

²⁹Masnadi, M.S., et al. 2018. Global carbon intensity of crude oil production. *Science* 361(6405), 851–853 DOI: 10.1126/science.aar6859.

³⁰Martin, J. 2017. Testimony to House Committee on Natural Resources: The Health, Environmental and Economic Risks of the Republican Campaign to Repeal the Bureau of Land Management's Methane Waste Rule. February 1.

energy sector's outsized contribution to climate change, preserve Federal lands, and protect the public. Fossil energy companies are among those most responsible for climate change; they have an obligation to society to disclose their activities and minimize future risks from climate-related damages.³¹

GREATER TRANSPARENCY NEEDED IN THE CURRENT POLITICAL ENVIRONMENT

Greater transparency of U.S. energy production is needed now, especially in light of recent executive branch actions that have further concealed the industry from public scrutiny. The Trump administration:

- Rescinded a Bureau of Land Management rule that would have required greater chemical disclosure, as well as monitoring and reduction of methane pollution on new and existing oil and gas production on public lands.³²
- Proposed changes to the National Environmental Policy Act that would weaken analysis and reporting requirements and limit opportunity for public input.³³
- Is rolling back an EPA rule that establishes requirements for monitoring and reducing methane pollution from new oil and gas production on public or private lands.³⁴
- Withdrew an EPA Request for Information that asked companies for data on methane emissions from U.S. oil and gas production.³⁵
- Withdrew from the international widely accepted Extractive Industries Transparency Initiative, which provides a vehicle for consistent disclosure and reporting of extractive industries worldwide.³⁶

A recent incident at the Department of the Interior concerning a loss of scientific integrity exemplifies the need for this bill. The Department, weighing proposed oil and gas operations in Alaska's Arctic National Wildlife Refuge, disregarded 18 memos from staff scientists who had raised concerns about the proposals.³⁷ The scientists identified significant data gaps on the effects of oil and gas drilling on the health and livelihoods of rural and Native Alaskans; the survivability of birds, caribou, polar bears, wolves, and fishes; and the inability to predict effects on vegetation, snowmelt, and waterways.³⁸ DOI suppressed these concerns, omitting them from the Department's draft environmental assessment and declining to release them to public interest groups who filed Freedom of Information Act requests.

The disclosure requirements outlined in this bill would have ensured public access to the kind of information suppressed in this case. Companies would have had to disclose the potential impacts of their operations on water resources, biodiversity, community relations, and Indigenous rights. When citizens can access this information, they can hold companies and decision makers accountable for actions that could degrade natural resources, endanger health, or hurt communities.

DISCLOSURE IS GOOD GOVERNANCE

Companies themselves also benefit from greater disclosure. Such disclosure mitigates financial, reputational, and legal risks. All companies operate with a social

³¹ Frumhoff, P.C., R. Heede, and N. Oreskes. The climate responsibilities of industrial carbon producers. *Climatic Change* (2015) 132:157. <https://doi.org/10.1007/s10584-015-1472-5>.

³² Goldman, G. 2017. Trump Administration Rescinds Fracking Rule for Public Lands: A Blow to Public Protection. Union of Concerned Scientists. Online at <https://blog.ucsusa.org/gretchen-goldman/trump-administration-rescinds-fracking-rule-for-public-lands-a-blow-to-public-protection? ga=2.210254742.2094529910.1579636272-1783996088.1570113323>.

³³ Council on Environmental Quality. 2020. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act. Online at: <https://www.federalregister.gov/documents/2020/01/10/2019-28106/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>.

³⁴ Kennedy, M. 2019. EPA Aims To Roll Back Limits On Methane Emissions From Oil And Gas Industry. NPR. August 29. Online at <https://www.npr.org/2019/08/29/755394353/epa-aims-to-roll-back-limits-on-methane-emissions-from-oil-and-gas-industry>.

³⁵ U.S. Environmental Protection Agency. 2017. Letter to Oil and Natural Gas Industry. March 6. Online at https://www.epa.gov/sites/production/files/2017-03/documents/oil_and_gas_information_request_withdrawal_letter_sample_to_post_1.pdf.

³⁶ U.S. Department of the Interior. 2017. Letter to the Extractive Industries Transparency Initiative. Online at: https://www.doi.gov/sites/doi.gov/files/uploads/eiti_withdraw.pdf.

³⁷ Brugger, K. 2019. Interior hid scientists' criticism of ANWR drilling; report. E&E News. Online at <https://www.eenews.net/greenwire/2019/03/12/stories/1060127067>.

³⁸ Public Employees for Environmental Responsibility. 2019. Undisclosed Statements of Scientific Concern. Online at <https://my.visme.co/projects/6xo09mn7-anwr-drilling-undisclosed-scientific-concerns>.

license,³⁹ and those that fail to act responsibly can lose the public's trust.⁴⁰ Heightened societal awareness and public pressure can incentivize companies to act in accordance with their responsibilities to investors and to society.^{41,42}

Companies increasingly face financial risks from climate change. Climate change-related impacts, like more severe storms and floods, represent costly physical risks; for fossil energy companies, risks are predicted to increase as existing vulnerabilities to natural disasters worsen.^{43,44} Companies also face reputational risks as public attitudes toward corporate behavior change. Across all economic sectors, the transition to a lower-carbon economy will reshape the global financial system: Models project that climate change will place global financial assets at risk by anywhere from US \$2.5 trillion to US \$24.2 trillion.⁴⁵

The financial sector is increasingly recognizing that climate-related risks are material for companies. All three major ratings agencies—Moody's, Standard & Poor, and Fitch—now recognize that climate change represents a financial risk.⁴⁶ Just this month, the CEO of the world's largest asset management company, BlackRock, noted, "The evidence on climate risk is compelling investors to reassess core assumptions about modern finance. In the near future—and sooner than most anticipate—there will be a significant reallocation of capital."⁴⁷ A recent report by the non-profit Ceres found that half of the companies evaluated now link executive compensation to greenhouse gas emissions performance.⁴⁸

Further, the United States, in its sluggishness on corporate disclosures, is being left behind in the global race. U.S. fossil energy companies now trail foreign oil firms like Total and Suncor, which are increasingly heeding investor calls for better climate-related disclosure.⁴⁹ The European Union, for example, is working to incorporate into disclosure requirements the recommendations outlined by the Task Force on Climate-related Financial Disclosures.⁵⁰

THE TRANSPARENCY IN ENERGY PRODUCTION ACT OF 2020

H.R. 5636 provides an opportunity to enhance transparency around energy industry operations. The following are suggested changes to further strengthen provisions of the bill to ensure the greatest transparency and utility of the required disclosures.

- **Section 3 should be amended to require timely disclosure.** Specifically, the Secretary should be required to make the information reported under Section 2 publicly accessible at the time it is received.

³⁹ Reuters. 2017. Shell CEO urges switch to clean energy as plans hefty renewable spending. Online at <https://www.reuters.com/article/us-ceraweek-shell-shell-idUSKBN16G2DT>.

⁴⁰ Goldman, G.T., K. Mulvey, P. Frumhoff, et al. 2017. A Methodology for Assessment of Corporate Responsibility on Climate Change: A Case Study of the Fossil Energy Industry. *Journal of Environmental Investing*. 8 (1). Online at <http://www.thejei.com/jei-vol-8-no-1-2017/>.

⁴¹ Oreskes, N., and E.M. Conway. 2011. "Merchants of doubt: How a handful of scientists obscured the truth on issues from tobacco smoke to global warming." New York: Bloomsbury Press.

⁴² Union of Concerned Scientists. 2018. The Climate Accountability Scorecard. Online at <https://www.ucsusa.org/resources/climate-accountability-scorecard-0>.

⁴³ Whelan, T. and C. Fink. 2016. "The Comprehensive Business Case for Sustainability." *Harvard Business Review*. Accessed on July 12, 2017. Available from <https://hbr.org/2016/10/the-comprehensive-business-case-for-sustainability>.

⁴⁴ Goldman, G.T., K. Mulvey, P. Frumhoff, et al. 2017. A Methodology for Assessment of Corporate Responsibility on Climate Change: A Case Study of the Fossil Energy Industry. *Journal of Environmental Investing*. 8 (1). Online at <http://www.thejei.com/jei-vol-8-no-1-2017/>.

⁴⁵ Dietz, S., et al. 2016. Climate value at risk of global financial assets. *Nature Climate Change*. 6:676-679.

⁴⁶ Ceres. 2016. Seven Key Actions in Steering the Oil and Gas Sector to a Low-Carbon Future. November 2. Online at: <https://www.ceres.org/news-center/blog/seven-key-actions-steering-oil-and-gas-sector-low-carbon-future>.

⁴⁷ Fink, L. 2020. A Fundamental Reshaping of Finance. BlackRock. Online at <https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter>.

⁴⁸ Ceres. 2017. Investor Climate Compass: Oil and Gas. Online at: <https://www.ceres.org/resources/reports/investor-climate-compass-oil-and-gas>.

⁴⁹ Ceres. 2016. Seven Key Actions in Steering the Oil and Gas Sector to a Low-Carbon Future. November 2. Online at: <https://www.ceres.org/news-center/blog/seven-key-actions-steering-oil-and-gas-sector-low-carbon-future>.

⁵⁰ Zimonyi, S. 2018. Will Europe be first to adopt the TCFD recommendations? London, UK: Climate Disclosure Standards Board. Blog, February 1. Online at <https://www.cdsb.net/mandatory-reporting/765/will-europe-be-first-adopt-tcf-recommendations>, accessed September 10, 2018.

- **Section 3 should be amended to require disclosures be made in an accessible format.** The Secretary should require companies making disclosure to do so in a format that is consumable by a wide range of stakeholders, including community members and researchers.
- **Section 3 should be amended to require that Agency resources be used to increase public access.** EPA and other agencies have staff devoted to managing data and interfacing with the public. This language would operate to require the same at Interior.
- **Section 4, paragraph (1) should be amended to require additional information be reported to Congress.** Reports to Congress should also include the other disclosure topics and accounting metrics within the SASB Standard for the Extractives and Minerals Processing Sector, including Security, Human Rights, & the Rights of Indigenous Peoples, Community Relations, Workforce Health & Safety, Reserves Valuation & Capital Expenditures, Business Ethics & Transparency, Management of the Legal & Regulatory Environment, and Critical Incident Risk Management. These metrics are required of companies' initial reporting and could provide Congress valuable information to inform future legislative or oversight efforts.
- **Section 4, paragraph (4) should be amended to provide further clarity about the method by which companies would calculate equivalent emissions.** There are several options for making such a calculation, and the resulting information would be most meaningful if a method were standardized. This could be specified in the bill, or Congress could defer to Department of Interior experts to choose an appropriate method.
- **Section 5, paragraph (3) should be amended to define public lands to be inclusive of Tribal Land.** Given the amount of oil and gas extraction that occurs on Native lands and the environmental justice issues surrounding mineral extraction in Indigenous communities, greater disclosure in this area is sorely needed and would aid Indigenous communities in ensuring good corporate behavior on their lands.

CONCLUSION

When energy companies fail to disclose their human and environmental footprints, others feel the impact. Investors face financial risk. The public pays in tax dollars when first responders, healthcare workers, local governments, and Federal aid services must respond to disasters at fossil energy facilities. And nearby communities pay every day when they are exposed to harm from routine emissions, leaks, and other damages exacerbated by poor disclosure and management. Companies owe it to all of us to be responsible actors. Disclosure is good for companies, communities, and the Nation; and the Transparency in Energy Production Act will help keep families informed, corporations held accountable, and the public safe. This vision of the future is worth striving for.

Dr. LOWENTHAL. Thank you, Dr. Goldman.

I would like to thank the panel for their testimony.

I want to remind members of the Committee that Rule 3(d) imposes a 5-minute limit on our questions.

The Chair is now going to recognize Members for any questions they may wish to ask the witnesses, and I am going to recognize Representative Levin for 5 minutes of questions.

Mr. LEVIN. Thank you, Chair Lowenthal, for holding this hearing today.

I represent a district and grew up in Southern California where we have worried my entire life about air quality criteria, air pollutants.

I have also been an environmental attorney, so I have seen throughout my life the good work that we have done in Southern California to reduce those air pollutants.

And I wanted to ask a few questions.

Dr. Goldman, one argument from the fossil fuel industry seems to be that disclosing air pollution, greenhouse gas emissions, water usage, pretty much any other impact is somehow too complicated or too burdensome for them to carry out. Yet, other industries have done this.

How have other industries been able to do this without it being too burdensome?

And how can we learn from those experiences?

Dr. GOLDMAN. Thank you, Congressman.

That is an important point. Many industries are already subject to these kinds of disclosure requirements around environmental reporting and health effects monitoring. This is something that companies regularly do, and other industries are required to do that under environmental laws.

Unfortunately, many of our environmental laws have exceptions for the oil and gas industry, so they haven't been subject to these same requirements.

But other industries have done this. It has not been burdensome. They have been able to do this monitoring, and indeed many fossil energy companies are doing this monitoring to comply with other requirements or for their own information anyway.

So, this would not add any additional burdens on them. This is reporting what they should be doing anyway. It aligns closely with what public companies are already asked by the U.S. Securities and Exchange Commission to report.

And the SASB requirements that are requested in the bill were developed with the extractives industry, so this is something that has had extensive industry input as well.

Mr. LEVIN. Thank you for that. I think that is an important point.

One of the other things that I sometimes hear is that if we embrace clean energy or oppose continued use of fossil fuels that somehow we are going to destroy the economy. My California experience tells me that is simply not true, that you can grow the economy and protect the environment at the same time.

Ms. Mason, do you believe the argument that reducing emissions and addressing climate change is bad for business, bad for a company's bottom line?

Ms. MASON. Thank you, Mr. Congressman.

No, I think quite the contrary actually. I think opposing bills like the TEPA Act, simply, all it does is it provides information to investors and the American people with some critical data.

Undermining the economy? Because how can it undermine it? It leads investors and policy makers to make critical decisions. Without the information, they don't make smart decisions from that standpoint.

I guess just as an example, imagine purchasing a house without having done an inspection. How can the prospective homeowner have an accurate picture of the risks around the house?

So, I believe that as a Nation we cannot continue to invest billions of dollars in companies that may not be viable for the long term and sustainable, and in fact, that is what would harm our Nation's economy.

Mr. LEVIN. Thank you for that.

I do acknowledge that many in the private sector are doing a lot when it comes to sustainability, and we appreciate those contributions.

I also do sometimes hear that government should just stay out of it, and my follow up for you, Ms. Mason, is: do we need Federal policies to help drive down greenhouse gas emissions, or can the private sector do it all by itself?

Ms. MASON. The SASB is very similar to what happened with the FASB, the Financial Accounting Standards Board. If we had left financial accounting standards to voluntarily be provided, the investor community themselves would be at a great detriment to having accurate information.

So, I think voluntary information flow, even though we would like to have that happen as individuals, I have found in business that it really is the requirements around that that deliver the best transparency.

That is part of why I think it is very important to have this Act go through.

Mr. LEVIN. Mr. Chairman, if you can indulge one last question for Mayor Snover, I know that New Mexico recently regained the ability to fine oil and gas companies for violation, which I believe is an important tool for holding bad actors accountable.

In general, what has been your experience with the state's enforcement over oil and gas operations?

And what role do you think the Federal Government needs to play here?

Mr. SNOVER. Thank you, Congressman.

I have been in New Mexico for about 5 years, and I have overlapped the previous state administration and our current state administration with Governor Michelle Lujan Grisham.

In my experience, in my short tenure as an elected official in Aztec, I have seen that we have gone from minimal enforcement and minimal following of the regulatory guidance to where we have really kind of turned the corner with our new administration and become more of a national leader in this enforcement to allow for and I feel like it has kind of put the energy industry on notice that they are going to get held accountable and held to the standard that is already on the books for them.

Mr. LEVIN. Thank you, Mr. Snover.

Thank you, Mr. Chairman.

Dr. LOWENTHAL. Thank you, Representative Levin.

I now call upon Representative Westerman for 5 minutes of questions. You can begin.

Mr. WESTERMAN. Thank you, Mr. Chairman. And thank you to the Ranking Member for yielding his position for me to go first. I appreciate that.

And I appreciate our witnesses being here today, talking about an important subject.

Mayor Snover, as I listened to your testimony and went through it, I just had some questions to make sure I understand your position on this.

You state that you estimate that approximately half of your students suffer from respiratory issues and talk about how New Mexico's methane emissions are said to have the same short-term

impacts on our climate as 22 coal-fired power plants or 28 million internal combustion automobiles.

And you also state that policy makers must establish an ambitious goal of zero emissions from public lands and waters by 2030.

You also have a paragraph in here where you say, "In New Mexico, under current regulations and rules, there is an annual loss of \$275 million in energy resources and an additional \$43 million in state tax and royalty revenue that we could and that we should be investing in our school systems. In a state where our education system consistently ranks in the lower tier nationally, any opportunity to increase revenue for educational programs should be explored."

So, are you saying you should stop energy and mineral production on Federal lands, or is it a problem that the revenues off of those or the royalties are not going into the school system?

Mr. SNOVER. Thank you, Congressman.

I believe that we are in a transitional energy economy right now, and I would kind of liken it to when we were transitioning away from the horse drawn carriage. We were using the technology we had to invent the technology of the future.

And while we are getting royalties from the oil and gas industry, a lot of those are used for our educational programs, and as a high school teacher in the school system in a state that is traditionally in the lower tier nationally, I think it is incredibly important to take every opportunity that we can to increase funding for education.

And this is one of the ways to do it. And if we are, in a sense, allowing that, as the Chairman had mentioned about the methane leaks at the wellhead sites, it is basically leaving money on the table, in my estimation, and I think that we need to do everything we can to stem that and use our resources—

Mr. WESTERMAN. Your position is not necessarily to do away with energy and mineral exploration, but to make it safer and cleaner and to redirect the royalties or increase the royalties?

I am just trying to understand.

Mr. SNOVER. Well, to kind of capture the royalties, not to necessarily redirect them, but to capture them.

And I am not suggesting that the energy industry is going to go away in New Mexico overnight, but I am suggesting that based on the Governor's plans to transition away to a carbon-neutral energy environment, it is important, and I think that is the future of our country.

And while we are doing that, we should do everything that we can to increase the amount of data available to make best use of the resources that we are extracting.

Mr. WESTERMAN. I am going to have to move on. I am limited on time.

Mr. SNOVER. Yes, sir.

Mr. WESTERMAN. Dr. Goldman, you talked about accounting for greenhouse gas emissions from energy exploration. I am wondering if in your studies, have you looked at how much carbon is released in forest fires and decomposition of dead trees?

And the follow up is: should there be reporting on those types of carbon emissions from public lands?

Dr. GOLDMAN. Thank you, Congressman.

I think it is very important that we ensure we have as much reporting as possible on greenhouse gas emissions. When we look at the U.S. carbon budget, one thing that sticks out to me is the fugitive methane leakage and other greenhouse gas emissions from energy production sites.

This is a significant part of our—

Mr. WESTERMAN. But I am talking about forests which cover millions of acres of public lands, and we have seen a rash of forest fires and exponential increase in forest fires and the amount of carbon being released from forest fires.

I am saying if we are going to do accounting, I think we should take that into the equation because it is all part of the carbon cycle.

I wish we had more time to discuss, but, Mr. Chairman, I am out of time, and I yield back.

Dr. LOWENTHAL. Mr. Westerman, I am allowing Members to go a little bit over, so if you want to continue, please go at least one more minute.

Mr. WESTERMAN. Oh, thank you. Thank you very much.

So, I am very concerned about the environment and how we are good stewards of that, but I think we discount the natural environment of forests and the ability of forests to make the air cleaner, to make the water cleaner, two of the things that you mentioned in your testimony.

Yet, it was all focused on fossil fuels, but I think there also is a positive side of what we can do to keep our forests healthier, which we know is good for the atmosphere and good for water.

Do you have anything you would like to elaborate on that?

Dr. GOLDMAN. Yes. Thank you, Congressman.

That is something else that we should be thinking about. In the context of this bill, I have been thinking about how to better manage the emissions of energy production sites.

That is the scope of what we are looking at here, and we know that that is something that we need a better handle on monitoring of.

Many scientists do, of course, work on looking at carbon accounting of forests and what that looks like. I regularly attend conferences where that is a big discussion point.

I think here we need to really be thinking about how are we getting a good handle on how energy production sites are doing on emissions because we know from scientific studies that there has been a range of emissions that have been estimated from fossil energy companies.

So, in order to better understand the role that plays in carbon emissions in the United States, we need to start with the monitoring. We need to make sure that we have that information, and companies are disclosing that data.

Mr. WESTERMAN. And I think that the bill is shortsighted in that it only looks at one side of the ledger. It doesn't consider all the possibilities of carbon emissions and the things that we can do to be better stewards.

There is a wealth of scientific data that also talks about how much carbon gets released in forest fires and other events and how much carbon we could sequester if we made our forests healthy.

But we oftentimes have regulations that prevent any kind of management or work on the forests, which exacerbates the cycle of seeing these forests go up in flames.

So, on top of the fact that I don't think we should be moving Federal regulations out to a non-profit or non-governmental organization that is highly politically motivated, the concept of measuring and keeping an accurate accounting of what is happening on our Federal lands, I believe, is at least a good starting point.

And I yield back.

Dr. LOWENTHAL. Thank you, Mr. Westerman.

I am now going to recognize myself for 5 minutes of questions also.

Dr. Goldman, I would like you to tell us a little bit more about voluntary efforts by oil and gas companies on disclosure or self-regulation. What has been their track record on voluntary or self-regulations?

And why have these been inadequate to protect the health of local communities?

Dr. GOLDMAN. Thank you, Chairman Lowenthal.

Voluntary disclosure has been inadequate. There are several voluntary regimes, SASB included, and those do play a useful role in providing information to investors and the public.

Unfortunately, those are inadequate because not everyone does it, and not everyone does it well. Many opt out of such regimes, especially those in the fossil energy industry don't always participate in those sorts of initiatives, and even if they do, there is often not the level of detail that we need in order to protect the public safety and to know how companies are operating on public lands.

Unfortunately, this is the situation despite pressure from investors, from the SEC, and through the voluntary initiatives to ensure that companies have more information disclosed.

For the purposes of communities and observing what is happening on Federal lands, we need disclosure to be more timely. We need it more accessible, and we need it to be consistent across companies and across states.

Dr. LOWENTHAL. Thank you.

Ms. Mason, why are shareholders and investors increasingly demanding that companies disclose the impacts associated with their businesses?

Is it simply because they think it is the moral thing to do, or do they believe that there are financial benefits of publicly disclosing this information?

Ms. MASON. Thank you, Mr. Chairman.

I don't think that the American shareholders are necessarily viewing this as a moral decision as it is a financially driven decision.

BlackRock itself is a financially driven organization. If you look at other members, even the founding member of FASB being Goldman Sachs, CalSTRS, CalPERS, these are financially driven organizations, and they have an interest in ensuring that whatever businesses they invest in long term are viable and will be around with labor returns and economic returns for them.

In that manner, we view, or at least I do in our organization, that the American people are shareholders in the public lands and,

therefore, they have a right to that level of transparency just as public shareholders have rights of that transparency in their company investments themselves.

So, it is clearly a business decision from that standpoint.

Dr. LOWENTHAL. Thank you.

Mayor Snover, last spring, as I mentioned earlier, the Subcommittee visited New Mexico and heard from local experts about the health impacts of methane emissions.

Ms. Barbara Webber of Health Action New Mexico testified in our hearings about how the long-term exposure to ozone increases the risk of asthma in children, and how the rate of asthma is higher in New Mexico than the national average.

You mentioned that already in some of the impacts upon your students, but how is your experience?

Can you go into more depth about the experience of the impact of methane and air pollution on your students? Can you describe that in a little bit more detail?

Mr. SNOVER. I will do my best, Mr. Chairman. Thank you.

First, I just want to make it clear, I am not a doctor. I am not a respiratory doctor. I am not an environmental expert. I am a retired Army sergeant first class. I teach Army Junior ROTC in the small town of Aztec, New Mexico.

Dr. LOWENTHAL. And thank you for your service.

Mr. SNOVER. I appreciate that. Thank you.

But I know what I experience. I know that when we go out on Fridays, throughout the school day we do a lot of PT or physical training. It is stuff that the Army mandates that we do as JROTC programs. We get a physical education credit through a New Mexico high school accreditation.

And I often see kids running back to their bag. "Let me grab my inhaler just in case." There are days when it seems to be especially, or it kind of spikes a little bit more than others in the warmer months, of course.

And it is just one of those things that, again, I am not a doctor. I am not an expert in this field. I just know what I see, and it is anecdotal.

I am not suggesting that that is the only cause of this and that it would completely go away, but you cannot help but ask yourself if we have an opportunity as policy makers and as elected officials to try to do something, that doesn't mean it is going to fix the entire problem, but it certainly could go at least a short distance or some distance in helping to mitigate part of the problem.

And I think it is that piecemeal way to fix a problem that we have to be aware of and we have to take action on any chance we get. I mean, these kids need our help, and we should be there and be more concerned about their health and welfare than discussing profit and loss and cost of equipment.

Dr. LOWENTHAL. Thank you, Mr. Snover.

I now recognize Representative HERN for his 5 minutes of questions.

Mr. HERN. Mr. Chairman, thank you so much. Leader Gosar, thank you and our witnesses for being here to testify on the importance of public disclosure requirements.

As a Congressman from the 1st District of Oklahoma, I represent a lot of people in the oil and gas industry, and it is 25 percent of our state budget and millions of jobs in our state.

And I was hopeful that we would start this year off with hearings on the right foot and recognize the importance of what it is when we have seen what has recently happened in Venezuela and the Middle East, how important our fossil fuel dominance has been in the world and what it means to be a net exporter and how important that has been to the world geopolitical stage.

But today is just another unfortunate episode in the relentless attack by my Democrat friends in the war on fossil fuels and the American energy sector.

The bill before us today is no different than the policies that have been pushed over the last year, and like the Green New Deal, the bill would cripple our energy sector while also lining the pockets of unaccountable, unelectable—I said “unelectable,” I am sorry—unelected non-governmental organizations funded by liberal Democrat Presidential candidates, who might be unelectable.

My colleagues across the aisle claim that this bill is necessary because of a need for greater transparency, but this is nothing more than a veiled attempt to hamper our energy sector with more meaningless, tedious paperwork, more regulation.

Additionally, this information could easily be used by anti-energy groups looking to hinder the regulatory process with frivolous lawsuits that provide us no benefits to the public. It is a bad bill, will never be considered by the Senate, and will never become law.

Mr. Stein, you talk about this in your testimony as you note that this legislation will hamper our energy production by imposing unnecessary costs.

You state that rather than a genuine bid for transparency, this legislation is more accurately described as an effort to impose higher costs on energy leasing on Federal lands.

Can you elaborate on this and how this bill would impose these costs on energy leasing and how this would affect our energy sector?

Mr. STEIN. Sure. There are lots of ways that the way the bill is constructed would add onto cost. You talk about the frivolous litigation. That is already a problem with leases on all Federal lands. We see it in Wyoming and Colorado. We have seen leases withdrawn because of problems with the NEPA process.

This is just adding a whole new layer of process onto that, and every little section of these disclosures is vague about how much of something needs to be disclosed.

Is there a certain threshold above it that needs to be disclosed?

How is something calculated?

There are no metrics in there, so even if you go through all of this work and do all of this disclosure, every single section an environmentalist group can come in and sue and say, “That is not enough,” or “You didn’t include everything there.”

And it basically brings the entire leasing process to a halt, even if there is an executive in the office that actually wants to pursue these leases.

Mr. HERN. Thank you.

It is clear these costs will be a great detriment to the energy sector.

You also talked about the duplicative nature of this legislation. It is my understanding that this information is already regularly reported through the NEPA process and already is given to the EPA.

This means the disclosure requirements will not only increase transparency, but also will hamper the energy industry and its ability to operate smoothly.

Could you talk about the duplicative processes?

And I think you started to allude to it a little bit with NEPA there, but can you talk about that as well, about how they are already reporting some of these requirements?

Mr. STEIN. Sure. Well, certainly all of the air emissions, all of the NOCs, SOCs, even greenhouse gases, are all reported to the EPA. So, the Federal Government already has this information.

The estimates of methane or gas that is vented or flared, that is already filed with the BLM.

Now, it is possible that the Federal Government makes it hard to access that information. I think that is certainly possible, but through all of the main sections of these SASB standards, that information is already being given to the Federal Government.

The stuff that is not currently being reported to the Federal Government are the sort of things that don't really have anything to do with leasing on Federal lands, some of the sort of global impacts.

One of the sections says that you need an estimate of how many of your reserves are in or near conflict areas around the world. That doesn't really have anything to do with leasing on Federal lands.

Mr. HERN. I appreciate, again, you all being here today, and I think it is being very clear that every step of the way my colleagues across the aisle have been trying to curtail the successes that we have seen in the fossil fuel industry.

And whether it is this bill or a Green New Deal, which nobody on the left likes to talk about right now, they are regularly overlooking the necessity of energy development blatantly and ignoring the harm these policies would cause.

They would rather fuel the extremely litigious, anti-energy lobby and outsource regulatory requirements to a Board funded by their friends, who are identified as being the largest funders, and that is Democratic Presidential candidate Mike Bloomberg and Tom Steyer, than to advocate for reliable sources of power and energy for the American people.

As someone who understands the negative effect my colleagues' actions would cause on an American industry, I cannot support their initiatives.

And, Mr. Chairman, can I ask one question for just sort of clarity, if I may?

Dr. LOWENTHAL. Absolutely.

Mr. HERN. Mr. Snover, I am in a state where football is played in the warm months. Both of my sons played outdoor baseball. This is the first I have heard that the energy industry is causing great harm to our kids.

Do you have a percentage?

And I appreciate your statement identifying that you are not a doctor and this is just anecdotal, but do you have a percentage of your kids that you think are being harmed by the methane releases in your community?

Mr. SNOVER. Well, like I said, Congressman, and thank you for the question, I cannot obviously state exactly what is causing any respiratory issues. But I have taught in two different parts of the country, on the East Coast in West Virginia, and back in New Mexico in Aztec like I currently do.

And while kids in this generation, I think it is fair, maybe have a higher propensity of diagnosed respiratory issues, again, anecdotally, from my experience I would say 4 or 5 out of 10 display some sort of respiratory issue.

And, again, I am not going to attribute it all to methane gases.

Mr. HERN. But would it be safe to say if in your part of the country, if it were due to allergies to trees and particular plants, you wouldn't be for eliminating all of those if that were the cause.

Like we live in one of the highest areas for allergy contaminants known in America in the Midwest, but we are not advocating removing all the trees and plants.

I yield back, Mr. Chairman.

Dr. LOWENTHAL. Thank you.

And now, Representative Luján, welcome to the Committee, and I recognize you for 5 minutes of questions.

Mr. LUJÁN. I want to thank you, Mr. Chairman. I want to thank the Ranking Member and the members of the Subcommittee today and the Natural Resources Committee for allowing me to testify a little bit here, if you will.

And the reason I say that is I want to welcome our mayor from New Mexico, Mr. Victor Snover from Aztec, New Mexico. I know he has already been welcomed.

I have had the honor of working with and getting to know the good mayor with his advocacy in the community. I always appreciate his courage and his honesty in coming forward to do what is right in our community.

So, thank you, Mr. Mayor, for being here.

Mr. Chairman, this is an important hearing and an important piece of legislation. I appreciate the conversation.

Last April, the Natural Resources Committee under your leadership and that of Chairman Grijalva traveled to New Mexico to hold a hearing on the impacts of oil and gas on local communities.

During the trip, we were able to visit an oil and gas well in the 3rd Congressional District and not just smell the methane emission, but with a piece of technology called the forward-looking infrared camera, you are actually able to see the emissions.

It was the first time I have ever looked out of one of those cameras. You could smell it while you were there, but what you could see through this camera were plumes as large as anything that you can imagine.

Think about when clouds gather and you look up and you see the immensity associated with the gathering of that humidity. These plumes look just like those clouds, the size of any distance that I

could describe. It was alarming. It is something to smell it, it is another thing to smell it and see it.

To make matters worse, the Federal Government does not properly account for how much gas is emitted from these wells into our atmosphere. According to the Environmental Protection Agency, New Mexico releases 205,000 metric tons. However, a group of leading scientists by the Environmental Defense Fund went to more than 100 sites to make on-the-ground measurements and determined that methane emissions in New Mexico are likely closer to 1 million metric tons, five times higher than the EPA number.

The Transparency in Energy Production Act would simply require public disclosure from oil and gas companies operating on public lands, also renewable companies operating on public lands, so that the public knows what is happening in their backyards.

That is all that this legislation is doing and saying, and I appreciate the information that has already been submitted into the record. There is a table that lists everything that is required. It is titled Table 1—Required Disclosure Topics and Accounting Metrics for Public Land Operations.

So, in the short time I have left, Mayor Snover, as a father, a high school instructor, and a mayor, are you concerned with how climate change will impact the lives of children and the future of communities?

Mr. SNOVER. Thank you, Congressman Luján, and might I add a new grandfather as well.

So, with all of those things in mind, I think all of us are concerned about the future of our climate, and as all of those things, as an elected official that helps provide input for policy, as a high school teacher that sees their kids suffering from respiratory issues, and not only that, but some of the disparities of, like I had said in my testimony, of not being able to move away from these areas that you described.

I was not there with you that day, but I have experienced similar smells, not the views because I have not had access to one of the cameras.

But, of course, I think it is a problem that we have to tackle, we have to be proactive on, and merely saying that we cannot afford it is not acceptable in the richest country in the Nation.

Mr. LUJÁN. In New Mexico, under the leadership of our new governor, Michelle Lujan Grisham, there was a bipartisan effort to move legislation forward to reduce capture with a goal of eliminating methane emissions in New Mexico. Is that correct?

Mr. SNOVER. Yes, sir.

Mr. LUJÁN. And are those conversations continuing to move in a positive fashion with what you are aware of, Mr. Mayor?

Mr. SNOVER. Yes, sir. From what I am aware of, they are moving in a positive direction. These things are always large, complicated issues to tackle.

There are many interests to consider, but I do believe they are moving in a positive direction, and I thank the Governor. I appreciate her leadership on this and her willingness to get us on the right side of history on this one.

Mr. LUJÁN. And last, stopping intentional flaring and venting and leaking of natural gas is good for everyone's bottom line. It is

good for taxpayers. It is good for the industry. Everyone will make more money, and we will have healthier communities and better air quality if we get it done.

I am hoping that we will find a way to get some of this done together.

I thank the indulgence of the Chairman and the Committee for their time today.

Dr. LOWENTHAL. Thank you, Representative Luján.

I now recognize the Ranking Member and thank him for allowing his Members to go first. I appreciate that, and I recognize you for 5 minutes.

Dr. GOSAR. Thank you, Chairman.

I would like to now turn our attention to the renewable energy projects for a moment since even wind and solar developments do not escape this legislation unscathed.

One of the standards outlined for renewable energy projects is sustainable sourcing of raw materials, including copper, cobalt, rare earth, and many others. I completely agree that this is a critical evaluation in the development of solar and wind technologies.

But I find it very ironic to be discussing these concerns today since my colleagues on the other side of the aisle seem determined to prevent domestic hardrock mining at every opportunity both in Committee and on the House Floor, even though the country has some of the best labor and environmental standards in the world.

Would you agree with that, Ms. Mason, that we have some of the best environmental and labor laws in the world?

Ms. MASON. I am not an expert on labor law or environmental laws. I can only speak from the standpoint of the businesses that I invest in, which are not renewable energy companies or any climate related companies.

Dr. GOSAR. Well, you made the comment about Goldman Sachs. So, if they are underlying that, I mean—in fact, I will go to the good doctor.

Do we have some of the best environmental and mining techniques in the world?

Dr. GOLDMAN. Thank you, Congressman or Ranking Member. We have—

Dr. GOSAR. Yes or no, because it is a yes or no answer.

Dr. GOLDMAN. We have protective environmental laws.

Dr. GOSAR. Yes, we have the best. They have been ranked higher than China, have they not?

Dr. GOLDMAN. I imagine so.

Dr. GOSAR. Yes, and how about India?

Dr. GOLDMAN. I imagine so.

Dr. GOSAR. How about Mexico?

Dr. GOLDMAN. I don't know for certain.

Dr. GOSAR. No, it is. Once again, these are hard facts, so when we look at supply chains, we have to start looking at this, particularly when we are going in, as the Mayor said, a transition in energy production. So, this is all included.

Mr. Stein, in regard to that, can you comment on the labor laws and the environmental dictations that we require in the United States?

Mr. STEIN. Sure. You are absolutely correct. Our environmental standards are higher, frankly, than even in many countries in Europe. We are very aggressive about protecting the environment in the United States.

One of the effects of that has been that we have ended up not developing a lot of these minerals in the United States, but that doesn't mean that we don't continue to demand those materials for renewables, the steel in renewables, all of the cobalt.

Most of the world's cobalt comes from the Democratic Republic of Congo where it is mined in essentially modern-day slavery conditions.

Dr. GOSAR. And just to that point, who is the principal owner in the Congo of some of those mines?

Mr. STEIN. Well, sometimes it is very hard to tell, but at the ground level it is—

Dr. GOSAR. Most of them are China.

Mr. STEIN. Well, it is also warlords, frankly, and then the Chinese take and extract those products because they buy from anyone. They don't have scruples like we do about bribery and funding.

Dr. GOSAR. It also goes with one belt, one road dictation, does it not?

Mr. STEIN. Sorry. I don't—

Dr. GOSAR. So, the one belt, one road is China leverages infrastructure at the cost of having resources.

Mr. STEIN. And it also involves building a lot of new coal plants all over the world, too.

Dr. GOSAR. Yes, so when you look at this, the vast majority of renewable energy is developed on state and private land, with only about 1 percent of the wind farms located on federally owned lands, with the overwhelming majority on private land.

Wouldn't this bill adversely impact investments in renewable energy development as well as conventional energy production?

Mr. STEIN. Sure. A lot of the lawsuit risk that I was mentioning earlier, that equally applies to wind and solar production, and this actually happens with a lot of solar farms, they get sued for effects on endangered species. Wind farms also have the same problem, affecting endangered species.

So, these series of lawsuits going through each section of the disclosure standards, that is going to slow down wind and solar development, too, in exactly the same way.

Dr. GOSAR. We are also in a dichotomy in the fact that these alternative energy modalities are intermittent. They are not base-load, right, Mr. Stein?

Mr. STEIN. Sure.

Dr. GOSAR. How do we have to look at that mitigation so that we have a constant current going through our transmission lines?

How do we have to look at the displaced value? Because when you look at solar, it is after noon that we get too much of it. In fact, California pays Arizona to take their excess solar, which totally changes our dynamics in our marketplace.

Can you describe a little bit about that?

Mr. STEIN. Sure. Because wind and solar are so intermittent, it requires backups of some sort, and, frankly, today most of that backup is done by natural gas.

And a lot of times in the calculations of the greenhouse gas emissions or greenhouse gases avoided, those calculations are not taken into account.

They are assumed that we will eventually have batteries at some point in the future, but these batteries, it is thousands of tons of the minerals that we are talking about being shipped in from all over the world, processed in China, and then produced in these batteries and then recycled.

So, all of that life cycle cost really is not included in this cost avoidance, greenhouse gas avoidance.

Dr. GOSAR. And, in fact, we have seen the other side add an intentional prohibition of actually mining for these, even though they are all over.

I am from the state of Arizona. In fact, Mayor Snover, I actually have family that live in Aztec. So, I mean, we see somebody talking out of one side of the mouth and then completely out of the other side of the mouth.

Mr. STEIN. It is true. If these minerals are not mined in the United States, they have to be mined somewhere. To replace our existing electricity, we are talking about 100 percent renewables. We are talking about 12 percent of the continental United States just in wind farms to replace current electricity production.

That is a vast undertaking of construction, and those minerals have to come from somewhere.

Dr. GOSAR. Mr. Chairman, for the record, I would like to submit a letter from the National Mining Association in regard to against this bill.

Dr. LOWENTHAL. Without objection.

[The information follows:]

NATIONAL MINING ASSOCIATION,
WASHINGTON, DC

April 28, 2014

Filed via Email at nrr_comments@sasb.org

Dr. Jean Rogers
Founder and Executive Director
The Sustainability Accounting Standards Board
75 Broadway, Suite 202
San Francisco, CA 94111

Re: Non-Renewable Resources Sector; Coal Operations & Metals & Mining
Exposure Drafts for Public Comment (January 2014)

The National Mining Association (NMA) submits the following comments on the Sustainability Accounting Standards Board (SASB) Exposure Drafts on coal operations and metals and mining released on January 14, 2014. SASB shared the Exposure Drafts with NMA on February 12, 2014, and hosted a webinar for NMA members on the organization and development of the sustainability accounting metrics on March 4, 2014. NMA appreciates SASB's willingness to educate our staff and members on the mission and efforts undertaken by the organization in developing sustainability accounting standards for use by publicly-listed corporations in disclosing material sustainability issues. However, NMA strongly opposes SASB's work to date and will not support in any manner SASB's ongoing efforts to develop disclosure guidance or accounting standards on sustainability topics for coal operations and the metals and mining industry in the "non-renewable resources sector."

Statement of Interest

NMA is a national trade association whose members include the producers of most of the nation's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and the engineering and consulting firms, financial institutions and other firms serving the mining industry. NMA members produce energy, metals and minerals that are essential to economic prosperity and a better quality of life. NMA members are committed to development that balances social, economic and environmental considerations.¹ NMA and our members are also committed to the safety of employees through the CORESafety® program.² As stated above, NMA and its members do not support SASB's efforts to date in determining and dictating which sustainability issues are material industry-wide and consequently should be disclosed (voluntarily or through a formal rulemaking process) in annual (i.e., Form 10-K or 20-F) or periodic filings to the U.S. Securities and Exchange Commission (SEC).³

NMA's Objections to the SASB Approach and Exposure Drafts

1. **The SEC's Existing Rules are Comprehensive:** Companies listed on the U.S. stock exchange are already required to report material risks in their regulatory filings with the SEC, including sustainability information that a company deems to have a material impact on its current or future financial performance. If the SEC wanted additional disclosures from companies, it would pursue informal or formal guidance to elicit additional information.

Additionally, any stakeholder interested in obtaining further information from a company on its sustainability performance may contact that company directly to encourage additional disclosures and engage in direct dialogue with the company on these issues. SASB's efforts to intrude into this process as a third party and push an aggressive campaign on expanded disclosures that are irrelevant to what a "reasonable investor" would expect from companies is entirely inappropriate. In the end, the *company and not SASB* is in the best position to determine what sustainability information is material to its operations and whether it should be disclosed. Furthermore, there are a multitude of robust voluntary disclosure programs on sustainability that SASB ignores in the development of its program, which only results in an additional scheme that does little to provide clarity and continuity for companies or their investors.

2. **SASB's "One-Size-Fits-All" Approach Improperly Expands the "Materiality" Standards under Current SEC Law:** In its briefing of NMA members, SASB proclaims that companies, within the confines of U.S. Supreme Court precedent, define "materiality". However, SASB's entire approach is to determine for an *industry sector* what is "material information" and "materiality" for disclosing sustainability issues. In the Conceptual Framework, SASB states that an aggregated analysis at the industry level is appropriate "because companies that provide similar products and services tend to have similar business models, use resources in similar ways, and therefore tend to have similar impacts on society and the environment." *See* SASB, Conceptual Framework at 9–10 (October 2013). SASB goes on to explain that "analysis of the impact of sustainability topics at the industry-level is meant to provide guidance for disclosure on sustainability topics that are *likely* to be material at the company-level." *Id.* at 10 (emphasis added).

This analysis turns the whole concept of a "materiality" determination on its head. By acting as the self-empowered arbiter on sustainability accounting metrics—metrics that are based on largely insupportable research and findings on the regulatory trends and sustainability-related risks facing the industry *without* meaningful participation of industry experts—SASB acts in

¹See NMA Position on Sustainable Development at <http://nma.org/index.php/position-on-sustainable-development> (last visited April 8, 2014).

²CORESafety is an approach to mining safety and health focused on preventing accidents before they happen, using a management system approach to drive continuous safety improvement. Its objective is to have zero fatalities and a 50 percent reduction in mining's injury rate within 5 years (0:50:5). CORESafety is the first system to integrate leadership and culture into an industry management system that includes self-reporting. *See* <http://www.coresafety.org/>.

³NMA's membership consists of U.S. and foreign public companies that are listed on the U.S. stock exchange and comply with existing U.S. Securities and Exchange Commission (SEC) regulations and filing obligations. NMA's membership also consists of private companies not governed by SEC regulations.

direct conflict with SEC's approach to entity-specific materiality determinations and the Supreme Court's fact-specific standard. Furthermore, by creating an "industry materiality" standard, SASB ignores the incredibly important fact that companies within the mining sector operate under a unique set of circumstances (i.e., the region in which a company operates, the scale of the operation, the grade of the ore mined and how it is processed, the ownership and size of the operation, etc.). Therefore, what is material for company "A" will not be material for company "B." Providing "industry materiality" guidance will only serve to confuse shareholders and other stakeholders into believing that *all* of the activity and accounting metrics identified by SASB are material and companies that do not disclose all of them are misleading investors. SASB is not "complet[ing] the picture on corporate performance" as proclaimed by the organization in its presentation, but creating a system of disclosure that will mislead and confuse investors in their investment decisions.

3. **SASB's Reporting Requirements are Largely Inappropriate, Go Beyond the "Reasonable Investor" Standard and are Inappropriately Forward-Looking and Speculative:** Given our opposition to SASB's actions to date in developing these industry sustainability accounting metrics, NMA will not provide a thorough critique of every topic and accounting metric provided in the Exposure Drafts. As a whole, NMA objects to the Exposure Drafts for coal operations and the metals and mining industry and lends no support to individual topics or metrics identified. However, given this opportunity to comment, there are several important overarching concerns with the approach SASB has taken. First, many of the metrics do not even meet SASB's own criteria of being relevant/useful, cost effective, comparable and auditable. Second, many of the metrics are not reflective of the "reasonable investor" standard under U.S. securities laws. Finally, some of SASB's reporting requirements are inappropriately forward-looking and speculative and beyond what the SEC requires. For example, speculation on the potential for greenhouse gas emissions embedded in proved coal reserves are not base level risks to investors. Such metrics do not account for advances in control technology that are arguably more relevant to investors than the metrics identified by SASB.

All in all, NMA strongly opposes the finalization of the Exposure Drafts for coal operations and the metals and mining industry. NMA will not support this initiative as it moves forward and will advocate against the adoption of these standards in any future rulemaking proceedings with the SEC.

Sincerely,

TAWNY A. BRIDGEFORD
Deputy General Counsel

Dr. GOSAR. And one last point. When we talk about transparency and evaluation, I find it interesting that we still do not have the dissertation about climate, what was actually done for background to have all of the information, how it was actually looked at.

I am a believer that climate always changes, but we need to have all the data and how it was collected, where it was collected and making that transparent for the American public because that has never been disclosed.

I yield back.

Dr. LOWENTHAL. Thank you, Mr. Ranking Member.

We are going to be closing this hearing, but before we close the hearing, I would like to ask each witness one last question.

What is the one question you were not asked today that you wish you were asked, and what would be your answer to that?

So, is there any question? If you don't think there was any question, then just say no, but is there one question that you were not

asked that you wished you were asked by the panel up here, and what would be your answer to that question?

I am going to start with Ms. Mason. Is there any question you were not asked that you came prepared or you would have liked to have been asked?

If not, that is fine.

Ms. MASON. I think actually the Committee did an excellent job of the questions across the board, so I have nothing to add.

Dr. LOWENTHAL. OK. Thank you.

Mr. Snover, is there one question that you would have liked to have been asked that now is your opportunity and what is your answer or you would like to elaborate on some answer?

Mr. SNOVER. Thank you, Mr. Chair.

I would just like to maybe touch on the Energy Transition Act that was enacted in New Mexico last year, which included \$40 million to help northwest New Mexico transition away from coal, and whether I support providing transition assistance to impacted communities.

And my answer is, of course, because as we had talked through some of the questions and answers and some of the testimony about transitioning our energy economy to a more renewable energy economy, there are going to be people who are kind of lost or potentially left behind in these transitions, folks that are, I mean, I hate to admit it but my age, in their early 50s and older that have been in a career for decades perhaps, and they know nothing else. They don't possibly have any other readily marketable skills.

But I think it is our obligation as elected officials and policy makers that we have a role to play to provide the best possible outcomes for those hardworking New Mexicans, specifically that they just want to provide a good life for their families, they want to be able to pay their bills, and they want to have pride in what they do every day.

And as we transition into this new energy economy, they don't have time to worry about what we are doing here today. They are just trying to go to work and make a living.

I think it is important that we support these laws such as the Energy Transition Act in New Mexico and try to give these folks as much opportunity to move into the next phase of their careers as possible.

Thank you, Mr. Chairman.

Dr. LOWENTHAL. Thank you, Mr. Snover.

Mr. Stein, any question that you would have liked us to ask or you would like to elaborate on some answer? This is your opportunity.

Mr. STEIN. Sure. Thank you very much, Mr. Chairman.

I just want to point out the question here is why this needs to be put on the private sector. As I said, a lot of this stuff is already reported to the Federal Government.

If local communities or independent groups are not able to get this information, that is a government transparency problem. It is not the companies themselves that are not sharing this information.

So, I think the question is why this cost needs to be put on the private sector rather than being put on these agencies whose job it is to monitor these sorts of things anyway.

Dr. LOWENTHAL. Thank you.

And, Dr. Goldman, one question or something you would like to elaborate on?

Dr. GOLDMAN. Thank you, Chairman.

I want to address the question of why this matters. Why does disclosure matter?

When I think about that, I think about the fact that this matters to the more than 8,000 residents who were displaced from their homes during the Aliso Canyon disaster a few years ago.

And it matters to the Indigenous communities that are living downstream of energy production sites without even knowing what might be being emitted into their waterways.

And it matters to the countless people in this country who live in the shadow of energy production sites and wake up every day wondering if their headache or their child's nosebleed is the result of toxic pollution from a nearby facility.

We owe it to them to ensure that this vital information is disclosed. This bill has requirements that are feasible and long overdue for companies, but more importantly, this bill is necessary and urgent for the American people.

Dr. GOSAR. Mr. Chairman, could I ask a question of the Chair?

In Arizona, we have the Navajo Generating Station, and as you know, the tribes actually are under the purview of Congress because of a trust agreement.

How would this legislation work when we have the trust responsibility? Would the Navajo Nation be responsible to report to this Board? Because it seems very odd and a contradiction of our due diligence under the Constitution.

Dr. LOWENTHAL. To answer your question, as it is written, it does not apply to the tribes at all.

Dr. GOLDMAN. If I may, may I elaborate on my comment?

Dr. GOSAR. Well, once again to the Chair, that sets one standard for one set of people and a different set for another.

Dr. LOWENTHAL. That is why we call it sovereign nation.

Dr. GOSAR. OK. Now that you opened up that worm, once again, they are wards of the Federal Government because they come every year to the United States under the auspices of appropriations. A sovereign entity has no entailments to another government. It is a pseudo type of application.

So, once again, how can we establish one standard for one group of people and yet not another?

Dr. LOWENTHAL. Well, we do, and I would be willing to work with you to discuss that issue in a hearing. I think you have raised an important issue. We do not deal with that in this bill at all.

But you have raised an issue that I don't think has to do specifically just with this bill. It has to do with all bills that really have to do with when we are talking about dealing with Native Americans on their designated land.

So, I would be willing to work with you. I think that is an interesting question that you raise. How can we have two standards?

Dr. GOSAR. And it goes beyond that because we have had some discussion in regard to Chaco Canyon. In regard to an amendment that is the requirement because of the Native Americans who have allotments behind that aspect. They have to be able to have access and to increase their claim.

So, once again, we keep running into this roadblock, and I think it is something that we ought to address sooner than later in that regard.

From that standpoint, I just wanted to bring that up.

Dr. LOWENTHAL. Thank you.

With that, I believe that we have kind of completed the hearing, and I would like to say that the members of the Committee here may have some additional questions for the witnesses, and we are going to ask you to respond in writing for any additional questions.

Under Committee Rule 3(o), members of the Committee must submit their witness questions within 3 business days following the hearing, and the hearing record will be held open for 10 business days for these responses from the witnesses.

If there are no further questions and no further business, without objection, the Committee stands adjourned.

[Whereupon, at 11:27 a.m., the Subcommittee was adjourned.]

