

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

January 25, 2022

Mr. Max Sarinsky
Senior Attorney, Institute for Policy Integrity
New York University School of Law
New York, New York

Dear Mr. Sarinsky,

I am writing to thank you for appearing before the Subcommittee on Energy and Mineral Resources at the oversight hearing on Thursday, January 20th, 2022 to present testimony on, "*What More Gulf of Mexico Oil and Gas Leasing Means for Achieving U.S. Climate Targets.*"

Your testimony was helpful in defining the Committee's understanding of the issue. We appreciate your time and insight and are grateful for your contribution to the Committee's work.

While many questions were asked during the hearing, the Subcommittee has additional questions, attached, for your reply. Please provide your written responses to: Charles Olsen, Subcommittee Clerk, no later than Thursday, February 3rd. Committee Rule 3(o) requires that responses be submitted within 10 business days of the hearing.

If you have any questions, please feel free to contact Charles Olsen, Policy Aide, at Charles.Olsen@mail.house.gov. Thank you for your important contribution to the Committee's work.

Sincerely,



Alan S. Lowenthal
Chair
Subcommittee on
Energy and Mineral Resources

Enclosures: Questions for the Record

Questions for the Record by Democrat Members

Questions from Rep. Huffman for Max Sarinsky; Senior Attorney, Institute for Policy Integrity, NYU School of Law:

1. Mr. Sarinsky, can you identify a few of the times that U.S. courts have taken issue with federal agencies using either perfect substitution or very high substitution rates to support fossil fuel projects or additional fossil fuel leasing?

Questions for the Record by Republican Members

Questions from Rep. Carl:

1. You emphasize twice in your testimony's first two paragraphs that your think-tank (IPI) is non-partisan. Please disclose for the record the political contributions and affiliations of yourself and obtain from your present colleagues and disclose that information for the institute's executive committee and board.
2. What is your think-tank's prediction for both US and global oil demand over by years 2025, 2035, 2040, and 2050? (If IPI has not made or refuses to make such a prediction here, please cite a credible source for such prediction upon which you base your policy prescriptions.)
3. Has any person or agency within the Biden Administration ever asked IPI or its employees to conduct studies or informal analysis of any kind to support its policy or regulatory processes?
 - a. If so, please provide the committee either physical or electronic copies of such communications.
4. If so, has IPI or its employees been in any way compensated for such work product? If so, please provide the committee either physical or electronic copies of such transactions.
5. Excluding public comments, has IPI directly communicated with any member of the White House staff, either political appointee or career staff, on BOEM's Revised Draft Environmental Impact Statement for Cook Inlet Lease Sale 258?
 - a. If so, please provide the committee either physical or electronic copies of such communications.
6. Excluding public comments, has IPI directly communicated with any member of the Interior Department staff, either political appointee or career staff, on BOEM's Revised Draft Environmental Impact Statement for Cook Inlet Lease Sale 258?

- a. If so, please provide the committee either physical or electronic copies of such communications.
7. Please disclose any instances where IPI has offered, been requested for, or provided any information in support of the filings of the parties to *Friends of the Earth v. Haaland* (DDC) as well as any and all of the cases you cite in your testimony, and please provide the committee either physical or electronic copies of such communications. (Including *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 736–40 (9th Cir. 2020))
8. Your testimony cites working paper from one Brian Prest of Resources for the Future. Please disclose all communications between IPI employees and Mr. Prest.
9. In the hearing, you indicated that you were aware of a study that showed restricting oil and gas production in the GOM would result in a decrease in the total consumption of oil and gas in the US. Please provide that study.

Responses of Max Sarinsky to Questions for the Record

Before the House Subcommittee on Energy and Mineral Resources

February 3, 2022

Question from Rep. Huffman

1. Mr. Sarinsky, can you identify a few of the times that U.S. courts have taken issue with federal agencies using either perfect substitution or very high substitution rates to support fossil fuel projects or additional fossil fuel leasing?

At least five federal court cases fit this description, which can be grouped into two categories.

In at least two cases, federal appellate courts have rejected the assumption of perfect substitution, finding that it violates economic principles. First, in 2003, the U.S. Court of Appeals for the Eighth Circuit rejected an analysis from the Surface Transportation Board assuming that a proposed coal railroad would not affect coal consumption, explaining that “the proposition that the demand for coal will be unaffected by an increase in availability and a decrease in price, which is the stated goal of the project, is illogical at best.”¹ Then, in 2017, the U.S. Court of Appeals for the Tenth Circuit rejected an analysis from the Bureau of Land Management (“BLM”) finding that fossil fuel leasing would not affect greenhouse gas emissions, finding the “perfect substitution assumption arbitrary and capricious” because it is “contrary to basic supply and demand principles.”²

In three other cases, federal courts have rejected the MarketSim model that the Bureau of Ocean Energy Management (“BOEM”) developed for its review of offshore leasing, which finds very high substitution rates. First, in 2020, the U.S. Court of Appeals for the Ninth Circuit held that BOEM’s analysis improperly omitted impacts on foreign oil demand resulting from domestic production, and thus irrationally assumed that foreign oil consumption will remain static when domestic production increases.³ As the Court explained, this ignores the global nature of the energy market and violates “basic economics principles” about supply and demand.⁴ Then, in 2021, the U.S. District Court for the District of Alaska echoed these findings in a decision vacating a BLM development plan that relied on the same faulty modeling.⁵ Most recently, just last week, the U.S. District Court for the District of Columbia identified the same flaw in BOEM’s analysis and thus vacated an offshore lease sale in the Gulf of Mexico.⁶

Questions from Rep. Carl:

1. You emphasize twice in your testimony’s first two paragraphs that your think-tank (IPI) is non-partisan. Please disclose for the record the political contributions and affiliations of yourself and

¹ *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549 (8th Cir. 2003).

² *WildEarth Guardians v. BLM*, 870 F.3d 1222, 1236 (10th Cir. 2017).

³ *Id.*

⁴ *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 736–40 (9th Cir. 2020).

⁵ *Sovereign Inupiat for a Living Arctic v. BLM*, No. 3:20-CV-00290-SLG, 2021 WL 3667986, at *10–14 (D. Alaska Aug. 18, 2021).

⁶ *Friends of the Earth v. Haaland*, No. CV 21-2317 (RC), 2022 WL 254526, at *12–15 (D.D.C. Jan. 27, 2022).

obtain from your present colleagues and disclose that information for the institute’s executive committee and board.

The redundancy of that statement in my written testimony was due to an editing oversight for which I apologize. In any event, my individual contributions to federally registered political committees is publicly available [here](#) through the Federal Election Commission (“FEC”) website. I have no personal knowledge of contributions from other Institute for Policy Integrity (“Policy Integrity”) staff or advisory board members, though I understand their federal campaign donations should also be a matter of public record on the FEC website.

2. What is your think-tank’s prediction for both US and global oil demand over by years 2025, 2035, 2040, and 2050? (If IPI has not made or refuses to make such a prediction here, please cite a credible source for such prediction upon which you base your policy prescriptions.)

Policy Integrity has not made projections of future U.S. or global oil demand. While many independent projections exist, some of the most authoritative projections come from the U.S. Energy Information Administration (“EIA”)—a federal agency that analyzes and disseminates energy information. In its most recent Annual Energy Outlook, EIA recognized substantial uncertainty in future oil demand. For instance, under the “Low Oil and Gas Supply” case, EIA projects that renewable energy would greatly increase its share of U.S. electricity generation while natural gas would decline substantially, with renewables soon becoming the dominant source of U.S. electricity generation.⁷ In some other cases, EIA projects that oil demand will remain relatively steady over the coming decades.⁸ Of course, the policies that the United States and other nations enact in the coming years could greatly determine which future occurs.

As explained in my written and oral testimony, this considerable long-term uncertainty creates substantial “option value” (i.e., the economic value of delay) that counsels for curtailing leasing at this time, when developers hold so many existing leases in reserve and thus the short-term need or economic benefit from additional leasing is currently low. If there remains a need for additional energy after fossil-fuel developers have mostly exhausted their reserves, then Interior could engage in additional leasing at that time. But if other energy sources, including renewable sources, meet national demand and there is little need for additional fossil-fuel leasing, then leasing that occurs now would have unnecessarily exacerbated the climate crisis for limited benefit.⁹ In other words, the fact that long-term oil and gas demand is highly uncertain is itself a strong reason to curtail leasing at this time.

3. Has any person or agency within the Biden Administration ever asked IPI or its employees to conduct studies or informal analysis of any kind to support its policy or regulatory processes? If so, [p]lease provide the committee either physical or electronic copies of such communications.

⁷ U.S. Energy Information Administration, Annual Energy Outlook 2021 at 15 (2021), https://www.eia.gov/pressroom/presentations/AEO2021_Release_Presentation.pdf.

⁸ *E.g., id.*

⁹ For a fuller discussion of option value and how it may affect Interior leasing determinations, see pages 6–8 of my written testimony previously submitted to this committee.

No person or agency within the Biden Administration has asked me to conduct studies or analysis to support its policy or regulatory processes, either on the subject matter of my testimony or on anything else. I am not aware of any person or agency within the Biden Administration asking other Policy Integrity staff to conduct studies or analysis to support the Administration's policy or regulatory processes.

4. If so, has IPI or its employees been in any way compensated for such work product? If so, [p]lease provide the committee either physical or electronic copies of such transactions.

Please see response to Question 3.

5. Excluding public comments, has IPI directly communicated with any member of the White House staff, either political appointee or career staff, on BOEM's Revised Draft Environmental Impact Statement for Cook Inlet Lease Sale 258?

I have not directly communicated with any member of the White House staff on BOEM's Revised Draft Environmental Impact Statement for Cook Inlet Lease Sale 258 (excluding public comments). I am not aware of any other Policy Integrity staff having done so.

6. Excluding public comments, has IPI directly communicated with any member of the Interior Department staff, either political appointee or career staff, on BOEM's Revised Draft Environmental Impact Statement for Cook Inlet Lease Sale 258?

I have not directly communicated with any member of the Interior Department staff on BOEM's Revised Draft Environmental Impact Statement for Cook Inlet Lease Sale 258 (excluding public comments). I am not aware of any other Policy Integrity staff having done so.

7. Please disclose any instances where IPI has offered, been requested for, or provided any information in support of the filings of the parties to Friends of the Earth v. Haaland (DDC) as well as any and all of the cases you cite in your testimony, and please provide the committee either physical or electronic copies of such communications. (Including Ctr. for Biological Diversity v. Bernhardt, 982 F.3d 723, 736–40 (9th Cir. 2020))

Policy Integrity served as co-counsel for petitioner in *Center for Sustainable Economy v. Jewell*, 779 F.3d 588 (D.C. Cir. 2015), which was cited in my written testimony. Policy Integrity submitted an amicus curiae brief supporting petitioners-appellants in *WildEarth Guardians v. BLM*, 870 F.3d 1222 (10th Cir. 2017), which was cited in my written testimony. Policy Integrity also submitted an amicus curiae brief supporting plaintiffs in *California v. Bernhardt*, 472 F. Supp. 3d 573 (N.D. Cal. 2020), which was cited in my written testimony. All three filings predated my employment with Policy Integrity.

I contemplated filing an amicus curiae brief on behalf of Policy Integrity in support of plaintiffs in *Sovereign Inupiat for a Living Arctic v. BLM*, No. 3:20-CV-00290-SLG, 2021 WL 3667986 (D. Alaska Aug. 18, 2021), which was also cited in my written testimony, but decided against it. I have otherwise not offered, been requested for, or provided any information in support of the filings in any of the cases cited in my written testimony. I am not aware of other Policy Integrity staff offering, being requested for, or providing any information in support of the filings in any of the cases cited in my written testimony, aside from the three cases discussed in the prior paragraph in which Policy Integrity itself prepared and submitted written filings.

8. Your testimony cites [a] working paper from one Brian Prest of Resources for the Future. Please disclose all communications between IPI employees and Mr. Prest.

In March 2021, after the publication of his cited working papers, a colleague and I exchanged emails with Dr. Prest regarding his research. I am aware that several of my colleagues have also communicated with Dr. Prest since the publication of his cited working papers, but have not been privy to those communications.

9. In the hearing, you indicated that you were aware of a study that showed restricting oil and gas production in the [Gulf of Mexico] would result in a decrease in the total consumption of oil and gas in the US. Please provide that study.

At the committee hearing, I responded affirmatively to Rep. Carl’s question as to whether any studies show that “restricting oil and gas production in federal waters will actually result in decreasing the total consumption of oil in the U.S.” The study that I referenced is presented on pages 43–48 of BOEM’s Revised Draft Environmental Impact Statement for Cook Inlet Lease Sale 258.¹⁰ As that study found, increasing domestic oil and gas production in Alaska’s Cook Inlet would result in an increase in both domestic and international oil and gas consumption, thereby resulting in over \$2 billion in additional climate damage.¹¹

While I did not say this during the Committee hearing, BOEM has actually recognized for years—long before its 2021 analysis discussed above, and beyond the specific context of the Cook Inlet—that increasing offshore oil and gas production increases total U.S. fossil-fuel consumption. In its 2016 analysis for its current five-year program, BOEM concluded that leasing and extraction under the program would in part displace reduced consumption, meaning that the five-year program would increase fossil-fuel consumption.¹²

¹⁰ This analysis is available at https://www.boem.gov/sites/default/files/documents/oil-gas-energy/leasing/LS258-DEIS_0.pdf.

¹¹ *Id.* at 51 tbls.4-14 & 4-15 (using 2.5% discount rate).

¹² BOEM, OCS Oil and Natural Gas: Potential Lifecycle Greenhouse Gas Emissions and Social Cost of Carbon 18 tbl.6-3 (2016), <https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2017-2022/OCS-Report-BOEM-2016-065---OCS-Oil-and-Natural-Gas---Potential-Lifecycle-GHG-Emissions-and-Social-Cost-of-Carbon.pdf>.