



U.S. HOUSE OF REPRESENTATIVES
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Transforming Ideas Into Solutions

Major Projects, Major Problems

Can America Build Anything Big Under the Obama Administration?



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Introduction

We are a nation of big ideas and America has a long history of success translating those ideas into major projects. With our pioneering spirit, no concept or endeavor was too large to tackle, and monumental projects like the Transcontinental Railroad, Panama Canal, Hoover Dam, Alaska Pipeline, and a great many others defined our progress forward. Without them, we would not be the nation we are today.

Some of the very largest undertakings, such as the Manhattan Project and Apollo Mission, were conducted by the federal government. But many were constructed by the private sector, with Washington acting as a facilitator or at least staying out of the way.

But over the last few decades, the federal government has begun to assume a new role in major projects - that of an obstructionist. A tangle of regulatory red tape routinely delays these big endeavors, and sometimes discourages them outright.

The degree of federal interference has reached unprecedented levels under President Obama. Despite the president's pledge in the 2014 State of the Union address to "cut red tape," the administration is aggressively interpreting existing authority to create lengthy permitting delays for proposed projects, while also adding a new layer of regulatory hurdles. As a result, many major projects have been held up.

This has been particularly true in the energy field. Proposed major pipelines, coal-fired power plants, and offshore oil projects are being blocked. The administration is taking action to hold back mining projects as well. Each stalled mega-project costs jobs and economic growth at a time when we need a lot more of both, and each has a chilling effect on those investors considering similar endeavors, both large and small. In addition to the projects already delayed or denied, there is a risk that the coming American manufacturing renaissance may also fall victim to the same red tape.

Washington created this problem, and Washington can fix it. Numerous legislative changes would be required to fully update and modernize the regulatory burden and permitting process, but the scope of the challenge is no reason not to begin to tackle it. If Congress can put in place the right reforms, America could once again become a nation where big ideas can thrive and big projects can get built.

The Keystone XL Pipeline Expansion

The landmark Keystone XL pipeline expansion would carry up to 830,000 barrels of oil 875 miles from Alberta, Canada to Steele City, Nebraska. From there, the oil would go to refineries in the Midwest and Gulf Coast. The new pipeline would also transport some of the rapidly-increasing oil production from the Bakken formation in North Dakota and Montana. The project is estimated to support approximately 42,000 jobs¹, and would

¹ <http://keystonepipeline-xl.state.gov/documents/organization/221135.pdf> p. ES20

deliver enough oil to substantially reduce imports from the Middle East.²

Because the pipeline crosses a national border, it requires federal approval in the form of a Presidential Permit.³ TransCanada, a Canadian energy company, first applied for this permit in September of 2008.⁴ It is still waiting for approval.

The State Department's recently revised Environmental Impact Statement, the second version under President Obama along with several other drafts and a supplemental, has failed to identify any reason to further obstruct Keystone XL.⁵ In fact, it concludes that there are greater safety and environmental risks from *not* building the pipeline, as the oil would still be transported by alternatives like rail and truck.⁶ Further, Keystone XL would be required to include a number of state-of-the-art features that aim to make it safer than any existing pipeline.⁷

Nonetheless, the president has not granted the permit, provided an adequate explanation for the delay, nor said when or even if he will make a final decision.

The Keystone XL expansion exemplifies how difficult it has become to gain approval for a large-scale energy project under the Obama administration. The original Keystone pipeline, roughly comparable in size to Keystone XL, received its Presidential Permit in less than two years in 2008. In fact, no previous energy project crossing the Canadian border has been the subject of significant delays. But for Keystone XL, the process has dragged on for nearly six years, encompassing the entirety of the Obama presidency, and there is no clear end in sight.

The damage done goes well beyond the lost jobs and affordable energy Keystone XL could already be providing. Other energy infrastructure projects face similar permit delays,⁸ and the administration's stonewalling on Keystone XL has likely deterred some companies from undertaking the cost of applying. Meanwhile, the delay has forced the Canadian government to consider alternative means of bringing its growing oil production to market, including the construction of a pipeline to Canada's Pacific coast for export by tanker to China.⁹

Now is a particularly poor time for obstructionism and uncertainty over energy project permits. North America's oil and natural gas output has been rising for nearly a decade, and is expected to continue increasing in the years ahead.¹⁰ Consequently, there is

² <http://keystonepipeline-xl.state.gov/documents/organization/182421.pdf>

³ Executive Order 13337. The portion of the project from Cushing Oklahoma to the Gulf Coast did not require federal approval and has been completed.

⁴ Although TransCanada is a Canadian company, most of the pipeline would be located in the U.S., and much of the technical expertise and most of the job positions would be American.

⁵ <http://keystonepipeline-xl.state.gov/documents/organization/221135.pdf>.

⁶ Id. at ES34-35

⁷ <http://keystonepipeline-xl.state.gov/documents/organization/205595.pdf>

⁸ See, <http://www.reuters.com/article/2014/02/14/enbridge-results-idUSL2N0LJ1AX20140214>

⁹ <http://www.nbcnews.com/news/investigations/what-happens-if-keystone-xl-pipeline-isnt-built-n59026>.

¹⁰ http://www.eia.gov/forecasts/aeo/er/early_production.cfm

an urgent need for new energy infrastructure to deliver affordable energy to consumers – from pipelines to storage facilities to export terminals.¹¹ The private sector is poised to invest upwards of one trillion dollars and create approximately one million jobs on these projects – but only to the extent that the federal government does not stand in the way.¹² Unfortunately, Keystone XL is only one piece of this architecture of abundance that has met with resistance from the administration.

The White Stallion Coal-Fired Power Plant

Defying the recent economic downturn, the state of Texas has enjoyed significant economic growth in recent years, which has contributed to increases in population. Demands for electricity have corresponded with the state’s economic and population growth. In 2008, White Stallion Energy Center proposed to build a 1,320 megawatt project about 90 miles southwest of Houston. According to the company, this large facility would employ 1,500 people during the expected four to five-year construction phase, 200 in the operation phase, and would provide enough electricity to power 650,000 homes.¹³ The plant would primarily run on coal, an affordable and reliable energy source that America possesses in great abundance.

But in February of 2013, despite the demand for additional electricity in the region, White Stallion announced that it had cancelled the project. The company cited uncertainty as to whether it could comply with proposed and upcoming EPA regulations as a major factor in its decision.¹⁴

White Stallion is one of many coal-fired power plant projects that have been stopped in recent years. In a 2012 rulemaking, EPA noted that 15 proposed coal-fired power plants had cancelled plans to construct since 2008.¹⁵ The agency also identified 15 additional projects still pending at the time, several of which (including White Stallion) have subsequently been cancelled.¹⁶

At the same time that very little new coal-fired generation capacity is coming online, many existing plants have shut down or announced closures in the near future, putting further strain on the grid and raising serious concerns about the reliability of our electricity

¹¹ For a discussion of the potential benefits of liquefied natural gas (LNG) export facilities, see <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/20140204LNGexports.pdf>.

¹² <http://www.api.org/news-and-media/news/newsitems/2014/jan-2014/~media/Files/Policy/SOAE-2014/API-Infrastructure-Investment-Study.pdf> ; See also, <http://www.ingaa.org/File.aspx?id=14911>

¹³ http://classic.edsuite.com/proposals/proposals_259/100_1_guide_to_white_stallion.pdf

¹⁴ <http://stateimpact.npr.org/texas/2013/02/15/after-white-stallion-power-plant-cancelled-coal-faces-dark-future-in-texas/>

¹⁵ See, *Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units; Proposed Rule*, 77 Fed. Reg. 22392, 22422 (April 13, 2012), at <http://www.gpo.gov/fdsys/pkg/FR-2012-04-13/pdf/2012-7820.pdf> .

¹⁶ Id.

supply.¹⁷

The long and still-growing list of EPA regulations targeting coal has been cited as a major cause, along with relatively low natural gas prices. Particularly damaging to coal are the already-finalized Mercury and Air Toxics Standards (MATS), and the proposed greenhouse gas New Source Performance Standards (NSPS) for new power plants. The latter is so strict that no technology currently in commercial service can comply. For all practical purposes, it is a de facto ban on new coal-fired electricity generation in the United States.

New natural gas generation is trying to make up the difference, but with more base load supplies like coal and nuclear retiring, imminent threats remain to electricity consumers from a lack of fuel diversity. The heavier reliance on natural gas is exacerbated by the lack of commitment to more infrastructure to deliver the gas from areas of new production to areas of electricity demand.

This growing problem was demonstrated during the bitterly cold winter of 2013-2014 when limitations on the natural gas supply contributed to localized shortages and price spikes, especially in areas like the Northeast where pipeline capacity is inadequate.¹⁸ Without the additional fuel diversity provided by coal, the nation's future electricity supply is likely to be subject to greater price volatility and compromised reliability.¹⁹

Oil Production in the Beaufort and Chukchi Seas

The icy waters of the Beaufort and Chukchi Seas off Alaska represent the last frontier of oil exploration in America. An estimated 23 billion barrels of oil are projected to lie beneath the sea floor in that region.²⁰ The federal government controls the offshore energy rights, and in 2005 through 2008 the Department of the Interior held lease sales totaling more than \$2 billion dollars. These leases, mostly purchased by Shell Oil, have the potential to yield one million barrels per day of oil and support approximately 63,500 jobs annually through 2050.²¹

The Obama administration inherited the task of working with the leaseholders on all the steps leading to actual drilling. Even under previous administrations, there was a lengthy bureaucratic process from acquiring the leasing rights to production of oil, but that path has become all-but-impossible to successfully navigate under the Obama

¹⁷ See, http://www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/2013_LTRA_FINAL.pdf Fig. 14.

¹⁸ <http://www.eia.gov/todayinenergy/detail.cfm?id=14671>

¹⁹ http://www.nytimes.com/2014/03/11/business/energy-environment/coal-to-the-rescue-this-time.html?_r=0;
http://www.cleancoalusa.org/sites/all/files/Electricity-price-spikes_Feb_2014.pdf.

²⁰ http://www.boem.gov/uploadedFiles/BOEM/Oil_and_Gas_Energy_Program/Leasing/Five_Year_Program/2012-2017_Five_Year_Program/Alaska_Fact_Sheet.pdf

²¹ <http://democrats.energycommerce.house.gov/sites/default/files/documents/Testimony-Goldsmith-EP-American-Energy-Initiative-HR-2021-Jobs-and-Energy-Permitting-Act-2011-4-13.pdf> (An estimated 35,000 of these jobs would be located in Alaska and 28,500 in the rest of the U.S.)

administration.

After these leases were acquired, they subsequently became ensnared in delays with EPA and the Department of the Interior over obtaining the permits necessary to move into the exploration and production phases. Compounding the problem has been multiple court challenges from environmental groups that have further delayed the issuance of permits. Given the narrow window to operate in this remote area of the Arctic due to extreme weather conditions during the winter months, the addition of bureaucratic delays and court challenges has forced Shell to postpone plans to drill year after year.

As with Keystone XL, the delays have spanned the entirety of the Obama administration, with minimal progress and no firm deadline as to when drilling will get the green light.

Offshore Alaska may be the largest example of energy production being thwarted by the Obama administration, but it is far from the only one. In fact, a 2014 report by the nonpartisan Congressional Research Service found that the recent increases in American oil and natural gas output are entirely attributable to state and privately-held lands, while production has stagnated on federally-controlled onshore and offshore areas. In the case of oil, the report concludes that “oil production has fluctuated on federal lands over the past five fiscal years, but has increased dramatically on nonfederal lands.”²² For natural gas, “production on non-federal lands grew by 33 percent,” while “production on federal lands (onshore and offshore) fell by about 28 percent.”²³ A turnaround on federal energy production is unlikely, since new federal leasing activity has declined dramatically under the Obama administration.²⁴ Indeed, oil and gas operators are fleeing federal lands for non-federal lands or other countries – places where they can actually produce energy.

Opening up more federal lands to oil and gas production could create more than 500,000 jobs over the next 7 years.²⁵ American innovations in exploration and drilling have made possible the increased production on private and state-owned lands. But these technological advances cannot yet be employed in the Beaufort and Chukchi Seas nor any other federally-controlled areas that remain off limits.

The Pebble Mine

The Pebble Mine in Alaska is a unique project in many ways. If completed, it has the potential to become America’s largest new mine in decades, providing over 16,000 jobs and producing vast amounts of copper, gold, molybdenum, and other metals.²⁶ But it is unique in another respect – the Obama EPA has taken steps to discourage the project even before

²² <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/20140410CRS-US-crude-oil-natural-gas-production-federal-non-federal-areas.pdf>

²³ Id.

²⁴ http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/statistics.html

²⁵ http://www.instituteforenergyresearch.org/wp-content/uploads/2013/02/IER_Mason_Report_NoEMB.pdf

²⁶ <http://corporate.pebblepartnership.com/files/documents/study.pdf>

the company, Northern Dynasty Minerals, has submitted a permit application for the mine.

Because Northern Dynasty has yet to specify its plans for the mine, EPA has essentially invented its own hypothetical version of what the project would look like and has taken steps to characterize it as too damaging to the environment. The agency's "Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska," painted a dire picture of the mine's assumed impact.²⁷ EPA has initiated a rarely-used process under the Clean Water Act to preemptively act against the project.²⁸ The agency has already proposed strict limits on the mine's environmental footprint.²⁹

It is not the role of federal agencies to speculate and predetermine decisions on projects where permits have not even been filed. Such overreaching actions will result in a chilling effect on potential private investment and further deter job growth.

The Alaska state government does not approve of EPA's actions, believing that the federal government is bypassing the state. Governor Sean Parnell has said, "What I think this does is short-circuit the state permitting process."³⁰

Given EPA's announcement that it has begun a process that could end in a veto of the mine, the company now must decide whether to incur the expense of moving ahead with a permit application.

The Pebble Mine is not the only example of the Obama EPA going to unusual lengths to prevent mining activity. The unprecedented revocation of a West Virginia coal mine permit that had been approved years earlier further underscores the message from the administration that any new American mine will have a very hard time obtaining federal approval.³¹ By one estimate, the U.S. is tied with Papua New Guinea as the nation with the longest permitting delays for new mines.³²

Conclusion: Policy Changes Needed to Realize the Potential of Major Projects

The extensive list of stalled projects has sparked a number of reform bills focusing on a specific project or industry. The House has passed with bipartisan support: H.R. 3, the "Northern Route Approval Act," a measure to approve Keystone XL; H.R. 1900, the "Natural Gas Pipeline Permitting Reform Act," to expedite future natural gas pipeline approvals; H.R. 3301, the "North American Energy Infrastructure Act," to eliminate unnecessary steps in authorizing energy infrastructure projects that cross the Canadian or Mexican border; and

²⁷ <http://cfpub.epa.gov/ncea/bristolbay/recordisplay.cfm?deid=253500>

²⁸ <http://www2.epa.gov/sites/production/files/2014-02/documents/bristol-bay-15day-letter-2-28-2014.pdf>

²⁹ http://www.eenews.net/assets/2014/07/18/document_gw_01.pdf

³⁰ <http://kdlg.org/post/governor-parnell-responds-epas-404-c-decision-regarding-pebble-mine>

³¹ http://www.eenews.net/features/documents/2009/09/08/document_pm_01.pdf

³²

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCwQFjAB&url=http%3A%2F%2Fwww.dolbear.com%2F_literature_125436%2F2012_Ranking_of_Countries_for_Mining_Investment&ei=PnBNU6feK9Pt0QHYjYHwBQ&usg=AFQjCNEuoZcMf-zr8zSxz_aLL3eTwwfnYw.

H.R. 6, the “Domestic Prosperity and Global Freedom Act,” to expedite the approval of natural gas export facilities.

The House has also passed H.R. 3826, the “Electricity Security and Affordability Act,” to help maintain a role for coal in a diverse, affordable, and reliable electricity mix. The committee continues to pursue other specific reforms.

Beyond these targeted provisions, there are problems common to many projects that need to be addressed, most significantly permitting uncertainty. In particular, federal regulators are often under no deadline to act on permit applications and can hold up projects indefinitely. The problem is not new, but Obama administration regulators have taken full advantage of opportunities to place proposed projects in an extended state of limbo.

In some respects, lengthy permitting delays are more damaging than timely rejections. With the latter, companies can at least consider their legal options or perhaps make modifications to their proposal and re-apply. Years-long delays also encourage some companies to simply give up and withdraw their applications, allowing the Obama administration to evade responsibility for stopping job-creating projects. Uncertain timelines also wreak havoc on the ability to secure financing for projects, especially large-scale ones.

These delays place the U.S. at a global disadvantage. Nearly all other industrialized nations have a “shot clock” for regulators, who must make a final decision within a specified timeframe.³³ Delays can prove fatal for American projects competing in a global marketplace, since similar endeavors located abroad can move much more quickly.

In addition to the above-mentioned projects and others like them, America is at the cusp of a major manufacturing renaissance. Rising natural gas production from non-federal lands has given the U.S. ample and affordable supplies, and the Energy Information Administration predicts continued increases in the coming decades.³⁴ This provides natural gas-using industries located in the U.S. a potential competitive advantage, especially chemicals producers that use natural gas (or natural gas liquids) as a chemical feedstock. According to one industry estimate, 148 chemical industry projects valued at over \$100 billion have been announced, with the potential to create 637,000 jobs.³⁵ Most have not yet

³³ See, *Environmental Permitting Guidance*, Department of Environment Food & Rural Affairs (UK), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211852/pb13897-ep-core-guidance-130220.pdf; *EPBC Act – Environment Assessment Process*, Department of Sustainability, Environment, Water, Population and Communities (Australia), available at http://www.environment.gov.au/system/files/resources/d60cdd6a-8122-473a-bbd0-d483662cef3e/files/assessment-process_1.pdf; *Basics of Environmental Assessment*, Canadian Environmental Assessment Agency, available at <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=B053F859-1#type02>.

³⁴ [http://www.eia.gov/forecasts/aeo/er/pdf/0383er\(2014\).pdf](http://www.eia.gov/forecasts/aeo/er/pdf/0383er(2014).pdf)

³⁵ <http://www.americanchemistry.com/Policy/Energy/Shale-Gas/Fact-Sheet-US-Chemical-Investment-Linked-to-Shale-Gas-Reaches-100-Billion.pdf>

been permitted, and indeed several have already seen their original timelines slip.³⁶ Extended delays could negate the energy cost advantage.

Along with the domestic energy renaissance, the domestic manufacturing renaissance has the potential to turn around the U.S. economy, but only if the right policies are in place. In addition to the industry-specific reform bills mentioned above, it is time for a broad review of federal permitting requirements with the goal of eliminating unnecessary delays and uncertainty.

Despite the regulatory obstacles, there still is a willingness to invest in major projects in the U.S. With a more reasonable regulatory environment, the nation could start thinking and building big again.

³⁶See <http://www.goldmansachs.com/our-thinking/our-conferences/north-american-energy-summit/unlocking-the-economic-potential-of-north-americas.pdf>, Exhibit 8.