

SPEND, BABY, SPEND

How Oil and Gas Controls Colorado



Spend, Baby, Spend: How Oil and Gas Controls Colorado

Colorado's oil and gas industry has been called "the state's most powerful"¹ and few would disagree. The industry has long presented itself as a key job creator and driver of Colorado's economy. Certainly, the industry has benefitted from regulations that are looser than even some historically friendly states like Texas and Pennsylvania. As it turns out, however, oil and gas development is a smaller portion of the state's economy than most Coloradans would likely expect, given the industry's power in Colorado political and policymaking arenas. This disparity may be explained by the industry's robust and effective spending on elections and lobbying.

Oil and Gas Development's Place In Colorado's Economy

Statistics from the United States Department of Commerce's Bureau of Economic Analysis (BEA) show that as of 2010 (the last year for which complete statistics are available) the oil and gas industry in Colorado accounted for only 2.25% of the state's gross domestic product (GDP) and just under 1% of the state's jobs.² This means that oil and gas extraction is not close to being a top industry in Colorado either measured as a percentage of state GDP or in terms of number of jobs created. The three largest private-sector contributors to Colorado GDP in 2010 were the Real Estate industry (including renting and leasing), at 12.25% of state GDP, Professional, Scientific and Technical Services, at 9.56%; and Information, at 8.37%.³ The top three private-sector industries for total Colorado jobs in 2010 were Retail Trade with 301,498 jobs (9.58% of all Colorado jobs); Health Care and Social Assistance with 281,417 jobs (8.94%); and Professional, Scientific and Technical Services with 275,885 jobs (8.77%).⁴ Oil and Gas even

¹ Kristen Wyatt, *Colorado Dems seeing partial victories on oil, gas*, ASPEN TIMES, (Apr. 16, 2013), <http://www.aspentimes.com/article/20130416/NEWS/130419878>.

² U.S. DEP'T OF COMMERCE, BUREAU OF ECON. ANALYSIS, REGIONAL ECONOMIC ACCOUNTS, <http://www.bea.gov/regional/index.htm> (last visited May 23, 2013).

³ *Id.*

⁴ *Id.*

came in behind even the Accommodations and Food Services industry, which employed 220,787 Coloradans (7.00% of all Colorado jobs) and accounted for 3.23% of the state's GDP in 2010.⁵

This conclusion is further supported by state-level data from 2007. According to the State of Colorado, the Mining industry as a whole (which includes the oil and gas industry as its largest component) accounted for 4% of state GDP in 2007.⁶ The entire Mining industry employed only 25,019 people, or 1.1% of all Colorado jobs in 2007.⁷

See **Appendix 1** for a presentation of selected Colorado data from the BEA analysis.

The Oil and Gas Industry's Political Clout in Colorado

The oil and gas industry punches above its weight when it comes to influence on Colorado politics. The industry has long been lightly regulated in Colorado, with fines for spills capped at \$1000 per day.⁸ In contrast, industry-friendly Texas allows fines ten times larger.⁹ Moreover, the Colorado Oil and Gas Conservation Commission ("COGCC"), which regulates the industry, has been reluctant to impose any fines for violations that result in spills. According to a study by the Fort Collins *Coloradoan*, less than 7% of all spills in the state resulted in a COGCC fine.¹⁰ Even in those rare cases when a fine is imposed, the COGCC

⁵ *Id.*

⁶ COLO. OFFICE OF ECON. DEV. AND INT'L TRADE, ECONOMIC DEVELOPMENT DATA Book 2008-09 EDITION 4 (2008), available at <http://www.larimer.org/compass/ColoradoDataBook2008-09.pdf>.

⁷ *Id.*

⁸ 2 COLO. CODE REGS. § 404-1:523(a)(1) (2013).

⁹ TEX. NAT. RES. CODE ANN. § 85.381(a)(1) (West 2013).

¹⁰ Bobby Magill, *Big fines rare for Colorado's oil and gas rule breakers*, COLORADOAN (Apr. 7, 2013),

<http://www.coloradoan.com/article/20130407/NEWS01/304070044/Big-fines-rare-Colorado-s-oil-gas-rule-breakers>.

often “suspends” a portion of a fine. In 2012, \$90,000 of a total \$257,100 of fines were suspended.¹¹

The oil and gas industry also enjoys a friendly relationship with Colorado’s Governor, John Hickenlooper, himself a former petroleum geologist turned restaurant entrepreneur. In February 2011, he appeared in controversial “public service announcements” about the purported safety of hydraulic fracturing (“fracking”) paid for by the Colorado Oil and Gas Association (“COGA”).¹² Hickenlooper’s 2011 appointments to the COGCC included two individuals who were employed by oil and gas companies at the time – one was the “state government affairs” manager for a large oil company – pleasing COGA but leaving environmentalists wary.¹³

The 2013 legislative session was another successful one for the industry. Two key bills opposed by the industry were defeated. One bill would have required wells in the heavily-developed Greater Wattenberg Area to meet the same testing standards that apply to the rest of the state (reversing a COGCC decision to allow more lenient testing rules there). The second bill would have imposed restrictions on conflicts of interest by members of the COGCC.¹⁴ A third bill, to raise fines on oil and gas producers, was withdrawn by its House sponsor

¹¹ COLO. OIL AND GAS CONSERVATION COMM’N, 2012 COGCC Enforcement Cases Approved with Fines, available at <http://www.scribd.com/doc/133693738/Colorado-Oil-and-Gas-Conservation-Commission-CORA-Response> (produced in response to Open Records Act request by Colo. Ethics Watch).

¹² Luis Toro, *Do Hickenlooper’s oil and gas ads cross the line? Yes*, DENVER POST, (Mar. 4, 2012, 1:00 AM), http://www.denverpost.com/opinion/ci_20083124.

¹³ Electa Draper, *Colorado Oil and Gas Conservation Commission: Members shuffled amid ‘new era’*, DENVER POST (July 30, 2011, 1:32 AM) http://www.denverpost.com/news/ci_18582675

¹⁴ Eli Stokols, *Hickenlooper gets Dems to flip, kills two bills to regulate oil and gas*, KDVR Fox 31 Denver (May 6, 2013, 8:02 PM), <http://kdvr.com/2013/05/06/hick-gets-three-dems-to-flop-kill-water-monitoring-measure/>. Note: Ethics Watch staff testified in support of this bill.

after the state Senate did not agree to a mandatory minimum fine.¹⁵ The fine bill, in particular, had the potential to cost oil and gas businesses money – it would have raised the maximum fine from \$1000 per day to \$15,000 per day.¹⁶

Oil and Gas Spending on Lobbying and Elections: A Sound Investment

How does the industry fare so well in this famously outdoor-loving state? As with so many questions in modern politics, the answer can be found by following the money. Ethics Watch looked at campaign finance reports and lobbying disclosures over a four-year period, from 2009 through 2012, and the results are informative:

- Oil and gas companies and their employees contributed over \$800,000 to political action committees, 527 political organizations and other groups to influence statewide candidate elections during the 2010 and 2012 election cycles. Significantly, politicians from both major parties benefited from this oil and gas money. 113 Republican and 82 Democratic candidates received support from groups that received contributions from the industry during those two cycles.
- Oil and gas companies and associations spent approximately \$4.7 million on lobbying Colorado elected officials during Fiscal Years 2008-09 through 2011-12. This spending greatly exceeded lobbying spending by higher education (approx. \$4 million), the telecommunications industry (approx. \$3.8 million), other mining businesses (approx. \$1.9 million) and agriculture (approx. \$900,000) during the same four-year period. (The health care industry dwarfed all others during these years dominated by the health care reform debate, spending more than \$16.6 million on Colorado lobbying.)

¹⁵ Peter Marcus, *Oil and gas regs slip by lawmakers*, COLORADO STATESMAN (May 13, 2013), <http://www.coloradostatesman.com/content/994158-oil-gas-reg-slip-lawmakers>.

¹⁶ *Id.*

- The number of registered professional lobbyists representing oil and gas interests at the Colorado legislature exceeded the number of COGCC inspectors monitoring the industry, 28 to 17 during Fiscal Year 2012-13.
- 2013 Fiscal Year-end statistics for lobbying spending will not be available until July, however, these same oil and gas companies and associations have so far spent approximately \$1.06 million dollars lobbying through April 30, 2013.

Graphic representations of these statistics may be found in **Appendix 2**. A breakdown of spending on lobbying by company may be found in **Appendix 3**.

The oil and gas industry has additional ways to curry favor with public officials. Although Governor Hickenlooper was not on the ballot in the 2012 election, he was the chief advocate for Amendment S, a proposal to modify the state personnel system established in the Colorado Constitution.¹⁷ That same election, the Governor (and most Colorado elected officials) took a public stand against Amendment 64, which would legalize marijuana in Colorado.¹⁸ Oil and gas businesses contributed heavily to both the Yes on S (appx. \$106,000) and No on 64 (appx. \$25,000) campaigns – ballot issue committees which are not subject to contribution limits.

A corporation's return on investment in election campaigns or lobbying is hard to quantify. Directly trading political favors in exchange for campaign contributions is, of course, illegal. But corporations are run by directors who owe

¹⁷ Tim Hoover, *Colorado governors, present and past, ask voters to say, 'Yes on S'*, DENVER POST, (Sept. 13, 2012, 3:23 AM)

http://www.denverpost.com/breakingnews/ci_21528578/colorado-governors-present-and-past-ask-voters-say.

¹⁸ Press Release, Governor of Colo., Gov. Hickenlooper Opposes Amendment 64 (Sept. 12, 2012), available at

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=GovHickenlooper%2FCBONLayout&cid=1251630730489&pagename=CBONWrapper>.

the shareholders a fiduciary duty to use corporate money only in the best interests of the corporation, and spending on lobbying has gone on for years. So what do oil and gas companies get as the return on these investments?

Some of the companies that spent the most on lobbying are also companies that have had the most spills in their Colorado drilling operations. According to a recent study by the Center for Western Priorities, six companies accounted for 62% of all reported spills in Colorado during 2012.¹⁹ Four companies were responsible for 92% of the spills that impacted Colorado groundwater that same year.²⁰ The list includes some of the oil and gas companies that spend the most on lobbying in Colorado – Anadarko, Noble Energy, and Encana Oil and Gas. The six companies identified as responsible for a majority of spills in Colorado²¹ have spent approximately \$455,000 on lobbying in Fiscal Year 2013 so far (through April 30, 2013) according to public disclosures filed with the Colorado Secretary of State.

These companies evidently believe that their political spending benefits shareholders, and the weakness of Colorado's enforcement provides proof that those investments are sound.

Conclusion

While it is not surprising that the oil and gas industry is a big lobbying player/contributor in Colorado politics, the level at which this has influenced enforcement and collection of fines (punishment), as well as the implementation of protective policy, is shocking. Given the reality of the comparatively small influence of the industry on the state's livelihood (jobs, GDP), compared to the perception of the industry's size and significance, the success of the industry's efforts to spend money to achieve influence is readily apparent. Now that the

¹⁹ CENTER FOR WESTERN PRIORITIES, *Toxic Release: Colorado Oil & Gas Spills 2012* (Apr. 15, 2013) <http://westernpriorities.org/wp-content/uploads/2013/04/Colorado-Oil-Gas-Spills-2012-copy.pdf>.

²⁰ *Id.*

²¹ *Id.*

facts about the industry's size and influence are coming to light, it will be up to the people to decide whether oil and gas should continue to occupy its position as the unquestioned top dog of Colorado business.

Our Methodology

Campaign Finance Research

To investigate the oil & gas industry's influence on Colorado politics, we started with the list of oil & gas companies active in Colorado elections for the last two cycles (2010 and 2012) as compiled at www.followthemoney.org, a project of the Montana-based National Institute on Money in State Politics. We also included this project's compilation of contributions to candidates by individuals employed in the oil & gas industry for the 2010 and 2012 election cycles.

We then searched the Colorado Secretary of State's TRACER database, located at tracer.sos.colorado.gov, for political spending information regarding these companies. Because corporations remain prohibited from making direct contributions to state-level candidates in Colorado, corporate political money (from eighteen oil and gas companies and trade associations) flowed to five types of political groups:

- Political committees (a/k/a PACs), groups that are subject to contribution limits and can make both direct contributions to candidates and independent expenditures expressly supporting or opposed to candidates;
- Political organizations (a/k/a 527s), groups that are not subject to contribution limits but cannot make direct contributions to candidates and who may spend money to support or oppose candidates so long as they avoid using "magic words" that "expressly advocate" for or against a candidate;
- Independent expenditure committees (a/k/a Super-PACs), groups which are not subject to contribution limits and may not make direct contributions to candidates, but who may make "independent expenditures" that constitute "express advocacy" (this type of organization sprung up in the wake of the Supreme Court's decision in *Citizens United v. F.E.C.*, 558 U.S. 310 (2010));

- Political party committees (e.g., the Colorado Democratic Party and Colorado Republican Party); and
- Issue committees, groups that may raise unlimited money to support or oppose ballot initiatives and referenda.

Readers should be aware that while these categories capture the publicly disclosed state-level political spending by the oil and gas industry, some spending that directly affects Colorado elections is not required to be disclosed. For example, a group could spend unlimited amounts of undisclosed money on ads that advocate for or against candidates so long as the ads avoid “magic words” or other regulatory triggers, and the group is not a political organization under Section 527 of the Internal Revenue Code. Generally, such ads are run by “social welfare” nonprofits that are not otherwise subject to state disclosure laws. Other loopholes exist that allow “dark money” to flow into Colorado elections, benefitting candidates of both parties, and there is no way to determine how much of that money originated in the oil and gas industry.

Once we identified PACs, 527s, Super-PACs and political parties that received oil and gas money, we identified through TRACER reports the candidates who either received contributions (from PACs) or were identified in independent expenditure reports as candidates supported or opposed by those organizations. This enabled us to determine how many candidates and state races were influenced by oil and gas industry spending.

Lobbying Research

Money paid to professional lobbyists to lobby statewide officials such as Governor Hickenlooper and members of the state legislature is subject to disclosure through the Colorado Secretary of State. Using the master database of lobbying expenditures, we searched for payments made to professional lobbyists by oil and gas companies during Fiscal Years 2008-2012, and Fiscal Year 2013 through the May 15 report. We also ran similar searches for other industries to get a sense of how the oil and gas industry compares to other industries that lobby in Colorado. To determine the number of registered lobbyists, we searched

the Secretary of State lobbying database for active lobbyists disclosing oil and gas companies as principals during Fiscal Year 2012-13.

As with campaign finance, public lobbying data does not necessarily reveal the true extent of an industry's lobbying. Spending on lobbying of officials at the county and municipal level is not required to be reported except when a home rule local government requires disclosure. Some lobbyists may report income for lobbying both state and local officials even when not required to do so.

All financial data in this report should be viewed as the best estimate made from publicly available information.

Appendix 1

Selected Colorado Data: United States Department of Commerce, Bureau of Economic Analysis (2010)

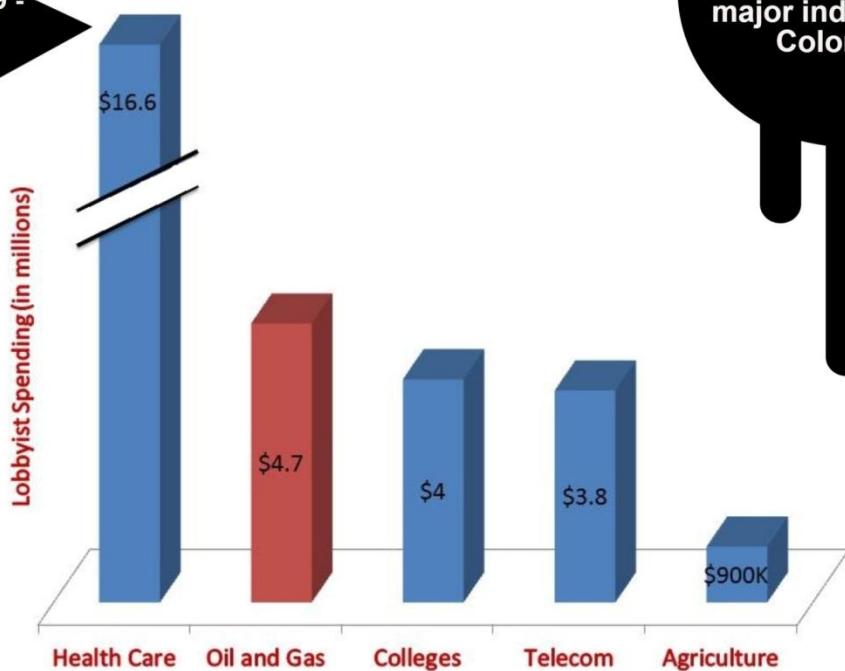
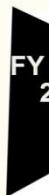
Industry	2010 contribution to Colorado GDP (in \$ millions)	2010 % of Colorado GDP	2010 net # of Colorado jobs	2010 % of Colorado jobs
Real Estate	31.010	12.25%	43,415	1.38%
Professional, Scientific & Technical Services	24.193	9.56%	275,885	8.77%
Information (cumulative)	21.178	8.37%	84,009	2.67%
Finance & Insurance	17.402	6.88%	101,846	3.24%
Health Care & Social Assistance	16.026	6.33%	281,417	8.94%
Retail Trade	14.663	5.79%	301,498	9.58%
Mining (cumulative)	9.273	3.66%	49,139	1.56%
Accomodation and Food Services	8.187	3.23%	220,787	7.02%
Mining (Oil & Gas only)	5.695	2.25%	29,421	0.93%
Arts, Entertainment and Recreation	2.935	1.16%	45,435	1.44%
Agriculture (cumulative)	2.282	0.90%	56,652	1.80%
Educational Services	1.945	0.77%	59,355	1.89%
Mining (Non-O & G)	1.873	0.74%	6,755	0.21%
Mining (support activities)	1.705	0.67%	12,963	0.41%
Total 2010 Colorado GDP = \$253.101 mill.			Total Colorado 2010 employment = 3,147,111	

SPEND BABY SPEND!

OIL & GAS MONEY IN COLORADO

LOBBYING

*SOURCE: Colorado SOS Lobbying Disclosure data

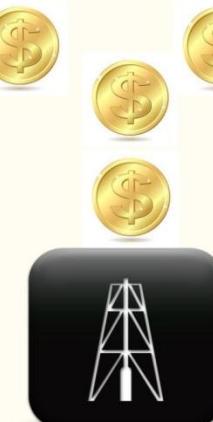


Oil & Gas spent more on lobbying than most other major industries in Colorado

CAMPAIGNS

*SOURCES: Colorado Campaign Finance data and Followthemoney.org

82 Democrats



\$ 811,450

Oil & Gas money was used to support CO candidates of both parties in 2010 & 2012

113 Republicans

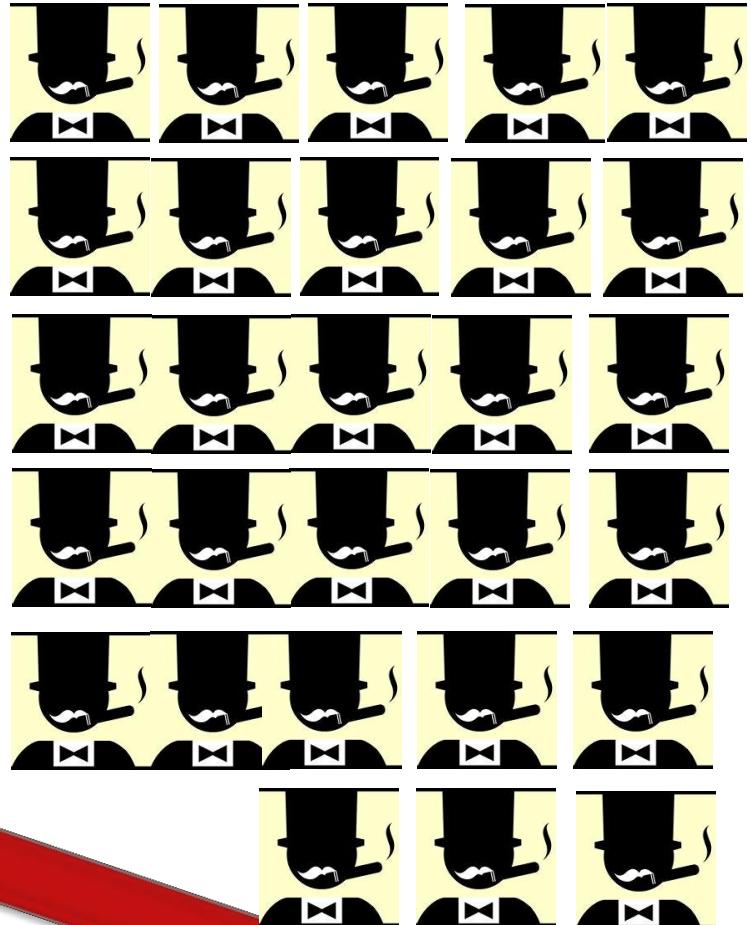
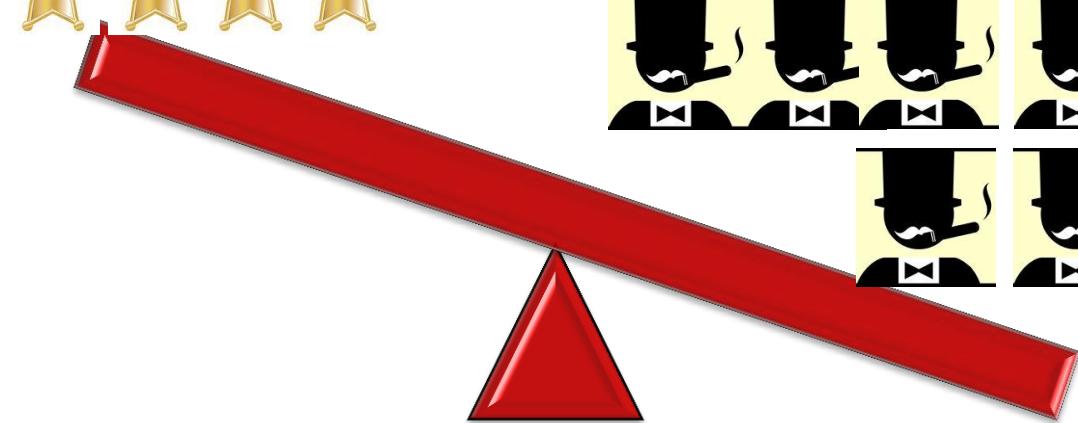
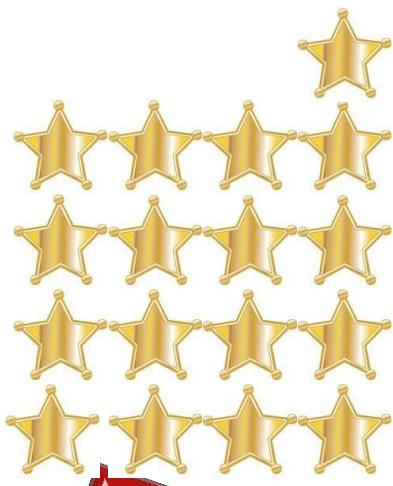


Number of Oil and Gas Industry Lobbyists vs. COGCC Inspectors

FY 2013

17 inspectors

28 lobbyists



Appendix 3:
Lobbying Spending by Oil Gas Companies and Associations (FY 2009-2013)

Company	# of Lobbyists receiving payment	Fiscal Year	Total Paid
7-11 Inc.			
		2009	\$ -
	2	2010	\$ 59,000.00
	2	2011	\$ 52,500.00
	2	2012	\$ 67,500.00
	1	2013 (through April)	\$ 22,500.00
		Total	\$ 201,500.00
ANADARKO PETROLEUM CORP			
	2	2009	\$ 50,000.00
	1	2010	\$ 55,000.00
	1	2011	\$ 55,000.00
	1	2012	\$ 55,000.00
	1	2013 (through April)	\$ 45,000.00
		Total	\$ 260,000.00
BILL BARRETT CORPORATION			
	1	2009	\$ 91,500.00
	1	2010	\$ 77,350.00
	2	2011	\$ 47,000.00
	2	2012	\$ 121,000.00
	1	2013 (through April)	\$ 40,000.00
		Total	\$ 376,850.00
Black Hills Corp./Black Hills Energy			
	1	2009	\$ 38,500.00
	1	2010	\$ 26,250.00
	2	2011	\$ 63,000.00
	2	2012	\$ 63,000.00
	2	2013 (through April)	\$ 33,250.00
		Total	\$ 224,000.00
BP/ BP America			
	1	2009	\$ 15,220.00
	1	2010	\$ 25,000.00
	1	2011	\$ 35,000.00
	1	2012	\$ 35,000.00
	1	2013 (through April)	\$ 37,800.00
		Total	\$ 148,020.00

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Company	# of Lobbyists receiving payment	Fiscal Year	Total Paid
CHESAPEAKE ENERGY CORPORATION			
		2009	\$ -
		2010	\$ -
	2	2011	\$ 39,150.03
	2	2012	\$ 53,200.00
	2	2013 (through April)	\$ 37,700.03
		Total	\$ 130,050.06
CHEVRON COMPANIES			
	1	2009	\$ 17,000.00
	1	2010	\$ 20,000.00
	1	2011	\$ 15,000.00
	1	2012	\$ 13,565.00
	1	2013 (through April)	\$ 12,000.00
		Total	\$ 77,565.00
COLORADO OIL & GAS ASSOCIATION			
	1	2009	\$ 80,000.04
	1	2010	\$ 80,000.04
	1	2011	\$ 82,916.66
	1	2012	\$ 89,899.96
	1	2013 (through April)	\$ 70,049.97
		Total	\$ 402,866.67
COLORADO PETROLEUM ASSOCIATION			
	2	2009	\$ 5,645.90
	1	2010	\$ 5,159.90
	1	2011	\$ 2,087.00
	1	2012	\$ 6,299.30
	3	2013 (through April)	\$ 36,950.00
		Total	\$ 56,142.10
COLORADO PETROLEUM MARKETERS ASSOCIATION			
	2	2009	\$ 15,075.00
	3	2010	\$ 16,867.75
	2	2011	\$ 12,050.00
	2	2012	\$ 9,525.00
	2	2013 (through April)	\$ 8,600.00
		Total	\$ 62,117.75

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Company	# of Lobbyists receiving payment	Fiscal Year	Total Paid
COLORADO PROPANE GAS ASSOC			
	1	2009	\$ 7,914.50
	3	2010	\$ 11,833.00
	2	2011	\$ 19,075.00
	1	2012	\$ 6,300.00
	1	2013 (through April)	\$ 4,725.00
		Total	\$ 49,847.50
CONOCOPHILLIPS			
	1	2009	\$ 12,750.00
	1	2010	\$ 15,000.00
	1	2011	\$ 15,000.00
	1	2012	\$ 13,565.00
	1	2013 (through April)	\$ 12,000.00
		Total	\$ 68,315.00
ENCANA OIL & GAS (USA) INC.			
	2	2009	\$ 35,665.00
	3	2010	\$ 94,393.00
	3	2011	\$ 113,199.00
	3	2012	\$ 70,900.00
	3	2013 (through April)	\$ 101,700.00
		Total	\$ 415,857.00
EXXON MOBIL CORPORATION			
	1	2009	\$ 25,500.00
	3	2010	\$ 43,950.00
	4	2011	\$ 85,118.64
	3	2012	\$ 62,511.50
	2	2013 (through April)	\$ 55,580.00
		Total	\$ 272,660.14
KP KAUFMAN			
	1	2009	\$ 34,050.00
	1	2010	\$ 60,100.00
	1	2011	\$ 39,600.00
		2012	\$ -
	1	2013 (through April)	\$ 32,200.00
		Total	\$ 165,950.00

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Lobbying Spending by Oil Gas Companies and Associations (FY 2009-2013)

Company	# of Lobbyists receiving payment	Fiscal Year	Total Paid
LUCA TECHNOLOGIES			\$ -
		2009	\$ -
	1	2010	\$ 55,000.00
	1	2011	\$ 20,000.00
	1	2012	\$ 5,000.00
	1	2013 (through April)	\$ 5,000.00
		Total	\$ 85,000.00
MARATHON OIL			
	1	2009	\$ 73,333.26
	1	2010	\$ 65,001.96
	1	2011	\$ 60,001.00
	1	2012	\$ 55,000.00
	1	2013 (through April)	\$ 40,000.00
		Total	\$ 293,336.22
NOBLE ENERGY, INC.			
	4	2009	\$ 93,748.10
	5	2010	\$ 122,157.24
	7	2011	\$ 153,486.02
	4	2012	\$ 175,250.00
	4	2013 (through April)	\$ 155,961.00
		Total	\$ 700,602.36
PIONEER NATURAL RESOURCES			
	3	2009	\$ 156,530.00
	1	2010	\$ 246,000.00
	2	2011	\$ 62,000.00
	1	2012	\$ 104,000.00
	1	2013 (through April)	\$ 72,000.00
		Total	\$ 640,530.00
SHELL OIL COMPANY			
	2	2009	\$ 120,000.00
	1	2010	\$ 120,000.00
	1	2011	\$ 120,000.00
	1	2012	\$ 120,000.00
	1	2013 (through April)	\$ 91,666.68
		Total	\$ 571,666.68

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Company	# of Lobbyists receiving payment	Fiscal Year	Total Paid
VALERO			
	3	2009	\$ 22,755.55
	3	2010	\$ 31,600.00
	3	2011	\$ 36,500.00
	3	2012	\$ 28,000.00
	1	2013 (through April)	\$ 16,000.00
		Total	\$ 134,855.55
WILLIAMS/WILLIAMS ENERGY			
	2	2009	\$ 60,000.00
	2	2010	\$ 60,000.00
	2	2011	\$ 60,000.00
	2	2012	\$ 60,000.00
	2	2013 (through April)	\$ 45,000.00
		Total	\$ 285,000.00
WPX Energy			
		2009	\$ -
		2010	\$ -
	1	2011	\$ 5,073.00
	1	2012	\$ 25,000.00
	1	2013 (through April)	\$ 30,400.00
		Total	\$ 60,473.00