



Statement of the U.S. Chamber of Commerce

ON: WAR ON WESTERN JOBS

TO: SENATE AND CONGRESSIONAL WESTERN CAUCUSES

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The Chamber's mission is to advance human progress through an economic,
political and social system based on individual freedom,
incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation, representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations.

More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business – manufacturing, retailing, services, construction, wholesaling, and finance – is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the U.S. Chamber of Commerce's 113 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

“War on Western Jobs Hearing Overview”

**Testimony of William L. Kovacs
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July 13, 2010

Good morning, Members of the Senate and House Western Caucuses. I am William L. Kovacs, Senior Vice President for Environment, Technology and Regulatory Affairs for the U.S. Chamber of Commerce, the world’s largest business federation, representing more than three million businesses and organizations of every size, sector, and region. On behalf of the Chamber and its members, I thank you for the opportunity to testify here today on the impact of environmental regulations and permitting on the jobs and economy of the western states.

The Joint Senate and House Western Caucuses are attempting to cover an enormous amount of substantive policy in a very short time period. That said, I congratulate you for the undertaking, as it is estimated that as of 2007 there were approximately 110,000 federal regulations¹, and that number is growing at the rate of 4,000 additional new regulations annually. As if that were not enough to be concerned about, these regulations are supplemented by thousands more guidance documents, administrative orders, and staff opinions. In addition, many, if not most, of those regulations having a major economic or policy impact are litigated in the courts.

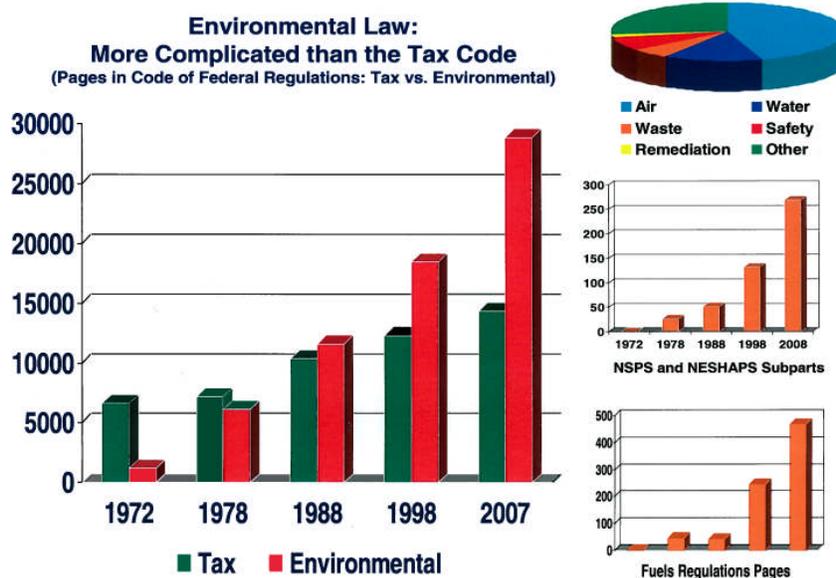
Altogether, this regulatory process is an amazingly complex undertaking, which if unclear in its application can result in huge uncertainties, and that alone is enough to stall private sector investment. Moreover, the regulatory process, in particular the permitting aspect of the process, can have a major impact on job creation or job destruction, depending upon whether a permit is approved or denied.

¹ John D. Graham, Administrator of the Office of Information and Regulatory Affairs, testimony before the Subcommittee on Energy Policy, Natural Resources, and Regulatory Affairs, U.S. House of Representatives (Nov. 17, 2004).

To cut through this burdensome regulatory morass that all U.S. businesses must address I will focus here on a few key concepts, and for each, in the spirit of enshrining the concept that a picture is worth a thousand words, I will provide an illustrative graphic.

The massive volume and impact of environmental regulations—a few examples:

As a starting point for comparison, consider that in 1972, for every 1000 pages of environmental regulations issued, there were 6000 pages of Internal Revenue Tax regulations issued. By 1988 tax regulations and environmental regulations issued were about equal in number, around 10,000 pages of text. By 2007 tax regulations issued had grown to 13,000 pages; however, in that same year environmental regulations had grown to 30,000 pages! Figure 1 below illustrates the growth of environmental regulations.



These environmental regulations cover almost every aspect of production in the U.S., ranging from permits needed to construct a facility, to facility operation, to the management of waste or emissions, to the technology used in the facility, and to facility shutdown.

Unfortunately, the amount of environmental regulation is growing at an alarming rate. EPA in its most recent 309 page *Semi-Annual Regulatory Agenda*, published

April 26 2010, listed 302 proposed rules and identified 29 rulemakings as having a major economic impact and identified 173 rulemakings as ones that raise major novel policy questions. Figure 2 below identifies the current rulemakings having a major economic impact. In comparison, these 29 major economic impact rulemakings are about double the number identified as having a major economic impact in EPA *Semi-Annual Regulatory Agendas* published in 2007 – 2008.

- EPA "MAJOR" RULEMAKINGS – EFFECT ON ECONOMY OF \$100 MILLION OR MORE**
- ▶ Criteria and standards for cooling water intake structures
 - ▶ National primary drinking water regulations: radon
 - ▶ Effluent limitations guidelines and standards for the construction and development point source category
 - ▶ Standards for the management of coal combustion residuals generated by commercial electric power producers
 - ▶ Revising undergrd. strg. tank regs.–revisions to existing rqmnts. & addns. to incorporate the provisions of EPA Act
 - ▶ Oil pollution prevention: spill prevention, control, and countermeasure rule requirements – amendments for milk
 - ▶ Revisions to the spill prevention, control, and countermeasure (SPCC) rule
 - ▶ Review of the NAAQS for carbon monoxide
 - ▶ NESHAP for area sources: Industrial, commercial and institutional boilers
 - ▶ Implementing periodic monitoring in Federal and State operating permit programs
 - ▶ Review of the NAAQS for particulate matter
 - ▶ Transport rule (CAIR replacement rule)
 - ▶ NESHAP for coal- and oil-fired electric utility steam generating units
 - ▶ Control of greenhouse gas emissions from heavy-duty vehicles
 - ▶ NESHAP for major source industrial, commercial and institutional boilers and process heaters
 - ▶ NESHAP: Portland cement notice of reconsideration
 - ▶ Review of NSPS – Portland cement
 - ▶ Review of primary NAAQS for sulfur dioxide
 - ▶ EPA/NHTSA joint rulemaking to establish light-duty greenhouse gas emission standards and CAFÉ standards
 - ▶ Reconsideration of the 2008 ozone NAAQS
 - ▶ NESHAP for reciprocating internal combustion engines – existing stationary spark ignition (gas-fired)
 - ▶ Review of the secondary NAAQS for oxides of nitrogen and oxides of sulfur
 - ▶ Review of the NAAQS for ozone
 - ▶ Review of the primary NAAQS for nitrogen dioxide
 - ▶ Renewable fuels standard program
 - ▶ NESHAP for reciprocating internal combustion engines – compression ignition
 - ▶ Lead: renovation, repair and painting program for public and commercial buildings
 - ▶ Lead: clearance and clearance testing requirements for the renovation, repair and painting program
 - ▶ Lead: amendment to the opt-out and recordkeeping provisions in the renovation, repair and painting program.

Even leaving aside EPA’s rulemakings aimed at regulating greenhouse gases, there are many other rules that will have a staggering impact on the business community and especially the west. For example, EPA is considering regulating coal ash as a hazardous waste. This is highly problematic, for large amounts of coal ash are used today as a recycled material—in the making of cement and wallboard. If coal ash is determined to be hazardous, it would no longer be recycled, and ash disposal costs for facilities using coal as a fuel source would increase from around \$10 a ton to \$150 a ton or more. Consider what that will mean given that as a result of EPA’s action there could be many tens of millions of tons of coal ash in need of disposal as a hazardous waste!²

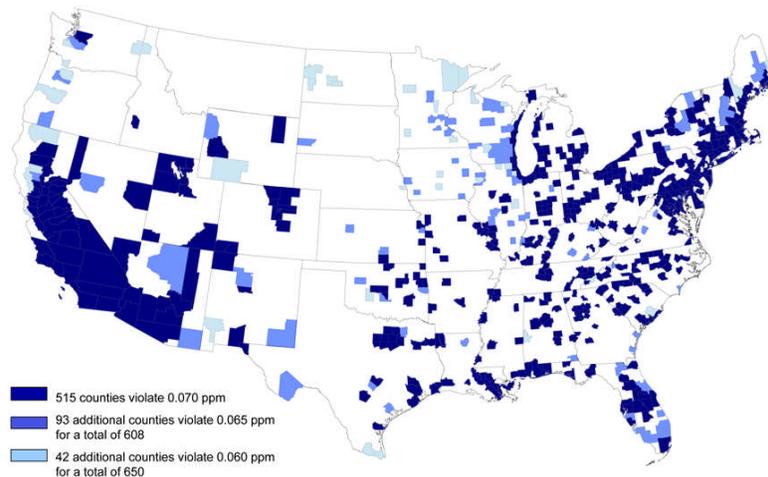
² Approximately 130 million tons of coal ash are produced in the U.S. annually. If all the ash were treated as a hazardous waste, at a disposal cost of \$150 per ton, the aggregate disposal cost would amount to about \$20 billion.

Another example of a rulemaking that will impact western states is EPA’s proposed new National Ambient Air Quality Standard for ozone, which was published in the *Federal Register* on January 19, 2010. The proposed ozone NAAQS is especially troublesome to the western states for several reasons. First, ozone standards are to be revised by EPA every five years. The last revision was made in 2008 when the standard was lowered from 0.084 parts per million (ppm) to 0.075 ppm.³ Now, rather than waiting five years for the current regulations to be implemented, EPA is proposing once again to lower and tighten a standard that was adopted less than two years ago, to perhaps as low as 0.060 ppm.

If this proposal becomes final, at the lower end of the range now under consideration, the tightened standard would nearly triple the number of non-attainment counties across the U.S. EPA’s own information shows that 650 of the 675 currently monitored counties would violate the proposed 0.060 ppm standard. Areas in non-attainment can lose highway funding and cannot bring in a new business that needs an air permit unless the area reduces existing source emissions by an amount equal to or greater than the emissions from the new business. Figure 3 below indicates counties in the U.S. that will be impacted by the EPA proposal, and many of the areas never before in non-attainment will be in the west.

Counties With Monitors Violating Proposed Primary 8-hour Ground-level Ozone Standards
0.060 - 0.070 parts per million
(Based on 2006 – 2008 Air Quality Data)

EPA will not designate areas as nonattainment on these data, but likely on 2008 – 2010 data which are expected to show improved air quality.



Notes:

1. No monitored counties outside the continental U.S. violate.
2. EPA is proposing to determine compliance with a revised primary ozone standard by rounding the 3-year average to three decimal places.

³ U.S. Environmental Protection Agency, “National Ambient Air Quality Standards for Ozone; Final Rule” Federal Register 73(60), 16436-16514, March 27, 2008.

Perhaps a more troubling aspect of the ozone issue is that much of the ozone that triggers non-compliance in the west ultimately arises as a result of long-range pollution transported from Asia. As stated by the National Research Council of the National Academy of Science in its assessment of long-range transport of key air pollutants to and from the U.S.:

*Most [U.S. ozone NAAQS] violations are only a few ppb above the standard, and thus the increase in baseline O₃ since the preindustrial era driven by global pollution has contributed to these violations.*⁴

Commenting in a February 10, 2010 article titled, “Asia-produced ozone making its way to U.S.” McClatchy Newspapers’ Les Blumenthal wrote:⁵

A new study further bolsters concerns that pollution blowing across the Pacific Ocean from China and other rapidly developing Asian nations may swamp efforts to clean up the air in the Western United States and make it difficult for states and cities to meet federal standards.

The U.S. Chamber has raised this concern with EPA several times, including in a petition asking that EPA use its authorities under the Clean Air Act to take into account Asian pollutant emissions. Western states must not be driven into noncompliance as a result of impacts arising from the long-range transport of pollution originating outside the U.S.⁶ Notwithstanding concerns raised by the Chamber, EPA has so far failed to employ reasonable measures that take account of such pollutant impacts.

The economic impacts of facilities not being able to secure environmental permits are huge.

As EPA moves this nation toward a “green” economy, one question that frequently arises is what type of energy will be used if fossil fuel-based energy is increasingly to be replaced. On this matter, the Chamber’s Emerging Technology

⁴ National Research Council of the National Academy of Science, *Global Sources of Local Pollution: An Assessment of Long-Range Transport of Key Air Pollutants to and from the United States*; p. 40, 2009; available at <http://www.nap.edu/catalog/12743.html>.

⁵ Les Blumenthal, “Asia-produced ozone making its way to U.S., study finds,” McClatchy Newspapers, February 21, 2010 at: <http://www.mcclatchydc.com/2010/02/21/86565/asia-produced-ozone-making-its.html>.

⁶ The Chamber filed a petition for rulemaking on December 13, 2006 and comments with EPA on October 9, 2007 and again on March 22, 2010.

Committee has received extensive advice from world renowned energy experts. Based on this and other significant information, for a whole host of reasons, it is apparent that as a nation we should do all we can to develop as many affordable new clean technologies as fast as reasonably possible.

But that said there remains the nagging question whether even if these new technologies are developed, can they in fact be built? At the outset of raising this point, the Chamber found that this was a concern that technologists could not really answer. Perhaps even more surprising, the Chamber found that there had been few facts gathered that could actually be used to address the question.

Motivated by the lack of information needed to answer the question, the Chamber started what is now called “Project No Project,” or PNP. In its essence, it is a study of proposed energy projects around the U.S. that have been unable to obtain permits needed for construction. When we started the project, we were already aware that what with the on-going environmentalists’ “war on coal,” we would find many coal projects that were being denied construction permits. In fact we did, but what was shocking is that as the project evolved we found that even more alternative energy projects (wind, solar, biomass) faced permit delays than coal projects. Based on the PNP analysis we found that projects were delayed as follows:

Renewable projects	167
Coal projects	129
Gas projects	41
Nuclear projects	20
<u>Transmission projects</u>	<u>24</u>
Total projects	381

Figure 4 (see next page) identifies the specific locations and type of projects unable to obtain final clearance. **Of the 381 energy projects unable to obtain permits, 152 of these projects (73 are renewable energy projects) were located in the west.**

The economic cost to the country of losing these projects is estimated to amount to over \$560 billion in direct and private investment and the impact of these projects not moving forward is estimated to deprive us of 250,000 direct jobs.

The economic loss to the west is estimated to be almost \$271 billion along with 102,000 jobs not created.



Figure 5 below summarizes the impact of permit challenges on the Western states.

State	Number of Stalled Projects ("Green" projects in parenthesis)	Value (\$)	Jobs Lost
Arizona	2	1,589,000,000.00	1,840
California	37 (25)	30,145,500,000.00	11,097
Colorado	6 (2)	3,330,000,000.00	1,820
Idaho	5 (3)	1,445,000,000.00	408
Kansas	7 (5)	985,000,000.00	100
Montana	2 (1)	1,000,000,000.00	5,735
Nebraska	2 (1)	1,000,000,000.00	----
Nevada	11 (4)	104,327,000,000.00	5,804
New Mexico	8 (3)	10,519,000,000.00	6,380
North Dakota	6 (1)	20,150,000,000.00	20,670
Oklahoma	4	2,800,000,000.00	1,600
Oregon	11 (7)	3,090,000,000.00	3,281
South Dakota	1 (1)	620,000,000.00	123
Texas	29 (10)	64,165,000,000.00	23,993
Utah	6 (1)	15,048,000,000.00	6,601
Washington	6 (5)	3,900,160,000.00	1,579
Wyoming	9 (4)	6,255,000,000.00	10,583
TOTAL:	152 (73)	270,368,660,000.00	101,614

A description of each of the projects identified as a result of the PNP effort can be found on the Chamber's website at www.projectnoproject.com. The site is interactive, and we invite site visitors to comment on the information presented as well as to help us update the information. To our knowledge, this is the only such compilation of this type of knowledge in the United States.

The Chamber is presently preparing an economic study of the impact on GDP and jobs arising from the failure of these identified sites to obtain permits for construction and operation. As soon as the study is completed and peer reviewed, we will provide it to the members of the caucus.

The impact of NEPA on energy projects.

You also asked that I address the impact of the National Environmental Policy Act (NEPA) on energy projects. While we do not have analysis of the generalized impact of NEPA on energy projects we have done some analysis of the use of NEPA challenges to energy projects.

Figure 6 (below) lists such NEPA energy project challenges, and as you will note, the vast majority of such challenges are for projects located in western states.

Project Name	Location(s)	Details
New Mexico Oil and Gas Lease Sale	NM	Environmental groups protested the BLM’s New Mexico oil and gas lease sale of April 2008 on climate grounds.
EPAct Advanced Coal Gasification Tax Credits	IN, FL, MS, NC, KY, CA, and TX	Environmental groups challenged DOE for failing to conduct NEPA analysis of nine advanced coal gasification projects authorized by Energy Policy Act of 2005.
Black Mesa Complex	AZ	Kayenta and Black Mesa coal mines, which have been in operation since the early 1970s.
BCP and T-US Power Lines	CA	Permits and rights-of-way to build electricity transmission lines within the United States and across the United States-Mexico border to connect new power plants in Mexico with the power grid in Southern California.
West-Wide Energy Corridor	NV, MT, WY, CO, NM, AZ, UT, ID, WA, OR, CA	Energy transmission corridor authorized by EPAct 2005 to facilitate future siting of oil, gas, and hydrogen pipelines, as well as renewable energy development projects and electricity transmission and distribution facilities on Federal lands in the West.
Five-Year Leasing Program for the Outer Continental Shelf	AK	New five-year Leasing Program included an expansion of previous lease offerings in the Beaufort, Bering, and Chukchi Seas off the coast of Alaska.
Richmond Refinery	CA	Proposed expansion of Chevron oil refinery.
OPIC international fossil fuel projects	International	Chad-Cameroon Oil Pipeline Project; Sakhalin Oil Field Project; West Seno I and II Oil and Gas Fields Project; Cantarell Oil Field Project; the Hamaca Heavy Crude Oil Development Project; and Dezhou Coal-Fired Power Plant Project.
Laidlaw Energy Biomass Plant	NY	16.5-acre tract to be developed into woody biomass renewable energy plant.
Montana oil and gas leases	MT	38,000 acres of oil and gas leases throughout Montana
West Elk Methane Venting Project	CO	Proposal to vent methane from mine (as a safety measure) would create 168 methane drainage wells on 146 well pads and construct nearly 23 miles of new road.

Energy Projects are not the only projects unable to obtain permits.

In fact, the permits for many types of projects are being challenged, ranging from big box stores to cell towers to hotels to agricultural operations to airport runways and more. Figure 7 below indicates a sampling of the types of projects that are being challenged.

Project Name	Type	Location(s)	Details
Napa Junction	Retail	CA	Napa Junction is the creation of a new downtown area within the City of American Canyon and the start of Main Street for the City. It is a mixed-use project that includes a 3-acre Main Street Park, 216 unit apartment complex, 100 room hotel, 215,000 square feet of retail and retail services anchored by the only Wal-Mart Supercenter within the Bay Area.
The Shops at Santa Anita	Retail	CA	800,000 square foot shopping mall next to Santa Anita Race Track.
I-95 Intercounty Connector	Transportation	MD	Proposed highway project, the Intercounty Connector, would connect I-95/US 1 in Prince George's County, Maryland and I-270 in Montgomery County, Maryland.
Sierra Pacific Industries Logging Projects	Forestry	CA	15 plans by Sierra Pacific Industries to conduct logging in California forests.
City of Banning residential development	Residential	CA	1,500 home development project (consisting of a school, neighborhood park and cluster of homes) proposed to be built in remote, undeveloped area.
Desert Hot Springs Palmwood Project	Residential & Commercial	CA	Palmwood Project consists of 2,700 homes, 1 million sq. ft. of commercial space, 400-unit hotel, commercial amphitheatre, and 45 holes of golf courses, on undeveloped land northwest of the city.
City of Perris Wal-Mart	Retail	CA	520,000 sq. foot retail space to be occupied by a Wal-Mart Supercenter retail store.
Van Der Kooi Dairy	Agricultural	CA	Proposed Van Der Kooi Dairy district, containing 3200 milk cows.
Yucca Valley Wal-Mart	Retail	CA	Proposed Wal-Mart Supercenter retail store in the Town of Yucca Valley
Northwest Forest Plan	Forestry	WA	Forest management and species conservation plan for 24.5 million acres of forest land.
El Charro retail plan	Retail	CA	1.5 million square feet of retail space, including a factory outlet center, in the City of Livermore.
Sacramento 50 Bus/Carpool Lanes	Transportation	CA	13-mile High Occupancy Vehicle (HOV) lane.
Smith Creek Vegetation Project	Forestry	MT	35-acre Livingston Ranger District of the Gallatin National Forest; area has historically experienced wildfires. U.S. Forest Service timber removal plan challenged for effects on climate change.
March Business Center	Commercial	CA	Warehouse facility to be built as a reuse project on former March Air Force Base.
South Fowl Snowmobile Trail	Transportation	MN	Snowmobile trail connecting McFarland Lake to South Fowl Lake along a route that is adjacent to the Boundary Waters Canoe Area Wilderness in northeastern Minnesota.
Lawrence Berkeley National Laboratory	Government	CA	Proposed expansion of the Lawrence Berkeley National Laboratory.
DM&E Powder River Basin Rail Project	Transportation	WY	Dakota, Minnesota & Eastern Railroad Corporation (DM&E) proposed 280 miles of new rail line to reach the coal mines of Wyoming's Powder River Basin and to upgrade nearly 600 miles of existing rail line in Minnesota and South Dakota.
Minnesota Steel taconite mine	Industrial	MN	\$1.6 billion project involving the reactivation of a taconite mine and tailings basin near Nashwauk, in Itasca County.
Columbia River Channel Improvement Project	Transportation	OR, WA	Proposed deepening of Columbia River navigation channel to increase shipping capability.
Chittenden County Circumferential Highway	Transportation	VT	Four-lane, limited access highway extending approximately 15.8 miles from I-89 in Williston, north and west through Essex to Vermont Route 127 in Colchester.

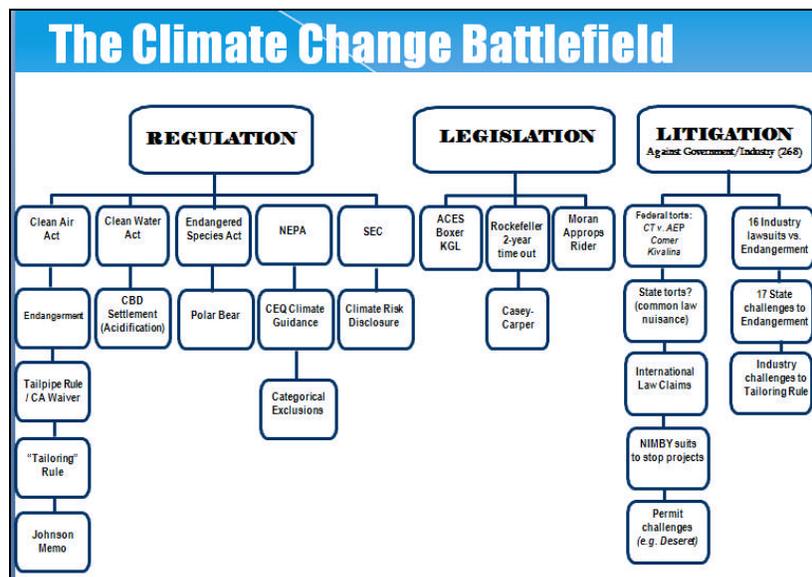
Access to and use of resources on federal lands represents another example of the difficulties faced by the private sector in the operation of a business.

Approximately 60% of the national forest system is closed to timber harvesting, and between 1989 and 2005, there were 949 lawsuits filed against the Forest Service.

Another troubling aspect of all these actions taken to stop or delay economic development is that many times the parties bringing a lawsuit can and are being paid their attorneys fees under the citizen suit provisions of twelve separate federal environmental statutes.⁷ The federal monies are paid from the Judgment Fund to the entity determined to be substantially prevailing (a decision made at the discretion of the Department of Justice). In a supremely non-transparent manner, there is no present accounting of what funds are paid to what parties for suits against any particular facility seeking to obtain a permit. Without such disclosure, it is extremely difficult to identify which group is stopping which project, killing jobs, and destroying economic growth.

Certainty must be brought to the climate debate

The climate debate is being fought out in every branch of the federal government as well as in the states. Figure 8 below illustrates current climate policy activity just at the federal level.



Within the executive branch climate is being regulated under the Clean Air Act, the Clean Water Act, Endangered Species Act, the National Environmental Policy

⁷ Environmental statutes providing attorney's fees for prevailing parties in citizen suits include: TSCA, 15 USC § 2619; Endangered Species, 16 USC § 1540(g); Surface mining control and reclamation- control of the environmental impacts of surface coal mining, 30 USC § 1270; Water pollution prevention and control general provisions, 33 USC § 1365; The public health service safety of public water systems, 42 USC 300j-8; Noise Control, 42 USC 4911; Energy Policy and conservation improving energy efficiency, 42 USC § 6305(d); Solid Waste disposal, 42 USC § 6972; Air pollution prevention and control General provision, 42 USC § 7604; Power plant and industrial fuel use, 42 USC § 8435(d) Comprehensive environmental response, compensation & liability, 42 USC § 9659; and Submerged lands outer continental shelf lands, 43 USC § 1845(e).

Act, and under securities laws. As to litigation there are presently pending 268 lawsuits that range from administrative challenges to EPA's regulations to federal and state common law cases, administrative law cases, permit challenges and even international claims.⁸ Twenty three states are also regulating climate in some manner. As to legislative attempts, the House has passed a climate bill and the Senate has several options before it.

Congress is the only entity that can eliminate the uncertainty that arises from the many venues in which the climate issue is being debated. To achieve this certainty Congress needs to pass a comprehensive, uniform law that displaces all of the competing regulations and lawsuits while ensuring environmental protections and a firm path forward that guarantees our nation that it will have the affordable energy supplies it needs to provide for a secure energy and economic future.

Amid the controversy, an opportunity in the West to develop a critically needed rare earth industry:

New technologies are an important component of any effort to move the United States to a cleaner energy future. Unfortunately, the U.S. currently lacks the capacity to produce and manufacture the rare earth oxides, metals, alloys and permanent magnets upon which many clean energy, defense, communication, and computer technologies rely. This situation, however, need not prevail: With the recent discovery of rare earth mineral resources in Nebraska and efforts to reopen the rare earth mine in California, the United States has the ability to re-establish on U.S. soil a viable rare earth oxide, metal, alloy and permanent magnet manufacturing supply chain.

This is an opportunity that should not be foregone. It is in the United States' interest to encourage the rapid re-establishment of a domestic rare earth materials and permanent magnet manufacturing supply chain as soon as possible. As the U.S. General Accounting Office recently reported, many U.S. defense and weapons systems are now totally dependent upon foreign-sourced rare earth materials. Moreover, the U.S. Geological Survey (USGS) has reported that high-

⁸ This information can be found at: www.climatecasechart.com; To receive email updates to this chart, send a request to cullen.howe@aporter.com.

technology and environmental applications of the rare earth elements (REEs) have grown dramatically in diversity and importance over the past four decades. As many of these applications are highly specific, in that substitutes for the REEs are inferior or unknown, the REEs have acquired a level of technological significance much greater than expected from their relative obscurity.

The United States' current 97 percent dependence upon REE imports from China is becoming increasingly problematic owing to down-trending exports of REEs from that nation as it ramps up domestic activities that are rapidly increasing internal REE demand. Recent reports of finds of significant potential mineral resources in Afghanistan are in no way a guarantee that there will be a viable alternative for meeting anticipated growing United States domestic demand for REE any time in the foreseeable future. In fact, independent analysts forecast that rest-of-world REE demand will likely exceed Chinese exports by 2011.

This situation places the United States in a difficult position. Looking forward, environmental applications of REE have increased markedly, and, according to the USGS, this trend will undoubtedly continue. Several REE are essential constituents of both petroleum fluid cracking catalysts, automotive pollution-control catalytic converters, hybrid-electric vehicles and permanent magnet generator wind turbines. Use of REE magnets reduces the weight of automobiles, increasing fuel efficiency. Widespread adoption of new energy-efficient fluorescent lamps using REEs for institutional lighting applications could potentially achieve significant reductions in U.S. carbon dioxide (CO₂) emissions equivalent to removing one-third of the automobiles currently on the road. Large-scale application of magnetic-refrigeration technology, which also requires REEs, could significantly reduce energy consumption and CO₂ emissions.

Simply put, the rare earth elements are essential for a diverse and expanding array of high-technology applications, which constitute an important part of the industrial economy of the United States. As USGS notes, long-term shortage or unavailability of REEs would force significant changes in many technological aspects of American society. In short, the accomplishment of many clean energy objectives encouraged by the Administration may not be realized if critical supply chain issues are not addressed in a constructive manner that assures the availability of domestic REE sources, known and potential. Moreover, creation of

domestic REE supply chain capability also means that jobs will be created in the United States, many of them in the west.

Re-establishing a domestic REE manufacturing and supply chain is especially critical given that the U.S. is now so heavily dependent upon questionably available foreign supplies of rare earths. As noted, such a production capability also will leverage new manufacturing jobs on U.S. soil in a variety of rare-earth dependent technologies, including renewable energy, hybrid and electric vehicles, batteries, power generation, energy efficient lighting, water treatment, agriculture, communications, health care systems and many others.

Recommendations for addressing the issues discussed:

a. Consolidate all project challenges

Based on a review of the 381 projects in the Project No Project database it is common for the project permit challenges to be filed sequentially over time, essentially dragging out the permitting process interminably. Since most projects are subject to a project financing agreement the longer the time it takes to secure a permit, the greater the risk of the developer losing project financing. This problem can be addressed by analogously adopting procedures Congress has already put in place for transportation projects that were subject to similar challenges.

Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA-LU), which was signed into law on August 10, 2005, applies to environmental reviews conducted under the National Environmental Policy Act (NEPA). At its core, Section 6002 contains two key components: process streamlining, and a statute of limitations. The process streamlining component does not in any way circumvent any NEPA requirement; rather, it designates a lead agency (in this case, DOT) and requires early participation among the lead agency and other participating agencies. The goal of the process streamlining provision was not to escape NEPA, but merely to facilitate interagency and public coordination so that the process could be sped up.⁹

⁹ At the time SAFETEA-LU was enacted, the average environmental review for a transportation project was taking 6 to 7 years. Because the regulatory streamlining provision has only been in effect for five years, it is difficult to determine its impact. In 2008, GAO conducted a study, at Sen. Inhofe's request, of the effect Section 6002 was having on environmental reviews. The report, "Transportation Agencies Are Acting to Involve Others in Planning

The second key element in Section 6002 is a 180-day statute of limitations to “use it or lose it” on judicial review. Without such a provision, the prevailing statute of limitations is 6 years. Many environmental and NIMBY groups wait until the very last day to file their claim, which shows that their only real motive is to exploit the law to delay projects—and they are particularly effective when they are given 6 years to file their claim. Even with the 180-day statute of limitations, groups still wait until the end of the process to file, so that the project is delayed as long as possible.¹⁰ A good example of this happening is the Maryland Inter-county Connector.

The suggested process balances the need for a complete environmental review and related challenges to a permit with the fact that the developer is financing a project that must be completed in a reasonable amount of time or must be terminated. Without such limitation those whose sole purpose is to stop the project have the decided advantage while the community that benefits from the economic development and job creation is at a politically determined disadvantage.

b. Provide continuous oversight for the Clean Air Act Section 321 (a) mandate of continuous evaluation of potential loss or shifts of employment due to EPA air regulations.

For decades there has been controversy over the economic and job impacts of regulations published under the Clean Air Act because of their direct impact on the operations of industries and on where they are able to locate. Complicating the issue is the fact that many of the provisions of the Clean Air Act do not allow for the consideration of economic impacts. Yet while a correct interpretation of the Act, the Clean Air Act does not completely ignore concerns over jobs.

For example, Section 321 (a) of the Clean Air Act (42 U.S.C. 7621 (a)) states:

and Environmental Decisions,” did not conclude that the process achieves ‘x’ months of reduction in the time needed to complete the NEPA process, but it did conclude that the process appeared to be running more smoothly. Given that it was only three years since enactment of SAFETEA-LU, however, GAO concluded that its results were too preliminary to make a difference.

¹⁰ As one example, **the United States is ranked in one recent assessment of mining projects as having the longest permitting delays in the world** (Papua New Guinea is ranked second worst). Source: Behre Dolbear, *2010 Ranking of Countries for Mining Investment – Where “Not to Invest”*, Behre Dolbear Group, Inc., 2010.

Continuous evaluation of potential loss or shifts of employment. *The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.*

On October 13, 2009, six members of the Senate¹¹ sent a letter to EPA concerning this matter and requested the results of EPA's continuing section 321(a) evaluation of potential shifts of employment which may result from the suite of regulations EPA has proposed or finalized that address greenhouse gases under provisions of the Clean Air Act, including threatened plant closures or reductions in employment that may result from the administration or enforcement of such regulations. EPA's response (on October 26, 2009) referenced only Section 321 (b) relating to allegations made by employees whose jobs are threatened by environmental regulations and observed that the relevant section of the committee report does not describe the provisions as applying broadly to all regulations under the Clean Air Act.

Such statements are at odds with the House Interstate and Foreign Commerce Committee Report 95-294, reporting H.R. 6161, May 12, 1977. 95 Cong. House Report 294; CAA77 Leg. Hist. 26. The House provision was adopted by the Senate in Conference. The House Committee specifically stated the purpose of the amendment is as follows:

Among the issues which have arisen frequently since the enactment of the 1970 Amendments is the extent to which the Clean Air Act or other factors are responsible for plant shutdowns, decisions not to build new plants, and consequent employment opportunities.

The bill establishes a new section 319 (codified as section 321) of the Act. Under this provision, the Administrator is mandated to undertake an ongoing evaluation of job losses and employment shifts due to the requirements of the act. This evaluation is to include an investigation of threatened plant closures or reductions in employment allegedly due to requirements of the act or any

¹¹ Senators David Vitter (R-LA), Jim Risch (R-ID), Mike Johanns (R-NE), James Inhofe (R-OK), John Ensign (R-NV), and Orrin Hatch (R-UT), letter to EPA Administrator Lisa Jackson, October 13, 2009.

actual closures or reductions which are alleged to have occurred because of such requirements.

Congress has mandated that EPA begin developing information on potential loss or shifts of employment in 1977, when the CAA was in its infancy. Now that the CAA is in full operation it is more important than ever for Congress to know about the impacts on jobs of our citizens.

c. Foreign emissions need to be taken into account when determining non-attainment.

EPA's implementation timeline for the proposed ozone standards requires states to meet the primary ozone standard, between 2014 and 2031, with deadlines depending on the severity of the problem.¹² During this time period, overseas long-range pollution transport impacts will increase significantly as the world's economy grows.¹³ It is possible that if EPA were to take into account these long-range pollution transport impacts, efficacy of the recently proposed ozone NAAQS rule may vanish, the projected benefits of the tightened standard would be found to be much reduced, and quite possibly costs would outweigh benefits with much less ambiguity than EPA has so far portrayed. It is not apparent that in its rulemaking EPA has performed a reasonable quantitative assessment of this issue taking account of the above observations and cited literature. The Agency should undertake to do this assessment, for as observed in my testimony, EPA cannot continue to ignore this issue, for even the news media is aware of the potential depth of this concern, and the impact on our Western states ability to attract business and create jobs.

d. There must be a clear and transparent accounting of the monies paid to citizens for bringing lawsuits against the federal government.

Such transparency should include the name of the recipient, the amount paid to the recipient and for what reasons, including the identification of the lawsuit.

¹² Environmental Protection Agency "National Ambient Air Quality Standards for Ozone" 75 *Fed. Reg.* 2,938-3,052 (January 19, 2010).

¹³ O.R. Cooper et al, "Increasing springtime ozone mixing ratios in the free troposphere over western North America," *Nature*, Vol. 463, pp. 344-348, January 21, 2010; National Research Council of the National Academy of Science, *Global Sources of Local Pollution: An Assessment of Long-Range Transport of Key Air Pollutants to and from the United States*; p. 40, 2009; available at <http://www.nap.edu/catalog/12743.html>.

Such an accounting is required by Article I, section 9 of the U.S. Constitution which reads:

No money shall be drawn from the Treasury, but in consequence of Appropriations made by law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

This concludes my testimony, and again, I thank you for the opportunity to testify before this Joint Meeting of the Western Caucuses.