Greenhouse Gas Litigation

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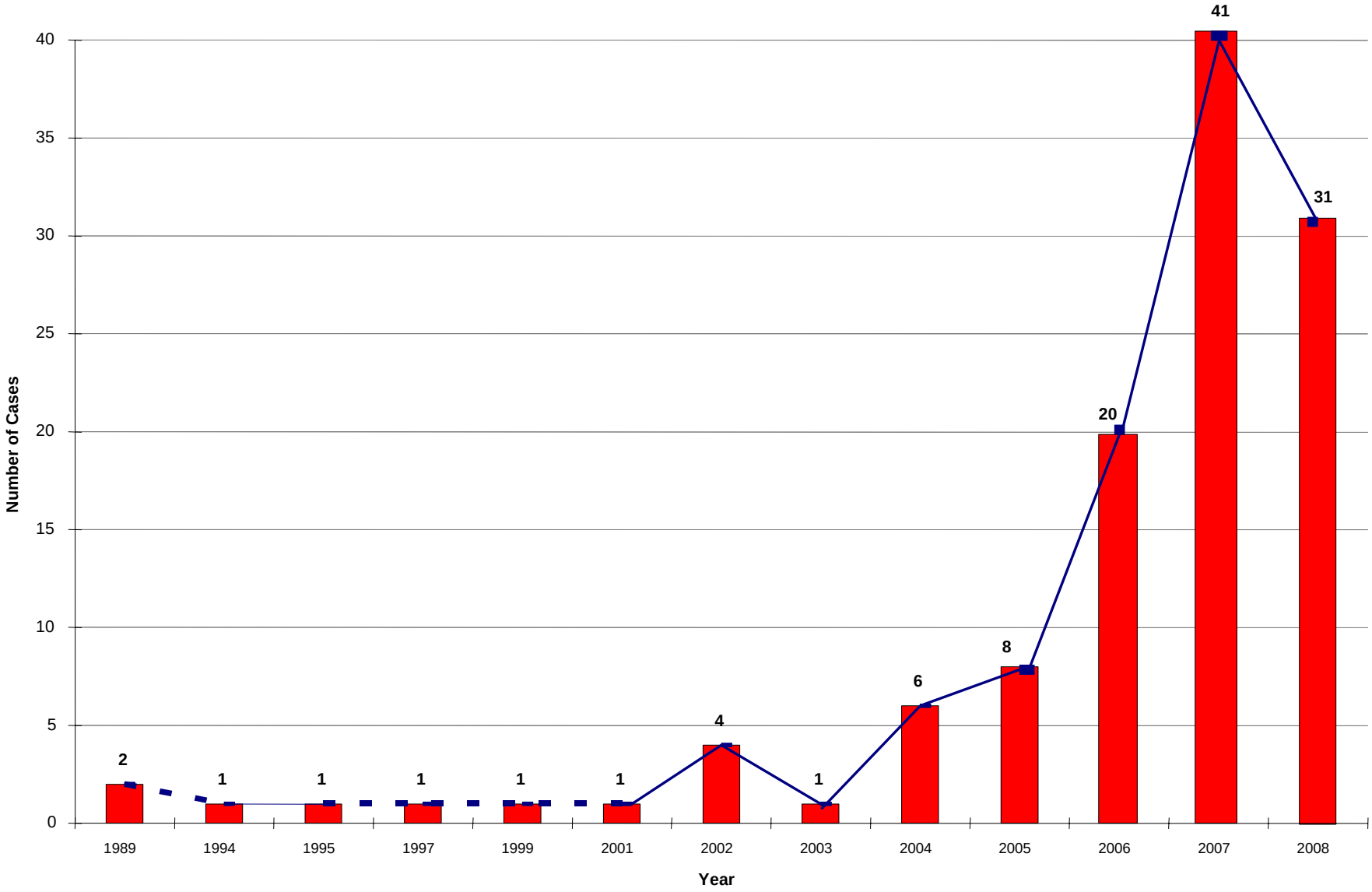
March 3, 2009

Climate Litigation: Filings



URL: www.climatecasechart.com

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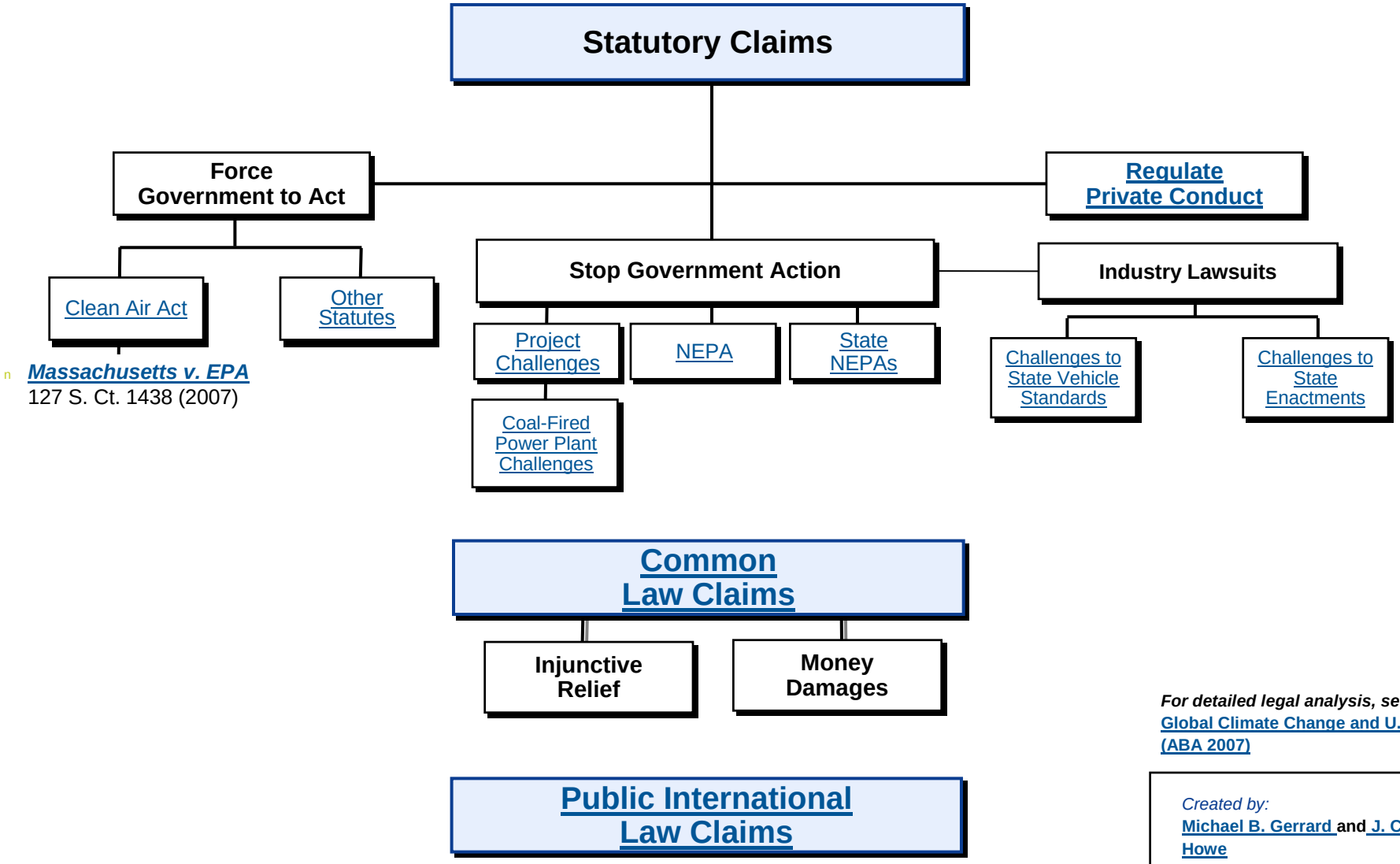
CLIMATE CHANGE LITIGATION IN THE U.S.



For detailed legal analysis, see Global Climate Change and U.S. Law (ABA 2007)

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CLIMATE CHANGE LITIGATION IN THE U.S.

Statutory Claims

Force Government to Act

Clean Air Act

- ***Massachusetts v. Whitman*** No. 3:03CV984 (D. Conn. 2003) (voluntarily dismissed)
- ***New York v. EPA*** No. 06-1322 (D.C. Cir. 2006)
- ***Coke Oven Environmental Task Force v. EPA*** No. 06-1131 (D.C. Cir. 2006) (consol. With NY v. EPA) (settled April 2008)
- ***Massachusetts v. EPA*** 127 S. Ct. 1438 (2007)
- ***Massachusetts v. EPA (II)*** (D.C. Cir. June 2008)
- **California Attorney General petition to EPA** to regulate GHG emissions from ocean going vessels in U.S. waters (2007)
- **Petitions** to EPA by nonprofit groups to set pollution rules for ocean-going vessels in U.S. waters (2007)
- **Cal. South Coast Air Quality Man. District petition** to EPA requesting GHG emissions limits for ocean going vessels (2008)
- **Petition** to compel EPA to make decision whether to regulate GHG emission (D.C. Cir. 2008)
- **EPA decision** denying California waiver request
- ***California v. EPA*** petition concerning denial of waiver request (9th Cir. 2008) (motion to dismiss denied April 2008) (motion to dismiss **granted** July 2008)
- **California Attorney General petition** to EPA to regulate GHG emissions of aircrafts (Dec. 2007)
- **California Attorney General petition** to EPA to regulate GHG emissions from construction and industrial equipment (Jan. 2008)
- ***Pacific Merchant Shipping Assoc. v. Goldstene*** (9th Cir. 2008) (not CO2)
- **EPA's Advance Notice of Proposed Rulemaking Regarding GHG Regulations** (July 2008)
- **Notice of intent to sue EPA** for failing to regulate GHG emissions from aircraft, oceangoing vessels and other equipment (July 2008)
- ***New York v. EPA*** (D.C. Cir., filed Aug. 2008)
- ***California v. EPA*** (N.D. Cal. Dec. 2008)
- **Presidential memo** to EPA regarding reassessment of denial of California waiver (Jan. 2009)

For detailed legal analysis, see **Global Climate Change and U.S. Law (ABA 2007)**

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CLIMATE CHANGE LITIGATION IN THE U.S.

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ESA/MMPA

- ***Cntr. for Bio. Div. v. Kempthorne*** (trans. Alaska, 2007)
- ***Cntr. for Bio. Div. v. Kempthorne***, (N.D. Cal. Dec. 2007)
- ***NRDC v. Kempthorne*** (E.D. Cal. 2007)
- ***Pac. Coast Fed. of Fisherman's Ass'ns v. Gutierrez*** (E.D. Cal. April 2008)
- **Petitions** to list species under ESA and related litigation

Clean Water Act

- **Center for Bio. Diversity petitions** asking 10 states to declare coastal waters "impaired" (2007)
- **Center for Bio. Diversity petition** to EPA regarding pH standard (2007)

Global Change Research Act

- ***Center for Bio. Diversity v. Brennan*** (N.D. Cal. 2007)

Freedom of Info. Act

- ***Citizens for Resp. and Ethics in Washington v. Council on Env. Quality*** No. 1:07CV00365 (D. D.C. 2007)
- ***Center for Bio. Diversity v. Office of Management and Budget*** (N.D. Cal. 2008)

Alternative Motor Fuels Act

- ***Natural Resources Defense Council v. Mineta*** (S.D.N.Y. 2005)

Energy Policy Act

- ***Center for Bio. Diversity v. Abraham*** (N.D. Cal. 2002)
- ***State of New York v. U.S. Dept. of Energy*** (2d Cir. 2008)

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Coal-Fired Power Plant Challenges

- ***Montana Env. Info. Center v. Johanns*** (D. D.C., filed 2007)
- ***Groce v. Pa. Dept of Env. Protection*** (Pa. Comm. Ct. April 2007)
- *Dean v. Kansas Dept. of Health and Env.* (filed May 2007)
- **In re Florida Power & Light** (Fl. Public Service Comm. June 2007)
- ***Sierra Club v. EPA*** (7th Cir., filed Aug. '07) (dismissed Sept. '07; rehearing denied Oct. '07)
- **In re Energy Northwest** (Wash. Ene. Fac. Site Evaluation Council Nov. 2007)
- **In re ConocoPhillips** (EPA Env. App. Bd., **rev. denied** June 2008)
- **Kansas Dept. of Health & Env.** denial of air quality permits (Oct. 2007)
- ***Sunflower v. Kan. Dept. of Health & Env.*** (Kan. Sup. Ct., filed 2008) (dismsd July 2008)
- ***SF Chptr of A. Phillip Randolph Inst. v. EPA*** (N.D. Cal. March 28, 2008)
- ***Friends of the Chattahoochee, Inc. v. GA Dept. of Nat. Resources*** (Jan. 2008)
- ***In re Otter Tail Power Co.*** (S. Dakota Sup. Ct. Jan. 2008)
- **In re Sevier Power Co. Power Plant** (Utah Air Quality Bd. Jan. 2008)
- **Mt. Env. Info. Center v. Mt. Dept. of Energy** (Mt. Bd. of Env. Rev. Jan. 2008)
- **In re Christian Co. Generation, LLC** (EPA Env. Appeals Bd. Jan. 2008)
- **In re Deseret Power Electric Cooperative** (EPA Env. Appeals Bd, filed Oct. 2007)
- ***Citizens for Env. Inquiry v. DEQ*** (Mich. Cir. Ct., filed Jan. 2008)

Project Challenges

- **Sierra Club v. Duke Energy Indiana** (Indiana Office of Env. Adj., filed Feb. 2008)
- ***Sierra Club v. Wellington Dev.-WVDT LLC*** (W.D. Pa., filed Feb. 27, 2008)
- ***Appalachian Voices v. Bodman*** (D.D.C. filed March 3, 2008)
- **S. Env. L. Cntr v. N.C. Div. of Air Qlty**, (N.C. Off. of Adm. Hear., filed March 2008).
- **In re Appalachian Power Co.** (Va. Corp. Comm., April 2008)
- ***Desert Rock Energy Co. and Dine Power Auth. v. EPA*** (S.D. Tex., filed 2008)
- ***Friends of the Chattahoochee, Inc v. GA Dept. of Nat. Res.*** (June 2008)
- ***Mont. Env. Info. Center v. Mont. DEQ*** (Mt. Dist. Ct., filed June 2008)
- ***Sierra Club v. USDA Rural Util. Serv.*** (D.D.C.) (motion to dsms denied July '08)
- ***CleanCOALition v. TXU Power*** (5th Cir. July 2008) (cert. denied Dec. 2008)
- ***Appalachian Voices v. Vir. State Air Poll. Control Bd.*** (Richmond Cir. Ct. July 2008)
- ***South.All. for Clean Ene. v. Duke Energy Carolinas, Inc.*** (W.D.N.C., filed Aug. 08)
- **In re Desert Rock Energy Co. LLC** (EPA Env. Appeals Bd, filed Aug. 2008)
- ***Longleaf Ene. v. Friends of the Chattahoochee*** (Ga. Ct. App., filed Aug. 08)
- ***Sierra Club v. EPA*** (11th Cir. 2008)
- ***Commonwealth of Kentucky Env. & Pub. Prot. Cab. v. Sierra Club*** (Ken. Ct. App. '08)
- **In re Desert Rock Energy Co. LLC** (EPA Env. Appeals Bd., filed Oct. 2008)
- **In re Seminole Ele. Cooperative** (EPA Env. Appeals Bd., filed Oct. 2008)
- ***Citizen Action Coalition of Indiana v. PSI Energy*** (Ind. Ct. App. Oct. 2008)
- ***Sevier Power Co. LLC v. Bd. of Sevier Co. Commissioners.*** (Utah Sup. Ct. Oct. 2008)
- ***Sierra Club v. Franklin Co. Power Co. of Ill.*** (7th Cir. Oct. 2008)
- **In re Deseret Power Electric Cooperative** (EPA Env. Appeals Bd. Nov. 2008)
- **In re Wisconsin Power and Light** (Pub. Serv. Comm. of Wisconsin Nov. 2008)
- ***Sunflower Ele. Corp. v. Sebelius*** (D. Kan., filed Nov. 2008)
- ***Palm Beach Co. Env. Coalition v. Florida*** (S.D. Florida Nov. 2008)
- **In re Kentucky Mountain Power** (Ken. Ene. & Env. Cabinet Nov. 2008)
- ***Southern Alliance for Clean Ene. v. Duke Energy Carolinas*** (W.D.N.C. Dec. 2008)
- ***Amer. Nurses Assoc. v. EPA*** (D. D.C. filed Dec. '08)
- **EPA adm. decision** finding that CO2 is not regulated pollutant for purposes of PSD program (Dec. 2008)
- ***Sierra Club v. EPA*** (D.C. Cir. , filed Jan. 2009)
- ***Blue Skies Alliance v. Texas Comm. on Env. Quality*** (Texas App. Ct. Jan. 2009)
- ***In re Desert Rock Energy Co. LLC*** (EPA Env. Appeals Bd., Jan. 2009)
- ***Sierra Club v. Two Eks Generation Partners*** (D. Wyoming, filed Jan. 2009)

Other Challenges

- ***Northwest Environmental Def. Center v. Owens Corning Corp.*** 434 F. Supp.2d 957 (D. Ore. 2006)
- ***Montana Environmental Information Center v. Montana DEQ & Bull Mountain Development*** (filed June 2007)

For detailed legal analysis, see **Global Climate Change and U.S. Law (ABA 2007)**

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- ***City of Los Angeles v. NHTSA***
  912 F.2d 478 (D.C. Cir. 1990)
- ***Found. on Econ. Trends v. Watkins***
  794 F. Supp. 395 (D.D.C. 1992)
- ***Seattle Audubon Soc. v. Lyons***
  871 F. Supp. 1291 (W.D. Wash. 1994)
- ***APAC, Inc. v. Bonneville Power Adm.***
  126 F.3d 1158 (9th Cir. 1997)
- **Council on Env. Quality Draft Memo on Climate Change** (Oct.1997)
- ***Border Power Plant Working Group v. Dept. of Energy***
  260 F. Supp.2d 997 (S.D. Cal. 2003)
- ***Mid States Coalition for Progress v. Surface Transportation Board***
  345 F.3d 520 (8th Cir. 2003)
- ***Senville v. Peters***, 327 F. Supp. 335 (D. Vt. 2004)
- ***Friends of the Earth v. Watson***
  (N.D. Cal. 2005)
- ***National Audubon Society v. Kempthorne***
  (D. Alaska 2006)
- ***NW Envtl. Advocates v. Nat'l Marine Fisheries Serv***., 460 F.3d 1125 (9th Cir. 2006)
- ***Mayo Found. v. Surface Transportation Board***
  472 F.3d 545 (8th Cir. 2006)
- ***Center for Bio. Diversity v. U.S. Dept. of Interior***,
  No. 07-1247 (D.C. Cir., filed July 2007)
- ***Friends of the Earth v. Mosbacher*** 488 F. Supp.2d 889 (N.D. Cal. 2007), Interlocutory appeal denied (Sept. 2007) (settled Feb. 2009)
- ***North Slope Borough v. Minerals Mgm't Service***
  2007 WL 1106110 (D. Alaska 2007)
- ***Izaak Walton League of America v. Kimbell***
  516 F. Supp.2d 982 (D. Minn. 2007)
- ***Ranchers Cattlemen Action LF v. Connor***,
  No. 07-Civ.-01023 (D. S.D., filed Oct. 2007)
- ***Audubon v. Department of Transportation***
  2007 WL 3299255 (D. Md. 2007)
- ***Center for Bio. Diversity v. NHTSA***
  508 F.3d 508 (9th Cir. 2007)
- **Petition** to CEQ to Include Climate Change Analysis In Env. Review Documents (Feb. 2008)
- ***Center for Bio. Diversity v. NHTSA***
  No. 06-71891 (9th Cir. 2008)
- ***Bravos v. BLM*** (D. N M, filed Jan. 2009)

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- ***GM Corp. v. California Air Resources Board*** 05-02787 (Cal. Sup. Ct. 2005)
- ***State of California v. County of San Bernardino*** No. CIV-5507-00329 (Cal. Super. Ct. 2007) (settled)
- ***NRDC v. State Reclamation Bd.*** No. 06 CS 01228 (Cal. Super. Ct. April 2007)
- ***Center for Bio. Diversity v. City of Banning*** No. INC 06848 (Riverside Co. Sup. Ct. 2006)
- ***Minn. Center for Env. Advocacy v. Hudson*** No. 31-CV-07-338 (Dist. Ct. Itasca Co. 2007)
- ***Am. Canyon Comm. United for Resp. Growth v. City of Am. Canyon*** (Napa. Co. Sup. Ct. 2007)
- ***Santa Clarita Oak Conservatory v. City of Santa Clara*** (L.A. Co. Sup. Ct. Aug. 2007)
- **California Attorney General GHG-related CEQA materials**
- **Settlement** concerning ConocoPhillips Clean Fuels expansion project in Contra Costa Co. (2007)
- **Cal. Attorney General agreement with Los Angeles concerning GHG emissions from port** (Dec. 2007)
- ***Highland Springs v. City of Banning*** (Riverside Co. Sup. Ct. Jan. 2008)
- **Settlement** concerning ConocoPhillips Clean Fuel Expansion Project in Contra Costa Co. (2007)
- ***Center for Bio. Diversity v. City of Perris*** (Riverside Co. Sup. Ct. March 2008)
- **Cal. Attorney General agreement** with S.D. Airport to reduce GHG emissions (May 2008)
- ***Arcadia First v. City of Arcadia*** (Los Angeles Co. Sup. Ct. May 2008)
- ***Env. Council of Sacramento v. Cal. Dept. of Transportation*** (Sac. Co. Sup. Ct. July 2008)
- ***NRDC v. South Coast Air Quality Management Dist.*** (L.A. Co. Sup. Ct. July 2008)
- ***El Charro Vista v. City of Livermore*** (Alamada Co. Sup. Ct. July 2008)
- ***Center for Bio. Diversity v. City of Desert Hot Springs*** (Riverside Co. Sup. Ct. August 2008).
- **Cal. Attorney General agreement with City of Stockton to curb GHG emissions** (Sept. 2008)
- ***Communities for a Better Env. v. City of Richmond*** (Contra Costa Co. Sup. Ct. , filed Sept. 2008)
- ***Center for Bio. Diversity v. San Joaquin Valley Air Pollution Control District*** (Fresno Co. Sup. Ct., filed Oct. 2008)
- ***Center for Bio. Diversity v. Cal. Pub. Utilities Comm.*** (Cal. Supreme Ct., filed Jan. 2009)

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Challenges to State Vehicle Standards

- ***Green Mountain Chrysler v. Torti*** No. 05-CV-302 (D. Vt. 2005)
- ***Green Mountain Chrysler v. Crombie*** 2007 WL 2669444 (D. Vt. 2007) (dismissed) (appeal pending)
- ***Central Valley Chrysler v. Goldstene*** (E.D. Cal. Dec. 2007)
- ***Central Valley Chrysler v. Goldstene*** (E.D. Cal. June 2008)
- ***Central Valley Chrysler v. Goldstene*** (E.D. Cal. Sept. 2008)
- ***Association of International Auto. Manufacturers v. Sullivan*** No. 1:06-CV-00069 (D.R.I. 2006)
- ***Lincoln Dodge, Inc. v. Sullivan*** 2007 WL 4577377 (D. R.I. 2007)
- ***Zangara Dodge, Inc. v. Curry***, No. 1:07-CV-01305 (D.N.M., filed Dec. 2007)
- ***Metro. Taxicab Board of Trade v. NYC*** (S.D.N.Y., filed Sept. 2008)
- ***Lincoln Dodge, Inc. v. Sullivan*** (D. R.I. Nov. 2008)
- **Presidential memo regarding fuel economy standards** (Jan. 2009)

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- ***Alliance of Auto. Manufacturers v. Sheehan*** No 4757/05 (Sup. Ct. N.Y. Co. 2005) (withdrawn)
- ***Air Conditioning, Heating & Refrig. Inst. v. City of Albuquerque*** (D. N.M. Oct. 2008)
- ***Tesoro Refining & Marketing Co. v. Cal. Air Resources Bd.*** (Sac. Co. Sup. Ct., filed Sept. 2008)
- ***Ash Grove Texas, LP v. City of Dallas*** (N.D. Tex. Nov. 2008)
- ***Indeck Cornith v. Paterson*** (N.Y. Sup. Ct., filed Jan. 2009)

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CLIMATE CHANGE LITIGATION IN THE U.S.

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Regulate Private Conduct

- ***Okeson v. City of Seattle***
  50 P.2d 556 (Wash. 2007)
- ***International Finance Corp. v. Korat***
  No. 07-5451 (S.D.N.Y. 2007)
- **New York Attorney General subpoenas to coal utilities** concerning disclosure of climate risks in SEC filings (Sept. 2007)
- **Environmental Defense petition to Securities and Exchange Commission** to require companies to disclose climate risk information (Sept. 2007)
- **Free Enterprise Action Fund petition to Securities and Exchange Commission** to require companies to disclose business risks of laws and regulations intended to address global warming (Oct. 2007)
- **GE request to SEC to omit shareholder proposal** to prepare global warming report for its 2008 annual shareholders meeting (denied by SEC 2008)
- **New York AG Settlement With Xcel Energy** concerning disclosure of climate risks in SEC filings (Aug. 2008)
- **New York AG Settlement With Dynegy, Inc.** concerning disclosure of climate risks in SEC filings (Oct. 2008)

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CLIMATE CHANGE LITIGATION IN THE U.S.

Common Law Claims

Injunctive Relief

- ***Connecticut v. American Electric Power***
  406 F. Supp.2d 265 (S.D.N.Y. 2005) (dismissed) (appeal pending)

- ***Korsinsky v. EPA***
  2005 WL 2414744 (S.D.N.Y. 2005) (dismissed) *Aff'd* 2006 WL 2334976 (2d Cir. 2006)

Money Damages

- ***Comer v. Murphy Oil USA, Inc.***
  No. 1:05-CV-436 (S.D. Miss. 2006) (dismissed August 2007) (appeal pending; oral argument scheduled for Nov. 2008)

- ***California v. GM Corp.***
  No. 3:06-CV-05755 (N.D. Cal. 2006) (dismissed Sept. 2007) (appeal pending)

- ***Native Village of Kivalina v. ExxonMobil Corp***., 08-CV-1138 (N.D. Cal. Feb. 2008)

- ***Steadfast Ins. Co. v. The AES Corp***., No. 2008/858 (Arlington Co. Cir. Ct., filed July 2008)

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CLIMATE CHANGE LITIGATION IN THE U.S.

Public International Law Claims

- Inuit petition to Inter-American Commission on Human Rights
- Petitions to the World Heritage Committee
- United Nations Human Rights Council Resolution to Study Impact of Climate Change on Human Rights (March 2008)

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Center For Biological Diversity Petitions Under The Endangered Species Act and Related Litigation

KITTLITZ'S MURRELET

Petition to list species as endangered (May 2001)
Findings: Warranted but precluded (May 2004)
Warranted but precluded (May 2005)
Warranted but precluded (Sept. 2006)
Warranted but precluded (Dec. 2007)

POLAR BEARS

Petition to list species as threatened (Feb. 2005)
Preliminary decision
Proposed rule (January 2007)
Notice of intent to sue over delayed listing (Jan. 2008)
CBD lawsuit over delayed listing (March 2008)
Order requiring decision on listing (April 2008)
Final rule listing Polar Bears as "threatened (May 2008)
Center for Biological Diversity v. Kempthorne (N.D. Cal. May 2008) (lawsuit challenging "threatened" determination)
Notice of intent to sue regarding oil and gas industry actions that could affect habitat (June 2008)
Center for Bio. Div. v. Kempthorne (N.D. Cal. June 2008) (denial of motion to dismiss lawsuit)
Pac. Legal Found. Notice of Intent to Sue FWS over "threatened" listing (July 2008)
Center for Bio. Diversity v. Kempthorne (N.D. Cal. Aug. 2008) (partially granting motion to intervene)
Alaska v. Kempthorne (D.D.C., filed Aug. 2008)
American Pet. Institute v. Kempshorne (D.D.C., filed Aug. 2008)
Settlement regarding determination on critical habitat (Oct. 2008)
Center for Bio. Diversity v. Kempthorne (N.D. Cal. Oct. 2, 2008) (denying motion for reconsideration of motion to intervene)
Center for Bio. Diversity v. Kempthorne (N.D. Cal. Oct. 10, 2008) (denying motion to transfer)
Center for Bio. Diversity v. Kempthorne (N.D. Cal. Nov. 18, 2008) (granted motion to intervene in part)

PENGUINS

Center for Bio. Diversity v. Hall (D.D.C. Sept. 2008)

ELKHORN AND STAGHORN CORALS

Petition to list species as endangered (March 2004)
90 day finding (positive)
12 month finding (proposal)
Final rule (listed)
Critical habitat proposal for *Elkhorn and Staghorm Corals* (Feb. 2008)
Notice of Intent to sue over failure to consider climate change threats in new rule protecting coral (Nov. 2008)

AMERICAN PIKA

California and federal petitions to list species as threatened (Aug. 2007)
Finding: pending
Center for Bio. Div. v. Kempthorne (E.D. Cal., filed Aug. 2008)
Center for Bio. Div. v. Cal. Fish & Game Comm. (Cal. Sup. Ct., filed Aug. 2008)
State and federal lawsuits seek to require response to state and federal petitions

RIBBON SEAL

Petition to list species as threatened or endangered (Dec. 2007)

PACIFIC WALRUS

Petition to list species as threatened or endangered (Feb. 2008)
Center for Bio. Diversity v. FWS (D. Alaska Dec. 2008)

OCEAN ACIDIFICATION

Notice of intent to sue over ocean acidification (Nov. 2008)

Endangered species and global warming petition pursuant to APA to enhance recovery of endangered species and address the growing impacts of global warming on imperiled species (February 2007)
Center for Bio. Diversity v. Dept. of Interior (D. D.C., Jan. 2009)

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