

# Climate Change Path to AB 32 and Overview

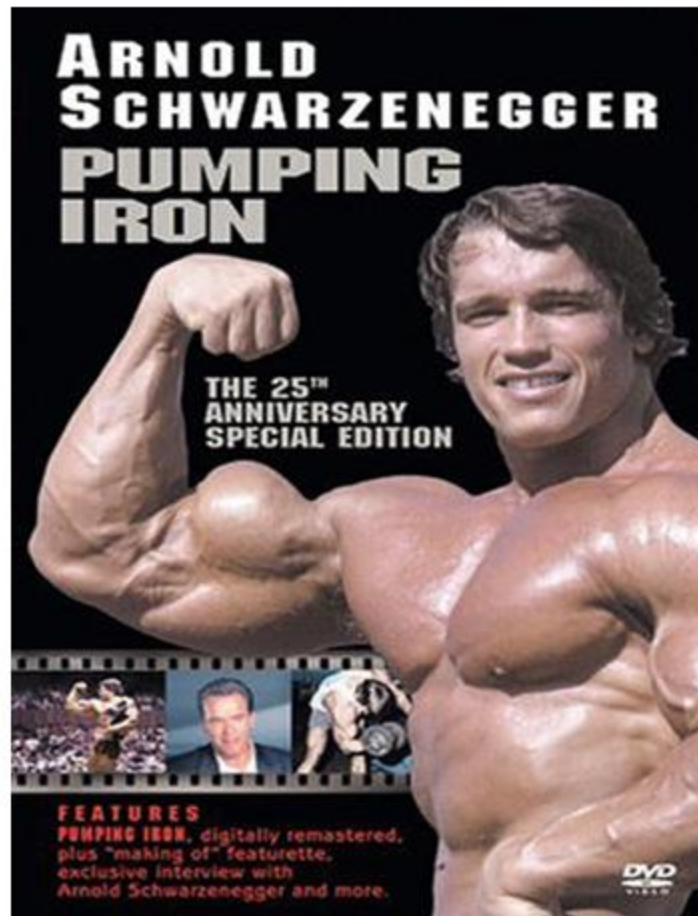
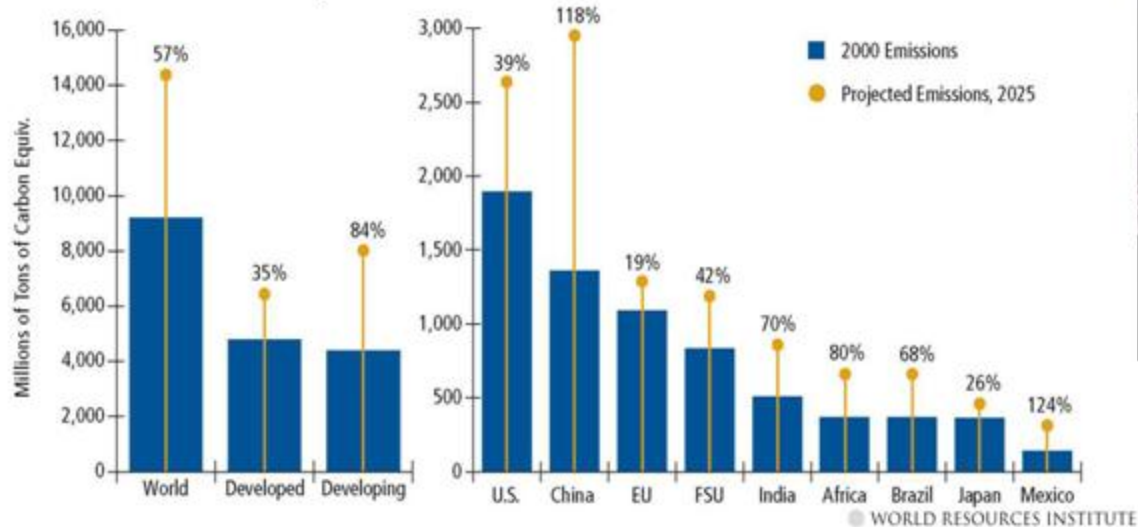
Malcolm Weiss, Esq.

So Cal Gas Co

# California Flexes Its Muscles

- Is global warming real?
  - Natural? Anthropogenic?
- U.S. global warming politics
  - **“The debate is over!”**

Projected Emissions of GHGs in 2025







# California's GHG Path

- SB 1771 Sher - Climate Action Registry (2000)
- AB 1493 Pavley - GHG vehicle standards (2002)
- AB 32 Nunez/Pavley - Global Warming Solutions Act (2006)
- SB 1368 Perata - Electricity: Emissions of GHGs (2006)
- Executive Orders - S-3-05, S-20-06 and S-01-07



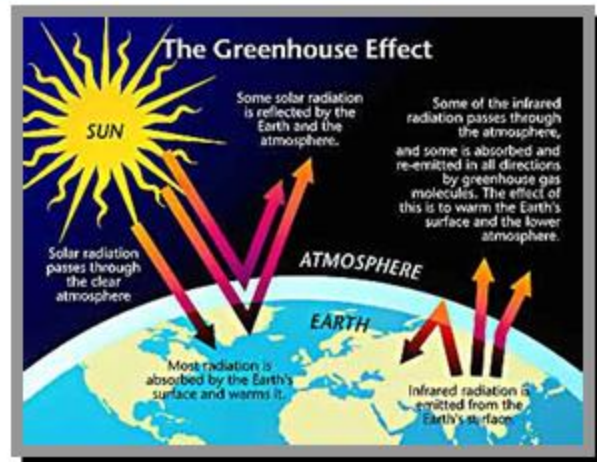
→ AB 32 goals, requirements and timeline

→ AB 32 implementation

→ Early actions, 1990 inventory/2020 cap, mandatory reporting

→ Scoping Plan

→ Litigation/CEQA issues





# AB 32 Goals

- Establish California as a leader in GHG
- Reduce GHG emissions to 1990 levels by 2020
- Institute comprehensive reporting, monitoring and reduction programs



# AB 32 Requirements

→ **Cap GHG emissions at 1990 levels by 2020**

- 427 million metric tons (reduce by ~174 MMT)
- ~30% reduction from business as usual

→ **CARB responsibilities:**

- Implementation and emissions inventory
- Mandatory reporting rules
- Environmental Justice and Economic and Technology Advancement Advisory Committees
- Consider impacts on California's economy, environment and public health



# AB 32 Timeline





- Early actions
- Mandatory reporting
- 1990 inventory & 2020 emissions cap
- Scoping Plan
- Develop regulations

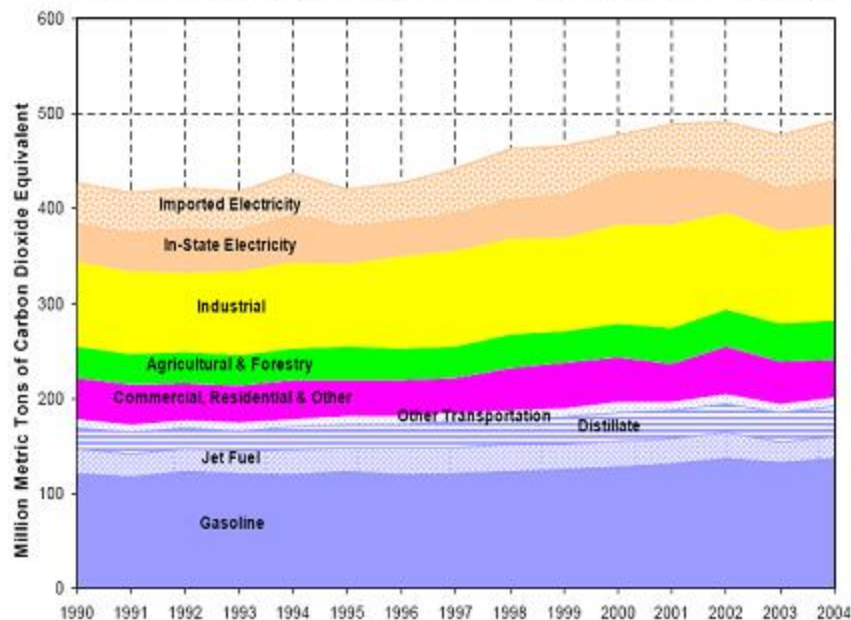


# AB 32 Emissions Inventory/Cap

CARB has:

- Created an emissions inventory
- 2020 cap established
- Use inventory to decide what sources to regulate

California's Gross GHG Emission Trends



Source: CEC December 2006

# Implementation





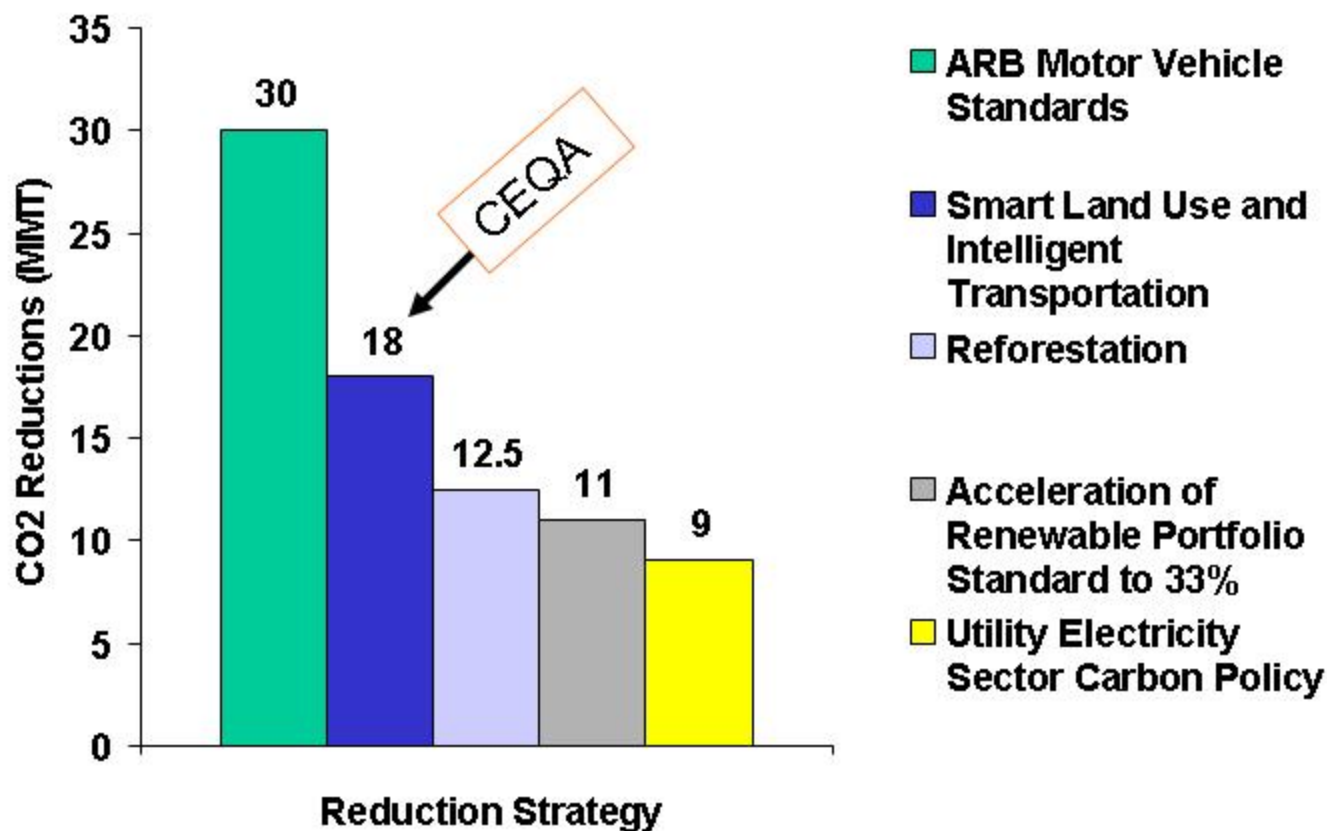
# Scoping Plan

## → Draft Scoping Plan (June 2008)

- Recommended actions
- Actions under consideration
- Road map
  - Control measures
- Process



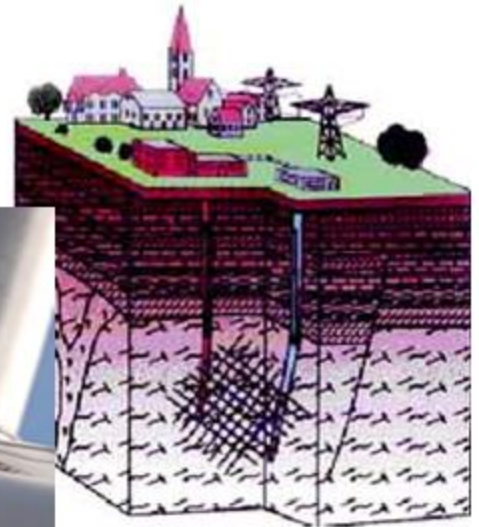
# Where Are All The Reductions?



Source: Climate Analysis indicators Tool (CAIT US Version 1.0, CAIT version 4.0), World Resources Institute, 2007 (data is for CY 2001 – 2002 and includes CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFCs, PFCs, and SF<sub>6</sub> emissions for countries and CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, and F-gases for CA)

# Reduction Opportunities

- Alternative Energy Options
  - Nuclear
  - Wind
  - Solar
  - Geothermal
  - Hydrogen
- Other





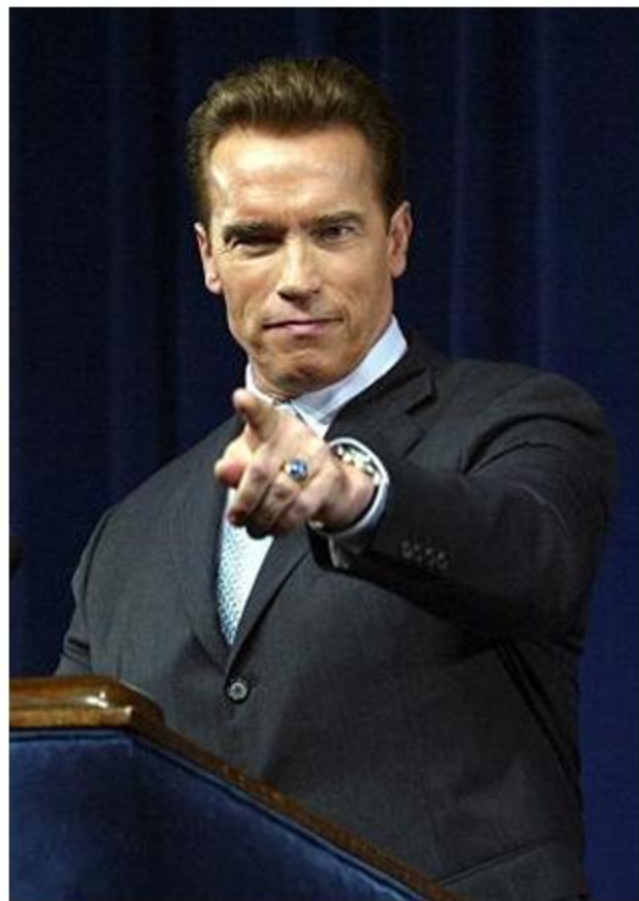
**AB 32**

**Climate Change Litigation**  
**and**  
**CEQA**

## “The carrot and...

“We simply must do everything we can in our power to slow down global warming before it is too late. The science is clear. The global warming debate is over.”

- *California Governor, Arnold Schwarzenegger (9/27/06)*





- Suits against EPA
- Suits against counties
- Suits against companies
- Settlements with
  - San Bernardino
  - ConocoPhillips





→ Administrative Procedures

→ CAA, CWA, ESA

→ CEQA

→ Nuisance / Trespass

→ Preemption

→ Commerce Clause

→ State Compacts/International Treaties

statute

common

constitution



# Climate Change Litigation

## U.S. Supreme & California Courts



- *Mass. v. Env'l Protection Agency*
  - CO2 is a "pollutant" EPA should regulate it unless

- *Green Mtn Chrysler-Plymouth-Dodge v. Crombie*

- *Central Valley Chrysler-Jeep v. Witherspoon-*
  - **Suit to block vehicle standards (AB 1493)**

- *People v. General Motors Corp.*

- **Nuisance suit seeking compensation for damage caused by GHG emissions from automakers**

- *People v. County of San Bernardino*

- **First suit by AG - gave credibility to pending suits - Settled**

- *People v. ConocoPhillips*

- **Appeal filed by AG - Settled**





## → Attorney General suit

- Climate change impacts of General Plan not sufficiently assessed and mitigated - CEQA

## → Settlement

- GHG Emissions Reduction Plan (30 mo.)
- All discretionary approvals to include GHG mitigations
- Mandates diesel exhaust & PM 2.5 control measures
- State agrees to seek \$500,000 for County



## → Attorney General challenges EIR



→ Project impacts on global warming not sufficiently discussed (Clean Fuels Project)

## → Settlement

→ Surrender Santa Maria calcining permit

→ Energy efficiency and GHG audits

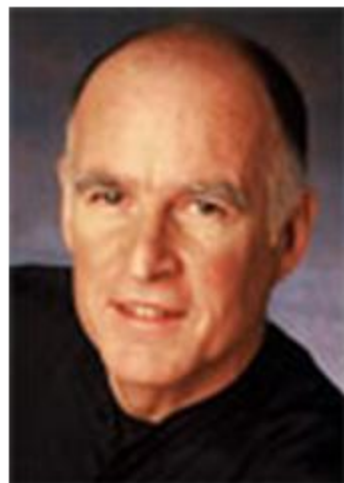
→ \$7,000,000 to BAAQMD

→ \$200,000 to Audubon Society

→ \$2,800,000 to Wildfire ReLeaf

# Settlements' Impacts

- Municipalities, agencies and project proponents are on notice
- In depth analysis is required:
  - Calculate project's GHG footprint
  - Assess cumulative impacts on global warming
  - Adopt feasible mitigation measures
    - Statement of overriding considerations?



# CEQA's Future

**"You've got your road map, you have your threat, and you have the carrot of all the good things that you will achieve and all the bad things you will avoid. So, to summarize, this is a no-brainer. Let's get working, and let's reduce oil dependency and fight global climate change."**

**→ Cal. Attorney General, Jerry Brown (September, 2007)**



# What Is Significant?

**CEQA**

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The California Environmental Quality Act

- **Numeric threshold**
  - **Zero?**
  - **Non-zero - allows small developments to ignore carbon management**
- **Compliance with AB 32**
  - **Use population increase from 1990 baseline to set a percentage reduction**
  - **Calculate tons of GHG/person & compare to target**
  - **Provides technology neutral solution**
- **Classification of green projects?**

# ESA Used to Confound Projects

**CBD's ESA strategy includes challenging:**

- **Offshore oil and gas leasing**
- **Licensing coal-fired power plants**
- **Large-scale, local government development plans in major cities**



**Arizona Daily Star (5/27/08)**

# Project Implications

- **CEQA process informs decision-makers about environmental impacts and Identify ways to avoid them.**
  - Consider project modifications, alternatives, and mitigation measures
  
- **Discretionary Project (agency approval/permit)?**
  - Exercises judgment or deliberation
  - More than “ministerial”
  
- **EIR**
  - Adequate discussion?
  - Mitigation measures?
  - Cumulative impacts?
  - Thresholds of significance?





# What Is Significant?

## → Numeric threshold

→ Zero?

→ Non-zero - allows small developments to ignore carbon management

## → Compliance with AB 32

→ Use population increase from 1990 to set a percentage reduction?

→ Calculate tons of GHG/person & compare to target?

## → Green project exemption?

## → SB 97

# CEQA

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The California Environmental Quality Act



# Distance Matters? You Bet It Does!

- Mitigation measures to reduce VMT
- Transit-oriented design
- Cluster jobs, services and homes
- Biking and walking paths
- Find energy efficiencies
- Reduce water use
- Source materials and labor considerations



1. **Don't let someone else carry your water**
  - **Early actors get advantages**
2. **Trust the government**
  - **Not!**
3. **Advocate market approaches**
  - **Markets reduce compliance costs**
4. **Understand local/regional GHG reduction targets**
  - **Better outcomes**
5. **Don't go it alone, use experts**
  - **You will be at a significant advantage**
6. **Don't ignore legal issues**
  - **Enforcement actions, contracts, opportunities**





# Finding the Upsides



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