

**Stronger relationships lead to stronger businesses.**

**BOK FINANCIAL**  
We go above. So you can go beyond.

Let's work together

Professional Services · Sponsored Content by Greenberg Traurig LLP

# The search for leadership in environmental and natural resource policy development

Email | Share | Print | Order Reprints



Business leaders need to re-engage in the development of environmental and natural resource policies to ensure they can retain the flexibility to operate and to thrive in Colorado, all while seeking to maintain the careful balance envisioned by Roosevelt just over a century ago. GETTY IMAGES



JE DUNN IS PROUD OF OUR LEGACY – DELIVERING A CENTURY OF CERTAINTY TO OUR CLIENTS AND COMMUNITIES ACROSS THE NATION.



By Stan Dempsey, Sr., Bill Owens, Paul Seby, and Chris Neumann – Greenberg Traurig LLP  
Dec 15, 2023

“Do something now. If not you, who? If not here, where? If not now, when?” - President Theodore Roosevelt

Roosevelt, often referred to as the father of modern conservation, recognized early on both the importance of balancing the needs of resource development with conservation, and the importance of informed leadership in the development of public policy. In the years since Roosevelt's tenure, Colorado has witnessed the pendulum of environmental and natural resources policy swing back and forth to new and competing heights of industry and environmentalist power. Today, with a majority of statewide offices held by politicians supportive of policies favored by environmentalists, the fundamental balance envisioned by Roosevelt is fast eroding. Participation on the part of industry in the legislative and rulemaking process is perhaps at an all-time low, at the same time the number and frequency of new and burdensome environmental and natural resource laws and regulations are growing at an alarming pace. For many businesses, the need for leadership within state government, industry and the environmental community may quickly become an existential concern. Many center-leaning thinkers are beginning to wonder out loud whether these diverse stakeholders can once again work to find balanced common ground and put the interests of Coloradans ahead of their own interests to develop environmental and natural resource policies that return to the careful balance to which Roosevelt aspired.

Colorado has a long history of visionary civic leaders on environmental and natural resource matters that predates the advent of modern environmental law. In 1966, the nascent Colorado Open Space Council (“COSC”) formed a committee with the Colorado Association of Commerce and Industry (“CACI,” now known as the Colorado Chamber) to open a dialogue between industry and conservationists. By 1967, the COSC-CACI Committee embarked upon a remarkable effort referred to as the “Experiment in Ecology” initiated by American Metal Climax Incorporated (“AMAX”) and supported by its executives at the highest levels. AMAX was preparing to develop its newly discovered Henderson molybdenum mine located near Empire, Colorado. Rather than sparring with increasingly organized conservationists, AMAX elected to embrace the conservationist community and to attempt to collaborate on the many key challenges the company would face in developing the mine. The company drafted and shared reports detailing the potential impacts of the proposed mine similar to environmental impact statements that would be required years later under the National Environmental Policy Act (“NEPA”), and ultimately made several changes to the project to mitigate its environmental impacts. For example, the Experiment in Ecology examined 30 processing sites before identifying a location 14 miles away where tailings could be managed with the least impact to the environment. To reach this location, the company tunneled 9.5 miles under the Continental Divide and constructed a specialized electric railroad to move its tailings. Rather than clearcutting trees to install powerlines, the company worked with its utility to remove and replant trees using horses. The company also opened much of the land near the Henderson mine to public recreation unlike other mining operations of the day that sought to keep the public off their land. As a result of this collaborative effort, AMAX opened the Henderson mine and processing plant on schedule in July 1976.

After this brief period of collaborative environmentalism in the late 1960s marked by projects such as AMAX's Henderson mine, the pendulum swung to the left. NEPA was enacted in 1969, the first Earth Day was celebrated in 1970, federal and state air, waste, and water laws were amended during the 1970s, and the Superfund law was enacted in 1980. The Surface Mining Control and Reclamation Act (“SMCRA”) and its state analog the Colorado Mined Land Reclamation Act were enacted or amended in the late 1970s, and the latter was amended again in the early 1990s after the U.S. Environmental Protection Agency (“EPA”) intervened on an emergency basis to stop the release of cyanide-laden water from the Summitville mine. These and other federal and state legislative and regulatory developments ushered in a period of constructive environmentalism from 1969 through 1998. By and large, the Colorado Department of Natural Resources (“DNR”) implemented the Colorado Oil and Gas Conservation Act and the Colorado Mined Land Reclamation Act to further their legislative purposes of fostering the development of the state's oil, gas, and mining resources in a manner consistent with the protection of public health, safety, welfare, and the environment, taking into consideration cost-effectiveness and technical feasibility. At the same time, the Colorado Department of Public Health and the Environment (“CDPHE”) implemented the state's air, water, and waste laws in a manner furthering their legislative purposes of protecting health and the environment while taking into account cost-effectiveness and technical feasibility. State agencies, environmental groups and industry collaborated less, but still had a constructive engagement on environmental policy matters. Industry still participated through senior executives or government affairs representatives and made available its top talent and its financial support to assist industry trade groups in participating in legislative and rulemaking proceedings.

Beginning in 1999, the pendulum swung back and forth ultimately ushering in a period of political environmentalism. From 1999 through 2007, elected officials were generally more supportive of industry and the state worked to promote the development of oil, gas, and minerals, and put in place policies and legislation to promote this agenda. For example, in 2003, the state amended the Colorado Administrative Procedure Act to allow for any person affected by any proposed rule to request that the agency proposing the rule perform a cost-benefit analysis of the rule. By 2007, the state changed course enacting HB 07-1298 and 07-1341 to require that oil and gas operations address heightened environmental considerations. A few years later, the state enacted the Clean Air Clean Jobs Act, HB 10-1365, that forced certain power plants to switch from coal to natural gas, and more recently the state enacted SB 19-181, upending the state's long-standing oil and gas policy and requiring the state to “regulate” but not “promote” or “foster” oil and gas development to minimize adverse impacts to health, safety, welfare and the environment without regard for technical feasibility or cost.

In the spring of 2020, COVID-19 arrived. Companies sought to cut costs in order to survive. Many companies lost important technical and governmental affairs staff and scrutinized closely whether to continue as members in industry trade groups. With a handful of exceptions, many of these trade groups saw enrollment dip in the wake of the COVID-19 pandemic and attendance and participation wane. Where only a few decades ago top executives of member companies would participate in trade groups, today many members eschew leadership roles in these groups and opportunities to fund their participation in legislative or regulatory policy development. At the same time, environmental groups have seen their ranks and revenues increase, and some have begun to question publicly whether it is worth it to collaborate with industry given their growing power and stature on environmental policy matters.

Against this backdrop, during the last three legislative sessions the pace at which the Colorado House and Senate have considered and enacted new environmental and natural resources laws has been breathtaking, including for example: targeting a 90% reduction in greenhouse gas emissions by 2050, setting new environmental standards for appliances, requiring producers of electronics and other materials to pay for recycling programs, creating energy performance standards for buildings, creating a program to mitigate the impacts of projects on environmental justice communities, phasing out single-use plastic bags, and requiring certain air toxics monitoring. In addition, the Colorado House and Senate have set some interim committee meetings with only agency and environmental non-governmental organization (NGO) stakeholders without any industry representation, and state agencies have gone as far as assisting environmental NGOs in obtaining legal counsel so that they can obtain party status alongside their industry counterparts to participate more fully in rulemakings.

The impact of these new laws, regulations and policies has been significant. The Colorado Chamber of Commerce recently released a survey of Colorado businesses in which 48% of employers indicated that increased regulation had become a top concern, and 65% of employers indicated that regulatory compliance had become one of their top three concerns. For employers operating in multiple states, 72% indicated Colorado had become a more costly business climate than other states, and 83% indicated that as a result at least some future investments would be made out of state.

This data should serve as a wake-up call to the Colorado business community. Perhaps never before has our community been tested so profoundly. Unless we reverse course and get back to our collaborative roots, it is increasingly possible that our economy and our way of life could be dramatically altered. It is time for our business community to find its voice and to re-engage in the development of our environmental and natural resource policy.

What can be done, you ask?

First, find a trade group or an industry group made up of similarly regulated companies and join them, robustly fund them, and seek out leadership roles through key company executives to engage in the public debate with environmental group and government counterparts in order to drive sensible environmental and natural resource policies.

Second, take stock of where your environmental, health, and safety programs are as a company; conduct an EHS audit and have your lawyers and consultants tell you if you are complying with the myriad new laws and regulations that have sprung up during the last few years. Reflect on these findings and identify the key policy issues on which you can contribute and make a difference.

It is time for our Colorado business community to usher in a new era of collaborative environmentalism. Business leaders need to re-engage in the development of environmental and natural resource policies to ensure they can retain the flexibility to operate and to thrive in Colorado, all while seeking to maintain the careful balance envisioned by Roosevelt just over a century ago.

*Greenberg Traurig's Denver attorneys offer the Rocky Mountain business community a strategic gateway to the firm's global resources while maintaining strong credibility with local business, industry, and government, having a former governor of Colorado, a former U.S. Attorney, and former members of the DOJ, EPA, and White House Counsel on the team.*

*Stan Dempsey, Sr. worked for AMAX from 1960 to 1983, including as the VP of Environmental Services where he led the company's “Experiment in Ecology,” and then served as the CEO of Royal Gold from 1987 to 2014. Bill Owens, who is not an attorney, served as Governor of Colorado from 1999 to 2007. Paul Seby has represented clients in environmental rulemakings and legislative matters for 35 years and has won several key rulings for clients on these matters before the U.S. Supreme Court. Chris Neumann is the co-chair of the environmental law practice group at Greenberg Traurig, LLP and served as co-chair of the Colorado Air Quality Control Commission from 2004 to 2007, and chair of the Colorado Solid and Hazardous Waste Commission from 2005 to 2016.*

## RECOMMENDED

**RETAILING**  
Downtown Seattle retailer Fox's Seattle to close after 112 years



**MANUFACTURING**  
Denver-area factory closing after nearly 100 years, development is poised next door



**CAREER & WORKPLACE**  
Susan Anable is keeping communities connected at Cox Communications



Back to Top

### SUBSCRIBERS

- Start a Subscription
- Subscriber-Only Content
- Digital Edition
- Book of Lists
- Book of Lists - Unlimited
- Manage your Account
- Manage My Advertising

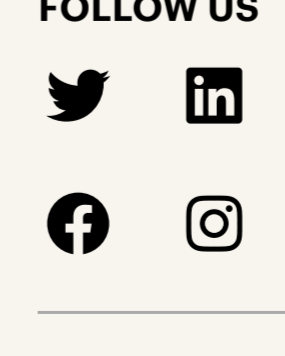
### ABOUT & CONTACT

- About Us
- About The Business Journals
- Advertise
- Help & FAQs
- Circulation Sales Center Directory

### APPS & SYNDICATION

- Mobile Apps
- Syndication/RSS

### FOLLOW US



### NEWSLETTERS

Sign Up Now

### ACBJ

- American City Business Journals
- AmericanInno
- BizEquity
- BizLeads
- Bizwomen
- Hemmlings