TESTIMONY OF
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BEFORE THE
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UNITED STATES SENATE AND HOUSE

BICAMERAL HEARING ENTITLED
"THE WESTERN ECONOMY: PERSPECTIVES OF JOB CREATORS IN THE WEST"

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Good afternoon Chairman Barrasso, Chairman Pearce and members of the Western Caucus.

My name is Geoff Simon. I am director of government affairs for MDU Resources Group. MDU Resources is a diversified, value-added natural resources company headquartered in Bismarck, North Dakota. We are a publicly-traded company on the New York Stock Exchange under the symbol – MDU.

Our company has five distinct business units that include energy production and transportation, natural gas and electric utilities, and highway and utility-related construction. MDU is licensed to do business in 44 states, but the vast majority of our operations are located in Western states, including Alaska and Hawaii.

Our company takes things <u>from</u> the earth (like aggregates, sand, gravel, oil and gas), we put things <u>on</u> the earth (like highways, transmission lines, parking lots and compressor stations), and our company puts things <u>in</u> the earth (like pipelines, culverts and oil and gas wells). When you engage in these types of businesses, it's pretty obvious that the government and the regulators it employs have a lot of control over how we run our business.

I'd like to say I spend a lot of time with our petroleum engineers, getting to know the finer points of geo-seismic analysis and how it's used to decide where and how an oil or gas well will be drilled. I wish I could spend time with aggregate managers so that I understand how they prospect for gravel, or how it's blended with asphalt oil to produce durable road material. I wish I could tell you I spend time with our pipeline division and that I understand how gas measurement works or how they ensure the integrity of our company's high pressure gas pipelines.

But because of the real and potential impact of federal regulations on our company's operations, the reality is that I spend most of my time talking with our regulatory affairs and environmental managers. As a result, I can share with the committee what I know about any number of environmental rules and procedures with which our company must comply, and that's a list that I might add continues to grow.

Our electric utility operates coal-fired power plants, and I know members of Congress are well aware of the new and pending rules affecting those operations. Our power production and environmental managers are still going through the EPA's 1,100-plus page Mercury and Air Toxics rule, otherwise known as Utility MACT. We know there will be impacts from the new rule – more emission control requirements at our power plants – and the cost will be significant. We're also about to launch a major construction project at an existing plant in order to comply with EPA's regional haze rule. Montana-Dakota Utilities and the other two co-owners of the Big Stone Power Plant in South Dakota will spend $490 million on an environmental retrofit project. That regulatory compliance expense will eventually be added to our customers' bills, resulting in a rate increase of approximately 15 percent.

We know of at least three other pending EPA regulations that will affect our generating stations:

1) The EPA is developing its so-called 316(b) rule for cooling water intake structures at existing facilities. Two of our smaller coal plants have river intakes – one on the Yellowstone River in Sidney, Montana, and the other on the Missouri River in Mandan, North Dakota. Both plants have screens around their water intake structures, but occasionally a few aquatic species still slip through. We don't know at this time what type of intake modifications the EPA will require, but we're fairly certain of one thing: the cost will far outweigh the environmental benefits.
2) The EPA recently released rules for greenhouse gas emissions associated with new coal-fired power plants. The EPA's rationale for the new rules is that coal plants produce carbon dioxide and that carbon dioxide is a greenhouse gas; that carbon dioxide "endangers both the public health and the public welfare of current and future generations" due to the theoretical public health and social effects of global warming, and that coal plants are "the country's largest stationary source emitters of carbon dioxide." The EPA concedes that the rule will do nothing to reduce total U.S. carbon dioxide emissions, and will therefore have no effect on our climate. Despite EPA assurances that it's not its intent, we are concerned these same restrictions on carbon dioxide emissions will be applied to existing plants under the New Source Performance Standard provision as upgrades or retrofits are made. That possibility with discourage utilities from upgrading their facilities, or ultimately force them to retire valuable assets prematurely.
3) We are also aware that EPA is developing new rules for coal combustion byproducts, also known as fly ash. The regulations, which I understand are now expected in July, could require our electric utility to build specially-lined landfills, adding many millions to our disposal costs. The pending EPA rules could also eliminate most or all of the re-use of this material, which can be used in road base and makes a good cement substitute.

Which brings me to our construction materials company, Knife River Corporation, which annually recycles about 85,000 tons of fly ash. In 2008, the concrete industry used nearly 16 million tons of fly ash in the manufacturing of ready mixed concrete. This valuable re-use would be virtually eliminated if the EPA makes a determination that coal ash is a "hazardous" waste. We believe the EPA's primary goal should be to reduce the amount of fly ash wasted, but we're concerned that's not the direction this regulation is headed.

At our construction materials business, we're also concerned about legislative and regulatory attempts to expand federal authority under the Clean Water Act to include groundwater, wash-out ponds, settlement basins and water reclaiming facilities located at our concrete plants. And the threat goes beyond our property. Not only could many previously unregulated activities require federal permits, those permits would be subject to challenge in federal court, delaying or halting construction activities to the detriment of our industry and economy.

Environmental managers at our construction sites are also obligated to comply with increasingly strict air quality regulations affecting our asphalt plants; storm and wastewater discharge rules on construction sites and highway construction projects; and existing and proposed vehicle emission and mileage standards for our trucks and other heavy equipment.

Here's a quick story about the impact of environmental regulations on our construction business. A couple years back in the midst of the recession, with the federal transportation funding bill about to expire and construction unemployment approaching 30 percent, highway construction companies were surveyed about their thoughts on the economy. I was frankly amazed by what they identified as their No. 1 obstacle to their future financial success – increasingly burdensome EPA regulations.

MDU Resources is also involved in domestic oil and natural gas production which, contrary to what some environmental activists would have you believe, is undoubtedly the most heavily regulated industry on the planet. Our subsidiary, Fidelity Exploration and Production Company, is headquartered in Denver. Our production activities are located in the Northern Rockies, in North Dakota, Texas and Utah, and we have non-operated ownership interests in the Gulf of Mexico.

There are days when I think my job is frustrating, but it can hardly compare to the challenges faced by Fidelity's environmental team. Any drilling and production activity occurring on public lands is subject to several laws including the Clean Water Act, Clean Air Act, Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act or NEPA. It affects Fidelity from cradle to grave in its operations.

The cradle is the leasing of a project. BLM's Resource Management Plans are developed under FLPMA and are subject to a NEPA analysis which identifies lands available for lease and stipulations if warranted. Historically, the leasing process was composed of three parts: 1) Development of a Resource Management Plan (RMP), followed by 2) Leasing activities that contain stipulations outlined by the RMP, and finally 3) the Application for Permit to Drill (APD), which requires another site-specific NEPA analysis to ensure sufficient resource protections are identified for the proposed drilling activity. Generally, these additional resource protections are attached as Conditions of Approval to the APD. Needless to say, every step of the process is subject to legal challenge (and in the last ten years that has usually occurred).

Interior Secretary Salazar has developed what he intended to be reforms to the leasing process. In addition to the RMP – the Resource Management Plan, the Interior Department now has provisions for a Master Leasing Plan. The intent of this was to identify more of the contentious environmental issues upfront in order to accelerate the process. That was also the intent behind a Leasing Environmental Assessment. But in practice the reforms haven't worked. What we're seeing is that early stages of the planning process lack the specificity required to identify unique environmental concerns. It's hard to know what to expect from a drilling operation if you don't know exactly where that drilling will occur, what type of drilling operation it will be, and the applicable “footprint” of the operation in order to implement a lessee’s plan. So while the intention was good, Fidelity and other operators (and their attorneys), will tell you that the reforms have only added more steps to the process, and more opportunity for those opposed to oil and gas activities to delay and obstruct our operation.

Once we do have a permit to drill, the operation is monitored and inspected by a variety of employees of the Bureau of Land Management. BLM personnel have a responsibility to ensure that oil and gas operators are in compliance with regulations that fall within their particular discipline. We expect BLM scrutiny, but there is a crying need for better coordination of this oversight. Fidelity has experienced instances where BLM specialists have made as many as six separate site visits. Applicable BLM specialists who we expect to see are an archaeologist, a wildlife biologist, a geologist, a viewshed specialist, a range specialist and a recreation specialist. Better coordination among BLM personnel would make the permitting and inspection process more efficient.

Of course, the big bugaboo in the oil and natural gas business these days is hydraulic fracturing. This technology in my opinion is perfectly safe. And as you know it has unlocked vast reserves of shale gas, and has turned oil plays such as those in North Dakota’s Bakken formation that were previously marginally profitable into tremendous success stories. For purposes of my testimony before the caucus, and for edification of the general public, I only want to make one point about fracing, and that is the difference between the actual frac job itself, and handling of the flow-back water that is the result of the process. Fracing, the injection of high-pressure water and sand, occurs thousands of feet underground, typically more than a mile below potable water aquifers. The water is separated from the oil-bearing strata by thousands of feet of impervious rock, making it impossible for any fracing fluid or oil or gas to get into the water. The management of the flow-back water that returns to the surface after the frac job is completed is an entirely separate issue. Its handling, and either treatment or disposal, must be carefully managed. And at least in our experience, I assure you that state regulations and the inspectors who enforce them, do a very good job of ensuring the safety of our disposal procedures.

Those of us in the natural resources business, the construction and energy sectors, understand that environmental regulations are necessary to protect the environment. MDU Resources supports environmental laws and regulations that are based on sound science and cost-effective technology, and our company operations comply with or exceed all applicable environmental laws, regulations and permit requirements.

I want to conclude my testimony by talking about a couple people who’ve been in the news recently. One is the Motor City Madman, Ted Nugent, who had a meeting last week with the Secret Service regarding some rather violent-sounding rhetoric about politics and the upcoming election. But those aren’t the remarks to which I’m referring. After Mr. Nugent’s comments became public, he defended them in an interview by saying, “If it wasn’t for the federal government my life would be perfect. Perfect. I’m not kidding…”

My reaction: Eliminating the federal government wouldn't make my life perfect. In fact, it would probably mean I no longer have a job, at least as a lobbyist. But let's consider the flip side of that remark as it applies to government employees. If government regulators weren't constantly coming up with new regulations, most of which increase the cost of doing business in this country, would they soon be out of a job? In the private sector, our people are constantly looking for ways to do things better, faster and cheaper, with fewer people. I'm not saying the same doesn't happen in government agencies, but it would be refreshing to see it happen more often. The term "government efficiency" doesn't have to be an oxymoron.

And since I've digressed this far, there's one other thing I'd like the Western Caucus to consider: If I wasn't employed as a lobbyist because I was needed to represent our company's interests and work to prevent or modify what we see as unnecessary, ineffective or inefficient government regulations, then what other useful occupation might I be performing to improve our society? Everyone in this committee room could be employed in a more productive exercise than is happening here today. So it's not just the direct effect of excessive regulations on companies doing business in America that we should consider. There is an indirect price that we all pay for this unproductive activity because it prevents us from doing something more useful in our society.

There's one final point I'd like to make, and that is the importance of including the views of the private sector in the business of making laws and regulations. Most of the federal agencies I've talked about here today make use of various scientific advisory panels. They are part of the peer review process to ensure that the science is sound, and that proposed regulations will be effective. The problem I've observed is that most of the members of these advisory panels are either government employees or they come from the world of academia. Very few have real-world business experience. But companies like ours employ a lot of scientists. We have environmental scientists, geologists, biologists, archaeologists and other experts on our payroll. If Congress wants an efficient and effective regulatory process, we believe it would be prudent to include industry representatives on all of those advisory panels.

My final thought is about a statement last week by Former Speaker Nancy Pelosi, who suggested that the 1st Amendment right to free speech be amended to essentially regulate corporate speech. Her intent would be to limit the ability of corporations to influence elections. But it is those elections which decide who will write the laws and review the regulations that have such a huge impact on our business and the economy as a whole. Understandably, many Americans are uncomfortable that money plays such a big role in our election process. But if there is truly a desire to reduce the role of money in politics, wouldn't it be better to reduce the role of government in our business? Then I believe the money problem would take care of itself.

Thank you for the opportunity to share my thoughts with the Caucus.