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NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

**Testimony of Gary W. Johnson
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**On behalf of
The National Stone, Sand & Gravel Association (NSSGA)**

**Before the
U.S. Senate Committee on Environment and Public Works**

**Hearing on
“Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective”**

Wednesday, November 30, 2022



Opening

Chairman Carper, Ranking Member Capito and members of this committee - thank you for inviting me here today to discuss the implementation of the Infrastructure Investment and Jobs Act (IIJA).

I am Gary Johnson, Vice President, Land & Quarry, with Granite Construction and Vice Chair of the National Stone, Sand & Gravel's Government Affairs Committee.

Headquartered in California and with operations located across the United States, Granite Construction is one of the largest diversified infrastructure construction and construction materials companies, as well as a full-suite provider in the transportation, water infrastructure and mineral exploration markets. Granite is publicly traded.

I am here today representing GCC as well as the National Stone Sand & Gravel Association - the voice of our nation's aggregates industry, which operates over 9,000 operations and employs over 100,000 people in high-paying jobs to source 2.6 billion tons of aggregates each year that are used to sustain our modern way of life and build our nation's communities and infrastructure.

First, I would like to echo the comments of my colleagues here today to **profoundly** thank you and your staff for crafting and executing the bipartisan infrastructure legislation. This committee's commitment to producing bipartisan surface transportation bills over the last two Congresses set the stage for moving the largest infrastructure investment in our lifetimes across the finish line.

As our country faces economic headwinds and an uncertain future, the historic infrastructure bill is laying the groundwork to keep the aggregates and materials industry moving forward to build more resilient communities and stronger transportation networks.

Many do not realize this, the products we mine and make in the aggregates industry **are the essential components** needed to build roads, airports, transit, rail, ports clean water and renewable energy networks funded through the Infrastructure Investment and Jobs Act. These products are quite literally, the building blocks of our nation.

The certainty provided by IIJA, through the five-year reauthorization of our surface transportation programs allows companies like Granite to better plan and make robust investments in our people, plants, and equipment.

The committee's hearing today and ongoing work to ensure the IIJA is effectively implemented is critical to its success and delivering the intended results of modernizing the outdated infrastructure our nation runs on.

Looking at the mandatory side of the ledger, the significant increase in highway trust fund dollars that have been obligated to the states is making a difference. While most of the funds have yet to be deployed to projects, we are seeing a significant increase in planning activity and anticipate greater lettings in the coming year. As an example, the California Department of Transportation [has budgeted](#) an increase of over \$8 billion (60%) in the last two cycles over the 2020-2021 spending with \$4.7 billion of the increase coming from federal funding.



I also want to praise the administration for working quickly to move discretionary funding to projects. In just one year, \$185 billion in funding and nearly 7,000 specific projects, that are reaching over 4,000 communities across all 50 states, D.C. and the territories – almost all these projects will depend on a supply of aggregates resources to be executed.

However, with the enactment of any major legislation, comes implementation challenges, and I will highlight a few areas where we believe greater oversight from Congress will drive better results that allow us to build.

IIJA Implementation Recommendations

Oppose Partisan Policies That Were Not Included in IIJA

Whether investing in a new road in a rural community or a new transit system in an urban city, infrastructure investment should benefit all Americans – a mantra well-known to members of this committee.

That is why we are concerned with proposed policies that insert new, partisan criteria into the planning process, such as restrictions on new highway capacity projects or new mandates included in federal grant applications that are discouraging some communities from participating. These policies were considered and rejected by Congress and not carried in IIJA.

Limiting new transportation capacity projects and curtailing flexibility does nothing to ease congestion, reduce air emissions and improve the flow of goods, which helps address inflation. Further, roads are still an important aspect of achieving an electric vehicle future. Granite is headquartered in California, where the administration’s stated goal is to move away from fossil-fueled passenger vehicles in the next decade. If this occurs, then new road capacity will not add increased emissions, but it will make the movement of goods and people cheaper and quicker. Lack of capacity has many negative impacts including increased inflation. Flexibility from Washington is critical, as states work to modernize our transportation networks, and we should not limit our ability to address increasing vehicular capacity to our systems.

It is critical for the administration to follow the will of Congress of providing maximum flexibility to state and local partners deploying infrastructure. Partisan mandates attached to federal infrastructure opportunities that discourage investment in new capacity projects, create more bureaucratic delays, or provide new workforce hurdles should be rejected.

Buy America Build America and the Aggregates Products Exclusion

One of the key policy changes made under the IIJA was the creation of new federal Build America Buy America (BABA) sourcing requirements, which include the addition of “construction materials” to Buy America preferences for federal infrastructure programs.

The aggregates, cement, concrete, and asphalt paving industry worked with this Committee and Congress, as they crafted the new statutory requirements to exclude aggregates, cement, asphalt additives



and paving binders as a construction material. Further, products that are made by combining these items, like concrete and asphalt, are also excluded from the new BABA requirements and subsequent Buy America sourcing rules.

Unfortunately, one critical roadblock has been the lack of clear and conscious communication over the new Build America, Buy America regulations, including the exclusion for aggregates-based products. Multiple state departments of transportation, in addition to federal agencies, have started issuing guidance and information requests to begin complying with BABA. Each state and federal agency has issued different and often conflicting guidance. Many times, the guidance fails to recognize the aggregates materials exclusion leading to confusion across our industries.

Keep in mind that certain geographic areas of the county do not have the geologic deposits that allow local sourcing of stone, sand, and gravel to make concrete and asphalt and to be used in construction. These materials must be imported from nearby countries and often it is less costly and produces less air emissions than trucking long distances across U.S. regions. Likewise, a lack of cement capacity in the states means cement must be imported. The lack of asphalt oil production and refineries, especially on the east coast, requires agencies and contractors to import from Canada to meet demand for basic street paving materials.

The aggregates industry strongly supports the goals of Congress and the administration to expeditiously improve our outdated infrastructure. It is imperative that federal and state partners responsible for distributing federal investments follow the BABA law and subsequent Buy America requirements, as written by Congress, and not impose any sourcing requirements or paperwork burdens on concrete, asphalt, cement, cementitious material, aggregates, additives, and binder. This will ensure maximum project delivery and American job creation.

Permitting Reform Is Needed to Build

The White House Council on Environmental Quality (CEQ) earlier this year issued a new regulation that complicates the permitting process for large infrastructure projects under the National Environmental Permitting Act (NEPA). This bureaucratic action broadens definitions and adds duplicative federal agency reviews that will do nothing to improve environmental outcomes. What is more frustrating is that these new rules run counter to the bipartisan NEPA reforms that were included in the Infrastructure Investment and Jobs Act (IIJA) which was signed into law last November.

Aggregates suppliers across the country crave certainty, as we work to supply the billions of tons of essential materials needed to improve roads; upgrade bridges; advance transportation systems and ports; and advance our modern energy infrastructure that will be funded by the investments provided by the bipartisan IIJA. This is especially important in the current economic environment, where needless red tape will delay project implementation and drive-up costs of construction materials.

The fixed cost investments for aggregates reserves, plants and rolling stock to produce this material runs from \$3 to \$4 per ton of material produced, which requires tremendous replacement capital each year from companies like Granite. This requires a huge commitment of capital which can be exacerbated by the high inflation we now experience. America uses over 2.6 billion tons of aggregate a year. This



means an annual commitment by private companies of up to \$10 billion per year for new reserves, plants, and equipment to keep producing the materials needed to meet the demand.

Instead of proceeding with new rulemakings that complicate the National Environmental Policy Act (NEPA) procedure, we urge rapid enactment of policies included in IJJA like “one federal decision” that will streamline bureaucratic review and reduce infrastructure permitting timelines from seven years to two.

NEPA is just one part of the permitting problem. Aggregate producers must often wait years for federal agencies such as the Army Corps of Engineers and the US Fish & Wildlife Service, amongst others to issue decisions. Often, the federal regulations conflict with similar state regulations adding complexity and red tape in the permitting process. Our operations need clear rules and accountable federal agencies to produce materials to meet the goals of the IJJA.

Additional Policy Recommendations

Industry is Leading the Way on Buy Clean

Industry has been leading the way to create more sustainable building materials that help us reach our emission reductions goals. Granite, like many across the construction materials industry, is focused on delivering more sustainable building materials and reducing GHG emissions. As implementation of the IJJA, Inflation Reduction Act (IRA) and work on Buy Clean policies continue, we urge policymakers to continue working closely with industry to identify investments that will help achieve the emissions reduction goals. We urge policymakers to prioritize funding to companies to support adaptation to lower carbon technologies. This will ensure rapid integration and recognition of low emission materials to build a more sustainable future.

For decades, the construction materials industry has been working to reduce air emissions in our materials production and construction operations. To better understand the impacts of the materials we produce, the industry has developed thousands of Environmental Product Declarations (EPDs). At Granite, we have published 8 EPDs for asphalt mixes and are in the process of creating 6 aggregate EPDs. In terms of innovation, Granite recently developed and is refining a process to replace some of the liquid oil binder with up to 10% recycled plastic in the production of our asphalt paving mix, which lowers the embodied carbon in the mix. Other materials companies are doing many of these same things to reduce emissions and produce more sustainable outcomes.

Over the past decade, Granite has invested substantially in energy conservation and emissions reduction in our operations. Key examples include: use of solar power, insulation of oil tanks and delivery systems, using lower emissions asphalt production processes, using more recycled asphalt, using hybrid construction vehicles, and using alternative fuels. In 2021, Granite replaced almost 1.5 million gallons of petroleum diesel with renewable diesel blends, resulting in 40-50% fewer life cycle GHG emissions compared to petroleum diesel.¹

¹ California Air Resources Board, LCFS Pathway Certified Carbon Intensities, <https://ww2.arb.ca.gov/resources/documents/lcfs-pathway-certified-carbon-intensities>.



We appreciate the work of this committee during consideration of the IRA to recognize the industry-led approach and provide incentives to help promote the use of cleaner materials we are actively making.

As implementation of IRA and work on Buy Clean policies continue, we urge policymakers to continue working closely with industry and recognize the work that has already been done. This will ensure rapid integration and recognition of low emission materials to build a more sustainable future.

Reject the new Waters of the United States (WOTUS) rulemaking until the Supreme Court rules in the Sackett vs. EPA case.

It is anticipated that the Supreme Court could change how the EPA and Army Corps of Engineers define a Waters of the United States (WOTUS). On October 3, the Supreme Court heard oral arguments examining the Sackett vs. EPA case and questioned the significant nexus analysis.

All the while, EPA and the Army Corps are working on finalizing a new rule, which makes *substantive* and *new* changes to the definition of WOTUS, under the guise of withdrawing the 2020 Navigable Waters Protection Rule. In fact, in February, the [Small Business Administration found](#) that the agencies have improperly certified the proposed rule, determined the proposed rule expands the definition of WOTUS and impacts small businesses requiring a small business regulatory review.

If the agencies proceed with their flawed rulemaking, material producers will be forced to comply with multiple complex changes, resulting in the fifth change in a decade. Because of the uncertainty, aggregates producers are unsure of when and how new operations and expansions can be permitted. Having EPA finalize yet another rule as SCOTUS stands poised to alter the rule's underpinning only adds to an already time consuming and uncertain permitting process. The current regulatory ambiguity is impacting industry ability to obtain CWA permits to establish new domestic manufacturing facilities and build infrastructure projects that are critical to addressing our supply chain crisis.

Unfortunately, despite hearing from impacted stakeholders, [201 Members of the House and 50 U.S. Senators](#), the agencies are still proceeding with a final rule that is likely to conflict with the Supreme Court action. To provide our industry with certainty needed to produce construction materials that supply the projects funded under IJIA, it is critical for the administration to halt this doomed rulemaking process and await the SCOTUS decision before proceeding with a new rulemaking process.

Rail Reform and Avoid a Pending Strike

It is no secret that rail service conditions are failing for the aggregates industry. Deteriorating rail conditions have a direct impact on our ability to supply millions of tons of aggregates and industrial sand, which are used to improve outdated infrastructure, build resilient communities, and drive America's energy production.

According to the California Air Resources Board, using renewable diesel provides a 40-50% reduction of GHG from well-to-wheel emissions and reduces tail-pipe emissions compared to petroleum diesel.



In [detailed comments](#) to the Surface Transportation Board (STB) earlier this year, NSSGA shared how service disruptions and unwarranted price increases are severely impacting our industry. If action is not taken to improve service, the constant delays, and the inability to move product to market will continue to have a direct impact on supplying key infrastructure projects across the country. This will ultimately plague the implementation of the bipartisan Infrastructure Investment and Jobs Act.

NSSGA calls on Congress and the Surface Transportation Board to enact meaningful rail reform that levels the playing field between shippers and carriers. One such proposal is the pending rulemaking at STB related to reciprocal switching. If enacted, this would drive greater competition, especially for facilities captive to one carrier.

Further, a pending rail strike is creating even more uncertainty. If a strike proceeds, the millions of tons of aggregates and industrial sand that move from quarries and plants to construction sites and markets will halt. This will have a profound impact on construction projects and infrastructure projects across the nation. Should Congress be faced with a looming strike, we urge swift action to resolve the strike and remove the economic catastrophe facing the American people and construction industry.

Conclusion

Chairman Carper, Ranking Member Capito and the distinguished members of committee, thank you again for the opportunity to testify before you today to provide a progress update on the implementation of the IIJA.

We have just celebrated the one-year anniversary of the IIJA and earlier this year Granite Construction celebrated our 100-year anniversary. There have been a lot of changes in the last 100-years and using the ingenuity of our work force, and with appropriate federal funding and environmental guidelines, we can and will rebuild our infrastructure to get America back to a leadership position in how we move people and goods.

We thank you for your bipartisan efforts to strengthen America's infrastructure and look forward to working with you to achieve our shared goals.

