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Clearing skies: U.S. federal achievements and next steps in climate policy

Samantha Medlock

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On day one at the U.N. Framework Convention on Climate Change Conference of the Parties (COP26), President Biden sought to reassert U.S. leadership on climate and [declared](#) that parties must raise global ambition during this decisive decade of climate action. In preparation for COP26, the White House announced actions aimed at achieving the president's climate goals, including the launch of the [President's Emergency Plan for Adaptation and Resilience \(PREPARE\) initiative](#), a whole-of-government campaign to deploy U.S. diplomatic, development, and technical expertise to help developing countries adapt to and manage the impacts of climate change. The White House also announced a new [U.S. Methane Emissions Reduction Action Plan](#) to identify and cost-effectively reduce methane emissions from major sources and help the United States meet its obligations under the new Global Methane Pledge. Meanwhile, Congress passed the president's bipartisan [Infrastructure Investment and Jobs Act \(IIJA\)](#) as the critical first step toward addressing the nation's infrastructure challenges through investments to strengthen and reduce emissions from transportation systems and the U.S. electricity grid, support electric vehicles, and better prepare communities for climate impacts. Congress, however, has not yet completed its work to enact the full Build Back Better agenda that would demonstrate to the world the unity of purpose to meet the president's climate goals.

With COP26 concluded, we can reflect on what was—and was not—achieved there. Nearly 200 countries reached an agreement that keeps the goal to limit global warming to 1.5 degrees Celsius within reach. Parties closed the Paris Agreement rulebook, raised ambition on climate finance, and included, for the first time, language on phasing down fossil fuel and coal subsidies. Despite these hard-won achievements, there is more work to do to accelerate climate mitigation and adaptation and to address the severe loss and damage that many vulnerable communities are still shouldering.

Last year alone, the United States faced 20 weather and climate disasters in 2021 with losses exceeding \$1 billion each and more than \$140 billion in total.¹ All Americans bear the costs of climate change, particularly marginalized communities, and those on the frontlines of pollution,

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extreme weather, and climate impacts. These burdens will continue to worsen, harming working families through reduced wages, property loss, and complicating health outcomes. According to numerous estimates, climate change will slow productivity and economic growth across the entire U.S. economy. Even modest warming would raise costs and shrink the economy by hundreds of billions of dollars² and reduce GDP by 0.5 percent per year.³ These costs would be borne across multiple sectors and geographic regions and affect families, businesses, local governments, and the financial system.⁴

The IJA and H.R. 5376, along with the [Build Back Better Act \(BBBA\)](#) that the House of Representatives passed in November 2021, would invest more than \$600 billion in climate action, clean energy, and environmental justice. Together, they constitute the largest-ever U.S. investment toward confronting the climate crisis as a national emergency. Although the bipartisan IJA contains important provisions to help reduce emissions and strengthen resilience, it is not a climate bill. Investments in conventional infrastructure such as roads, bridges, and ports are the principal objectives of the IJA, not the decarbonization and long-term resilience of the U.S. economy. The IJA takes the important first step toward protecting communities from climate-related damages through investments to modernize infrastructure. Given the significant risks and costs of climate change and the opportunities to harness the burgeoning clean energy economy for U.S. jobs, much more substantial investment is still needed.

Conservation and climate resilience

The IJA provides \$3.5 billion in flood mitigation assistance, \$1 billion under FEMA's pre-disaster mitigation program, and \$500 million toward a new resilience revolving loan program. Additional investments include \$8 billion to establish the PROTECT Grant Program to improve transportation infrastructure resilience to extreme weather, nearly \$3.4 billion to address wildfire risks, and more than \$8 billion to address water supply and conservation needs for the drought-stricken West. The BBBA would put a new generation of Americans to work combatting the climate crisis by investing \$15 billion to establish a Civilian Climate Corps serving communities across the nation. The BBBA also would invest \$15 billion to reduce wildfire risk, \$6 billion in coastal ecosystems restoration, and \$4 billion toward sustainable and resilient agricultural practices.

Environmental justice

Although the IJA tackles important threats to low-income communities and communities of color, including landmark investments in lead pipe remediation, clean school buses, and cleanup of brownfields and Superfund sites, much more is needed to address long-standing injustices and race-based policies and practices. The BBBA would create a new program at the Environmental

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Protection Agency through environmental justice block grants to help communities reduce pollution and climate threats and improve public health. It also would invest \$65 billion in affordable and sustainable housing, \$5 billion in clean transportation, and help Tribes and Native Hawaiian communities modernize electricity and water infrastructure and strengthen resilience to extreme weather and other climate impacts.

Clean energy, efficiency, and electric vehicles

Energy efficiency improvements not only help the United States reach its clean energy goals, but also improve public health and community resilience. The IJA invests more than \$4 billion through the Weatherization Assistance Program and Energy Efficiency and Conservation Block Grants to help households and communities reduce energy consumption and costs. The IJA expands the Smart Grid Investment Matching Grant program to upgrade existing transmission systems and deploy more energy storage solutions. Public schools will also benefit from \$500 million in funding to improve efficiency, with priority investments to low-wealth schools. The BBBA would provide numerous tax incentives to make the IJA investments go even further through commercial and residential efficiency tax deductions and credits, home energy efficiency rebates, and assistance to help states update energy codes.

On the transportation side, responsible for approximately 30 percent of U.S. carbon emissions, the IJA provides more than \$7 billion in funding to build a nationwide electric vehicle (EV) charging network and more than \$6 billion toward domestic EV battery manufacturing and recycling. The BBBA would provide tax credits to incentivize the purchase of EVs by both individual consumers and commercial enterprises, with enhanced credits available for vehicles built in the United States using union labor.

What's next?

Despite recent setbacks, the BBBA can still be revived in 2022, which would mark a major advancement for domestic climate action and demonstrate to the global community that the United States is unified and committed to achieving the president's climate goals. As of this writing, legislative outcomes remain uncertain for the BBBA. Regardless of congressional agendas, climate impacts at home and abroad will continue to serve as harsh reminders of the economic, social, geopolitical, and humanitarian consequences of incomplete action.

In May, the government of Indonesia will host the [2022 Global Platform for Disaster Risk Reduction](#), where countries will discuss how to build stronger systems to manage disaster risks, reduce loss and damage, and protect those in harm's way from natural hazards and climate-fueled disasters. With climate hazards accounting for 90 percent of all major disasters

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worldwide,⁵ disaster risk reduction policies and practices are crucial. The Global Platform takes place at a critical time: seven years from the adoption of the [Sendai Framework](#) and more than two years into the COVID-19 pandemic, which has exposed how underlying inequities have catastrophic consequences for the most vulnerable around the world.

Later in the year, Egypt will focus on resilience and adaptation when it hosts the 27th U.N. Climate Change Conference (COP27) in Sharm el-Sheikh in November. The conference will build on progress achieved at COP26 in Glasgow and there are high hopes that hosting a conference of parties in Africa will foster greater attention and investment toward climate adaptation, as well as unavoidable loss and damage. COP27 will present another key opportunity for parties to follow through on the range of commitments, including the delivery of \$100 billion per year to help developing countries mitigate and adapt to climate impacts, creation a loss and damage fund to further mobilize financing, and implementation of policies to limit global heating to well below 2 degrees Celsius by the end of the century.

¹ NOAA National Centers for Environmental Information, U.S. Billion-Dollar Weather and Climate Disasters (2022), <https://www.ncdc.noaa.gov/billions/>.

² U.S. Global Change Research Program (USGCRP), *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* (2018).

³ Solomon Hsiang et al., *Estimating Economic Damage from Climate Change in the United States*, *Science* 356: 1362–69 (2017).

⁴ USGCRP, *supra* note 2.

⁵ United Nations Office for Disaster Risk Reduction, *The Human Cost of Weather-Related Disasters 1995-2015* (2015).

New federal legislation spotlights the ocean as a climate solution

Valerie Cleland and Molly Masterton

Valerie Cleland is an Oceans advocate for the Natural Resources Defense Council. Valerie advocates for policies in Congress that protect and restore our oceans. Molly Masterton is the U.S. Fisheries director for the Natural Resources Defense Council. Molly works to promote sustainable fisheries management and the application of ecosystem-based management tools to ocean resources in the United States and abroad. Her areas of practice include environment and oceans.

The ocean supports us in countless ways—it feeds us and provides half the oxygen we breathe. It is a source of jobs and recreation, and its wetlands and reefs protect us from mounting storms. The ocean is also a carbon sink and a powerhouse of climate solutions.

A healthy ocean is fundamental to mitigating the worst effects of climate change and safeguarding marine ecosystems and coastal communities. Yet, federal climate policy has largely ignored the ocean's key role in combatting the climate crisis. With the Ocean-Based Climate Solutions Act ([H.R. 3764](#)), Representative Raúl Grijalva, chair of the House Committee on Natural Resources, has brought the ocean into the climate policy conversation with notable focus and ambition. This bill offers a broad suite of solutions, several of which we highlight below.

Revolutionizing ocean energy

H.R. 3764 proposes key reforms to energy policy that would help the United States to meet international climate commitments. Last year the Biden administration [set a target](#) of reducing U.S. emissions by 50 to 52 percent below 2005 levels in 2030, and the ocean is a key player both in reducing our dependence on fossil fuels and transitioning to clean energy sources.

H.R. 3764 would amend the Outer Continental Shelf Lands Act (OCSLA) to prohibit new offshore oil and gas leasing and seismic exploration for mineral resources in most areas of the outer continental shelf. This prohibition notably excludes the central and Western Gulf of Mexico planning areas, which are currently where the vast majority of offshore drilling currently occurs. Still, protection of our coasts from future drilling would be a victory for coastal communities. Simultaneously, the bill seeks to ramp up offshore wind energy, setting a national goal under OCSLA of producing 30 gigawatts of offshore wind energy by 2030 and calling for the development of best practices and increased funding to ensure that offshore wind development expands [without harming whales and other marine life](#). H.R. 3764 would also set new reporting requirements for greenhouse gases from [shipping vessels](#), which account for 90 percent of the world's trade and burn massive amounts of fossil fuel.

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Protecting ocean habitats

Healthy, functioning ecosystems are essential to addressing the twin crises of climate change and rapidly declining biodiversity. H.R. 3764 would support the Biden administration's [goal to protect](#) 30 percent of our waters by 2030, including by promoting a detailed analysis of gaps in marine biodiversity protections.

The bill would also strengthen tools to protect marine habitat under the federal fisheries law, the Magnuson-Stevens Act. Under current law, federal agencies conducting activities that may adversely affect designated “essential” fish habitat (such as dredging, sand mining, or energy exploration and development) are required to consult with the National Oceanic and Atmospheric Administration (NOAA) on impacts to such habitat. The process lacks teeth, however, as federal agencies must consider recommendations from NOAA to minimize impacts but are not required to adopt them—making it notably weaker than consultations under the Endangered Species Act. H.R. 3764 would strengthen the requirement for federal agencies to avoid or mitigate impacts of projects on essential fish habitat.

Reengaging in international and tribal ocean governance

To fully address the ocean's role in tackling climate change, a coordinated international effort is needed that elevates Indigenous and local knowledge. H.R. 3764 would restore and strengthen U.S. leadership in the international ocean space by honoring the U.S. commitment to the Arctic Council to reduce “black carbon” emissions (a type of fine particulate matter). The bill would also create a Tribal Resilience Program within the Bureau of Indian Affairs to support Native American leaders and provide grants for climate resilience activities.

Increasing blue carbon and coastal resiliency

“Blue carbon,” the carbon stored in the ocean by seagrasses, salt marshes, and mangroves, is a key ocean-climate solution. These same ecosystems that store up to four times the amount of carbon in a forest also protect coastal communities by limiting impacts from erosion, storms, and flooding. H.R. 3764 would create a new Blue Carbon Program within NOAA and provide targeted support for NOAA to better understand, map, protect, and restore blue carbon ecosystems.

Supporting climate-ready fisheries management

In a rapidly warming ocean, fish stocks are shifting to new geographic areas and are struggling to adapt to extreme events like marine heat waves. H.R. 3764 would increase the capacity and

coordination of fishery managers to respond to climate change under the Magnuson-Stevens Act's regional management framework. It includes new programs to jumpstart the production and use of climate-related science and data, and it also calls on NOAA Fisheries to identify actions to address management challenges posed by shifting fish populations. H.R. 3764 would also crack down on subsidies in trade agreements that contribute to overfishing or illegal fishing. H.R. 3764 offers innovative approaches in several other areas, by protecting vulnerable marine mammal populations from ship strikes and underwater noise, reducing plastic in the ocean with a tax on virgin plastic, and helping coastal communities adapt to sea level rise.

Representative Grijalva's Ocean-Based Climate Solutions Act, which has picked up 40 cosponsors in the 117th Congress, is an essential step in harnessing the power of the ocean to tackle the climate crisis. The bill is also doing double duty by educating policy makers and helping to shape Congress's and the Biden administration's climate policies. As this pioneering bill advances through Congress, conservation, climate, and environmental justice organizations and partners will continue to fight for strong ocean climate action. It is one of the most important steps we can take to protect vulnerable coastal communities, marine wildlife, and the natural systems that are essential to life on earth.

Infrastructure Act takes an “all roads” approach in attempt to build a cleaner future

Kathleen C. Schroder, Almira Moronne, Andrea Bronson, and Kelsey K. Johnson

A longer version of this article entitled “Not Just Roads – Infrastructure Act Offers Opportunities and Funding for Carbon Capture, Oil and Gas Infrastructure, Critical Minerals, and Mining Communities” first appeared on the website of Davis Graham & Stubbs LLP on November 22, 2021. The original article was authored by Kathleen C. Schroder, Almira Moronne, Andrea Bronson, and Kelsey K. Johnson. Almira Moronne has revised the article to appear in Trends.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (the Act), Public Law No: 117-58, a piece of bipartisan legislation known for months as the Infrastructure Bill. Among its many legislative priorities, the Act contains provisions relating to carbon capture, utilization, storage, and transportation; conventional oil and gas development; critical minerals; and revitalizing mining communities. Key highlights of the Act that may be of interest to Section members are summarized here.

Carbon capture, utilization, storage, and transportation

The Act includes numerous policy findings and operative provisions related to carbon capture, utilization, storage, and transportation (collectively, CCUS) infrastructure. The policy statements make clear that Congress considers CCUS a necessary, safe, and proven component of the nation’s efforts to reduce greenhouse gas emissions.

Geologic sequestration on the Outer Continental Shelf

The Act amends the Outer Continental Shelf Lands Act (OCSLA) to, among other things, authorize the Secretary of the Interior to grant leases, easements, and rights-of-way on the Outer Continental Shelf for purposes of long-term carbon sequestration by injection of carbon dioxide (CO₂) streams into sub-seabed geologic formations, as well as for activities that produce or support “storage” of energy from sources other than oil and gas. The Act also appropriates \$2.5 billion for the Secretary of Energy to establish a program for new or expanded large-scale carbon sequestration projects and associated CO₂ transport infrastructure.

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CO₂ transportation infrastructure finance and innovation program

The Act creates the Carbon Dioxide Transportation Infrastructure Finance and Innovation program and directs the Secretary of Energy to provide financing to private entities for large-scale (costing \$100 million or greater) pipelines, shipping, rail, or other infrastructure to transport captured CO₂ that are ready for deployment within 90 days after receipt of funding.

Carbon removal hubs

The Act directs the Secretary of Energy to fund the development of four regional hubs of direct air capture projects, CO₂ off-takers, CO₂ transport infrastructure, subsurface resources, and sequestration infrastructure in areas with existing or recently retired carbon-intensive fuel production or industrial capacity.

Conventional oil and gas development

Categorical exclusion for gathering lines

The Act creates a categorical exclusion under the National Environmental Policy Act for certain gathering lines on federal or Indian lands, intended to reduce flaring from oil and gas wells due to a lack of infrastructure.

Orphaned and idled wells

The Act expands the current program for orphaned well sites under the Energy Policy Act of 2005, directing the Secretary of the Interior to establish a program to plug, remediate, and reclaim orphaned wells on federal lands and to allocate grants to Indian Tribes for plugging, remediating, and reclaiming orphaned wells on Tribal lands. Importantly, the Act does not absolve the owner or operator of an orphaned well of any potential liability.

Keystone XL Pipeline

The Act directs the Secretary of Energy to review the impacts of the revocation the Keystone XL Pipeline permit on the number of jobs lost and impacts on consumer energy costs over a 10-year period.

Critical minerals and mining community resilience

The Act includes provisions related to critical minerals and the mining sector in general, as well as the rehabilitation of abandoned mine lands and the use of former mining sites to promote renewable energy development. The Act adds new provisions to various statutes that govern energy and mining, as well as public lands and public lands agencies, reflecting the United States' growing understanding of the importance and intersectionality of issues related to economic opportunity for historic mining communities, the energy transition, and securing critical mineral supply chains.

Critical minerals

On the technical side, the Act allocates funding to various agencies to support rare earth and critical mineral supply chains and battery technology:

- \$320 million to the U.S. Geological Survey (USGS) for the Earth Mapping Resources Initiative (Earth MRI) to support above- and underground mapping of mineral resources across the United States, including the identification of abandoned mine land and mine waste, which is thought to be an important potential source of critical minerals.
- \$167 million to USGS to establish an Energy and Minerals Research Facility in partnership with an academic institution.
- \$140 million to support the design, construction, and build-out of a Rare Earth Demonstration Facility, which will endeavor to demonstrate the commercial feasibility of extracting rare earth elements from acid mine drainage, mine waste, and “other deleterious material,” which could theoretically include coal ash.
- \$3 billion to fund grants for advanced battery material processing demonstration and production projects.
- \$3 billion to fund grants for advanced battery manufacturing and recycling projects.
- \$125 million to fund federal, state, and retail seller grants to support recycling and critical mineral recovery from smaller rechargeable (less than 5 kilograms) and non-rechargeable (less than 2 kilograms) batteries.
- \$200 million to fund grants related to recycling and finding “second use” applications for electric vehicle batteries.

The Act also creates grant programs within the National Science Foundation to support basic research on domestic critical minerals mining and recycling, with an “end-to-end” life cycle approach, examining the entire production and supply chain for critical minerals.

Other provisions of the Infrastructure Act aim to address obstacles to the development of critical mineral supply chains by improving the permitting process for mining projects on federal public

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lands. Earlier this year, large-scale mining was added as an eligible sector for the FAST-41 permit streamlining program, but given the administration's policy positions toward major mining projects to date, it is questionable whether any mining projects will actually be granted access to FAST-41. In addition, because most critical minerals are co-located with, or byproducts of, more major mineral commodities, FAST-41 may be too blunt of an instrument to try to prioritize critical minerals projects specifically.

Parts of the Act embody similar principles to FAST-41, mandating the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) to conduct a self-assessment of their permitting procedures; engage in more timely collaboration with stakeholders, with concurrent, rather than sequential, consultation processes; develop best practices for dissemination of information to the public; and develop firmer timelines and performance metrics to assess adherence to performance goals.

Promoting renewable energy development and resilient mining communities

Other sections of the Act are geared toward revitalizing mining communities and finding new uses for historic mine sites. Section 40701 allocates funding of nearly \$11.3 billion for states and Indian tribes to reclaim abandoned coal mines through the Abandoned Mine Reclamation Fund. Priority will be given to programs that employ current and former employees of the coal industry. Notably, the Abandoned Mine Reclamation Fee payable by miners on tons of coal produced has been reduced by 20 percent, while the authorization to continue collecting the fee has been extended to 2034. The Act also establishes a new \$3 billion fund to support reclamation of abandoned hardrock mining sites on federal, state, Tribal, local, and private lands. Funds awarded under the hardrock program cannot be used to satisfy obligations under the Comprehensive Environmental Response, Compensation, and Liability Act.

Adding to efforts to address physical conditions at mine sites, and the impacts on surrounding communities, the Act provides for the establishment of up to five "clean energy" demonstration projects on current and former coal and hardrock mining sites, two of which must be solar projects. The primary factors to be considered in evaluating project candidates are: job creation at the project site (particularly in economically distressed areas and with respect to dislocated workers who were previously employed in manufacturing, coal power plants, or coal mining) and throughout the supply chain, reducing carbon intensity and greenhouse gas emissions, technological innovation and commercial deployment potential, reducing the cost of generated or stored energy, and reducing the project time from permitting to completion. A total of \$500 million has been allocated to support the demonstration projects.

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Plastic pollution policy: California leads, but the crisis requires national and international action

Rachel S. Doughty and Lisa Kaas Boyle

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Introduction

Plastic use continues to grow—half of all plastic ever made was produced in the last 20 years. As a result of its ubiquitous presence, we are now all [eating and drinking plastic](#), it litters our rivers and oceans, and only a small fraction is recycled. And, if plastic production were a country, it would be the [fifth largest producer of greenhouse gases](#) on the planet, according to Laurie Wright in her article in *The Conversation*. Yet, legislators and regulators are only now taking tepid steps to address the plastic problem, birthed in the consumer age and unleashed by the industrial retooling at the end of World War II. Legislative and regulatory control is clearly necessary to staunch the flow of this waste. But this awareness comes as the oil industry pivots to expand plastic production in reaction to the government’s focus on conventional fuels that threaten long-term climate goals. Efforts to rein in profitable plastic production will not go unchallenged by the petrochemical industry.

Basel Convention and the United States as an outlier

The Basel Convention controls the international trade in hazardous and certain other wastes. The United States has signed—but not ratified—this international law. In 2019 the convention was amended to add plastic waste to its trade restrictions, preventing the 188 parties to the convention from trading with a non-party (like the United States) absent a bilateral agreement. The United States has such agreements with Canada, Mexico, Costa Rica, Malaysia, and the Philippines, leaving out many countries that have historically taken the United States’ plastic waste. [Changes to the Basel Convention](#) may prove even more challenging for the United States as a major plastic waste exporter than [China’s plastic waste import restrictions of 2017](#). (See Colin Staub, *Basel changes may have ‘bigger impact’ than China ban*, Resource Recycling (May 17, 2019),

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<https://resource-recycling.com/recycling/2019/05/14/basel-changes-may-have-bigger-impact-than-china-ban/>.

At the time this article was prepared for publication, the U.N. Environment Assembly (UNEA) was scheduled to consider in late February adopting a treaty to control global plastic pollution. While most nations have agreed to participate, the timing and especially the scope remain up for grabs—environmental nongovernmental organizations, the plastics industry, and countries have different ideas about what the treaty should cover.

A federal approach to combat plastic pollution

[The Break Free From Plastics Pollution Act](#), championed by environmental activists, failed to pass in 2020 and 2021 in the face of opposition from chemical and plastic manufacturers. The act would require producers of plastic to internalize the effects of their products: in essence, to take responsibility for the long-term waste and health impacts. It would require manufacturers to take into consideration the recyclability of their packaging choices, launch a nationwide container refund program, encourage investment in recycling infrastructure, protect the right of state and local governments to adopt more stringent standards, and place a moratorium on permitting of new and expanded plastic production facilities. The bill faces a sharply divided Congress again in 2022.

California embraces transparency and promotes a circular economy for glass

In the absence of a unifying federal approach, California is stepping up its efforts on legislation to daylight its broken recycling and waste management system. In 2021 Governor Newsom signed plastic pollution legislation including laws that stop the counting of exported waste as recycling (AB 881) and stop misleading claims about recycling by banning the use of chasing arrows on items that cannot be recycled (SB 343). Another law allows for the refill of glass bottles instead of requiring them to be crushed (AB 962).

Under AB 881, “the export of plastic wastes shall not constitute diversion through recycling and shall be considered disposal.” The goal is to prohibit offshoring California waste under the guise of recycling that never actually happens. The new law imposes civil fines of up to \$10,000 per violation for various actions including, “knowingly or willfully fil[ing] a false report” regarding disposals to the Department of Resources Recycling and Recovery.

SB 343 bars the use of the “chasing arrows” symbol on any product or packaging “unless the product or packaging is considered recyclable in the state . . . and is of a material type and form that routinely becomes feedstock used in the production of new products or packaging.” The

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proscriptive elements of the law will take effect on January 1, 2024. In the interim, the Department of Resources Recycling and Recovery must work to provide the public with information “sufficient for evaluating whether a product or packaging” is recyclable.

Meanwhile, AB 962 aims to “encourage and support the reuse, as well as the recycling, of empty beverage containers.” To incentivize reusable glass containers, the law provides that “[t]he processing payment for a reusable beverage container shall be the same amount paid for other glass beverage containers.” The Department of Resources Recycling and Recovery will oversee the program and ensure compliance by certified processors.

Bills tackle microfiber pollution

The biggest source of microplastic pollution in our environment is [microfibers from the plastic material in our clothing](#). [France](#) is the first nation to require washing machine filters to collect these plastic fibers in all machines sold by 2025. Closer to home, the [Break Free From Plastic Pollution](#) national bill was amended in 2021 to mandate washing machine filters, while California is considering two bills to target microfiber pollution: [AB 802 \(Bloom\) Microfiber Pollution](#) and [AB 622 \(Friedman\) Washing Machines: Microfiber Filtration](#).

California Attorney General supports environmental accountability

The poor bear the brunt of society’s insatiable appetite for plastic, including pollution from refining fossil fuels, the feedstock for plastic. Challenging the acceptance of that reality, the California Office of the Attorney General [intervened](#) in a lawsuit brought by grassroots advocacy organizations against the San Joaquin Valley Unified Air Pollution Control District, which had exempted four area fuel refineries from complying with a new state air quality rule, imposing air quality impacts on the neighboring poor, largely-Hispanic community that would be illegal in wealthier parts of the state. The suit relied on a [screening tool](#) called [CalEnviroScreen](#), which pinpoints pollution sources and the areas where pollution is the worst, identifying overburdened communities. The suit argues that disproportionate impacts must be considered by local officials in granting permits. Following the trend, the newly introduced AB 1001 (2022) would amend the California Environmental Quality Act to require consideration of environmental justice and impact mitigation for certain projects.

Nationally, the Biden administration is creating a replica of CalEnviroScreen as part of federal efforts to promote environmental justice. All these environmental justice efforts could force producers to internalize and limit the impacts of plastic manufacturing.

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California citizens' initiative

Finally, in November 2022, voters in California will have the opportunity to take direct action. A state ballot initiative titled [the California Recycling and Plastic Pollution Reduction Act](#) would curtail reliance on single use plastic packaging and foodware by imposing a Plastic Pollution Reduction Fee on such items. Funds generated would be used to improve waste management and recycling and mitigate the impacts of single use plastics.

In just the past decade or so, the world has come to understand that stemming the increasing flow of plastic waste demands solutions at the national and international level. Will 2022 be a landmark year where plastic pollution reduction policies finally take hold?

Environmental liability can provide remedies for biodiversity loss from illegal wildlife trade

Carol Adaire Jones, PhD

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The illegal exploitation of resources—including illegal wildlife trade; illegal, unreported, and unregulated fishing; and illegal logging—is [one of the top two factors](#), along with changes in land and sea use, devastating global biodiversity, and driving species to extinction. While criminal and administrative enforcement is the primary strategy to combat illegal wildlife trade, countries are beginning to add a different kind of tool to the policy toolkit—environmental liability suits that hold responsible parties accountable for remedying the environmental harm and restoring biodiversity.

Illegal exploitation of resources and criminal sanctions

Valued at more than [\\$216 billion per year](#), the global trafficking of wildlife, fish, and timber has become a serious threat not only to the environment, but also to the rule of law and political stability, and to the economy, public health, and cultural heritage of many countries. By contributing to the extinction of many species and damaging ecosystems, illegal trade robs countries of badly needed revenues and undermines efforts to conserve natural resources and eliminate rural poverty.

As the scale of illegal wildlife trade has increased, scientific, governmental, and international organizations have sharpened their calls to combat it. Entities such as the [U.N. General Assembly](#) have recommended criminalizing violations of trade and resource protection laws, and prosecuting corruption, fraud, racketeering, and financial crimes linked to illicit trafficking.

However, criminal sanctions alone do not remedy the environmental harm or restore biodiversity.

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A new application of environmental liability: To remedy biodiversity harms

An important policy tool for providing remedies for large-scale pollution in the United States and other countries, environmental liability suits are beginning to emerge for harms from illegal wildlife trade in biodiversity hotspots in the global South, as well as in the North.

In a [2021 paper in Conservation Letters](#), an [international team of conservationists, economists, and lawyers](#), brought together by the Lancaster Environment Centre in the United Kingdom, highlighted the significance of this new use of environmental liability suits to provide the financial resources to remedy harms from illegal resource exploitation and restore biodiversity through, for example, species and habitat restoration and protection. Typically, as a complement to criminal prosecution, such suits can be effective when used strategically against defendants with financial means, such as corporations and organized crime groups.

To value the damage claims, the team highlights the potential for using the restoration-based approach introduced in the regulations implementing the 1990 U.S. Oil Pollution Act (OPA), which was passed following the *Exxon Valdez* oil spill. In this approach, damages are based on the cost of restoration projects to restore impaired resources and compensate for resource losses incurred in the interim. Widely adopted by U.S. federal, state, and tribal natural resource trustee programs, the restoration-based approach is more readily transferable to developing countries than the alternative approach of putting a dollar value on the harm.

Environmental liability cases for illegal resource exploitation

In Indonesia, the nongovernmental organization WAHLI (Friends of the Earth) North Sumatra and Medan Legal Aid Institute [filed an environmental liability lawsuit in 2021](#)—the first of its kind—against an illegal zoo in Indonesia that was keeping critically endangered Sumatran orangutans and Komodo dragons, as well as 16 other iconic and internationally protected Indonesian species. In the most clearly articulated restoration-based damage claim, the requested remedies (which focused on the Sumatran orangutan injuries) included financial compensation to cover the costs of long-term care of the rescued Sumatran orangutans, which cannot be returned to the wild, as well as the costs for additional patrols and scientific monitoring of the orangutan population in North Sumatra. In addition, the plaintiffs requested funds to cover the costs of educational exhibits about the environmental, economic, and community impacts of illegal wildlife trade, as well as a public apology.

A [recent study](#) conducted mock trials of a hypothetical illegal tiger trade lawsuit in front of 32 Indonesian judges. The study found that the judges were very amenable to providing liability

remedies—including animal rehabilitation, actions to restore the population, and public apologies—in this type of civil lawsuit.

A few earlier cases involving illegal wildlife trade have been successfully resolved. In June 2021, a [French court of appeal upheld a claim](#) for ecological damage from illegal fishing (and sales) from the Calanques National Park, though the court substantially reduced the compensation that the poachers must pay one-seventh what had been decided by the lower court. In Thailand, in December 2021, the Supreme Court sentenced three defendants to prison terms of two-and-half to three years, and also ordered them to pay two million baht (USD 60,000) in compensation for damage to nature resulting from illegal hunting in Thung Yai Naresuan Wildlife Sanctuary.

In 2018, Cameroon’s Ministry of Environment and Fauna brought joint criminal and civil proceedings against five men involved in the illegal, commercial trade of 630 kilograms of giant pangolin scales, an amount representing approximately 210 individual animals of this endangered species. The men were held civilly liable and required to pay significant financial compensation to the state, including the estimated cost of lost hunting permits, tax revenue, tourism income, ecosystem services, and the value of the pangolin scales and meat.

Opportunities and impediments for environmental liability in biodiversity hotspots

The field of environmental liability for illegal wildlife trade is nascent with relatively few case precedents. What is the potential for expanding the use of such suits to remedy biodiversity loss? A recent [study of environmental liability in tropical biodiversity hotspots](#) found that the necessary laws are in place to bring liability suits in many countries spanning a wide range of economic development and legal systems, including in Brazil, China, the Democratic Republic of Congo, India, Indonesia, Mexico, and the Philippines.

Indeed, in many countries, an overarching environmental statute establishes broader coverage for environmental harms when compared to the environmental liability regime in the United States, where individual statutes create liability for selected sources of harm (i.e., oil spills and hazardous waste contamination) or for harm to protected resources.

However, relatively few natural resource liability cases have been brought in the global South, and those that have succeeded typically have had low damage awards relative to the injuries.

One reason identified for the underutilization of the liability provisions is lack of awareness on the part of public agencies and particularly civil society. Additionally, policies and procedures to implement relevant laws, particularly for valuing damage claims, are still a work in progress

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where the legislation is comparatively new. To address this issue, the international team brought together by the Lancaster Environment Centre in the United Kingdom launched a [new guide](#) that explains how to develop lawsuits in wildlife cases, as well as a [website](#) that provides additional resources.

In some cases, lack of political will or limited institutional capacity may limit government action. Unlike the United States, many countries in the global South have expanded standing to include members of civil society, which can provide an alternative source of liability filings, as was the case with the North Sumatran illegal zoo.

Despite potential impediments, adding to the policy tool kit the strategic use of environmental liability suits for illegal resource exploitation by well-resourced defendants has the potential to expand the resources available to restore biodiversity.

Farmers are depleting the Ogallala Aquifer because the government pays them to do it

Burke W. Griggs, Matthew R. Sanderson, and Jacob A. Miller-Klugesherz

A version of this article was originally published by The Conversation US on November 9, 2020, <https://theconversation.com/farmers-are-depleting-the-ogallala-aquifer-because-the-government-pays-them-to-do-it-145501>.

A slow-moving crisis threatens the U.S. Central Plains, which grow [a quarter of the nation's crops](#). Underground, the region's lifeblood—water—is disappearing, placing one of the world's major food-producing regions at risk.

The [Ogallala-High Plains Aquifer](#) is one of the world's largest groundwater sources, extending from South Dakota down through the Texas Panhandle, across portions of eight states. Its water supports [\\$35 billion](#) in crop production each year.

But most of the aquifer's supplies are effectively nonrenewable, and farmers are pumping water out of the Ogallala faster than precipitation can recharge it. Between 1900 and 2008, irrigators drained more than 273 million acre-feet from the aquifer, equivalent to two-thirds of [Lake Erie](#). Groundwater depletion is threatening drinking water supplies and undermining local communities already struggling with the [COVID-19 pandemic](#), the [opioid crisis](#), [hospital closures](#), soaring [farm losses](#), and [rising suicide rates](#).

In Kansas, “Day Zero”—the day wells run dry—has arrived for about [30 percent of the aquifer](#). Within 50 years, the entire aquifer is expected to be [70 percent depleted](#). Some observers blame this situation on [periodic drought](#). Others point to the individual choices made by farmers, since irrigation accounts for [90 percent of Ogallala groundwater withdrawals](#). But our research, which focuses largely on the social and legal aspects of water use in agricultural communities, shows that farmers are draining the Ogallala because state and federal policies encourage them to do it.

A production treadmill

At first glance, farmers on the High Plains appear to be doing well. Crop production increased in 2020. Corn, the largest crop in the United States, had a [near-record year](#), and farm incomes increased by [5.7 percent over 2019](#).

But those figures hide massive government payments to farmers. Federal subsidies increased by a remarkable [65 percent in 2020](#), totaling \$37.2 billion. This sum includes money for [lost](#)

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[exports from escalating trade wars, as well as COVID-19-related relief payments](#). Corn prices were too low to cover the cost of growing it in 2020, so federal subsidies made up the difference.

Our research finds that [subsidies put farmers on a treadmill](#), working harder to produce greater yields, yet draining the resource that supports their livelihood. Government payments create a vicious cycle of overproduction that intensifies water use. Subsidies encourage farmers to expand and to purchase expensive equipment to irrigate larger areas.

With [low market prices for many crops](#), production does not cover expenses on most farms. To stay afloat, many farmers buy or lease more acres. Growing larger amounts floods the market, further reducing crop prices and farm incomes. Subsidies support this cycle.

Few farmers benefit, especially those with small and midsize operations. In a 2019 study of the region's 234 counties from 1980 to 2010, we found that larger irrigated acreage [failed to increase incomes or improve education or health outcomes for residents](#).

Focus on policy, not farmers

Four decades of federal, state, and local conservation efforts have mainly targeted individual farmers, providing ways for them to voluntarily [reduce water use](#) or [adopt more water-efficient technologies](#). While these initiatives are important, they have not stemmed the aquifer's decline. In our view, what the Ogallala Aquifer region really needs is policy change.

A lot can be done at the federal level, but the first principle should be to “do no harm.” Whenever federal agencies have [tried to regulate groundwater](#), the backlash has been swift and intense, with farm states' congressional representatives [repudiating federal jurisdiction over groundwater](#).

Nor should Congress propose to eliminate agricultural subsidies, as some [environmental organizations](#) and [free-market advocates](#) have proposed. Given the thin margins of farming and long-standing political realities, federal support is simply part of modern production agriculture.

With these cautions in mind, three federal initiatives could help ease pressure on farmers to keep expanding production. The U.S. Department of Agriculture's [Conservation Reserve Program](#), which pays farmers to remove environmentally sensitive farmland from production for at least 10 years, should be enhanced to address groundwater depletion. With new provisions, the program could reduce unsustainable water use by prohibiting expansion of irrigated acreage, permanently retiring marginal lands from irrigation, and linking subsidies to the cultivation of less water-intensive crops such as grain sorghum, industrial hemp, and wheat.

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These initiatives could be implemented through the [federal farm bill](#), which also sets funding levels for nonfarm subsidies such as the [Supplemental Nutrition Assistance Program](#), or SNAP. SNAP payments, which increase needy families' food budgets, are an important tool for addressing poverty, including rural poverty. Increasing these payments and adding financial assistance to local communities could offset lower tax revenues that result from farming less irrigated acreage.

Changes in federal farm credit and [federal farm credit rates](#) could also slow the treadmill. Generous terms promote borrowing for irrigation-related farm equipment. But that debt in turn motivates irrigators to intensify irrigation on existing acres and increase irrigated acreage, further depleting the aquifer. By offering cheaper debt and more flexible borrowing rates for equipment that reduces water use, and withholding similar terms for standard, wasteful equipment, federal farm credit programs could nudge irrigators toward conservation.

The last federal initiative concerns the Internal Revenue Code. Two depreciation provisions in the federal tax code reward excessive irrigation. One allows farmers to take [depreciation deductions for declining groundwater levels](#); this perk should be replaced with a tax credit for irrigators who can stabilize them or even reverse the decline. The code also allows farmers to exploit generous, accelerated depreciation schedules on farm equipment. These depreciation schedules can and should be modified to reward the purchase of equipment that reduces excessive and unnecessary irrigation—such as soil moisture monitoring systems, cover crop-related equipment, and strip and dragline irrigation equipment. Allowing depreciation for wasteful irrigation equipment should be denied.

Amending state water laws

Reforming state water policy is also crucial, because water rights are mostly determined by state law. Water rights are use rights; their owners put water to beneficial use. But as every water lawyer knows, waste is not beneficial use; owning water rights [does not grant the legal right to wastewater](#). Courts have endorsed this logic for over a century, upholding state restrictions on waste, with [rulings that allow for adaptation](#) by modifying the definitions of “beneficial use” and “waste” over time. Courts have long emphasized that what we deem to be “reasonable” changes over time. With these long-standing rules as a guide, states can adopt regulations defining certain irrigation practices (such as prewatering and the use of “end guns” on irrigation sprinklers) and certain especially thirsty crops (such as alfalfa, rice, cotton, and corn) as wasteful in certain regions. Reasonable regulations preventing unreasonable water use [are not unconstitutional](#), nor do they qualify as regulatory takings.

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Next, in exchange for less pumping, irrigators should be allowed greater flexibility in their water use over the long term. Most western water rights are quantified at the level of annual use, which can tempt irrigators to over-water acreage. But if they can irrigate less or not at all in years with abundant precipitation and low commodity prices, they should be allowed to irrigate more in years with less rain and higher prices—provided they reduce their long-term usage. Granted, it is easier to recommend a policy change than to predict the weather, changes in commodity prices, or the contract and hedging strategies of irrigators. But in the zero-sum game of most of the Ogallala, many irrigators are willing to exchange lower annual yields for a longer aquifer life.

Finally, the private insurance industry could modify its practices. Crop insurance is a common tool across the High Plains, where the semi-arid climate requires irrigation for corn and soybeans, which are generally more profitable than dryland crops such as wheat and grain sorghum. Yet crop insurance can create moral hazards on either side of the policy. Where an irrigated crop has failed, many insurers still require farmers to prove that they have fully watered it through irrigation season—forcing farmers to waste water by sprinkling it on ruined fields. Farmers can abuse the system through the practice of “insurance farming.” As Lucas Bessire explains in [Running Out](#), the practice occurs when farmers plant irrigated crops that they suspect will fail, but do so anyway to collect insurance payments. Insurance companies prefer to insure irrigated over dryland crops because they make higher profits on the former; federal subsidies offset farmers’ higher premiums. Insurance payments are typically calculated based on the average of farmers’ harvests over the past 10 years and not on current conditions. Thus, if an irrigator’s water supply and/or pumping rate declines significantly over that period, he or she can be over-compensated—paid for yields that are no longer possible given the decline in the aquifer. Under certain conditions a failed irrigated crop can be worth more than a successful irrigated one. This result in nonsensical.

“Day Zero” looms across the Ogallala because groundwater pumping in much of the region is a zero-sum game: every acre-foot pumped this year is an acre-foot gone forever. As our research has shown, the vast majority of farmers in the region [want to save groundwater](#), and [some irrigators have taken steps in that direction](#). But they need help from policymakers. Forty years is long enough to learn that the Ogallala Aquifer’s decline is not driven by weather or by individual farmers’ preferences. Depletion is a structural problem embedded in agricultural policies. Groundwater depletion is a policy choice made by federal, state, and local officials.

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Stephen Lauer and Vivian Aranda-Hughes, former doctoral students at Kansas State University, contributed to several of the studies cited in this article.

Enforcement of Clean Water Act could clean up water, save Florida manatees

Jaclyn Lopez

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Florida's water quality crisis is best told through the eyes of a Florida manatee. Florida manatees are slow-moving herbivores, roly-poly sea cows that graze on seagrasses throughout Florida's rivers, estuaries, and nearshore marine waters. But in 2021, algae-choked water caused by nutrient pollution killed hundreds of the manatees.

On Florida's west coast, the Piney Point phosphogypsum stack discharged 215 million gallons of [wastewater into Tampa Bay](#).¹ Phosphogypsum is the toxic waste from creating phosphoric acid. It is radioactive, acidic, and has heavy metals and a lot of nitrogen and phosphorous. The two-week event added [nearly 200 metric tons of nitrogen](#),² the equivalent of what the region typically receives over the course of [an entire year](#).³ This led to a deadly red tide, a type of harmful algae bloom that can turn the water red and is [toxic to humans and wildlife](#).⁴ The red tide [killed thousands of pounds of marine wildlife](#),⁵ including more than [30 federally threatened Florida manatees](#).⁶

Meanwhile, on Florida's east coast more than 600 manatees starved to death in the [northern Indian River Lagoon](#).⁷ This mass mortality event was triggered by nutrient pollution in the lagoon that for years has fueled algae blooms that have killed thousands of acres of seagrass. The lagoon is important warmwater habitat for the manatee, and when temperatures dipped last year, manatees habitually returned to the area to a [lagoon robbed of its lush seagrass](#).⁸ This year, wildlife managers have resorted to provisionally [feeding manatees romaine lettuce](#).⁹ Between the Piney Point disaster and the Indian River Lagoon mortality event, harmful algae caused by nutrient pollution was to blame for the majority of the more than [1,100 unprecedented manatee deaths in 2021](#).¹⁰

The common thread with both manatee-killing events, and the majority of harmful algae blooms in the United States, was unchecked phosphorous and nitrogen pollution. While point source discharges like Piney Point can be damaging, nonpoint source discharges are the leading cause of

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nutrient pollution in most watersheds. In Florida, anthropogenic nutrient pollution including “high levels of nitrogen and phosphorous are washing into the water from agricultural lands, leaky septic systems, and [fertilizer runoff](#).”¹¹

The Clean Water Act, which works to “restore and maintain the chemical, physical, and biological integrity” of our [nation’s waters](#),¹² regulates point source pollution under [section 402](#) through the National Pollution Discharge Elimination System (NPDES) program,¹³ and nonpoint source pollution under [section 303](#).¹⁴ For nonpoint source pollution, total maximum daily loads (TMDLs) prescribe pollution diets for waterbodies, and most TMDLs rely upon “best management practices” (BMPs) to control the amount of nutrient pollution reaching waterways.

The majority of states, rather than the U.S. Environmental Protection Agency directly, are largely responsible for implementing these provisions of the Clean Water Act and are therefore primarily responsible for managing harmful algae blooms. Yet few states have water quality criteria explicitly addressing harmful algae, and many have a [poor track record](#) controlling the nutrient pollution that fuels harmful algae.¹⁵

The [deficiencies of these programs](#) are much discussed,¹⁶ and some solutions might involve [amending federal statutes and regulations](#),¹⁷ [holistic watershed planning](#),¹⁸ cost-sharing programs, and regional water treatment systems to improve water quality.

Another solution that might work just as well is enforcing existing laws and policies. For example, in the case of Piney Point, over the past 20 years Piney Point’s owners and operators have caused the discharge of over a [billion gallons of nutrient-laden wastewater](#) into the bay and the Gulf of Mexico.¹⁹ Had the Clean Water Act been enforced against those owners and operators, perhaps the 2021 Piney Point disaster would not have happened. Perhaps holding the polluters responsible this time through the enforcement of civil penalties might [prevent future disasters](#) from the phosphate industry,²⁰ which has a [track record of unpermitted discharges](#) in the region.²¹

In the Indian River Lagoon, repeated discharges from municipal [wastewater treatment facilities](#),²² coupled with [low or nonenforcement of NPDES violations](#),²³ contributes to poor water quality. This point source pollution acts in concert with nonpoint source nutrient pollution in part attributable to ineffective and unenforced BMPs. Landowner [enrollment in BMP programs in the region is low](#),²⁴ less than 25 percent, which is significantly lower than the Florida average. And of the more than 6,000 referrals for enforcement to the state regarding agricultural producers not following BMPs, [none have resulted in penalties](#).²⁵

So, in both examples of significant nutrient pollution resulting in harmful algae blooms that have killed Florida manatees, simple enforcement of existing regulatory mechanisms could result in improved water quality by reducing nutrient pollution that would in turn lead to a [decline in the proliferation of harmful algae blooms](#).²⁶

Either way, it is clear the Clean Water Act, as currently implemented and enforced, is in need of reform to address our nation's algae bloom crisis. In Florida, the steady decline in water quality from nutrient pollution and harmful algae blooms has been well documented by scientists, but it took the starvation of hundreds of once chubby manatees to finally bring into focus just how bad things have gotten in Florida. Florida can right the course by immediately enforcing the Clean Water Act against point source polluters and by bringing noncompliant landowners into compliance.

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Leading energy experts convene to discuss critical issues relating to broad electric transmission reform

Andrew P. Mina

Andrew P. Mina is a senior managing associate at Dentons US LLP in Washington, D.C. Andrew represents electric and natural gas utilities, project developers, and large financial institutions before the Federal Energy Regulatory Commission, state regulatory commissions and appellate courts. Additionally, Andrew has represented, as energy regulatory and transactional counsel, renewable resource developers and investors in over 70 projects, totaling more than 10,000 megawatts.

This past summer, the American Bar Association's (ABA) Section of Environment, Energy, and Resources hosted a webinar entitled "The Missing Link: Energy Transmission Reform," in which several of the nation's foremost energy experts discussed emerging legal issues in connection with public and private efforts to decarbonize national energy infrastructure. The webinar highlighted recent renewed interest in decarbonizing the U.S. power sector by, among other things, (1) reducing emissions from stationary power sources, (2) increasing the deployment of renewable resources, (3) reducing load at peak hours of the day, and (4) decentralizing large energy systems. Several recent studies, however, have suggested that the nation's interstate transmission system, in its present form, may not be readily equipped to facilitate such decarbonization goals. Absent critically important updates to the grid, transmission could be the weak link in achieving a decarbonized energy economy.

The disconnect between decarbonization goals and reality

There has been considerable focus on and progress in decarbonizing the nation's power systems through, for example, the deployment of renewable and battery storage resources. However, that progress has arguably outpaced necessary updates to the interstate transmission system to which such resources are interconnected. For example, local, state, and federal governments have fostered the proliferation of renewable resources in resource-rich areas, but there is often insufficient transmission capacity available to transport power from those resources to distant load centers. There also may be an underutilization of regional and interregional planning that takes advantage of storage and high voltage transmission lines or addresses the significant backlog of interconnection requests in many areas of the country. Additionally, an influx of renewable resources interconnecting to aging transmission facilities may pose security, reliability, and resiliency concerns.

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Regulatory and commercial options are available to modernize the grid

The panelists addressed the foregoing by providing unique perspectives on a number of key issues, including: the complex legal and regulatory regimes governing interstate transmission of electricity, statutory limits on regulators seeking to enact new transmission policies, appropriate incentives to induce investments in new transmission facilities, the role of new energy technologies in electricity markets, regional and interregional transmission and interconnection planning, and changing energy mixes and load patterns. For example:

- Matthew Christiansen, general counsel of the Federal Energy Regulatory Commission (FERC), provided an overview of the different regulatory regimes governing interstate electric transmission and siting, and discussed the various challenges FERC faces with respect to regulating new transmission development, such as 1. alleviating long interconnection queues inside and outside of organized wholesale markets, 2. responding to a rapidly changing generation mix in the direction of more transmission-dependent resources, 3. appropriately assessing qualitative benefits of new transmission and 4. ensuring that the costs passed on to customers of new transmission resources are reasonable.
- Michael Pesin, deputy assistant secretary for the Advanced Grid Research and Development Division at the U.S. Department of Energy's Office of Electricity, summarized the dramatic structural transformation taking place in the production, delivery, and interactive use of electricity, and its effect on the design and operation of the electric grid. He explained that further transformation will require re-engineering the electric grid to permit better control of both generation and load, incorporate energy storage, enable multidirectional power flow and meet varied/variable grid configurations.
- Ari Peskoe, director of the Electricity Law Initiative at Harvard Law School, discussed the misalignment between, on the one hand, state regulation and investor-owned utilities subject to such regulation and, on the other hand, interstate transmission development. He explained that state and local siting laws can inhibit the development of needed interstate and interregional transmission facilities, often to the benefit of incumbent utilities.
- Nina Plaushin, vice president of Regulatory and Federal Affairs for ITC Holdings Corporation, identified key commercial and market initiatives that may help foster broader decarbonization and transmission reform measures. For instance, she

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explained that allowing developers to build transmission at higher voltages (e.g., 500 kV) would help lower transmission rates ultimately borne by customers. She also asserted that FERC should 1. encourage proactive and regular portfolio planning; 2. require planning regions to incorporate corporate, utility, and state renewable goals; 3. provide cost allocation mechanisms that consider multiple benefits; and 4. return to a more collaborative transmission planning process.

In sum, the webinar highlighted the need to align various industry sectors and regulatory regimes to foster decarbonization objectives, and identified critical gating items that should or must be resolved for meaningful transmission reform and decarbonization efforts to succeed at local, regional, and national levels.

A [recording](#) of the webinar is available to all ABA Section of Environment, Energy, and Resources members.

51st Spring Conference on Environmental Law

Sarah L. Clark

Sarah L. Clark is the director of Legislative Affairs at the Pennsylvania Department of Transportation. She is the planning chair for the 51st Spring Conference on Environmental Law.

The ABA Section of Environment, Energy, and Resources (SEER) is excited to return to San Francisco on April 6–8, 2022, for the [51st Spring Conference on Environmental Law](#). Reunite with friends and colleagues, both old and new, in the City by the Bay!

This year’s Spring Conference—our first in-person SEER conference in two years—will focus on the future of environmental law and how emerging topics and trends are fundamentally changing our practices. The planning committee’s cross-disciplinary team has developed a program with something for everyone. The conference will offer world-class CLE programming and networking opportunities.

The conference opens on Thursday with the plenary session “The Evolving City: How Cities Respond to Climate Change.” Cities have been at the forefront of climate change action and adaptation and provide a window into legal and other tools being deployed. Panelists will discuss cities’ responses to climate change and natural disasters and novel approaches to addressing urban redevelopment and historic environmental inequities through the lens of environmental justice.

A second plenary session, “Beyond the Transition: The Future of Not-Yet-Mainstream Energy Technologies and Solutions,” takes the discussion of transitioning to a clean energy future one step further and focuses on breakthrough technologies and solutions and the legal mechanisms to facilitate their success.

Friday’s morning plenary session, “Infrastructure Bill—Transformational Change, or More of the Same?” discusses the historic bipartisan infrastructure law’s investment in infrastructure and its potential over the next decade to be a game changer for permitting initiatives; environmental justice considerations; and climate change resilience, adaptation, and mitigation—and how it will reshape areas of law that touch these issues.

This year’s Spring Conference will cover a broad range of cutting-edge topics, including:

- Sacred Cow: Moo-ving Towards Sustainable and Climate-Friendly Agricultural Practices
- Citizen Suits after 50 years of the Clean Water Act
- The Future of PFAS regulation

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- Air and Climate Regulation Opportunities by the Biden-Harris Administration
- ESG for Gen Z: Sustainable Finance and How Young People Are “Voting with Their Wallets” and Raising the Bar on What’s Expected of Green-Minded Corporations
- The Next Generation of Drought Response
- Sustainable and Climate Friendly Agricultural Practices
- Management of Sovereign Lands in the Era of Climate Change
- Where Do We Go from (Shut) Down?
- Ethics plenary session on Addressing Environmental Compliance and Investigation from the Perspective of Outside Counsel, In-House Company, Government, and ENGOs

In addition to this exciting content, the conference will provide ample networking opportunities for you to reconnect with fellow practitioners, including the welcome reception on Wednesday, and the reception and dine-arounds on Thursday. For the public service project on Wednesday afternoon, we will be partnering with SCRAP, a creative reuse center and arts education nonprofit.

The [51st Spring Conference on Environmental Law](#) will take place at the Hyatt Regency San Francisco, located near the city’s most celebrated hot spots and only steps away from the iconic Embarcadero, the Ferry Building, and Union Square. You and your families can enjoy the nearby ferry and popular walking and Segway tours. It is also a short trip to Oracle Park, Alcatraz Island, the Exploratorium, and more.

I look forward to seeing you in San Francisco!

Views from the Chair

Michelle Diffenderfer

Michelle Diffenderfer is president of Lewis, Longman and Walker, P.A. in West Palm Beach, Florida, and chair of the ABA Section of Environment, Energy, and Resources.

It's spring and we are excited about the Section's [51st Spring Conference on Environmental Law](#), which will be held in person next month in San Francisco at the Hyatt Regency, April 6–8. It has been too long since we were last together and we are looking forward to seeing everyone at the conference. And, on May 16, we will host our [2022 Superfund Master Class](#) in Chicago at the Swissotel. If you are a Superfund practitioner, this is an opportunity you won't want to miss!

This month we will offer our members two special programs focused on furthering your career. On March 1, there will be a virtual [Committee Fair](#) using Zoom. Please register to learn about our committees, meet committee leaders and other Section members, and participate in breakout rooms to discuss committee activities. If you can't attend on March 1, there are already future Committee Fairs in the works—watch for announcements.

All our committee activities and communications occur through [ABA Communities](#). Communities is an essential part of your Section membership, and we hope you are accessing it to view the latest news from committee leaders and members including posts about new state and federal regulations; breaking environmental, energy, and resource cases; and committee articles. Many committees frequently hold member meetings with guest speakers on fascinating topics and often share links to programming outside the Section of relevance to our membership—this is all available to you by joining a Section committee. And, of course, you can always reach out directly to me or the committee chairs if you have any questions or would like to become more involved in a committee.

As part of SEER's ongoing commitment to mentoring, the Section will host the virtual program "[Environmental Lawyers of Color Mentoring the Future](#)" on March 10, when SEER lawyers of color will discuss careers in environmental law with attendees. The program is open to all. College and law students considering a focus in environmental law, early-career stage lawyers with zero to five years of legal experience, and lawyers new to the practice area are especially encouraged to attend.

You can learn about our Section's Diversity, Equity, and Inclusion (DEI) initiatives [here](#). In the next few months, we will be hosting *DEI Conversations*, open to all Section members. Our Executive Council and committee leaders have participated in similar DEI conversations these past few months that focus on how to ensure that our actions for the Section are inclusive.

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I am excited to report that the members of the ABA Environmental Justice Task Force have now been appointed by President Turner and President-Elect Enix-Ross. Our Section was instrumental in updating the ABA Resolution on Environmental Justice and asked for the creation of an Environmental Justice Task Force. The ABA Board of Governors responded by creating the Task Force, and we worked with President Turner's office to identify candidates to serve on the first Task Force. Please click [here](#) to learn more about our Section's environmental justice initiatives.

If you would like to become more involved in our Section, please let us know. It is the time of year when the whole ABA is looking at appointments for the coming ABA year, beginning September 1. Our Section's Chair-Elect Jonathan Kahn is working on his appointments, and he would love to hear about your interest in serving in our Section.

People on the Move

James R. Arnold

Jim Arnold is the principal in the Arnold Law Practice in San Francisco. Jim has served as Section secretary, Council member, Sponsorships Committee chair, In-House Counsel Committee chair, Superfund and Hazardous Waste Committee chair, Annual RCRA/CERCLA Update co-chair, and Section Fall Meeting (1999) co-chair, and is currently a contributing editor to Trends. Information about Section members' moves and activities can be sent to Jim's attention, care of ellen.rothstein@americanbar.org.

Pamela Elkow is now counsel at Corporate Law Partners, LPCC, in the firm's New York metropolitan area office in Stamford, Connecticut, as an environmental advisor and attorney. Previously, Elkow was a partner in the Environmental Practice Group at Carmody Torrance Sandak and Hennessey LLP. Elkow has over 25 years of experience in brownfields redevelopment, real estate and corporate due diligence, transactions, and federal and state environmental enforcement and permitting. Her areas of practice include negotiating purchase and sale agreements, advising on environmental health and safety due diligence, and sustainable green development. Elkow has been active in the Section for many years and is a former Section Council member and committee chair.

Carlos Evans is the new director of the Office of Environmental Quality and Sustainability for the City of Dallas. Evans is leading the team that provides direction on sustainability and key environmental, energy, water, and climate matters for the city. Additionally, he provides compliance advice, coordinates efforts to obtain environmental permits, and oversees projects involving environmental impacts and site remediation. Previously, Evans was assistant regional counsel for U.S. EPA, Region 6, for litigation of Clean Air Act and other enforcement actions against a variety of industrial and manufacturing companies. He is also highly experienced in advising White House and senior officials to advance EPA priorities. Evans is currently serving as an adjunct professor of Environmental Management at Tulane University. He has served with the Section's Air Quality Committee and currently is a member of the MDEP (Membership Diversity Enhancement Program).

Sheila Hollis was selected to receive a Lifetime Achievement Award in the Law Firm category as part of the Women, Influence, and Power in Law Awards from Law.Com on October 7, 2021. For the last 18 months, she has also been the acting executive director of the U.S. Energy Association and will maintain that role through the end of the year. Hollis is the founding managing partner and current chair, of the Washington, D.C., office of Duane Morris LLP. She is also the founding leader in the firm's Energy, Environment, and Resources Group, was the first woman to serve on the firm's Executive Committee, and was a member of its Partners

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Board for 20 years. Hollis practices in the areas of energy, transactional, and regulatory law, as well as international and administrative law before government agencies. Her focus is on domestic and international energy, water, and environmental matters, representing governmental bodies, the power and natural gas industries, and other entities.

Hollis has served in many roles in the Section, notably as chair, and is currently the Section's liaison to the Board of Governors. She has also served as the chair of the ABA's Standing Committee on the Law Library of Congress. Hollis has chaired the board of editors of the *ABA Journal*, the ABA's Standing Committee on Gavel Awards, the ABA's Fund for Justice and Education, and the ABA's Standing Committee on Environmental Law.

Elliott Laws was recently elected to the Covanta board of directors. Covanta is a world leader in providing sustainable waste and energy solutions. Annually, the company safely converts over 20 million tons of waste from municipalities and businesses into clean, renewable electricity. Laws is also a partner in the Washington, D.C., office of Crowell & Moring, where he is co-chair of the firm's Environment and Natural Resources Group and a member of the Government Affairs Group. Laws provides strategic counseling and legal, policy, and crisis management advice on environmental and energy policy issues. Laws is a past Section Council member.

Kate Tipple has joined Brownstein Hyatt Farber Schreck in San Diego, as a natural resources and water law attorney. Previously, Tipple was an environmental and natural resources attorney at Beveridge & Diamond, P.C., in San Francisco. Her practice includes strategically navigating the challenges of regulatory compliance and litigation, particularly with federal and state environmental permitting issues, water law, and contaminated property risks. Tipple's current work includes California storm water compliance, groundwater adjudication, water supply contract disputes, CERCLA and related hazardous substances litigation, CEQA challenges, and emerging water resource issues. She is the co-chair of the Section's Mining Committee which provides a forum for innovative discussion of the multitude of issues facing the industry, including sustainable development, critical metal extraction for clean energy development, and climate change.