

**From:** [Jean Su](#)  
**To:** [Jessica Gordon](#)  
**Subject:** Automatic reply: COP planning  
**Date:** Tuesday, November 28, 2023 9:04:19 AM

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Hello,

I am attending COP28 in Dubai and will be slower to respond on email.

If you are trying to reach me for COP28 issues, please Signal/Whatsapp me at [REDACTED] for a faster response.

For urgent matters outside COP28, please reach out to Miyo Sakashita ([msakashita@biologicaldiversity.org](mailto:msakashita@biologicaldiversity.org)) for acting executive director issues and Howard Crystal ([hcrystal@biologicaldiversity.org](mailto:hcrystal@biologicaldiversity.org)) for Energy Justice Program issues. Otherwise, I'll get back to you when I can.

Thanks for your patience.

Keep safe,

Jean

**Jean Su**

*Acting Co-Executive Director*

*Director, Energy Justice Program // Senior Attorney*

**Center for Biological Diversity**

1411 K Street NW, Suite 1300

Washington, D.C. 20005

Phone: (202) 849-8399

Cell: [REDACTED]

Twitter: @ajeansu

<https://www.biologicaldiversity.org/programs/energy-justice/>

**From:** [Kassie Siegel](#)  
**To:** [Jessica Gordon](#)  
**Subject:** COP blue zone event application  
**Date:** Friday, November 17, 2023 10:18:59 AM

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Hi Jessica,

We just found out about a new Blue Zone pavilion that will be hosting events – and applications are due today at this link: <https://docs.google.com/forms/d/e/1FAIpQLScv-uWb76v4wGlsz3DZew7JtpyXDiSiVckh6GCYOvkg9kdBgQ/viewform>

Are you able to hop on the phone briefly by any chance? I am out today but have my cell – [REDACTED]

Thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

**From:** [Mary K Reinhart](#)  
**To:** [Kassie Siegel](#); [Elizabeth Scheller-Crowley](#); [Patricia LiceaChavez](#); [Jessica Gordon](#)  
**Cc:** [Jean Su](#); [Nyshie Perkinson](#); [Tara Gallegos](#); [Bethany Lesser](#)  
**Subject:** RE: COP planning  
**Date:** Friday, December 1, 2023 3:49:00 PM  
**Attachments:** [image001.png](#)  
[23 12 01 COP28 side event advisory.docx](#)

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**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks for looping me in, Kassie, and glad to e-meet you folks.

Looks like it's shaping up to be a great event! Happy to add someone from your office as a contact on the media advisory, if you'd like, before it goes out (late this evening Pacific time/AM Dubai time).

Thanks much!

Mary K

Mary K. Reinhart  
Media specialist  
[Center for Biological Diversity](#)  
(602) 320-7309

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Friday, December 1, 2023 12:55 PM  
**To:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>; Nyshie Perkinson <[nperkinson@biologicaldiversity.org](mailto:nperkinson@biologicaldiversity.org)>; Tara Gallegos <[Tara.Gallegos@doj.ca.gov](mailto:Tara.Gallegos@doj.ca.gov)>; Bethany Lesser <[Bethany.Lesser@doj.ca.gov](mailto:Bethany.Lesser@doj.ca.gov)>; Mary K Reinhart <[MKReinhart@biologicaldiversity.org](mailto:MKReinhart@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thanks so much Liz, and great to meet you Tara and Bethany. I'm adding Mary K. Reinhart, our deputy communications director (who is not in Dubai).

Attached please find a draft media advisory for the event. Please let us know if you have any feedback, and if you'd like to add a contact. We will send it out tomorrow a.m. Dubai time (this evening our time) to journalists at COP/covering COP and CA journalists. We expect to get a live webcast link from the UN and will add it in when we get it. If you are doing separate outreach, or would like to also distribute this, or would like to further coordinate, please just let us know your preferences and we'd be delighted to work with you.

Also it looks like we're doing some speaker substitutions on our panel from an earlier version some of you saw; FYI the panel speakers will be finalized shortly.

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Sent:** Thursday, November 30, 2023 10:17 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>; Nyshie Perkinson <[nperkinson@biologicaldiversity.org](mailto:nperkinson@biologicaldiversity.org)>; Tara Gallegos <[Tara.Gallegos@doj.ca.gov](mailto:Tara.Gallegos@doj.ca.gov)>; Bethany Lesser <[Bethany.Lesser@doj.ca.gov](mailto:Bethany.Lesser@doj.ca.gov)>  
**Subject:** Re: COP planning

No problem! My colleagues Tara and Bethany are copied. Please direct media inquiries to the two of them and me. Thanks!

Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Date:** Thursday, November 30, 2023 at 9:49 PM  
**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>, Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>, Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>, Nyshie Perkinson <[nperkinson@biologicaldiversity.org](mailto:nperkinson@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi all, I think that there is an email from one of your colleagues that works with media, but I cannot find that email. Could someone add your colleague(s) back into this chain if my recollection is correct? I am adding my colleague Nyshie Perkinson, Senior Media Specialist, in Dubai, here.

Nyshie is working on a media advisory for the event. We'll send that to you tomorrow a.m., and

Nyshie plans to send it out on Saturday to a list of journalists in Dubai and to a list of California journalists. (If our list of journalists in Dubai would be helpful for any outreach your office is doing, Nyshie is happy to share it.)

Questions for your team for tomorrow: would you like to have anyone from your office listed as a contact on the media advisory?

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Sent:** Thursday, November 30, 2023 11:24 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

You're welcome, let me know if you have any logistical questions on our side, I am not as busy as Jessica.

Paty

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 30, 2023 10:52 AM  
**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Terrific, thanks for the clarity, Paty, this looks great!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Sent:** Thursday, November 30, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

I really appreciate the flexibility in your schedule. Replacing Jean at the podium is a great idea. It would be best if Jean calls on people since she is moderating the rest of the conversation. He won't be able to stay the entire time due to some schedule constraints. I think it would be best if after the end of his Q&A, he departs. It might be a good idea if Jean thanks him and then transitions to the panel, that way there isn't an abrupt end to his section. This is what he have him scheduled:

11:20 am – AG arrives  
11:30 am – Jean Su provides welcome and overall introduction of the event  
11:35 am – Jean Su introduce AG  
11:40 am – AG provide keynote remarks on climate accountability case  
11:50 am – AG participate in Q&A with moderator/audience  
12:10 pm – AG departs

Liz and Jessica [REDACTED] they usually just stand towards the back of the room to allow for the seats to be used by audience members.

Thank you,  
Paty

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 29, 2023 7:24 PM  
**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

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Great thanks Paty! Our thought was that Jean would introduce him and then he would replace her at the podium. Then during Q&A, Jean will ask a moderator question or two and then take questions from the audience (unless he prefers to call on people himself or do it differently). At the end of Q&A, he'd move "off stage," and the other speakers and Jean would take the stage for the panel portion of the event.

We can reserve seats in the front row for your team and the other speakers. We weren't sure if his schedule would allow him to stay in the room for the full 90 minutes, which is why we broke the program into two parts per the plan below. But the bottom line is, we're flexible and just want to work with you to set up a successful and productive event! - Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Sent:** Wednesday, November 29, 2023 2:08 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thank you so much for all this info!

I have discussed with our team regarding timing for the keynote/Q&A, we believe that a 20 minute keynote might be a little too long. By cutting the keynote in half we can allocate the extra 10 minutes to the Q&A giving both the audience and the AG a little more time for questions.

Attached is AG Bonta's bio, you can pick and choose what you would like to include during the intro.

In regards to where he speaks from, having somewhere to place any papers he brings along would help. If he were to speak from the podium, would he move "off stage" after his portion? This might be a better transition than having him sit.



**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 29, 2023 1:33 PM  
**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

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that appear suspicious.

Hi all, please see draft event description and answers to Paty's questions. 2 questions for you below are whether you would like to adjust the 20 minute keynote + 10 min Q&A, and whether you'd like to send us language for Jean's introduction of the AG. I've also attached a word doc, if you have line edits to the description that are easier in word. Many thanks! – Kassie

### **The Global Fight to End Fossil Fuels & Ensure Climate Accountability**

Sunday, December 3<sup>rd</sup>, 11:30-1:00pm, Side Events (SE) Room 2, Building 78, Zone B6, Blue Zone.  
(Please refer to venue [map](#) to find your way to the Side Events space.)

Please join us for a keynote address from California Attorney General Rob Bonta on climate accountability, followed by a panel of grassroots leaders from around the world engaged in the global fight to end fossil fuels.

**Keynote:** California Attorney General [Rob Bonta](#) will discuss the major climate accountability [lawsuit](#) he recently filed against five of the world's largest oil companies and the American Petroleum Institute. From increasingly severe wildfire seasons to extreme heat and droughts, California's worsening climate conditions have been fueled by Big Oil's pollution and efforts to deceive the public. This lawsuit seeks to enjoin the deceptive practices and create an abatement fund for climate adaptation projects, which would help protect residents by ensuring that polluters, not communities, pay for the damages they knowingly caused.

**Panel:** Grassroots activists will discuss their work to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.

Speakers:

[John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX

[Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa

[Ivonne Yanez](#) - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Moderated by [Jean Su](#), Director, Energy Justice Program, Center for Biological Diversity and Co-Chair of the Board of Directors, CAN-International

Hosted by the Center for Biological Diversity, Earthworks, Human Rights Foundation of Aotearoa New Zealand (HRF), and Institute for Policy Studies.

1. Could you provide me with a run of show or program?

DRAFT:

11:30-11:35: Jean welcome and overall introduction of the event

11:35-11:40: Jean introduce AG & keynote on case



11:40-12:00: AG keynote address on climate accountability case  
12:00-12:10: AG takes questions from moderator/audience?  
[end climate accountability portion of program]  
12:10-12:15: Jean introduces panel  
12:15-1:00pm: Moderated panel on the Global Fight to End Fossil Fuels

2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?

We are flexible but have proposed 20 minute keynote + 10 minutes Q&A – please adjust as needed.

3. Do you have anyone you would like the AG to acknowledge?

Not at the moment, but if we do have other officials in the room we'll do our best to acknowledge them during Jean's introduction.

4. Will Jean in addition to moderate the conversation, introduce the AG?

Yes, Jean will also introduce the AG. If you have preferred language to include in introduction, could you please send it to us?

5. How many audience members are expected to attend?

The room fits 173 people. We'll do our best to fill it. There should also be a webcast – to be confirmed closer to the event.

6. What is the room set up like? Will there be a podium, mic, or teleprompter?

There will be a podium and mic, as well as a table with mics. No teleprompter.

7. Will the panelist be seated?

The AG could speak standing from the podium after Jean introduces, or from a table/chair arrangement if that is preferable.

8. Are the panelist finalized?

Our speakers are finalized – that said, due to travel interruptions or other logistical issues, last minute substitutions are a possibility.

John Beard, Port Arthur Community Action Network (PACAN), who just won a 5th Cir case against gas export terminal in Port Arthur, TX

Mohamed Adow, PowerShift Africa, leader of East Africa Crude Oil Pipeline (EACOP) fight across Sub-Saharan Africa

Ivonne Yanez - Acción Ecológica, Ecuador, leader of successful referendum to stop oil

## extraction in the Yasuni Reserve in Ecuador

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 1:16 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thank you for the add Jessica.

Hi both, it is nice to e-meet you. I am the AG's Briefing Coordinator. I will be drafting a briefing memo for the AG, so he is prepared for this event. With all that being said, I do have logistical questions.

1. Could you provide me with a run of show or program?
2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?
3. Do you have anyone you would like the AG to acknowledge?
4. Will Jean in addition to moderate the conversation, introduce the AG?
5. How many audience members are expected to attend?
6. What is the room set up like? Will there be a podium, mic, or teleprompter?
7. Will the panelist be seated?
8. Are the panelist finalized?

Thank you in advance.



**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:29 PM

**To:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Subject:** RE: COP planning

Thanks again, Kassie and Jean. I will try to get you a description ASAP. I'm adding Paty Licea-Chavez, who may have additional logistical questions about the event. Thanks again.

---

**From:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:03 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** Re: COP planning

Hi Kassie and Jean –

Great to meet you via email and thank you for your work on this event! Do you have a preference of how long the AG's remarks should be?

Thanks,  
Liz

Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Date:** Tuesday, November 28, 2023 at 9:35 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>, Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

That's great news, Jessica, we are delighted he can join us!

Re: editing title and description, we can make some quick edits, e.g. change title to **"The Global Fight to End Fossil Fuels & Ensure Climate Accountability"**

Would you prefer to send us a blurb describing the keynote, or would you prefer us to take a first

crack at it and send you a draft of the edited event description?

Does the timing work on your end for him to kick off the event at 11:30, and how many minutes would be ideal from your perspective?

Our senior media specialist Nyshie Perkinson, Jean, and I are in touch with a lot of journalists, and can start telling folks informally about the event in our various conversations – if there is interest in covering it and/or talking beforehand can we refer journalists to one of you, or to another colleague, or ? (and would you like me to also mention the America is All In event? I think that is 5:30-6:30 on the 3<sup>rd</sup>, but the program I'm looking at online doesn't have speakers listed (<https://www.americaisallin.com/sites/default/files/2023-11/COP28%20Event%20Schedule.pdf>).

Registration for badges is underway and I hope to hear that it is squared away tomorrow Dubai time.

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 9:04 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Belated but sincere thanks, Kassie and Jean! We would prefer for the AG to give a keynote and not join the panel. In terms of scheduling, it should be fine to have him up first. Thank you again – we're really looking forward to it.

Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 21, 2023 8:54 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Terrific! Great to meet you, Elizabeth! I'm adding Jean. Some info is below, but basically, we're

flexible, so please let us know any constraints or preferences on your end and we can adjust as need be. Happy to hop on the phone to discuss today or tomorrow – my schedule is pretty open due to the holiday week.

Here's some basics:

The event is 90 minutes. Typically we have 4 panelists moderated by Jean, talking for 1 hour in a roundtable format and then taking questions from the audience for the remaining 30 minutes. Names and affiliations of likely panelists are below – but not yet finalized.

If the AG can come, however, we'd love to feature him as the keynote speaker. We recognize that he may not be able to get there at the precise start time or stay for the full 90 minutes. At one end of the spectrum, he could come at the beginning, give a keynote address, and not stay for the entire event. At the other end of the spectrum, he can come, give a talk, join the panel, and stay for the full 90 minutes. If arriving at the beginning doesn't work with your schedule, we can put him on as the next speaker once he arrives in the room.

We edit the title and text for the event to reflect the new format and content.

Other likely panelists:

1. [John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX
2. [Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa
3. [Lidy Nacpil](#), Asian Peoples' Movement on Dept and Development (APMDD), who has won against coal plants in Philipinnes and across Asia

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, November 20, 2023 2:18 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Subject:** RE: COP planning

Kassie, thanks again. I'm adding Liz Scheller-Crowley, the AG's executive speechwriter who will also be staffing him at COP. Can you please share any additional info about format, presentation time, the other panelists, etc, when you have it? Or would it be easier if we communicate with Jean directly? Thanks so much.

Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 16, 2023 9:43 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

I confirmed with my team that we don't believe the UN will allow any changes to what is printed on the schedule currently. That said, we can and will adjust the title, add the speakers once confirmed, and do our own publicity via email to conference participants. We'd be happy to work with you on a title and description that works for you, and you could also publicize however you'd like. We'd do our best to get the current title/description in as many places as possible with the caveat that what's currently on the schedule may also get reproduced other places – for example on screens around the venue that list events for each day - and that isn't under our control at this point. My sense is that most people will attend side events because they receive an email or hear about via word of mouth, not because they see it in the online schedule, but unfortunately there's only so much we can do at this point.

Also I confirmed re: badges that the best available info is that we can credential others on our badges on a day by day basis (for example, for the side event), but the badges will still have our name on them. And you can tell I'm adding caveats into all of this because this may be a particularly wild COP and they can and do sometimes change things at the last minute. But that's the best info I've got at this point. All best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 14, 2023 11:39 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Kassie, thanks again. Do you know whether it would be possible to amend the title/description to include accountability as well as phase-out? As I'm sure you understand, it's important for us to stay within the accountability lane and avoid implying that our case pursues policy goals. Thanks!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 9, 2023 10:32 AM

To: Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

Subject: RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks for reaching out and nice talking! I'd like to extend a very warm invitation to AG Bonta or to you to join our side event – info below. The organizers are typically not the speakers but Jean will very likely moderate this one, FYI. All best, Kassie

Sunday, 03 Dec 2023	11:30 —	<b>Center for Biological Diversity (CBD)</b> Ms. Anchun Jean Su <a href="mailto:jsu@biologicaldiversity.org">jsu@biologicaldiversity.org</a> <b>+1 415 7703187</b>	<b>The Global Fight to End Fossil Fuels</b> Addressing the climate emergency doesn't only mean deploying renewable energy, it must also mean equitably and swiftly phasing out fossil fuels. Hear from grassroots leaders in the global fight to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.  <b>Speakers:</b> Grassroots activists from communities in South & Central America, Africa, Asia, Pacific Islands, Europe and the US, including members of the Global Gas & Oil Network and People vs Fossil Fuels. Speakers represent diverse communities impacted by pollution from the entire fossil fuel lifecycle.
	13:00 SE	<b>Earthworks</b> Mr. Ethan Buckner <a href="mailto:ebuckner@earthworksaction.org">ebuckner@earthworksaction.org</a> <b>+1 612 7183847</b>	
	Room 2 (173 pax)	<b>Human Rights Foundation of Aotearoa New Zealand (HRF)</b> Mr. David Tong <a href="mailto:david@humanrights.co.nz">david@humanrights.co.nz</a> <b>+64 21 2506375</b>	
		<b>Institute for Policy Studies (IPS)</b> Mr. Oscar Reyes <a href="mailto:oscar@ips-dc.org">oscar@ips-dc.org</a> <b>+1 202 2349382</b>	

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](http://CenterforBiologicalDiversity.org)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Sent:** Wednesday, November 8, 2023 9:11 PM

**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Subject:** RE: COP planning

Thanks! Let's talk at 9:30 am tomorrow.

Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 8, 2023 7:39 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, this is great to hear. Do you want to hop on the phone for a few minutes to discuss? I am free tomorrow before 11 or Friday until 1:30 or I can send an email tomorrow if that isn't convenient. Thanks and all best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](https://www.biologicaldiversity.org/)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** COP planning

Kassie, hope you're doing well! Coming off the great discussion and press that our climate accountability suit generated at NYC Climate Week, I'm working to organize a COP side event where the AG and leaders of other jurisdictions that have filed similar suits can speak about legal action to hold the fossil fuel industry accountable. I'm talking with the America is All In and Scotland teams but would love any other suggestions you might have. Thanks!  
Jessica

Jessica Gordon  
Special Assistant Attorney General for Environmental Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

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Media Advisory, December 2, 2023

Contact:

Nyshie Perkinson, Center for Biological Diversity, +1 (718) 928-5148,

[nperkinson@biologicaldiversity.org](mailto:nperkinson@biologicaldiversity.org)

XXX AG office press contact ?

## **California Attorney General Bonta Headlines COP28 Side Event Sunday**

### ***AG Talks Big Oil Lawsuit, Followed by Global Panel on Fossil Fuel Fights***

DUBAI— California Attorney General Rob Bonta will deliver remarks Sunday at a COP28 side event showcasing key global fights against fossil fuels.

Bonta will detail the groundbreaking [lawsuit](#) the state filed in September against five of the world's largest oil companies and the American Petroleum Institute. The most significant climate accountability lawsuit of its kind, it seeks to hold Big Oil accountable for lying about the science and blocking solutions to California's worsening climate crisis. It seeks creation of a climate abatement fund, forcing polluters to pay for the damages they caused.

Bonta will be followed by a panel of global climate justice advocates fighting fossil fuels across the world. Highlights will include a recent legal win in the fight to halt gas exports on the U.S. Gulf Coast, the groundbreaking vote in Ecuador to stop oil drilling in the Amazon, and others.

**What:** COP28 side event featuring California Attorney General Rob Bonta, followed by a panel of global climate justice advocates highlighting recent grassroots wins and strategies against fossil fuels.

**When:** 11:30 a.m. to 1:00 p.m. Dubai time, Sunday Dec. 3

**Where:** Side Events (SE) Room 2, Building 78, Zone B6, [Blue Zone](#)

**Who:** Rob Bonta, California Attorney General

John Beard, Jr., Port Arthur Community Action Network, Texas

Karla Maass Wolfenson, Asesora LAC - Climate Action Network (CAN)

Lorraine Chipponda, Africa Movement Building Spaces & Don't Gas Africa

**From:** [Kassie Siegel](#)  
**To:** [Elizabeth Scheller-Crowley](#); [Patricia LiceaChavez](#); [Jessica Gordon](#)  
**Cc:** [Jean Su](#); [Nyshie Perkinson](#); [Tara Gallegos](#); [Bethany Lesser](#); [Mary K Reinhart](#)  
**Subject:** RE: COP planning  
**Date:** Friday, December 1, 2023 11:56:11 AM  
**Attachments:** [image001.png](#)  
[23 12 01 COP28 side event advisory.docx](#)

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks so much Liz, and great to meet you Tara and Bethany. I'm adding Mary K. Reinhart, our deputy communications director (who is not in Dubai).

Attached please find a draft media advisory for the event. Please let us know if you have any feedback, and if you'd like to add a contact. We will send it out tomorrow a.m. Dubai time (this evening our time) to journalists at COP/covering COP and CA journalists. We expect to get a live webcast link from the UN and will add it in when we get it. If you are doing separate outreach, or would like to also distribute this, or would like to further coordinate, please just let us know your preferences and we'd be delighted to work with you.

Also it looks like we're doing some speaker substitutions on our panel from an earlier version some of you saw; FYI the panel speakers will be finalized shortly.

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Elizabeth Scheller-Crowley <Elizabeth.SchellerCrowley@doj.ca.gov>  
**Sent:** Thursday, November 30, 2023 10:17 PM  
**To:** Kassie Siegel <ksiegel@biologicaldiversity.org>; Patricia LiceaChavez <Patricia.LiceaChavez@doj.ca.gov>; Jessica Gordon <Jessica.Gordon@doj.ca.gov>  
**Cc:** Jean Su <JSu@biologicaldiversity.org>; Nyshie Perkinson <nperkinson@biologicaldiversity.org>; Tara Gallegos <Tara.Gallegos@doj.ca.gov>; Bethany Lesser <Bethany.Lesser@doj.ca.gov>  
**Subject:** Re: COP planning

No problem! My colleagues Tara and Bethany are copied. Please direct media inquiries to the two of them and me. Thanks!

Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Date:** Thursday, November 30, 2023 at 9:49 PM

**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>, Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>, Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>

**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>, Nyshie Perkinson <[nperkinson@biologicaldiversity.org](mailto:nperkinson@biologicaldiversity.org)>

**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi all, I think that there is an email from one of your colleagues that works with media, but I cannot find that email. Could someone add your colleague(s) back into this chain if my recollection is correct? I am adding my colleague Nyshie Perkinson, Senior Media Specialist, in Dubai, here.

Nyshie is working on a media advisory for the event. We'll send that to you tomorrow a.m., and Nyshie plans to send it out on Saturday to a list of journalists in Dubai and to a list of California journalists. (If our list of journalists in Dubai would be helpful for any outreach your office is doing, Nyshie is happy to share it.)

Questions for your team for tomorrow: would you like to have anyone from your office listed as a contact on the media advisory?

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>

**Sent:** Thursday, November 30, 2023 11:24 AM

**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>

**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** RE: COP planning

You're welcome, let me know if you have any logistical questions on our side, I am not as busy as Jessica.

Paty

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 30, 2023 10:52 AM  
**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Terrific, thanks for the clarity, Paty, this looks great!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Sent:** Thursday, November 30, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

I really appreciate the flexibility in your schedule. Replacing Jean at the podium is a great idea. It would be best if Jean calls on people since she is moderating the rest of the conversation. He won't be able to stay the entire time due to some schedule constraints. I think it would be best if after the end of his Q&A, he departs. It might be a good idea if Jean thanks him and then transitions to the panel, that way there isn't an abrupt end to his section. This is what he have him scheduled:

11:20 am – AG arrives  
11:30 am – Jean Su provides welcome and overall introduction of the event  
11:35 am – Jean Su introduce AG  
11:40 am – AG provide keynote remarks on climate accountability case  
11:50 am – AG participate in Q&A with moderator/audience  
12:10 pm – AG departs

Liz and Jessica [REDACTED] they usually just stand towards the back of the room to allow for the seats to be used by audience members.

Thank you,  
Paty

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 29, 2023 7:24 PM  
**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Great thanks Paty! Our thought was that Jean would introduce him and then he would replace her at the podium. Then during Q&A, Jean will ask a moderator question or two and then take questions from the audience (unless he prefers to call on people himself or do it differently). At the end of Q&A, he'd move "off stage," and the other speakers and Jean would take the stage for the panel portion of the event.

We can reserve seats in the front row for your team and the other speakers. We weren't sure if his schedule would allow him to stay in the room for the full 90 minutes, which is why we broke the program into two parts per the plan below. But the bottom line is, we're flexible and just want to work with you to set up a successful and productive event! - Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Sent:** Wednesday, November 29, 2023 2:08 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thank you so much for all this info!

I have discussed with our team regarding timing for the keynote/Q&A, we believe that a 20 minute keynote might be a little too long. By cutting the keynote in half we can allocate the extra 10 minutes to the Q&A giving both the audience and the AG a little more time for questions.

Attached is AG Bonta's bio, you can pick and choose what you would like to include during the intro.

In regards to where he speaks from, having somewhere to place any papers he brings along would help. If he were to speak from the podium, would he move "off stage" after his portion? This might be a better transition than having him sit.



**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 29, 2023 1:33 PM  
**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi all, please see draft event description and answers to Paty's questions. 2 questions for you below are whether you would like to adjust the 20 minute keynote + 10 min Q&A, and whether you'd like to send us language for Jean's introduction of the AG. I've also attached a word doc, if you have line edits to the description that are easier in word. Many thanks! – Kassie

### **The Global Fight to End Fossil Fuels & Ensure Climate Accountability**

Sunday, December 3<sup>rd</sup>, 11:30-1:00pm, Side Events (SE) Room 2, Building 78, Zone B6, Blue Zone.  
(Please refer to venue [map](#) to find your way to the Side Events space.)

Please join us for a keynote address from California Attorney General Rob Bonta on climate accountability, followed by a panel of grassroots leaders from around the world engaged in the global fight to end fossil fuels.

**Keynote:** California Attorney General [Rob Bonta](#) will discuss the major climate accountability [lawsuit](#) he recently filed against five of the world's largest oil companies and the American Petroleum Institute. From increasingly severe wildfire seasons to extreme heat and droughts, California's worsening climate conditions have been fueled by Big Oil's pollution and efforts to deceive the public. This lawsuit seeks to enjoin the deceptive practices and create an abatement fund for climate adaptation projects, which would help protect residents by ensuring that polluters, not communities, pay for the damages they knowingly caused.

**Panel:** Grassroots activists will discuss their work to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.



Speakers:

John Beard, Port Arthur Community Action Network (PACAN), who just won a 5th Cir case against gas export terminal in Port Arthur, TX

Mohamed Adow, PowerShift Africa, leader of East Africa Crude Oil Pipeline (EACOP) fight across Sub-Saharan Africa

**Ivonne Yanez - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador**

Moderated by Jean Su, Director, Energy Justice Program, Center for Biological Diversity and Co-Chair of the Board of Directors, CAN-International

Hosted by the Center for Biological Diversity, Earthworks, Human Rights Foundation of Aotearoa New Zealand (HRF), and Institute for Policy Studies.

1. Could you provide me with a run of show or program?

DRAFT:

11:30-11:35: Jean welcome and overall introduction of the event

11:35-11:40: Jean introduce AG & keynote on case

11:40-12:00: AG keynote address on climate accountability case

12:00-12:10: AG takes questions from moderator/audience?

[end climate accountability portion of program]

12:10-12:15: Jean introduces panel

12:15-1:00pm: Moderated panel on the Global Fight to End Fossil Fuels

2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?

We are flexible but have proposed 20 minute keynote + 10 minutes Q&A – please adjust as needed.

3. Do you have anyone you would like the AG to acknowledge?

Not at the moment, but if we do have other officials in the room we'll do our best to acknowledge them during Jean's introduction.

4. Will Jean in addition to moderate the conversation, introduce the AG?

Yes, Jean will also introduce the AG. If you have preferred language to include in introduction, could you please send it to us?

5. How many audience members are expected to attend?

The room fits 173 people. We'll do our best to fill it. There should also be a webcast – to be confirmed closer to the event.

6. What is the room set up like? Will there be a podium, mic, or teleprompter?

There will be a podium and mic, as well as a table with mics. No teleprompter.

7. Will the panelist be seated?

The AG could speak standing from the podium after Jean introduces, or from a table/chair arrangement if that is preferable.

8. Are the panelist finalized?

Our speakers are finalized – that said, due to travel interruptions or other logistical issues, last minute substitutions are a possibility.

John Beard, Port Arthur Community Action Network (PACAN), who just won a 5th Cir case against gas export terminal in Port Arthur, TX

Mohamed Adow, PowerShift Africa, leader of East Africa Crude Oil Pipeline (EACOP) fight across Sub-Saharan Africa

Ivonne Yanez - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Kassie Siegel, Director

Climate Law Institute

[Center for Biological Diversity](#)

Phone: [REDACTED]

---

**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>

**Sent:** Tuesday, November 28, 2023 1:16 PM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** RE: COP planning

Thank you for the add Jessica.

Hi both, it is nice to e-meet you. I am the AG's Briefing Coordinator. I will be drafting a briefing memo for the AG, so he is prepared for this event. With all that being said, I do have logistical questions.

1. Could you provide me with a run of show or program?
2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?
3. Do you have anyone you would like the AG to acknowledge?
4. Will Jean in addition to moderate the conversation, introduce the AG?

5. How many audience members are expected to attend?
6. What is the room set up like? Will there be a podium, mic, or teleprompter?
7. Will the panelist be seated?
8. Are the panelist finalized?

Thank you in advance.



**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:29 PM  
**To:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Subject:** RE: COP planning

Thanks again, Kassie and Jean. I will try to get you a description ASAP. I'm adding Paty Licea-Chavez, who may have additional logistical questions about the event. Thanks again.

---

**From:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:03 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** Re: COP planning

Hi Kassie and Jean –

Great to meet you via email and thank you for your work on this event! Do you have a preference of how long the AG's remarks should be?

Thanks,  
Liz

Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Date:** Tuesday, November 28, 2023 at 9:35 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>, Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

That's great news, Jessica, we are delighted he can join us!

Re: editing title and description, we can make some quick edits, e.g. change title to **"The Global Fight to End Fossil Fuels & Ensure Climate Accountability"**

Would you prefer to send us a blurb describing the keynote, or would you prefer us to take a first crack at it and send you a draft of the edited event description?

Does the timing work on your end for him to kick off the event at 11:30, and how many minutes would be ideal from your perspective?

Our senior media specialist Nyshie Perkinson, Jean, and I are in touch with a lot of journalists, and can start telling folks informally about the event in our various conversations – if there is interest in covering it and/or talking beforehand can we refer journalists to one of you, or to another colleague, or ? (and would you like me to also mention the America is All In event? I think that is 5:30-6:30 on the 3<sup>rd</sup>, but the program I'm looking at online doesn't have speakers listed (<https://www.americaisallin.com/sites/default/files/2023-11/COP28%20Event%20Schedule.pdf>).

Registration for badges is underway and I hope to hear that it is squared away tomorrow Dubai time.

Many thanks!

Kassie Siegel, Director

Climate Law Institute

[Center for Biological Diversity](#)

Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Sent:** Tuesday, November 28, 2023 9:04 AM

**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su

<[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** RE: COP planning

Belated but sincere thanks, Kassie and Jean! We would prefer for the AG to give a keynote and not join the panel. In terms of scheduling, it should be fine to have him up first. Thank you again – we're really looking forward to it.

Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Sent:** Tuesday, November 21, 2023 8:54 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Terrific! Great to meet you, Elizabeth! I'm adding Jean. Some info is below, but basically, we're flexible, so please let us know any constraints or preferences on your end and we can adjust as need be. Happy to hop on the phone to discuss today or tomorrow – my schedule is pretty open due to the holiday week.

Here's some basics:

The event is 90 minutes. Typically we have 4 panelists moderated by Jean, talking for 1 hour in a roundtable format and then taking questions from the audience for the remaining 30 minutes. Names and affiliations of likely panelists are below – but not yet finalized.

If the AG can come, however, we'd love to feature him as the keynote speaker. We recognize that he may not be able to get there at the precise start time or stay for the full 90 minutes. At one end of the spectrum, he could come at the beginning, give a keynote address, and not stay for the entire event. At the other end of the spectrum, he can come, give a talk, join the panel, and stay for the full 90 minutes. If arriving at the beginning doesn't work with your schedule, we can put him on as the next speaker once he arrives in the room.

We edit the title and text for the event to reflect the new format and content.

Other likely panelists:

1. [John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX
2. [Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa
3. [Lidy Nacpil](#), Asian Peoples' Movement on Debt and Development (APMDD), who has won

against coal plants in Philipinnes and across Asia

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, November 20, 2023 2:18 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Subject:** RE: COP planning

Kassie, thanks again. I'm adding Liz Scheller-Crowley, the AG's executive speechwriter who will also be staffing him at COP. Can you please share any additional info about format, presentation time, the other panelists, etc, when you have it? Or would it be easier if we communicate with Jean directly? Thanks so much.

Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 16, 2023 9:43 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

I confirmed with my team that we don't believe the UN will allow any changes to what is printed on the schedule currently. That said, we can and will adjust the title, add the speakers once confirmed, and do our own publicity via email to conference participants. We'd be happy to work with you on a title and description that works for you, and you could also publicize however you'd like. We'd do our best to get the current title/description in as many places as possible with the caveat that what's currently on the schedule may also get reproduced other places – for example on screens around the venue that list events for each day - and that isn't under our control at this point. My sense is that most people will attend side events because they receive an email or hear about via word of mouth, not because they see it in the online schedule, but unfortunately there's only so much we can do at this point.

Also I confirmed re: badges that the best available info is that we can credential others on our badges on a day by day basis (for example, for the side event), but the badges will still have our name on them. And you can tell I'm adding caveats into all of this because this may be a particularly

wild COP and they can and do sometimes change things at the last minute. But that's the best info I've got at this point. All best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](http://CenterforBiologicalDiversity.org)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 14, 2023 11:39 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Kassie, thanks again. Do you know whether it would be possible to amend the title/description to include accountability as well as phase-out? As I'm sure you understand, it's important for us to stay within the accountability lane and avoid implying that our case pursues policy goals. Thanks!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 9, 2023 10:32 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks for reaching out and nice talking! I'd like to extend a very warm invitation to AG Bonta or to you to join our side event – info below. The organizers are typically not the speakers but Jean will very likely moderate this one, FYI. All best, Kassie

Sunday, 03 Dec 2023	Room 2 (173 pax)	<b>Center for Biological Diversity (CBD)</b> Ms. Anchun Jean Su <a href="mailto:jsu@biologicaldiversity.org">jsu@biologicaldiversity.org</a> <b>+1 415 7703187</b>	<b>The Global Fight to End Fossil Fuels</b> Addressing the climate emergency doesn't only mean deploying renewable energy, it must also mean equitably and swiftly phasing out fossil fuels. Hear from grassroots leaders in the global fight to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.  <b>Speakers:</b> Grassroots activists from communities in South & Central America, Africa, Asia, Pacific Islands, Europe and the US, including members of the Global Gas & Oil Network and People vs Fossil Fuels.
		<b>Earthworks</b> Mr. Ethan Buckner <a href="mailto:ebuckner@earthworksaction.org">ebuckner@earthworksaction.org</a> <b>+1 612 7183847</b>	
		<b>Human Rights Foundation of Aotearoa New Zealand (HRF)</b> Mr. David Tong <a href="mailto:david@humanrights.co.nz">david@humanrights.co.nz</a> <b>+64 21 2506375</b>	

	<b>Institute for Policy Studies (IPS)</b> Mr. Oscar Reyes <a href="mailto:oscar@ips-dc.org">oscar@ips-dc.org</a> <b>+1 202 2349382</b>	Speakers represent diverse communities impacted by pollution from the entire fossil fuel lifecycle.
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Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 9:11 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thanks! Let's talk at 9:30 am tomorrow.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 8, 2023 7:39 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, this is great to hear. Do you want to hop on the phone for a few minutes to discuss? I am free tomorrow before 11 or Friday until 1:30 or I can send an email tomorrow if that isn't convenient. Thanks and all best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** COP planning



Kassie, hope you're doing well! Coming off the great discussion and press that our climate accountability suit generated at NYC Climate Week, I'm working to organize a COP side event where the AG and leaders of other jurisdictions that have filed similar suits can speak about legal action to hold the fossil fuel industry accountable. I'm talking with the America is All In and Scotland teams but would love any other suggestions you might have. Thanks!

Jessica

Jessica Gordon  
Special Assistant Attorney General for Environmental Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

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Media Advisory, December 2, 2023

Contact:

Nyshie Perkinson, Center for Biological Diversity, +1 (718) 928-5148,

[nperkinson@biologicaldiversity.org](mailto:nperkinson@biologicaldiversity.org)

XXX AG office press contact ?

## **California Attorney General Bonta Headlines COP28 Side Event Sunday**

### ***AG Talks Big Oil Lawsuit, Followed by Global Panel on Fossil Fuel Fights***

DUBAI— California Attorney General Rob Bonta will deliver remarks Sunday at a COP28 side event showcasing key global fights against fossil fuels.

Bonta will detail the groundbreaking [lawsuit](#) the state filed in September against five of the world's largest oil companies and the American Petroleum Institute. The most significant climate accountability lawsuit of its kind, it seeks to hold Big Oil accountable for lying about the science and blocking solutions to California's worsening climate crisis. It seeks creation of a climate abatement fund, forcing polluters to pay for the damages they caused.

Bonta will be followed by a panel of global climate justice advocates fighting fossil fuels across the world. Highlights will include a recent legal win in the fight to halt gas exports on the U.S. Gulf Coast, the groundbreaking vote in Ecuador to stop oil drilling in the Amazon, and others.

**What:** COP28 side event featuring California Attorney General Rob Bonta, followed by a panel of global climate justice advocates highlighting recent grassroots wins and strategies against fossil fuels.

**When:** 11:30 a.m. to 1:00 p.m. Dubai time, Sunday Dec. 3

**Where:** Side Events (SE) Room 2, Building 78, Zone B6, [Blue Zone](#)

**Who:** Rob Bonta, California Attorney General

John Beard, Jr., Port Arthur Community Action Network, Texas

Karla Maass Wolfenson, Asesora LAC - Climate Action Network (CAN)

Lorraine Chipponda, Africa Movement Building Spaces & Don't Gas Africa

**From:** [Kassie Siegel](#)  
**To:** [Jessica Gordon](#)  
**Subject:** Documents  
**Date:** Wednesday, October 4, 2023 3:34:23 PM  
**Attachments:** [23 01 31 GHG NAAQS explainer.pdf](#)  
[Crystal et al. 2019 Returning to Clean Air Act Fundamentals.pdf](#)  
[54 - 23 09 27 Exxon v SB Order on X-MSJs Phase 1.pdf](#)

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**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Dear Jessica,

Thanks so much for speaking with me the other day! Here are a few of the documents I mentioned:

Recent [Carbon Tracker report](#) on oil and gas well decommissioning in California.

A three page write-up of how a NAAQS would work for GHGs, and a much longer law review article.

A ruling in our favor on cross motions for summary judgment in Exxon's lawsuit against Santa Barbara County for denying its proposal to transport oil by tanker trucks along hazardous highways. The summary judgment motions covered Exxon's writ claim. They have four other claims in the case, including takings and commerce clause challenges, and we do not yet know whether they will proceed to litigate those. Happy to send more from this case if it is of interest and you don't already have it.

If you're able to connect me with your colleagues Amy and Jana at your convenience, I'd be very grateful.

And finally for now, I understand I may see you the week of October 16<sup>th</sup> and I look forward to it!

Very best, Kassie Siegel

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]



**From:** Maya Golden-Krasner, Center for Biological Diversity

**Date:** January 31, 2023

**Subject:** Options for setting up a U.S. GHG NAAQS “Greenhouse Pollution Cap” Regime

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## **INTRODUCTION**

The United States is experiencing an accelerating climate emergency. In 2021, President Biden promised to reduce US greenhouse gas (GHG) emissions by 50-52% (from 2005 levels) by 2030 — a goal that itself falls short of the fair share of emissions reductions the US owes the world. Yet even with the renewable energy incentives in the Inflation Reduction Act, the US has only closed half of the gap between the current emissions reductions and Biden’s pledge for a 50-52% reduction. We are therefore falling far short of what is necessary to stay on track for a 1.5-degree target.

Meanwhile, the Supreme Court’s decision last year in *West Virginia v. EPA* curtailed the Environmental Protection Agency’s (EPA) ability to regulate power plant GHG emissions under Section 111(d) of the Clean Air Act. In overturning the EPA’s use of “outside the fence line” measures in the Clean Power Plan, the majority contrasted EPA’s application of that provision to reduce emissions with setting a “cap that must be based on some scientific, objective criterion, such as the NAAQS [National Ambient Air Quality Standards].” Justice Roberts noted that “capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal may be a sensible solution to the crisis of the day”—just not under the Act’s “ancillary” Section 111(d).

The Inflation Reduction Act (IRA, 2022) amended the Clean Air Act to affirmatively put to rest any doubt as to whether greenhouse gases are “air pollutants” under the Act, defining “greenhouse gas” as “the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride” throughout the Act amendments. Section 135 appropriates funding to ensure GHG reductions from the electricity sector “through the use of existing authorities of the Act,” but does not specify which authorities, leaving it to the discretion of EPA. It also provides funding for multipollutant monitoring stations—including in order “to expand the national ambient air quality monitoring network”—to monitor and reduce “greenhouse gas emissions and other air pollutants,” and other funding to monitor and reduce greenhouse gases at schools, from mobile sources, and from petroleum and gas facilities. The IRA clearly contemplates a multi-pollutant NAAQS regime that includes GHGs.

In 2009, the Center for Biological Diversity and 350.org [petitioned](#) EPA to list greenhouse gases as “criteria pollutants” under the Clean Air Act and set a GHG NAAQS. In July 2022, seven state attorneys general [wrote to the EPA](#) recommending the same. As one Oregon Justice Department lawyer [noted](#), the IRA- and transportation-related reductions already underway leave 48 percent of emissions unregulated – and source-by-source regulation under Section 111(d) is too slow to address the climate emergency.

The NAAQS program is the “engine that drives” the Clean Air Act. It provides a national framework for addressing the most pervasive forms of air pollution emitted from “numerous or diverse” sources and the best and most flexible way to achieve the emissions reductions needed across *all* sectors of the economy. Congress [explicitly envisioned](#) the NAAQS program to have “vast economic and political significance,” requiring “major action throughout the Nation,” major changes and investments in new technologies and fuels, generation shifting, facility closures, and brand new transportation and land use policies. It’s time to put the NAAQS to work addressing the climate crisis.

## **HOW A GHG NAAQS REGIME COULD WORK**

### **1) Setting the NAAQS**

Under the Paris Climate Agreement, the world committed to keep warming to well below 2°C above pre-industrial levels, striving to keep warming below 1.5°C above pre-industrial levels. In order to translate a temperature objective (e.g., below 1.5°C warming) to a NAAQS, EPA should determine the target concentration of GHGs necessary to keep global temperatures below the target level (e.g., 350 ppm).

- *One model is lead:* As EPA would set a NAAQS to keep warming below 1.5°C, EPA set a NAAQS for lead to keep IQ loss to less than 2 points. Since standards were set in 1978, air concentrations of lead have dropped dramatically, due in large part to the phase out of lead in gasoline, paint, and other products.

As there are at least six GHGs, EPA could use each pollutant's Global Warming Potential or Global Temperature Potential to estimate the effects of concentrations of each GHG on global temperature. Then, in order to normalize the standard across regions that may produce various GHGs in different proportions, EPA could use these calculations to develop an overall CO<sub>2</sub> equivalent metric for a GHG NAAQS.

### **2) Classification of Nonattainment Areas and Nonattainment Plan Provisions**

Once EPA sets the target atmospheric concentration, the entire U.S. will be in nonattainment.<sup>1</sup> EPA must set the attainment date at 10 years from the date of designation of nonattainment. (§ 172(a)(2).) It will take longer than 10 years for the atmospheric concentrations of GHGs to reach attainment. However, EPA has options for setting deadlines under the Act.

EPA can use three characteristics of a NAAQS – level, averaging time, and form – to set out binding benchmarks to ensure “reasonable further progress” on a strict timeline to achieve attainment “as expeditiously as practicable.”

- **Level** – concentration of pollutants in the ambient air.
- **Averaging time** – span of time across which the amount of a pollutant in the air will be averaged.
  - Some NAAQS require a certain average annual level, while others require a certain average daily level
- **Form** – how compliance will be determined within the averaging time, and often allows for exceedance of the standard, for a certain number of times over an averaging period

*Again, using the lead model:* after establishing a lead exposure level of 0.15 ug/m<sup>3</sup> to avoid a loss of 2 IQ points, EPA found the appropriate averaging time for the air lead level standard is a rolling three-month period with a maximum (not-to-be-exceeded) form evaluated over a period of three years.

Recognizing the slow atmospheric response of even aggressive steps to curb emissions of greenhouse gases, as with lead, EPA could combine the averaging time and form to allow a certain number of years of nonattainment over a long averaging period. For example (numbers for purposes of discussion):

- **Level** – 350ppm - final attainment after 70 years and stays at 350pm for the duration of the averaging time
- **Averaging time** – 100 years

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<sup>1</sup> Note that courts have ruled against petitioners who argued attaining the ozone NAAQS was impossible due to factors beyond the region's or state's control. They noted that “Congress is aware that some regions are having difficulty in meeting the national standards,” but that “[a]ttainability and technological feasibility are not relevant considerations in the promulgation of national ambient air quality standards.” This applies even when “attainment of the proposed standards would be precluded in *most areas* of the nation by natural background levels of ozone.” *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1185-86 (DC. Cir. 1980); see also *Murray Energy Corporation v. EPA*, 936 F.3d 597, 623–24 (D.C. Cir. 2019).

- **Form** – EPA could model and establish shorter-term concentration targets to be met at least every 10 years to comply with Section 172(a)(2). Measurements must demonstrate attainment of carbon budget (see below) benchmarks based on these targets to ensure “reasonable further progress” toward the longer-term concentration goal over the full averaging period.

### **3) Setting and Apportioning Reductions Among the States**

In setting the necessary reductions to achieve the NAAQS, EPA could determine the reductions needed to ensure the U.S. does not exceed its [domestic carbon budget](#), such as by using some combination of carbon budget research – the amount of carbon emissions that we have left to emit if we want to stay under 1.5°C – and the U.S. Nationally Determined Contributions (NDCs), which must regularly ratchet down under the Paris Agreement. Note that Section 179B of the Clean Air Act calls for the EPA to account for pollution emanating from outside the United States, and to approve State Implementation Plans where the obstacle to a state achieving attainment is emissions emanating from outside of the United States if the SIP otherwise meets the Act’s requirements.

Section 110(2)(D) of the Clean Air Act expressly instructs EPA, in setting attainment objectives for the states, to consider the role that other states are playing in causing the same pollution problem. (*See EPA v. EME Homer City Generation L.P.*, 572 U.S. 489 (2014), reviewing EPA’s Transport Rule.) In addition, EPA and many states maintain state-level GHG inventories.<sup>2</sup> Taking these inventories into account, EPA could determine cost-effective means to reduce GHG emissions across and among all states and sources to stay within the carbon budget.<sup>3</sup> Unlike under Section 111 (per the U.S. Supreme Court), for example, a NAAQS would allow for major changes in technology and flexibility across regions, sectors, and types of regulations.

#### **SECONDARY NAAQS**

Even if a reviewing court were to find that the statute does not permit a primary NAAQS over such a long averaging period, it may still uphold a secondary NAAQS. EPA must establish both primary standards to protect public health and secondary standards requisite to protect public welfare, including effects on wildlife, weather, visibility, and climate. (§§ 109(a), 302(h).) A secondary standard does not require a specific attainment deadline. EPA can issue standards that will achieve attainment “as expeditiously as practicable.” (§ 172(a)(2)(B).)

Secondary standards can be set at different levels than the primary standards. Given the urgent threats GHG pollution poses to the planet, the secondary standards should include the same *or more stringent* concentration targets and required reductions than EPA would set for a primary NAAQS.

EPA could set a secondary NAAQS without also having set a primary NAAQS. In *Utility Air Resources Group v. EPA*, 573 U.S. 302 (2014), the Supreme Court allowed the definition of “air pollutant” under the specific provisions at issue in the Title V and PSD programs of the Clean Air Act to incorporate GHGs differently, depending on whether including them would be impractical. Similarly, here—to the extent a court were to find there is no practical way to achieve a primary GHG NAAQS attainment deadline within 10 years—because a secondary NAAQS contains no attainment deadline provision, EPA could still set a secondary NAAQS.

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<sup>2</sup> EPA and various states each use varying methodologies for determining state-level inventories. EPA would need to develop a rigorous uniform methodology for state-level inventories.

<sup>3</sup> Note that EPA has calculated overall state emission reduction targets before. In the Clean Power Plan, EPA first determined the emissions reductions that could be achieved by implementing the Best System of Emissions Reduction for power plants, then calculated the overall emission reductions each state must achieve.

# ARTICLES

## **Returning to Clean Air Act Fundamentals: A Renewed Call to Regulate Greenhouse Gases Under the National Ambient Air Quality Standards (NAAQS) Program**

HOWARD M. CRYSTAL\*, KASSIE SIEGEL\*\*, MAYA GOLDEN-KRASNER\*\*\*, AND CLARE LAKEWOOD\*\*\*\*

### TABLE OF CONTENTS

Introduction . . . . .	234
I. The Climate Crisis and the EPA’s Responses to Date . . . . .	242
A. The Climate Crisis . . . . .	242
B. The EPA’s Efforts to Address the Climate Crisis to Date: Some Steps Forward, and Now Backward . . . . .	245
1. The Obama EPA’s Greenhouse Gas Regulations . . . . .	245
a. The Clean Power Plan . . . . .	245
b. Challenges to the Clean Power Plan . . . . .	248
c. The EPA’s Limited Progress Regulating Greenhouse Gas Emissions from Other Stationary Source Sectors . . . . .	249
d. The EPA’s Progress Regulating Greenhouse Gases from Mobile Sources . . . . .	251
2. De-regulating Greenhouse Gases under the Trump Administration: (Roll)Back to the Future . . . . .	252
a. Affordable Clean Energy Rule and Oil and Gas Regulation Roll-backs . . . . .	252
b. Roll-backs of Mobile Source Regulations . . . . .	253

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c.	The EPA's Broader Roll-back of Science-Based Decision-Making . . . . .	254
II.	The Updated Case for a Greenhouse Gas NAAQS . . . . .	255
A.	The NAAQS Program . . . . .	256
B.	Greenhouse Gases Are Well-Suited for Regulation Under the NAAQS Program. . . . .	259
1.	The Time Period Necessary to Achieve Attainment is No Impediment to a Greenhouse Gas NAAQS. . . . .	262
a.	What a Greenhouse Gas NAAQS Could Look Like. . . . .	262
b.	How a Greenhouse Gas NAAQS can be Formulated . . . . .	263
i.	The EPA Could Design a Greenhouse Gas NAAQS that Meets the Deadline for a Primary Standard. . . . .	264
ii.	The EPA has Discretion to Establish a Secondary NAAQS for Greenhouse Gases that Will Not Be Fully Attained for Decades. . . . .	266
2.	The Unique Nature of the SIPs That Will Address Greenhouse Gas Emissions Also Poses No Obstacle to a Greenhouse Gas NAAQS. . . . .	271
a.	Clean Air Act Section 179B Calls on the EPA, in Considering SIPs, to Take Emissions from Outside the United States into Account, and the Paris Agreement Provides a Framework for Approaching That Task . . . . .	273
b.	The Supreme Court's Decision in <i>Homer</i> Demonstrates that the EPA Can Meaningfully Apportion Greenhouse Gas Reductions Within the United States, and the Clean Power Plan Provides an Initial Structure from Which the EPA Can Frame a Greenhouse Gas NAAQS. . . . .	276
III.	The Clean Air Act's Section 111(d) Exclusion, and Concerns About Congressional Backlash, Should Not Stand in the Way of a Greenhouse Gas NAAQS . . . . .	280
A.	The Relationship Between a NAAQS and Regulation Under Section 111(d) is Not an Obstacle to a Greenhouse Gas NAAQS . . . . .	280
B.	Concerns that Congress Could Remove the EPA's Authority to Regulate Greenhouse Gases Under the NAAQS Program Does Not Counsel Against the Agency Finally Moving Forward . . . . .	282
	Conclusion . . . . .	284

## INTRODUCTION

In the more than a decade since the Supreme Court resolved that greenhouse gases are “air pollutants” under the Clean Air Act (“Act”),<sup>1</sup> the Environmental Protection Agency (“EPA”) has grappled with how to bring the Act to bear on the existential threat these pollutants pose to the earth and all its inhabitants. Under

1. *Massachusetts v. EPA*, 549 U.S. 497 (2007).

President Obama, the EPA addressed greenhouse gases by regulating several of the most important sources.<sup>2</sup> Those efforts, although salutary, were limited and subject to protracted litigation.<sup>3</sup> At the same time, President Obama left office without invoking the Act's most far-reaching and important tool: the National Ambient Air Quality Standards ("NAAQS") program, or even responding to a 2009 rulemaking petition urging such regulations.<sup>4</sup>

The NAAQS program is the heart of the Clean Air Act, providing an overarching, comprehensive program for the reduction of those air pollutants, emitted from numerous and diverse sources, that endanger public health or welfare. Critically, the NAAQS program allows states to use their broad regulatory powers over sectors not subject to federal legislation to optimally attain the NAAQS through State Implementation Plans ("SIPs").<sup>5</sup> While there have certainly been challenges in implementing the NAAQS program over the years, it has made significant strides in reducing levels of the existing listed criteria air pollutants—lead, ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and particulate matter.

The Trump Administration does not plan to promulgate a greenhouse gas NAAQS.<sup>6</sup> To the contrary, the current EPA is curtailing and rolling back not only the Obama Administration's greenhouse gas regulations, but the larger Clean Air Act framework that has been a bedrock of the Agency's approach to protecting public health and the environment for generations.<sup>7</sup>

However, the premise of this Article is that, under a new administration, the EPA will resume its congressional mandate to make science-driven decisions to protect human health and the environment. At that time, the EPA should inaugurate its return to that mission by finally promulgating NAAQS for greenhouse

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2. The EPA's greenhouse gas regulation began with its "endangerment finding" for greenhouse gases from mobile sources, *see* *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012) (upholding endangerment finding), *aff'd in part, rev'd on other grounds sub nom. Util. Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014), and had spread to other areas before the Trump Administration began rolling back even that progress. *See infra* pp. 245–54.

3. *Id.*

4. *See* Ctr. for Biological Diversity & 350.org, *Petition to Establish National Pollutant Limits for Greenhouse Gases Pursuant to the Clean Air Act* (Dec. 2, 2009), [https://www.biologicaldiversity.org/programs/climate\\_law\\_institute/global\\_warming\\_litigation/clean\\_air\\_act/pdfs/Petition\\_GHG\\_pollution\\_cap\\_12-2-2009.pdf](https://www.biologicaldiversity.org/programs/climate_law_institute/global_warming_litigation/clean_air_act/pdfs/Petition_GHG_pollution_cap_12-2-2009.pdf).

5. *E.g.*, 42 U.S.C. § 7410(a).

6. Although numerous federal agencies recently issued the fourth National Climate Assessment volume, with detailed scientific findings as to the causes of climate change and impacts in the United States, President Trump has made it absolutely clear he rejects those findings, and does not believe action is necessary to address the climate crisis. *Compare* U.S. GLOBAL CHANGE RESEARCH PROGRAM, IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT VOLUME II (D.R. Reidmiller et al. eds., 2018), [https://nca2018.globalchange.gov/downloads/NCA4\\_Report-in-Brief.pdf](https://nca2018.globalchange.gov/downloads/NCA4_Report-in-Brief.pdf) with Aaron Blake, *President Trump's Full Washington Post Interview Transcript Annotated*, WASH. POST, Nov. 28, 2018 (regarding climate change, quoting President Trump saying, "As to whether or not it's man-made and whether or not the effects that you're talking about are there, I don't see it.").

7. *See infra* 252–55 (detailing recent EPA initiatives).

gases. Indeed, promulgating such a NAAQS would be the perfect vehicle for the EPA to reclaim its mantle as a leader in science-based decision-making for the protection of the environment.

After the Supreme Court resolved that greenhouse gases are subject to the Clean Air Act in 2007,<sup>8</sup> the question of a greenhouse gas NAAQS received lengthy treatment by both academics and practitioners.<sup>9</sup> In one article, practitioners argued that setting a NAAQS for greenhouse gases would fit naturally within the language and purpose of this program and explained why regulating in this manner would be the most expeditious and effective means to employ the full force of the Act to address the climate change crisis.<sup>10</sup> The article also responded to several arguments that questioned the viability of a greenhouse gas NAAQS, including how such a standard would be structured given that greenhouse gas emissions are not localized like other criteria air pollutants and the legal risks implementation of such a NAAQS may pose to the EPA's regulatory authority under other Clean Air Act sections—particularly Section 111, under which the Obama Administration promulgated the Clean Power Plan.<sup>11</sup>

This Article reiterates and expands on these arguments in favor of a greenhouse gas NAAQS, calling for the EPA to launch a more comprehensive

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8. *Massachusetts v. EPA*, 549 U.S. 497 (2007).

9. Kassie Siegel et al., *Strong Law, Timid Implementation. How the EPA Can Apply the Full Force of the Clean Air Act to Address the Climate Crisis*, 30 UCLA J. ENVTL. L. & POLICY 185 (2012) [hereinafter *Strong Law, Timid Implementation*]; Kassie Siegel et al., *No Reason to Wait: Reducing Greenhouse Gas Emissions Through the Clean Air Act* (Ctr. for Biological Diversity Climate Law Inst., Working Paper June 2009); Ari R. Lieberman, *Turning Lemons into Lemonade: Utilizing the NAAQS Provisions of the Clean Air Act to Comprehensively Address Climate Change*, 21 BUFF. ENVTL. L.J. 1 (2013); Inimai M. Chettiar & Jason A. Schwartz, Inst. for Policy Integrity, *The Road Ahead: EPA's Options and Obligations For Regulating Greenhouse Gases* (2009); Holly Doremus & W. Michael Hanemann, *Of Babies and Bathwater: Why the Clean Air Act's Cooperative Federalism Framework Is Useful for Addressing Global Warming*, 50 ARIZ. L. REV. 799 (2008); Robert B. McKinstry Jr. et al, *The New Climate World: Achieving Economic Efficiency in a Federal System for Greenhouse Gas Control Through State Planning Combined with Federal Programs*, 34 N.C. J. INT'L L. & COM. REG. 768 (2009); Patricia Ross McCubbin, *EPA's Endangerment Finding for Greenhouse Gases and the Potential Duty to Adopt National Ambient Quality Standards to Address Global Climate Change*, 33 S. ILL. U. L. J. 437 (2009); Timothy J. Mullins & M. Rhead Enion, *(If) Things Fall Apart: Searching for Optimal Regulatory Solutions to Combating Climate Change under Title I of the Existing CAA if Congressional Action Fails*, 40 ENVTL. L. REP. 10864 (2010); Rich Raiders, *How EPA Could Implement a Greenhouse Gas NAAQS*, 22 FORDHAM ENVTL. L. REV. 233 (2010); Nathan Richardson, *Greenhouse Gas Regulation Under the Clean Air Act: Does Chevron Set the EPA Free?*, 29 STAN. ENVTL. L.J. 283 (2010); Nathan Richardson et al., *Greenhouse Gas Regulation under the Clean Air Act: Structure, Effects, and Implications of a Knowable Pathway*, 41 ENVTL. L. REV. 10098 (2011); Christopher T. Giovinazzo, *Defending Overstatement: The Symbolic Clean Air Act and Carbon Dioxide*, 30 HARV. ENVTL. L. REV. 99 (2006); Craig N. Oren, *Is the Clean Air Act at a Crossroads?*, 40 ENVTL. L. 1231, 1249–54 (2010) [hereinafter *Is the Clean Air Act at a Crossroads?*]; Craig N. Oren, *When Must EPA Set Ambient Air Quality Standards? Looking Back at NRDC v. Train*, 30 UCLA J. ENVTL. L. & POL'Y 157 (2012) [hereinafter *When Must EPA Set Ambient Air Quality Standards? Looking Back at NRDC v. Train*].

10. Siegel, *Strong Law, Timid Implementation*, *supra* note 9, at 206–12. Those authors were, as the authors here are, all practicing attorneys with the Center for Biological Diversity.

11. *Id.* at 213–24.

approach to regulating greenhouse gases under the Clean Air Act than the Agency has followed to date. Moreover, the Article will detail how *eight* developments in the past several years lend additional support to the case for a greenhouse gas NAAQS.

*First*, the climate crisis has only grown more urgent, and thus the need for the far-reaching protections of a greenhouse gas NAAQS more vital. While the global atmospheric concentration of carbon dioxide remained below approximately 300 parts per million (ppm) for more than 800,000 years, and reached 350 ppm less than thirty years ago, it has continued to rise from 395 ppm in December 2012 to 408 ppm in December 2017.<sup>12</sup> Climate change and its devastating impacts are no longer a future concern; the effects are being experienced now and are only going to get much worse without dramatic action to curb greenhouse gas emissions.

*Second*, in 2015 the EPA issued its Clean Power Plan (“CPP”), which regulates greenhouse gas emissions from electric power plants.<sup>13</sup> Although the Supreme Court has stayed its implementation,<sup>14</sup> and the Trump Administration has proposed repealing it,<sup>15</sup> the CPP as promulgated would regulate these emissions with a nation-wide program containing elements that could be incorporated into a greenhouse gas NAAQS. For example, the EPA established an emission reduction target approach for each state, which could be expanded to form the basis for NAAQS SIPs and encompass greenhouse gas reduction measures across sectors.<sup>16</sup>

*Third*, the ongoing and protracted litigation over the CPP and other greenhouse gas initiatives demonstrates that the sector-by-sector approach the EPA has relied on to date will not address the climate crisis more quickly than a greenhouse gas NAAQS. In particular, although promulgating a greenhouse gas NAAQS will almost certainly engender litigation, success with such a program would bring about much more far-reaching results than the current regulatory approach. That

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12. See *Climate Change Indicators: Atmospheric Concentrations of Greenhouse Gases*, EPA (Apr. 2016), <https://www.epa.gov/climate-indicators/climate-change-indicators-atmospheric-concentrations-greenhouse-gases>; *Global Climate Change, Vital Signs of the Planet, Carbon Dioxide Measurement*, NASA, (Nov. 2018), <https://climate.nasa.gov/vital-signs/carbon-dioxide/>.

13. Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510 (Oct. 23, 2015).

14. See Lisa Heinzerling, *The Supreme Court’s Clean-Power Power Grab*, 28 GEO. ENVTL. L. REV. 425 (2016) (discussing the unprecedented and inappropriate nature of the Supreme Court stay).

15. Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 82 Fed. Reg. 48,035 (Oct. 16, 2017); see also Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, 83 Fed. Reg. 44,746 (Aug. 31, 2018) (proposed replacement rule).

16. Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510.

is because only the NAAQS program forces the EPA to achieve the critical goal of protecting human health and welfare, as distinguished from focusing solely on improving technologies within each separate sector.

*Fourth*, in 2014 the Supreme Court, in *Homer*, upheld a NAAQS implementation rule which—like a potential greenhouse gas NAAQS—addressed pollution that crosses state lines. The Court recognized the EPA’s broad latitude to address the “thorny causation problem” caused when multiple states contribute to the failure to attain NAAQS, and concluded that the EPA’s “efficient and equitable solution to the allocation problem” was well within the Agency’s discretion.<sup>17</sup> This decision further supports the EPA’s authority to appropriately allocate greenhouse gas emission reductions among states under a greenhouse gas NAAQS.

*Fifth*, although the Supreme Court issued another ruling in *URG* limiting the EPA’s authority to regulate greenhouse gas emissions from certain sources,<sup>18</sup> in that decision the Court further concluded that the EPA could continue to regulate those sources under certain conditions, which has important implications for the EPA’s authority to regulate these pollutants under the NAAQS program. Thus, although the Court found that the term “air pollutant” in the statutory definition of “major sources” does not include greenhouse gases—because, the Court concluded, including them would lead to absurd results Congress could not have intended—the Court limited its holding to that definition alone. The Court concluded there is no similar constraint on including greenhouse gas emissions where the EPA is regulating those sources anyway, called “anyway sources,” for other pollutant emissions.<sup>19</sup>

One of the arguments against a greenhouse gas NAAQS concerns the statutory requirement that the EPA establish a deadline for the “attainment” of a primary NAAQS in no longer than ten years.<sup>20</sup> A ten-year deadline is currently impossible for greenhouse gases because they are long-lived in the atmosphere, and thus will take much longer than ten years to reduce to safe concentration levels. But the NAAQS program also has a separate provision for imposing *secondary* standards as necessary to protect “public welfare.”<sup>21</sup> This provision not only contains no strict deadline, it expressly calls on the EPA to take into account effects on “climate.”<sup>22</sup> The Court’s treatment of “anyway sources” in *URG* thus suggests a path by which the EPA could impose a *secondary* NAAQS, even if it were determined that the Agency does not have the authority to impose a primary standard.

*Sixth*, in 2015 the United States and the international community, under the auspices of the United Nations Framework Convention on Climate Change, entered into the Paris Agreement, which commits participating nations to taking

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17. EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584, 1607 (2014).

18. Utility Air Regulatory Group v. EPA, 134 S. Ct. 2427 (2014).

19. *Id.* at 2448–50.

20. 42 U.S.C. § 7502(a)(2)(A).

21. *Id.* § 7502(a)(2)(B).

22. *Id.* § 7602(h) (defining public welfare to include climate impacts).

the steps necessary to hold “the global average temperature to well below 2° Celsius above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5° Celsius above pre-industrial levels.”<sup>23</sup> This international framework serves to reinforce the EPA’s authority, under Clean Air Act Section 179B,<sup>24</sup> to take global greenhouse gas emissions into account in setting domestic emission limits under the NAAQS program.<sup>25</sup>

*Seventh*, in recent years, scientists have developed reasonable carbon budgets that allocate appropriate carbon emission reductions among the nations of the world, including the United States. For example, the United States carbon budget to limit temperature rise to well below 2°C (per the Paris Agreement) has been estimated at 25 GtCO<sub>2</sub>eq to 57 GtCO<sub>2</sub>eq on average.<sup>26</sup> Taken together, this carbon budgets work and the Paris Agreement provide the EPA with multiple options for establishing the United States’ emission reduction levels that would be incorporated into a greenhouse gas NAAQS.

*Finally*, the current regulatory uncertainty concerning the regulation of greenhouse gases under the NAAQS program, which will remain so long as the EPA does not invoke this authority, is arguably itself an obstacle to addressing the climate crisis in other ways. For example, in response to recent tort lawsuits against fossil fuel companies and others potentially liable for the sea level rise and other damages caused by climate change, defendants have been arguing, with some initial success, that because the EPA has such plenary authority to address greenhouse gases under the Clean Air Act, the Act displaces any claims that touch on climate change.<sup>27</sup>

If, in fact, the courts were to determine that the EPA has no power to regulate greenhouse gases under the NAAQS program, defendants’ displacement arguments would certainly have less force. On the other hand, the current *status quo*, under which the scope of the EPA’s authority to act remains unresolved, has allowed defendants to more successfully invoke the Act to avoid liability.

Accordingly, even if in response to an EPA NAAQS for greenhouse gases, the courts—or Congress—were to preclude the EPA from regulating these pollutants

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23. UNFCCC Paris Agreement, art. 2, ¶ 1(a).

24. 42 U.S.C. § 7509(a).

25. Although the Trump Administration has announced its withdrawal from the Paris Agreement, that result—which will not be finalized until 2020, Paris Agreement, art. 28—would not undermine the utility of the Agreement to a greenhouse gas NAAQS.

26. See, e.g., Robiou du Pont et al., *Equitable mitigation to achieve the Paris Agreement goals 3* (Paris Equity Check, 2017). Quantities measured in GtCO<sub>2</sub>eq include the mass emissions from carbon dioxide (“CO<sub>2</sub>”) as well as the other well-mixed greenhouse gases (CO<sub>2</sub>, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and SF<sub>6</sub>) converted into CO<sub>2</sub>-equivalent values. See Glen P. Peters et al., *Measuring a Fair and Ambitious Climate Agreement Using Cumulative Emissions*, (Environmental Research Letters, No. 105004, 2015); Renaud Gignac and H. Damon Matthews, *Allocating a 2C Cumulative Carbon Budget to Countries*, (Environmental Research Letters, No. 075004, 2015); Yann Robiou du Pont et al., *Equitable Mitigation to Achieve the Paris Agreement Goals*, Supplemental Tables 1 and 2, (Nature Climate Change, No. NCLIMATE3186, 2017).

27. See *infra* pp. 282–84.



under the NAAQS program, that result could arguably be preferable to the *status quo*. In short, while today there is no such program, the uncertain prospect of comprehensively regulating greenhouse gases by means of a NAAQS poses an obstacle to addressing the climate crisis in other ways. Under a new administration, the EPA should not let this untenable *status quo* remain.

Part I of this Article summarizes the state of the climate crisis and addresses the Obama Administration's efforts to harness the Act to address that crisis, before summarizing the Trump Administration's initiatives to dismantle these efforts.

Part II, in turn, details the unique suitability of the NAAQS program to comprehensively address greenhouse gas pollution in the United States. In particular, this Part will explain why, especially in light of the Paris Agreement and more recent work on carbon budgets, the dispersal of greenhouse gases throughout the atmosphere is no impediment to a greenhouse gas NAAQS. It will also suggest several approaches that the EPA could take to ensure that a greenhouse gas NAAQS is consistent with the statute's requirements for prompt action towards attainment of air quality standards, particularly in light of the Supreme Court's rulings in *Homer* and *URG*, as well as the significant progress the EPA made with the SIPs components of the CPP.

Finally, Part III will explain why neither (a) the relationship between the NAAQS program and the EPA's power to regulate pollutants under Clean Air Act Section 111 (under which the CPP was promulgated) nor (b) any concern with Congressional backlash, should stand in the way of the EPA finally moving forward with a greenhouse gas NAAQS. As for the CPP, it would not be impacted until a greenhouse gas NAAQS is in effect, at which point its relevant elements can be incorporated into the NAAQS. And although Congress always will have the power to completely remove the EPA's authority to promulgate a greenhouse gas NAAQS, the Agency's refusal to resolve the scope of this authority is a double blow, hindering both the full use of the Clean Air Act to address the climate crisis and separate efforts to address that crisis with other regulatory tools, both within and beyond the Act. Accordingly, a new EPA should finally move forward with a greenhouse gas NAAQS.

**Whether The EPA Can Be Compelled To Promulgate a Greenhouse Gas NAAQS**

This Article urges that, under a new administration, the EPA return to its science-based mission by voluntarily promulgating a greenhouse gas NAAQS. Nonetheless, it bears noting that Clean Air Act Section 108 *mandates* that the EPA promulgate a NAAQS for any air pollutant endangering public health and welfare and present from numerous and diverse sources.<sup>1</sup> Greenhouse gases indisputably fit this test, particularly given that the EPA has already made—and successfully defended—an “endangerment” finding

for emissions of these pollutants from mobile sources under Section 202 of the Act.<sup>2</sup>

Some commentators have suggested that the EPA retains discretion to decline to impose a NAAQS regardless of endangerment, in light of the final phrase in Section 108(a), which provides that the mandate to impose a NAAQS applies to pollutants “for which [EPA] *plans* to issue air quality criteria under this section.”<sup>3</sup> However, this argument has been rejected by every court that has considered it.<sup>4</sup>

Moreover, relying on whether the EPA “plans” to issue a NAAQS would arguably give the Agency absolute, unreviewable discretion whether to issue a NAAQS for a pollutant despite finding endangerment. Such a reading would run counter to the “very narrow” circumstances in which courts find that Congress intends to afford agencies such broad discretion.<sup>5</sup> Particularly in the context of a provision that begins by setting forth what the EPA “shall” do to address some of the most far-reaching and important public health threats that the statute is designed to address, it would not be reasonable for the EPA to conclude that Congress intended to afford the Agency that kind of unbridled discretion.<sup>6</sup>

1. 42 U.S.C. § 7408(a)(1).

2. *Coalition for Responsible Reg., Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). There is no reason the EPA could reasonably reach a different endangerment finding under Section 108 than it has already successfully made and defended under Section 202. Indeed, in making its 2016 endangerment finding for aircraft greenhouse gas emissions, the EPA relied on how the standard is the same as under Section 202—that is, whether the pollutant “may reasonably be anticipated to endanger public health or welfare.” *See* 81 Fed. Reg. 54,434 (Aug. 15, 2016) (comparing 42 U.S.C. § 7521(a) with § 7571(a)(2)(A)). The same, of course, is true in the Act’s provision governing when a NAAQS is required. 42 U.S.C. § 7408(a)(1)(A).

3. *See, e.g., Craig Oren, Is The Clean Air Act At A Crossroads, supra* note 9, at 1249–55 (arguing that the text and legislative history of Section 108 indicate that EPA retains discretion whether to impose a NAAQS, even for a pollutant which both endangers public health and welfare and is emitted from numerous and diverse sources).

4. *See NRDC v. Train*, 411 F. Supp. 864 (S.D.N.Y. 1976), *aff’d* 545 F.2d 320 (2d Cir. 1976) (finding the EPA’s argument “is contrary to the structure of the Act as a whole” and would render the “shall” language in Section 108 “mere surplusage”); *Indiana & Michigan Elec. Co. v. EPA*, 509 F.2d 839, 841 (7th Cir. 1975); *Kennecott Copper Corp. v. EPA*, 462 F.2d 846, 847 (D.C. Cir. 1972); *Center for Biological Diversity v. EPA*, 749 F.3d 1079, 1083 (D.C. Cir. 2014) (“EPA is required to regulate any airborne pollutant which, in the Administrator’s judgment, ‘may reasonably be anticipated to endanger public health or welfare,’” and “[f]or pollutants within that category—so-called ‘criteria air pollutants’—the EPA must promulgate national ambient air quality standards”); *Zook v. McCarthy*, 52 F. Supp. 3d 69, (D.D.C. 2014) (Section 108 “makes clear that EPA’s listing duty is a nondiscretionary duty to list any pollutant that the EPA has determined meets the criteria in Section 108(a)(1)(A) and (B)”); *Ethyl Corp. v. EPA*, 541 F.2d 1, 20 note 37 (D.C. Cir. 1976) (“Sections 108 and 202 are *mandatory* in their terms; under both sections the Administrator ‘shall’ regulate if ‘in his judgment’ the pollutants warrant regulation”) (emphasis added); *see also, Richardson, Greenhouse Gas Regulation under the Clean Air Act*, at 21–26.

5. *Hi-Tech Furnace Sys. v. FCC*, 224 F.3d 781, 788 (D.C. Cir. 2000) (explaining that the exception making agency action entirely unreviewable is a “very narrow” one, reserved for “those rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply”)



(citing *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 410 (1971)). All the EPA would have to do under Section 108(a)(1)(C) is refuse to issue a NAAQS on the grounds that the agency has “no plans” to act, without any need to reasonably explain *why* there were no such plans, and there would arguably be no recourse—and thus no effective judicial review. *See also, e.g.,* *Weyerhaeuser v. Fish and Wildlife Svc.*, 139 S. Ct. 361, 370–72 (2018) (finding that even a statutory provision providing simply that the agency *may* act under certain circumstances does not preclude judicial review).

6. The decision in *Train* was issued before *Chevron v. NRDC*, where the Supreme Court established that an agency is entitled to deference for a reasonable interpretation of an ambiguous statutory provision. *Chevron v. NRDC*, 467 U.S. 837 (1984). In light of *Chevron*, the EPA itself has intimated the Agency might be entitled to deference were it to formally interpret Section 108 as providing the Agency with broad discretion whether to regulate a pollutant even if it falls under Section 108. *See* *Regulating Greenhouse Gas Emissions Under the Clean Air Act*, 73 Fed. Reg. 44,354, 44,477 note 229 (July 30, 2008). The EPA could only prevail in such an argument, however, if it were offering a reasonable interpretation of Section 108—and, as the foregoing discussion demonstrates, reading that provision to provide the EPA with unfettered discretion in deciding whether or when issuing a NAAQS for a pollutant it has found endangers public health and welfare and is emitted from many sources would not be reasonable.

## I. THE CLIMATE CRISIS AND THE EPA’S RESPONSES TO DATE

### A. THE CLIMATE CRISIS

After the Supreme Court ruled in *Massachusetts v. EPA*<sup>28</sup> that greenhouse gases are “air pollutants” under the Clean Air Act, the EPA comprehensively assessed whether these gases endanger public health and welfare. In 2009, the EPA made its endangerment finding, establishing that, for the purposes of the Act, motor-vehicle emissions of greenhouse gases “contribute to the total greenhouse gas air pollution, and thus to the climate change problem, which is reasonably anticipated to endanger public health and welfare.”<sup>29</sup> Industry-supported groups and various states vigorously challenged that finding.<sup>30</sup> Rejecting those challenges in 2012, the D.C. Circuit unanimously found that the EPA had relied on the best scientific data; had reasonably concluded, based on that data, that climate change is caused by anthropogenic greenhouse gas emissions; and had also reasonably found that climate change “threatens both public health and public welfare.”<sup>31</sup> The Supreme Court declined to review the EPA’s findings, and since

28. *Massachusetts v. EPA*, 549 U.S. 497 (2007).

29. Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, EPA, <https://www.epa.gov/ghgemissions/endangerment-and-cause-or-contribute-findings-greenhouse-gases-under-section-202a-clean> (last visited Jan. 17, 2019); Final Rule, 74 Fed. Reg. 66,499 (2009) (codified at 40 C.F.R. ch. 1) (EPA made the endangerment finding for “the mix of six long-lived and directly-emitted greenhouse gases: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF<sub>6</sub>)”).

30. *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012).

31. As the Court summarized:

[EPA] found that extreme weather events, changes in air quality, increases in food- and water-borne pathogens, and increases in temperatures are likely to have adverse health effects [and] [t]he

that time, the EPA has consistently reiterated that greenhouse gases endanger public health and welfare.<sup>32</sup>

Since that decision, the urgency of the climate crisis has only grown. In October 2018, the Intergovernmental Panel on Climate Change (“IPCC”) issued a Special Report on the state of the crisis and what needs to be done.<sup>33</sup> Most importantly, the Special Report concludes that it is absolutely critical for greenhouse gas emissions to be drastically reduced in the next decade to avoid the worst impacts of climate change.<sup>34</sup> Key findings of the special report also include:

*First*, “human-induced warming reached approximately 1°C (likely between 0.8°C and 1.2°C) above pre-industrial levels in 2017, increasing at 0.2°C (likely between 0.1°C and 0.3°C) per decade.”<sup>35</sup>

*Second*, “[m]ean sea level is increasing . . . with substantial impacts already being felt by coastal ecosystems and communities . . . . These changes are interacting with other factors such as strengthening storms, which together are driving greater storm surge, infrastructure damage, erosion and habitat loss.”<sup>36</sup>

*Third*, “[t]he ocean has absorbed about 30% of the anthropogenic carbon dioxide, resulting in ocean acidification and changes to carbonate chemistry that are unprecedented in 65 million years.”<sup>37</sup>

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record also supports the EPA’s conclusion that climate change endangers human welfare by creating risk to food production and agriculture, forestry, energy, infrastructure, ecosystems, and wildlife.

*Id.* at 121.

32. *See, e.g.*, 81 Fed. Reg. 54,422 (Aug. 15, 2016) (to be codified at 40 C.F.R. pts. 87 and 1068); *see also* Philip B. Duffy et al., *Strengthened scientific support for the Endangerment Finding for atmospheric greenhouse gases*, SCIENCE, Dec. 13, 2018 (summarizing the latest evidence concerning the ways in which greenhouse gases are endangering public health and welfare).

33. *See generally*, IPCC, GLOBAL WARMING OF 1.5°C: SUMMARY FOR POLICYMAKERS (2018), <https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/>.

34. *Id.* at 51; IPCC, HEADLINE STATEMENTS FROM THE SUMMARY FOR POLICYMAKERS: GLOBAL WARMING OF 1.5°C 2 (2018), [https://www.ipcc.ch/site/assets/uploads/sites/2/2018/07/sr15\\_headline\\_statements.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2018/07/sr15_headline_statements.pdf).

35. *Id.*; MYLES ALLEN ET AL., IPCC, Chapter 1: Framing and Context, at 51 (2018) [hereinafter “IPCC 2018 Report”], <https://www.ipcc.ch/sr15/chapter/chapter-1-pdf/>.

Indeed, in late 2017, United States government scientists issued Volume I of the Fourth National Climate Assessment (“NCA”) pursuant to the Global Change Research Act (“GCRA”), 15 U.S.C. § 2921—confirming that the earth “is now the warmest in the history of modern civilization,” and that “the last three years have been the warmest years on record for the globe.” U.S. GLOBAL CHANGE RESEARCH PROGRAM, CLIMATE SCIENCE SPECIAL REPORT, FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME I (2017), <https://science2017.globalchange.gov>. The 2017 NCA also reiterates that, “[t]housands of studies conducted by researchers around the world have documented changes in surface, atmospheric, and oceanic temperatures; melting glaciers; diminishing snow cover; shrinking sea ice; rising sea levels; ocean acidification; and increasing atmospheric water vapor.” *Id.* at 10. (emphasis added).

36. IPCC 2018 Report, Chapter 3, at 225, <https://www.ipcc.ch/sr15/chapter/chapter-3/>.

The Fourth NCA, Volume I finds that “global average sea level has risen by about 7–8 inches since 1900,” and that they “are expected to continue to rise—by at least several inches in the next 15 years and by 1–4 feet by 2100,” while a “rise of as much as 8 feet by 2100 cannot be ruled out.” FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME I, *supra* note 35, at 10.

37. IPCC 2018 Report, Chapter 3, at 178, <https://www.ipcc.ch/sr15/chapter/chapter-3/>.

*Fourth*, greenhouse gas emissions are principally responsible for global warming and climate change.<sup>38</sup>

And *finally*, “[t]he rise in global CO<sub>2</sub> concentration since 2000 is about 20 ppm/decade, which is up to 10 times faster than any sustained rise in CO<sub>2</sub> during the past 800,000 years.”<sup>39</sup>

In November 2018, Volume II of the congressionally-mandated Fourth National Climate Assessment was released, further detailing the stark realities of climate change impacts on Americans, including increased hurricanes and extended wildfire seasons.<sup>40</sup> The Assessment also details how lower-income and marginalized communities are expected to experience even greater impacts to their health, safety and quality of life than others.<sup>41</sup> It further concludes that, without substantial and sustained reductions in emissions, the impact to the United States economy will likely reach hundreds of billions of dollars by the end of the century.<sup>42</sup>

Reports aside, the on-the-ground evidence of the climate crisis is now all around us. Ever more severe hurricanes, rain storms and extreme weather, wildfires, intense heat waves, melting ice, and other impacts are dominating headlines and devastating lives and the environment.<sup>43</sup> The climate crisis is no longer something to be concerned about in the distant future.<sup>44</sup> And, as detailed in the IPCC’s most recent report, absent necessary action within the next decade, it will become exponentially more difficult to keep global temperatures from rising more than 1.5° Celsius—above which the earth will experience devastating climate change impacts.<sup>45</sup>

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38. IPCC 2018 Report, Chapter 1, at 54, [https://www.ipcc.ch/site/assets/uploads/sites/2/2018/11/SR15\\_Chapter1\\_Low\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2018/11/SR15_Chapter1_Low_Res.pdf). FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME I, *supra* note 35, at 1. As the Fourth NCA, Volume I concludes, “[i]t is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century.” *Id.* at 10.

39. IPCC 2018 Report, Chapter 1, at 54, [https://www.ipcc.ch/site/assets/uploads/sites/2/2018/11/SR15\\_Chapter1\\_Low\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2018/11/SR15_Chapter1_Low_Res.pdf). *See also* NATIONAL RESEARCH COUNCIL, CLIMATE STABILIZATION TARGETS: EMISSIONS, CONCENTRATIONS, AND IMPACTS OVER DECADES TO MILLENNIA (The National Academies Press, 2011), <http://www.nap.edu/catalog/12877.html>.

40. U.S. GLOBAL CHANGE RESEARCH PROGRAM, CLIMATE SCIENCE SPECIAL REPORT, FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II 24 (2018), <https://nca2018.globalchange.gov>.

41. *Id.* at ch. 14.

42. *Id.* at ch. 1, at 46. As noted, President Trump rejects the conclusions of the latest Climate Assessment. *See supra* note 6.

43. *See, e.g.*, Joel Achenbach & Angela Fritz, *Hot summers, wildfires: Scientists say it's climate change, and they told you so*, CHICAGO TRIBUNE (July 27, 2018), <https://www.chicagotribune.com/news/nationworld/ct-summer-climate-change-20180727-story.html>.

44. *See* Duffy et al., *supra* note 32 (summarizing latest evidence on greenhouse gas impacts on human health and the environment).

45. IPCC, GLOBAL WARMING OF 1.5°C: SUMMARY FOR POLICYMAKERS, *supra* note 33.

B. THE EPA'S EFFORTS TO ADDRESS THE CLIMATE CRISIS TO DATE: SOME STEPS FORWARD,  
AND NOW BACKWARD

Although the NAAQS program allows the EPA to comprehensively regulate emissions of an air pollutant that is both dangerous and widespread, the Act also provides the EPA with tools to combat those pollutants more narrowly, by targeting individual pollutant sectors and sources. This section reviews those programs, and the progress the Obama Administration made in regulating greenhouse gases under them, and then addresses the Trump Administration's efforts to roll back these initiatives.

As depicted in the chart on the following page, taken together, the EPA estimated that the emissions reductions from the Obama Administration's programs—between 2020 and 2050—would amount to approximately 16 gigatons of CO<sub>2</sub>eq. Thus, although any or all of these emission reduction efforts might be strengthened, as developed to date they would not collectively bring about greenhouse gas reduction levels even remotely approaching those necessary for the United States to stay within its carbon budget of at least 25–57 gigatons of CO<sub>2</sub>eq.<sup>46</sup>

1. The Obama EPA's Greenhouse Gas Regulations

*a. The Clean Power Plan*

For stationary sources, Clean Air Act Section 111(b) provides for the EPA to establish a list of the different “categories” of stationary sources that “cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare,” and then to issue “standards of performance” for pollution from those sources.<sup>47</sup> Those standards must reflect the “best system of emission reductions” (“BSER”) that stationary sources can achieve while taking into account both the costs involved and “any nonair quality health and environmental impact and energy requirements.”<sup>48</sup>

In addition to mandating such regulations for new sources, the Act provides for the development of standards of performance for existing stationary sources of pollution.<sup>49</sup> Under the existing source program in Section 111(d), the Act provides for the EPA to require that states develop plans—similar to the SIPs promulgated for national air quality standards—that impose requirements on existing sources in sectors where new source standards are issued. It was under that authority that the EPA issued the CPP.

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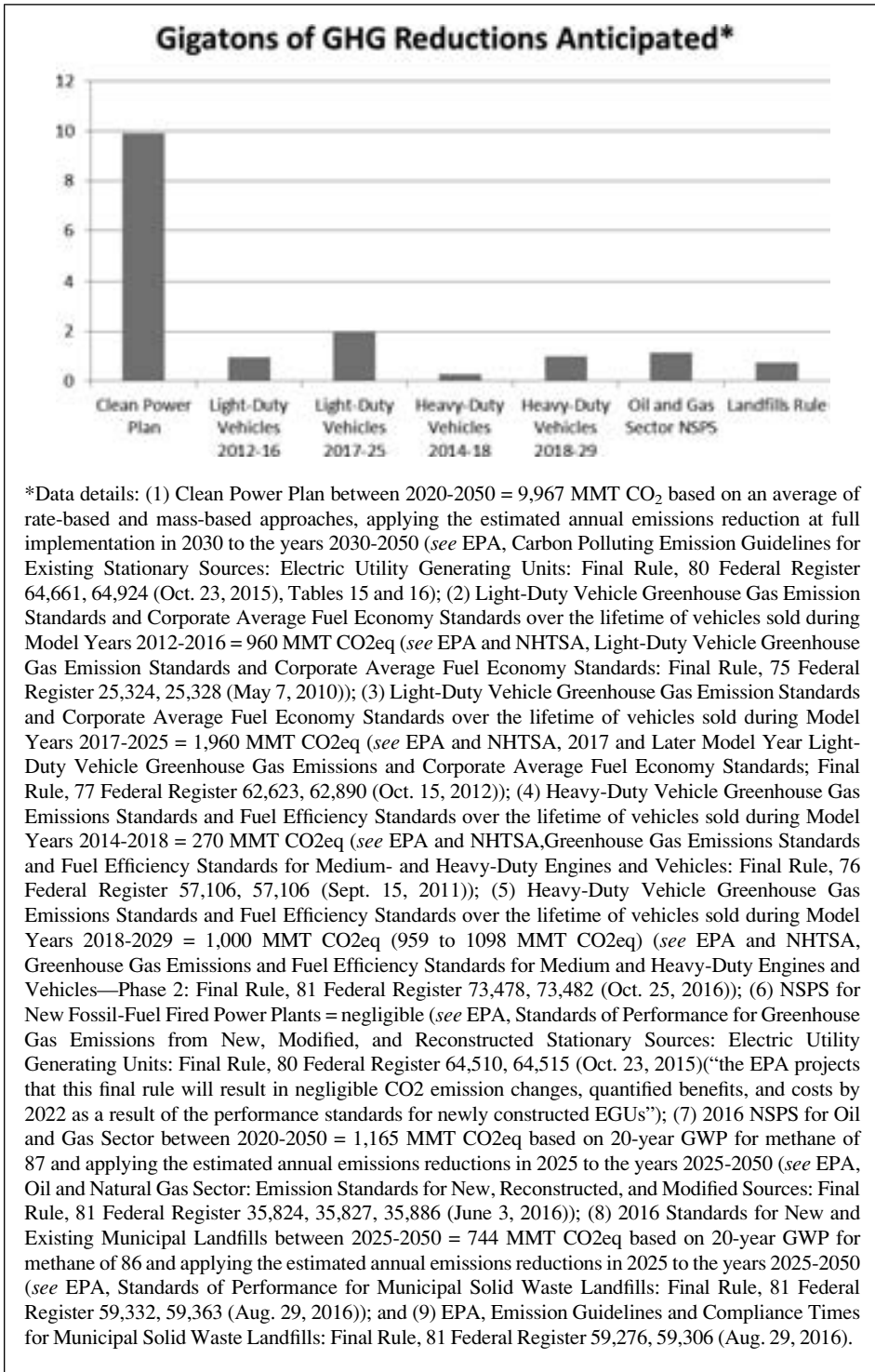
46. See Robiou du Pont et al., *supra* note 26. Annual United States emissions in 2017 alone approached 6.5 gigatons. Inventory of U.S. Greenhouse Gas Emissions and Sinks, 1990–2017, at 2-1 (2019).

47. 42 U.S.C. § 7411(b)(1).

48. *Id.* § 7411(a)(1).

49. *Id.* § 7411(b)(1), (d).

FIGURE 1.



The CPP was the Obama Administration’s marquee greenhouse gas reduction program, intended to establish the BSERs for greenhouse gases from existing power plants. Pursuant to Clean Air Act Section 111(b),<sup>50</sup> in 2015 the EPA issued New Source Performance Standards (“NSPS”) for greenhouse gas emissions from new, modified, and reconstructed fossil fuel-fired steam generating units and natural gas-fired stationary combustion turbines—collectively Electric Generating Units, or “EGUs.”<sup>51</sup> At the same time, pursuant to its authority under Section 111(d),<sup>52</sup> the EPA issued the CPP for greenhouse gas emissions from *existing* power plants.<sup>53</sup> In its most general form, the CPP established state-by-state goals for carbon emissions reductions from existing power plants and offered a flexible framework under which states could meet those targets.

More specifically, the EPA examined various approaches to the BSER from existing power plants. Based on that analysis the EPA established state carbon emission reduction targets. The CPP then provided emission guidelines to guide states in achieving these targets over time.<sup>54</sup> Under the CPP, the EPA defined the BSER for existing power plants by reference to several “building blocks.” Block One concerned economically achievable measures source owners could take to improve the heat rates—the efficiency with which plants convert fuel to electricity—at coal-fired steam plants.<sup>55</sup> Blocks Two and Three, in turn, focused on economically achievable approaches to shifting energy generation from coal-fired, and other steam-to-electric, power plants to other forms of generation, including more efficient existing natural gas combined-cycle plants (“gas plants”) and renewable-energy sources such as wind and solar.<sup>56</sup>

The CPP provided for states to adopt plans to satisfy the emission guidelines and allowed multiple avenues for the states to structure their plans and emission limits. For example, the CPP allowed for a relatively straightforward approach, whereby states would implement the two national emission performance rates for coal and gas plants. Each source would be allowed to reduce its emissions through a combination of actions, including heat-rate improvements, shifting generation from dirtier to cleaner power generation methods, or acquiring emission rate credits.<sup>57</sup>

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50. *Id.* § 7411(b).

51. Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510, 64,661 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60).

52. 42 U.S.C. § 7411(d).

53. 80 Fed. Reg. 64, 661 (Oct. 23, 2015).

54. *Id.* at 64,666.

55. *Id.* at 64,717. Although natural gas plants—also large emitters of greenhouse gases—will be a considerably larger portion of the power plant fleet in coming years, the CPP provided no heat rate improvements for those plants.

56. *Id.* at 64,723–58, 64,787–811. The EPA quantified the degree of emission reduction achievable with these technologies for two subcategories of sources: steam units and gas-fired units.

57. *Id.*

Alternatively, the CPP allowed states to adopt state-based emission limits that would blend the separate limits for coal and gas plants, and which would apply uniformly to both kinds of plants. It also allowed for “mass-based” approaches used under other programs—such as those addressing acid rain and cross-state smog—whereby the state would impose limits on the number of tons of pollution a plant may emit, rather than calculating limits based on pollution emitted per unit of electricity generated.<sup>58</sup>

Finally, the CPP anticipated that source owners could choose to obtain alternative sources of generation to meet emission reduction goals. Thus, states were permitted to adopt a mass-based plan that could include measures such as renewable portfolio standards that provide for source owners to obtain renewable energy resources. Under any of these approaches, states could also allow sources to engage in cross-state trading for emission reduction credits.<sup>59</sup>

### *b. Challenges to the Clean Power Plan*

Litigation over the CPP has been fierce and unceasing. Opponents unsuccessfully tried to challenge the CPP before it was even finalized,<sup>60</sup> and filed new challenges as soon as the final CPP was issued.<sup>61</sup> After the D.C. Circuit refused to immediately stay the CPP, the petitioners obtained an unprecedented decision from the Supreme Court staying the CPP until litigation over its legality is resolved.<sup>62</sup>

One of the many arguments against the CPP is that the EPA may not rely on its authority to regulate power plant emissions under Section 111(d) in a manner that leads to widespread emission reductions through the development of renewable energy sources. The CPP’s critical elements that may lead to “generation-shifting” to other sources of energy, opponents argue, go beyond the EPA’s authority to regulate “sources” under Section 111(d).<sup>63</sup> In advancing this argument, opponents have expressly contrasted the EPA’s broader authority under the NAAQS program, claiming that only under that kind of broader authority could the EPA ensure reductions in greenhouse gas

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58. *Id.*

59. *Id.* The CPP required that state plans include enforceable emissions standards that begin in 2022 and ramp up to full strength by 2030. In the event a state did not adopt any such plan, the EPA provides a federal plan instead. *See also, e.g.,* Daniel Selmi, *Federal Implementation Plans and the Path to Clean Power*, 28 GEO. ENVTL. L. REV. 637 (2016).

60. *See, e.g.,* Murray Energy Corp. v. EPA, 788 F.3d 330 (D.C. Cir. 2015).

61. *See, e.g.,* Petition for Review, West Virginia v. EPA, (D.C. Cir. Oct. 23, 2015) (No. 15-1363).

62. *See* Heinzerling, *supra* note 14 (discussing the unprecedented and inappropriate nature of the Supreme Court stay).

63. Brief for the Petitioner, State of West Virginia v. EPA, No. 15-1363, 54–56 (D.C. Cir. Apr. 22, 2016).



emissions across the economy.<sup>64</sup>

The D.C. Circuit considered the merits of CPP challenges initially *en banc*, but more than two years after hearing oral arguments the court has not issued a decision on the CPP's legality. In the meantime, the CPP and the litigation over it both remain<sup>65</sup> while the Trump Administration pursues its replacement rule.<sup>66</sup>

*c. The EPA's Limited Progress Regulating Greenhouse Gas Emissions from Other Stationary Source Sectors*

In addition to power plants, the EPA regulates pollutants from dozens of other categories of stationary industrial sources,<sup>67</sup> many of which could potentially be regulated for greenhouse gas emissions. However, despite numerous lawsuits to prompt action during the Obama Administration, the only progress made thus far has been on methane emissions, further supporting the conclusion that a comprehensive approach to greenhouse gas regulation under the NAAQS program is preferable to continuing to pursue emission limitations on a sector-by-sector basis. For example:

- Although the EPA has recognized that “[p]ortland cement is one of the largest stationary source categories of GHG emissions,”<sup>68</sup> the Agency has declined to set a greenhouse gas NSPS.<sup>69</sup>
- The EPA has made no progress regulating greenhouse gas emissions from refineries.<sup>70</sup>

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64. *Id.* For its part, in defending the CPP, the EPA expressly relied on Section 111's *cross-reference* to its Section 110 authority to impose SIPs, explaining:

The references in Sections 111(d)(1) and (d)(2) to Section [110] and to the flexibility states have under the NAAQS program (see 42 U.S.C. § 7410(d)(2)(A)) further indicate that Congress intended that states be able to incorporate a broad range of emission-reduction mechanisms into their Section 111(d) “standards of performance,” including having the ability to craft standards that authorize, incentivize, or compel generation-shifting.

*State of West Virginia v. EPA*, No. 15-1363, Brief of EPA at 47 (D.C. Cir. Apr. 22, 2016). The EPA also argued that, unlike the Section 111(d) program, “state plans implementing ambient air quality standards may include, in addition to ‘emission limitations’ for individual sources, ‘other control measures,’ ‘means,’ or ‘techniques,’ like ‘marketable permits’ to ensure attainment and maintenance of ambient air quality standards.” *See id.* at 55.

65. *See, e.g.*, *State of West Virginia v. EPA*, No. 15-1363 Order of Dec. 21, 2018 (D.C. Cir. 2018).

66. Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, 83 Fed. Reg. 44,746 (Aug. 31, 2018).

67. *See* 40 C.F.R. § 60.

68. 75 Fed. Reg. 54,970, 54,997 (Sept. 9, 2010) (to be codified at 40 C.F.R. pts. 60 and 63).

69. *Id.*; *see also* *Portland Cement Ass'n v. EPA*, 665 F.3d 177 (D.C. Cir. 2011) (rejecting challenge to EPA's failure to act on the grounds that the agency has taken no reviewable final agency action on the matter).

70. 73 Fed. Reg. 35,838 (June 24, 2008) (to be codified in 40 C.F.R. pt. 60).



- The EPA has not issued greenhouse gas emission limits for industrial commercial-institutional boilers.<sup>71</sup>
- The EPA has similarly declined to regulate greenhouse gas emissions from coal mines, citing budgetary and resource constraints.<sup>72</sup>
- Finally, as regards reductions in emissions of methane—a particularly potent greenhouse gas<sup>73</sup>—the EPA issued regulations that would have begun to address methane emissions from landfills and the oil and gas sector, but it did not do so comprehensively. The regulations also only addressed new, and not existing, sources.<sup>74</sup>

The EPA also regulates emissions from stationary sources under the Clean Air Act’s Prevention of Significant Deterioration (“PSD”) and Title V permitting programs.<sup>75</sup> However, this authority also has not produced significant greenhouse gas reductions because the Agency does not require permittees to consider alternatives such as renewable energy, and courts have allowed the EPA to adopt approaches to Best Available Control Technology (“BACT”) requirements that limit improvements to relatively minor efficiency adjustments rather than substantial changes.<sup>76</sup>

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71. 71 Fed. Reg. 9,866 (Feb. 27, 2006) (to be codified in 40 C.F.R. pt. 60).

72. *See* *Wildearth Guardians v. EPA*, 751 F.3d 649 (D.C. Cir. 2014) (upholding EPA’s reliance on resource constraints as a reasonable basis for inaction on coal mine emissions).

73. Scot M. Miller et al., *Anthropogenic Emissions of Methane in the United States*, 50 Proc. Nat’l Acad. Sci. 20,018, 20,018 (Dec. 10, 2013), <http://www.pnas.org/content/pnas/110/50/20018.full.pdf>.

74. 81 Fed. Reg. 59,332 (Aug. 29, 2016) (to be codified in 40 C.F.R. pt. 60) (landfill regulation); 81 Fed. Reg. 35,824 (June 3, 2016) (oil and gas regulations); *see also* David Woodsmall, *Targeting Fugitive Emissions: Regulating Methane Emissions from the Oil and Natural Gas Industry under Section 111 of the Clean Air Act*, GEO. ENVTL. L. REV. 531 (Spring 2016). For *existing* sources of methane in this sector, the Obama Administration issued an Information Collection Request (“ICR”) under Clean Air Act Section 114 in order to collect data the Agency determined would be necessary to proceed with Section 111(d) regulations, 81 Fed. Reg. 66,962 (Sept. 29, 2016), but took no further action.

75. 42 U.S.C. §§ 7470–7492, 7661; *see also* *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014).

76. Thus, for example, the Ninth Circuit found that the EPA had acted within its discretion when it refused to consider a solar power alternative to a biomass facility, finding that alternative would “redefine the source” and thus was not mandated by BACT requirements. *Helping Hand Tools v. EPA*, 836 F.3d 999 (9th Cir. 2016); *Sierra Club v. EPA*, 499 F.3d 653 (7th Cir. 2007) (upholding EPA’s narrow view of BACT requirements); *Utility Air Regulatory Group*, 134 S. Ct. at 2448 (“it has long been held that BACT cannot be used to order a fundamental redesign of the facility”); *see also, e.g.,* Gregory B. Foote, *Considering Alternatives: The Case for Limiting CO<sub>2</sub> Emissions From New Power Plants Through New Source Review*, 34 ELR 10642 (July 2004) (explaining that BACT often “focuses on end-of-stack controls, providing little or no attention to important categories of emission reduction strategies—beginning with the threshold decision whether to build any new source at all. As a result, states and permit applicants often fail to consider the full range of alternatives, precluding even the possibility of adopting an alternative that might result in dramatically less pollution.”).

*d. The EPA's Progress Regulating Greenhouse Gases from Mobile Sources*

Mobile sources—cars, trucks, airplanes, and other moving vehicles—also are an important source of air pollution. For those sources, the Act requires that the EPA also establish standards governing emissions of air pollutants that “may reasonably be anticipated to endanger public health or welfare.”<sup>77</sup> After such an endangerment finding for mobile sources, the EPA must set standards “which reflect the greatest degree of emission reduction achievable through the application of [available technology], giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.”<sup>78</sup> The Act also authorizes differing standards among classes of vehicles—such as passenger cars versus trucks, and aircraft, for which the EPA must also set standards for pollutants that “endanger public health or welfare.”<sup>79</sup>

The regulation of new motor vehicles under Section 202 was the focus of *Massachusetts v. EPA*,<sup>80</sup> and, in concert with California's efforts to also move forward with curbing these emissions, the Obama Administration's EPA made more concrete progress here than in any other sector.<sup>81</sup> In 2010, the EPA, along with the National Highway Traffic Safety Administration (“NHTSA”)<sup>82</sup> and California, adopted the first parallel passenger car—otherwise called “light duty vehicle”—greenhouse gas emission and fuel economy standards, for model years 2012-2016.<sup>83</sup> Two years later, the agencies adopted standards for vehicles beginning in model year 2017, and running through 2025.<sup>84</sup>

The rulemaking also provided for the EPA to conduct a “mid-term review” of the standards for model years 2022-25.<sup>85</sup> In January 2017, the EPA completed that mid-term review and issued its “Final Determination” that the original standards for 2022-25 should remain in place.<sup>86</sup> California reached the same result.<sup>87</sup>

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77. 42 U.S.C. § 7521.

78. *Id.* § 7521(a)(3).

79. *Id.* §§ 7521(a)(3)(ii), 7571–72.

80. *Massachusetts v. EPA*, 549 U.S. 497 (2007).

81. Under Clean Air Act Section 209, California is entitled to a “waiver” allowing the state to impose stricter motor vehicle emission standards than the EPA, in recognition that the state's mobile source program predates the federal regulatory scheme. 42 U.S.C. § 7543. Other states may also adopt California's standards. 42 U.S.C. § 7507 (1990).

82. NHTSA sets Corporate Average Fuel Economy (“CAFE”) standards pursuant to the Energy Policy Conservation Act. 49 U.S.C. § 32901.

83. *See* 75 Fed. Reg. 25,324 (May 7, 2010) (to be codified at 49 C.F.R. pts. 531, 533, 536, 537, 538).

84. *See* 77 Fed. Reg. 62,624 (Oct. 15, 2012) (to be codified at 49 C.F.R. pts. 523, 531, 533, 536, 537).

85. *Id.*

86. *See* EPA, Final Determination on the Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation, EPA-420-R-17-001 (January 2017).

87. California Environmental Protection Agency, California's Advanced Clean Cars Midterm Review (Jan. 18, 2017), [https://www.arb.ca.gov/msprog/acc/mtr/acc\\_mtr\\_finalreport\\_full.pdf](https://www.arb.ca.gov/msprog/acc/mtr/acc_mtr_finalreport_full.pdf).

Finally, although aircraft emissions account for 12 percent of all United States transportation greenhouse gas emissions and 3 percent of total United States GHG emissions,<sup>88</sup> the Obama Administration's EPA never imposed any greenhouse gas regulations for this sector. Thus, despite the EPA's endangerment finding for aircraft greenhouse gas emissions in 2016,<sup>89</sup> the Agency did not propose implementing emission standards.

## 2. De-regulating Greenhouse Gases under the Trump Administration: (Roll) Back to the Future

Fulfilling campaign promises to roll-back environmental regulations,<sup>90</sup> and consistent with his denial of climate change,<sup>91</sup> in March 2018, President Trump signed Executive Order 13783, directing the EPA to re-evaluate the CPP and the Obama Administration's other greenhouse gas regulation efforts.<sup>92</sup> Since that time, the EPA has moved aggressively to delay and roll back the Obama Administration's progress.

### *a. Affordable Clean Energy Rule and Oil and Gas Regulation Roll-backs*

In October 2017, the EPA proposed to repeal the CPP, without offering a replacement.<sup>93</sup> Several months later the EPA solicited comment on a potential replacement rule,<sup>94</sup> and finally, in August 2018, proposed the Affordable Clean

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While these standards were an important step forward, it bears emphasizing that they are considerably less ambitious than could actually be achieved with existing technology, and lower than the standards required in other jurisdictions, such as the European Union and South Korea. *See* International Council on Clean Transportation, Light-Duty Vehicle Greenhouse Gas And Fuel Economy Standards (2017), [https://www.theicct.org/sites/default/files/publications/2017-Global-LDV-Standards-Update\\_ICCT-Report\\_23062017\\_vF.pdf](https://www.theicct.org/sites/default/files/publications/2017-Global-LDV-Standards-Update_ICCT-Report_23062017_vF.pdf). In 2016, the EPA also established model year 2021-27 greenhouse gas emission standards for heavy duty trucks. 81 Fed. Reg. 73,478 (Oct. 25, 2016) (to be codified at 49 C.F.R. pts. 523, 534, 535, 538); *see also* 76 Fed. Reg. 57,106 (Sept. 15, 2011) (model year 2014-18 heavy duty truck standards).

88. *See Regulations for Greenhouse Gas Emissions from Aircraft*, EPA, <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-greenhouse-gas-emissions-aircraft>.

89. 81 Fed. Reg. 54,422 (Aug. 15, 2016) (to be codified at 40 C.F.R. pts. 87 and 1068).

90. *See, e.g.*, Justin Worland, *Donald Trump Promises to Cut Regulation on 'Phony' Environmental Issues*, TIME, (May 26, 2016), <http://time.com/4349309/donald-trump-bismarck-energy-speech/>.

91. *See, e.g.*, Edward Wong, *Trump Has Called Climate Change a Chinese Hoax. Beijing Says It Is Anything But*, N.Y. TIMES (Nov. 18, 2016), <https://www.nytimes.com/2016/11/19/world/asia/china-trump-climate-change.html>.

92. *See* Exec. Order No. 13783, § 4 (Mar. 28, 2017)(requiring the EPA to review the CPP and other decisions and "if appropriate [to] suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules").

93. Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 82 Fed. Reg. 48,035 (Oct. 16, 2017).

94. 82 Fed. Reg. 61,507 (Dec. 28, 2017).

Energy (“ACE”) Rule to replace the CPP.<sup>95</sup> Unlike the CPP’s sector-wide approach to emissions reduction, the ACE Rule considers only the “best system of emission reduction” that can be applied at a particular source. Consequently, it requires only limited heat rate improvements at coal-fired power plants.<sup>96</sup>

With regard to the EPA’s separate 2016 rule establishing new source performance standards for fugitive emissions of methane and other air pollutants from oil and gas sources,<sup>97</sup> the Agency initially sought to temporarily stay implementation of the rule “pending reconsideration,” under the Clean Air Act Section 307(d).<sup>98</sup> However, the D.C. Circuit vacated that stay, blocking the EPA’s immediate roll-back efforts.<sup>99</sup> Although the EPA also proposed a two-year stay while it reconsiders the 2016 rule,<sup>100</sup> it never finalized that proposal, but instead has proposed a marked weakening of the rule.<sup>101</sup>

Finally, regarding *existing* sources of oil and gas methane, in March 2017, the EPA withdrew the ICR for information on equipment and emissions at oil and gas operation sites,<sup>102</sup> and several states have sued the EPA for failing to move forward with regulations to curb methane emissions from these sources.<sup>103</sup>

#### *b. Roll-backs of Mobile Source Regulations*

The Trump Administration has also been working on roll-backs to greenhouse gas emission reductions from mobile sources. As regards passenger cars, in April 2018, the EPA withdrew its January 2017 Final Determination, and announced it would reconsider the 2022-25 mobile emission standards.<sup>104</sup> Several months later, the EPA issued a new Proposed Rule, the “Safer and Affordable Fuel-Efficient Vehicles Rule,” proposing to freeze fuel economy standards and

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95. Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, 83 Fed. Reg. 44,746 (Aug. 31, 2018).

96. *Id.* The EPA has also proposed to significantly weaken the Obama Administration’s NSPS for greenhouse gas emissions from EGUs. 83 Fed. Reg. 65,424 (Dec. 20, 2018).

97. 81 Fed. Reg. 35,824 (June 3, 2016) (to be codified in 40 C.F.R. pt. 60).

98. 42 U.S.C. § 7607(d)(7)(B).

99. *Clean Air Council v. EPA*, 862 F.3d 1 (D.C. Cir. 2017).

100. *See, e.g.*, 82 Fed. Reg. 27646 (June 16, 2017) (proposed delay rule).

101. 83 Fed. Reg. 52,056 (Oct. 15, 2018).

102. 82 Fed. Reg. 12,817 (Mar. 7, 2017).

103. *Sierra Club v. Wheeler*, 330 F. Supp. 3d 407, 411 (D.D.C. 2018). As regards landfills, while the Trump Administration has not moved to repeal the methane emissions rule, there have been serious concerns whether it is being carried out, leading California and other states to file suit. *See California v. EPA*, No. 18-CV-03237-HSG, 2018 WL 6728009 (N.D. Cal. Dec. 21, 2018).

104. *See* 83 Fed. Reg. 16,077 (Apr. 13, 2018); *see also* 82 Fed. Reg. 14,672 (Mar. 22, 2017) (initial notice on re-opening the mid-term evaluation process); 82 Fed. Reg. 39,551 (Aug. 21, 2017) (request for comment on re-considering mid-term evaluation). Litigation over the withdrawal of the Final Determination is now pending in the D.C. Circuit, *California v. EPA*, No. 18-1114, (D.C. Cir. filed July, 10, 2018), which rejected the EPA’s initial bid to have the case dismissed. *Id.* Order of Nov. 21, 2018.

greenhouse gas emission standards for passenger cars and light trucks at 2020 levels for model years 2021-2026.<sup>105</sup> For its part, California has announced it will not be undertaking such a re-evaluation, but the EPA is seeking to use this process to revoke California's Clean Air Act waiver—and thereby remove California's independent authority to regulate greenhouse gases from mobile sources under the Clean Air Act.<sup>106</sup>

As for heavy-duty trucks, although the EPA's 2016 truck standards included "glider vehicles,"<sup>107</sup> the EPA has proposed to exempt these vehicles from the standards, which will leave old, less efficient and more polluting engines on the road for many years.<sup>108</sup> The 2016 standards also provided important requirements for the trailer component of trucks that improve fuel efficiency and reduce greenhouse gas emission, but the EPA is revisiting that aspect of the standards for trailers.<sup>109</sup>

Finally, as regards aircraft emissions, in pending litigation challenging the biogenic carbon dioxide component of the aircraft endangerment finding, the EPA has obtained several abeyance orders on the grounds that the parties are discussing a potential resolution, which likely signals that the EPA has no intention of moving forward with implementing regulations.<sup>110</sup>

### *c. The EPA's Broader Roll-back of Science-Based Decision-Making*

The Trump Administration's EPA has also launched initiatives that pose enormous threats to the Agency's regulation of pollutants under the entire NAAQS program. These include: (a) a Memorandum suggesting a new and more restrictive view of the NAAQS program;<sup>111</sup> (b) a Proposed Rule, which, if finalized, would prohibit the EPA from considering vital public health studies in NAAQS decision-making;<sup>112</sup> and (c) an Advanced Notice of Proposed Rule-making concerning the manner in which the EPA undertakes cost-benefit analysis, suggesting the EPA might issue uniform regulations elevating compliance costs, and undermining the consideration of the environmental benefits of NAAQS and other

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105. 83 Fed. Reg. 42,986 (Aug. 24, 2018).

106. *Id.* at 42,999.

107. Gliders are trucks comprised of a previously owned powertrain (including the engine, transmission, and usually the rear axle) combined with new body parts (generally including the tractor chassis with frame, front axle, brakes, and cab).

108. 82 Fed Reg. 53,442 (Nov. 16, 2017). The EPA had announced it simply would not enforce the standards, but in response to litigation, withdrew that approach. *See* Juliet Eilperin and Brady Dennis, *EPA reverses course, says it will enforce stricter pollution limits for glider trucks*, WASH. POST, (July 27, 2018) [https://www.washingtonpost.com/national/health-science/epa-reverses-course-says-it-will-enforce-stricter-pollution-limits-for-glider-trucks/2018/07/26/705ff4ee-9144-11e8-8322-b5482bf5e0f5\\_story.html?noredirect=on&utm\\_erm=.d2bdc87d0c0d](https://www.washingtonpost.com/national/health-science/epa-reverses-course-says-it-will-enforce-stricter-pollution-limits-for-glider-trucks/2018/07/26/705ff4ee-9144-11e8-8322-b5482bf5e0f5_story.html?noredirect=on&utm_erm=.d2bdc87d0c0d).

109. *See* Truck Trailer Man. Ass'n. v. EPA, No. 16-1430, (D.C. Cir. Oct. 27, 2017).

110. *See* EPA Status Report, *Biogenic CO2 Coalition v. EPA*, No. 16-1358, (D.C. Cir. Nov. 1, 2018).

111. *See* EPA, *Back To Basics Process For Reviewing National Ambient Air Quality Standards* (May 9, 2019).

112. *See* 83 Fed. Reg. 18,768 (Apr. 30, 2018).

regulations.<sup>113</sup> Taken together, these EPA initiatives reflect a fundamental assault on the Agency's decades-long legacy of protecting the American people from the harmful effects of air pollution.

## II. THE UPDATED CASE FOR A GREENHOUSE GAS NAAQS

It remains to be seen how far the Trump Administration will get in fulfilling its deregulatory agenda. Decided cases thus far suggest that there may be judicially imposed limits on its efforts to elide its statutory mandates and elevate industry interests above public health and the environment.<sup>114</sup> However, once the Trump Administration leaves, and the EPA is empowered to once again carry out its statutory mandates, it will be faced with both unraveling the damage wrought, while at the same time determining anew how to bring the Act to bear on the climate crisis.

At that time, the EPA should not simply return to the Obama Administration's approach to greenhouse gas regulations. As the preceding discussion demonstrates, that sector-by-sector approach simply will not bring about the emission reductions necessary within the timeframe they are needed. Only through the NAAQS program can the EPA work toward the overarching objective of protecting human health and welfare from the threats posed by greenhouse gas emissions. Moreover, any notion that proceeding with an incremental approach would allow faster progress with fewer litigation and other delays than pursuing a greenhouse gas NAAQS has been shattered by the ferocious litigation assault that the fossil fuel and power industry and its state allies have waged against the CPP and other regulatory initiatives to date.

Rather, when the EPA returns to faithfully implementing the Act, it should restore the central role of science in the Agency's decision-making by finally implementing a greenhouse gas NAAQS. As the following sections explain, such a NAAQS is the Act's best tool for regulating greenhouse gases.

At the same time, developments in recent years have made implementing a greenhouse gas NAAQS more straightforward, helping to resolve concerns raised as to whether the global nature of greenhouse gas emissions and climate change make a greenhouse gas NAAQS feasible. This Part briefly outlines the NAAQS program, and then explains how, and why, a new EPA should move forward with a greenhouse gas NAAQS as rapidly as practicable.

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113. See 83 Fed. Reg. 27,524 (June 13, 2018). The Agency also issued a policy statement providing that in future regulatory actions it will treat biomass from managed forests as carbon neutral when burned at power plants. EPA, EPA'S TREATMENT OF BIOGENIC CARBON DIOXIDE EMISSIONS FROM STATIONARY SOURCES THAT USE FOREST BIOMASS FOR ENERGY PRODUCTION (Apr. 23, 2018).

114. See, e.g., Lisa Heinzerling, *Unreasonable Delays: The Legal Problems (So Far) of Trump's Deregulatory Binge*, 12 HARV. L. & POL'Y REV. 13 (Winter 2018); see also, e.g., NRDC v. Nat'l Hwy Traffic Safety Admin., 894 F.3d 95 (D.C. Cir. 2018) (rejecting agency's effort to delay implementation of Obama era regulation imposing penalties for violating fuel economy standards).



## A. THE NAAQS PROGRAM

Although the Clean Air Act has multiple and overlapping programs to address pollution at the individual plant, vehicle class, and industry sector level, only the NAAQS program requires the EPA to achieve the overarching objective of protecting public health and welfare from the most pervasive forms of air pollution emitted from “numerous or diverse” sources.

The NAAQS comes into play once the EPA makes a threshold finding that a pollutant, which is present in the ambient air due to “numerous or diverse mobile or stationary sources,” “cause[s] or contribute[s] to air pollution which may reasonably be anticipated to endanger public health or welfare.”<sup>115</sup> For greenhouse gases, the EPA made that finding for certain mobile sources in 2009,<sup>116</sup> and since that time has consistently reiterated that greenhouse gases endanger public health and welfare.<sup>117</sup>

Once an air pollutant is listed as a NAAQS pollutant, the EPA has one year to issue “air quality criteria” that reflect “the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities.”<sup>118</sup> Pollutants for which criteria have been identified are known as “criteria” air pollutants, and the current six “criteria” pollutants are lead, ozone, carbon monoxide, sulfur oxides, nitrogen oxides, and particulate matter.<sup>119</sup>

At the time these criteria are established, the EPA must also propose primary and secondary air quality standards; these are the National Ambient Air Quality Standards, or NAAQS.<sup>120</sup> Primary standards are target concentrations of the pollutant in the air, “the attainment and maintenance of which . . . are requisite to protect the public health.”<sup>121</sup> Secondary standards are “the level of air quality”

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115. 42 U.S.C. § 7408(a)(1)(A) and (B) (1998).

116. *See* Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202 (a) of the Clean Air Act, *supra* note 29.

117. Among other rulemakings, the EPA has reiterated that finding in (a) promulgating new and existing source regulations for power plants, Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,510 (Oct. 23, 2015); (b) regulating the oil and gas sector, 81 Fed. Reg. 35,824 (June 3, 2016) (to be codified in 40 C.F.R. pt. 60); and (c) connection with greenhouse gas emissions from aircraft, 81 Fed. Reg. 54,422, 54,424 (Aug. 15, 2016) (explaining that “[n]o information or assessments published since late 2009 suggest that it would be reasonable for the EPA to now reach a different or contrary conclusion for purposes of CAA Section 231(a)(2)(A) than the Agency reached for purposes of Section 202(a)”).

118. *Id.* 42 U.S.C. § 7408(a)(2) (1998). This includes: (a) variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant; (b) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and (c) any known or anticipated adverse effects on welfare. *Id.* § 7408(a)(2)(A)-(C).

119. *See* 40 C.F.R. § 50.

120. 42 U.S.C. § 7409(a)(2).

121. *Id.* § 7409(b)(1).

necessary to “protect the public welfare”<sup>122</sup>—expressly defined to include, *inter alia*, “effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate”<sup>123</sup>—from the adverse effects of “such air pollutants in the ambient air.”<sup>124</sup> The EPA is not permitted to consider cost in determining the standards necessary to protect public health or welfare.<sup>125</sup>

Once the primary and secondary NAAQS have been established, the EPA, with input from the states, must designate geographic areas of the nation as being in “attainment”—that is, areas that meet the “national primary or secondary ambient air quality standard for the pollutant”—or “nonattainment”—that is, areas that do *not* meet one or both of those standards.<sup>126</sup> This process may take up to three years to complete.<sup>127</sup>

For areas designated as nonattainment, the EPA is required to determine the dates by which attainment can be achieved.<sup>128</sup> With respect to a primary air quality standard, the Act provides that ten years is the longest period that may be provided for reaching attainment.<sup>129</sup> Where an area’s nonattainment designation is with respect to a secondary standard, by contrast, the EPA must choose the date “by which attainment can be achieved as expeditiously as practicable.”<sup>130</sup> Under the NAAQS program, the states, and their air quality regions, then play the leading role in bringing about compliance with the NAAQS. Once the EPA has made its designations, each state must prepare—within three years—a SIP to obtain “implementation, maintenance and enforcement” of the standards.<sup>131</sup> For nonattainment areas, these plans must include, *inter alia*, “the implementation of all reasonably available control measures as expeditiously as practicable . . .”<sup>132</sup>

As a practical matter, these broad mandates call for states to take action to reduce emissions on many fronts—from not only power plants, but also commercial and residential buildings, the transportation sector, the agricultural sector and elsewhere. Although the myriad of programs and approaches states may take to

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122. *Id.* § 7409(b)(2).

123. *Id.* § 7602(h) (emphasis added).

124. *Id.* § 7409(b)(2).

125. *See, e.g.,* *Whitman v. American Trucking Ass’ns, Inc.*, 531 U.S. 457, 471 (2001). In a recent memorandum, the EPA Administrator sought to weaken this feature of the NAAQS program, characterizing *Whitman* as authorizing the EPA to consider “adverse social, economic, or energy effects” in establishing NAAQS, *see* EPA, *Back To Basics Process For Reviewing National Ambient Air Quality Standards*, *supra* note 111, an interpretation flatly contrary to the Supreme Court’s ruling in *Whitman*.

126. 42 U.S.C. § 7407(d)(1) (2012).

127. *Id.* § 7407(d)(1)(B)(i).

128. *Id.* § 7502(a)(1)(A).

129. *Id.* § 7502(a)(2)(A). Congress has amended the statute to extend these deadlines for all existing NAAQS pollutants, *id.* §§ 7511 (ozone), 7512 (carbon monoxide), 7513 (particulate matter), 7514 (sulfur oxides, nitrogen dioxide, and lead). The Act also provides specific remedies when the statutory deadlines are missed. *Id.* § 7509(c), (d).

130. *Id.* § 7502(a)(2)(B).

131. *Id.* § 7410(a).

132. *Id.* § 7502(c)(1).



reduce emissions of listed pollutants are beyond the scope of this Article, the salient point is that the NAAQS program activates the widest possible approach to tackling these emissions with maximum flexibility to choose those measures, across multiple sectors, which will allow each state to achieve SIP emission reduction requirements.<sup>133</sup>

Importantly for purposes of envisioning a greenhouse gas NAAQS, the Clean Air Act also requires that each SIP address pollution that crosses state lines. Thus, under Section 110(a)(2)(D), each SIP must prohibit sources from emissions “which will contribute significantly to nonattainment in, or interfere with maintenance by, *any other State* with respect to any such national primary or secondary ambient air quality standard . . . .”<sup>134</sup>

The existing NAAQS have brought about enormous reductions in NAAQS pollutants, while also providing large economic benefits.<sup>135</sup> Because one of the main objections to any NAAQS—and especially over greenhouse gases—concerns the overall economic impact on regulated businesses, it also bears emphasizing that these benefits have been achieved during periods of rapid economic growth: the EPA currently states on its website, “[f]rom 1970 to 2015, aggregate national emissions of the six common pollutants alone dropped an average of 70 percent while gross domestic product grew by 246 percent.”<sup>136</sup>

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133. *See id.* § 7410(a). In many states, NAAQS implementation is carried out by multiple Air Quality Management Districts, which manage a specific area. For example, California alone has more than twenty-five such districts. *See, e.g.*, CALIFORNIA SOUTH COAST AIR MANAGEMENT DISTRICT, FINAL SIP (2016), <http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan/final-2016-aqmp>. Through the “transportation conformity” program, the EPA also works with states to incorporate changing mobile source emission standards into state SIPs. 40 C.F.R. § 93.100-60 (2018).

134. 42 U.S.C. § 7410(a)(2)(D)(i)(I) (emphasis added).

135. Between 1990 and 2010, the Clean Air Act produced an almost 50% reduction in volatile organic compounds and nitrogen oxides, and more than a 60% reduction in sulfur oxides, while producing economic benefits that dwarfed the costs. *See* EPA, THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020 (2011).

136. *See Clean Air Act Results*, EPA, <https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health>. (last visited Feb. 19, 2019); *see also* OFFICE OF MGMT. & BUDGET, 2017 DRAFT REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES REFORM ACT (Feb. 23, 2018) (available at [https://www.whitehouse.gov/wp-content/uploads/2017/12/draft\\_2017\\_cost\\_benefit\\_report.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf)) (estimating that the regulations imposed from 2006 to 2016 provided benefits worth as much as \$911 billion in exchange for costs as low as \$78 billion, measured in 2015 dollars).

To be sure, the NAAQS are no panacea, and for some—especially ozone—air quality districts have struggled to meet NAAQS attainment deadlines. *See, e.g.*, Max Baumhefner, *The Ozone Saga*, 35 *ECOLOGY L.Q.* 557 (2008) (discussing failure to comply with ozone standards); Arnold W. Reitze, Jr., *The National Ambient Air Quality Standards For Ozone*, 6 *ARIZ. J. ENVTL. L. & POL’Y* 421, 431–33 (2015) (same). However, the fact that the EPA, and implementing state and local agencies, have grappled with how to most effectively implement NAAQS for other criteria air pollutants only serves to further highlight that the complexities in implementing a greenhouse gas NAAQS is in no manner an impediment to the EPA’s authority, and responsibility, to act.

## B. GREENHOUSE GASES ARE WELL-SUITED FOR REGULATION UNDER THE NAAQS PROGRAM

Greenhouse gases have several distinguishing characteristics from the existing criteria air pollutants. While some criteria pollutants travel across state—and even international—borders, existing NAAQS pollutants' impacts are all closely tied with where the pollutants are ultimately located, and thus the EPA has been able to set localized pollution concentrations as attainment objectives.

Greenhouse gases are different. They are broadly dispersed in the atmosphere, not staying within one state, or even the United States, and their impacts are not tied to pollutant concentrations in any one area. This means that, unlike other NAAQS pollutants, attainment cannot be measured based on local pollution conditions alone. Moreover, while it has proven difficult to reach attainment for some of the existing NAAQS pollutants, it is apparent that it will take multiple decades, and require significant changes to many aspects of the economy as well as those of countries around the world, to reduce greenhouse gas concentrations to safe levels—regardless of how quickly emissions are reduced.

Relying on these distinguishing characteristics, some have argued that greenhouse gases are not suited for regulation under the NAAQS program.<sup>137</sup> The issues can be framed in many ways but come down to the same fundamental question: given the unique nature of greenhouse gases, can the EPA craft a greenhouse gas NAAQS which fits sufficiently within the NAAQS framework? Or, put another way, would a reviewing court conclude that a greenhouse gas NAAQS is so different from other NAAQS regulations—and so far-reaching—that Congress could not have intended the EPA to impose it under the existing statutory scheme?<sup>138</sup>

One way to approach that question would be to focus on the economic implications of a greenhouse gas NAAQS. Some recent Supreme Court precedents suggest that where an agency initiative will have major economic impacts, the Court will be skeptical that Congress authorized the agency to act unless the statutory language is unambiguous.<sup>139</sup> For example, in *FDA v. Brown & Williamson Tobacco Corp.*, the Court concluded that the Food and Drug Administration's power to regulate drugs did not encompass the power to regulate tobacco products, because the underlying statute did not make clear that Congress intended to give the Agency such sweeping authority.<sup>140</sup>

Similarly, in *URG* the Court rejected the EPA's effort to regulate greenhouse gases from certain sources under the Clean Air Act's Title V and PSD programs in

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137. *E.g.*, Oren, *Is The Clean Air Act At A Crossroads*, *supra* note 9, at 1246–50.

138. As the Supreme Court has characterized this question in the course of considering the scope of various statutes, Congress “does not, one might say, hide elephants in mouseholes.” *Bilski v. Kappos*, 561 U.S. 593, 645 (2010) (quoting *Whitman v. American Trucking Assns., Inc.*, 531 U.S. 457, 468 (2001)).

139. *See* Lisa Heinzerling, *The Power Canons*, 58 WM. & MARY L. REV. 1933 (2017) (discussing, *e.g.*, *King v. Burwell*, 135 S. Ct. 2480, 2488–89 (2015)).

140. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 147 (2000).

part on the grounds that “it would bring about an enormous and transformative expansion in the EPA’s regulatory authority without clear congressional authorization.”<sup>141</sup> The same charge is likely to be levied against a greenhouse gas NAAQS.

This line of attack should not be an impediment to a greenhouse gas NAAQS, for two reasons. First, unlike the programs at issue in *UARG*, the NAAQS program is designed precisely to address pollutants, like greenhouse gases and the other NAAQS listed pollutants, emitted from “numerous or diverse mobile or stationary sources.”<sup>142</sup> Congress thus plainly anticipated that through such regulation the EPA would, in fact, impact many activities. Moreover, by directing the EPA to take into account the “latest scientific knowledge” relevant to the “kind and extent of all identifiable effects of public health or welfare which may be expected from the presence of such pollutant in the ambient air,” 42 U.S.C. § 7408(a)(2), Congress also contemplated that there might be new economic effects where the science reveals a new air pollution threat. Accordingly, a greenhouse gas NAAQS would not expand the EPA’s role in the unanticipated manner the Court was concerned about in *UARG*.<sup>143</sup>

Second, the EPA’s regulation of the existing NAAQS already has far-reaching economic impacts. Indeed, the Supreme Court, in *Whitman v. American Trucking Assns., Inc.*, has rejected a claim that the EPA exceeded its power in setting NAAQS without taking cost considerations into account.<sup>144</sup>

*Whitman* concerned the EPA’s revised NAAQS for particulate matter and ozone. Petitioners claimed the EPA was required to consider economic implications when revising NAAQS, and that in any event the NAAQS program constituted an unconstitutional delegation of legislative authority to the EPA.<sup>145</sup> Rejecting both arguments, the Supreme Court unanimously found that the EPA may not consider costs in setting NAAQS, and that the Agency’s power to make NAAQS determinations raises no serious constitutional concerns.<sup>146</sup>

This outcome should resolve any similar attack on a greenhouse gas NAAQS. Thus, while establishing and implementing a NAAQS may have far-reaching economic implications, the Court’s ruling in *Whitman* makes clear that Congress gave the EPA precisely that power in the NAAQS program.<sup>147</sup>

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141. *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2444 (2014).

142. 42 U.S.C. § 7408(a)(1)(B) (1998).

143. It also bears emphasizing that EPA’s *failure* to impose a greenhouse gas NAAQS also has important economic implications, allowing ongoing emissions that inevitably contribute to the devastating economic harms caused by climate change. *See supra* at 243–45.

144. *Whitman v. American Trucking Ass’ns Inc.*, 531 U.S. 457, 471 (2001).

145. *Id.* As the Court explained, where a statute lacks any “intelligible principle” to guide agency action, the statute may be deemed to violate the non-delegation doctrine. *Id.* at 474.

146. *Id.*

147. Importantly, the Court noted that while economic factors are irrelevant to *establishing* NAAQS, the Act provides for “economic costs to be taken into account in *implementing* the air quality standards.” *Id.* at 467 (emphasis added); *see, e.g.*, 42 U.S.C. § 7502(a)(1)(A) (2017) (mandating that, in setting an attainment date, the EPA must consider “the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment”). Thus, for example, while

Moreover, it bears emphasizing that the EPA has been able to implement the existing NAAQS without adverse economic effects, and there is no reason to assume a greenhouse gas NAAQS would be different. To be sure, there will necessarily be large-scale economic adjustments as the nation moves away from a fossil fuel economy to one driven by renewables. However, the engines of economic growth in the energy industry—a significant source of greenhouse gas emissions—are the same renewable energy sources that will be central to a greenhouse gas NAAQS program. Solar jobs are growing faster than any other job sector, and wind and solar energy continue to account for the largest areas of new energy growth across the economy.<sup>148</sup> Moreover, existing technologies are available to make this transition rapidly, and once the development of new technologies—which the Act is expressly designed to foster<sup>149</sup>—are considered, as several studies have concluded, there is no reason that the transition to a 100% renewable energy economy cannot be achieved within several decades.<sup>150</sup>

At bottom, as the nation's experience with existing NAAQS has shown, the economy can and will adjust to the regulatory structure necessary to achieve a greenhouse gas NAAQS. The Act contains the necessary flexibility to ensure that the nation can move toward a NAAQS as expeditiously as possible, without

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SIPs must include, *inter alia*, “all reasonably available control measures as expeditiously as practicable,” including by imposing “reasonably available control technology” (“RACT”), *id.* § 7502(c), the EPA interprets RACT to allow states to reject measures that “would be economically or technologically infeasible,” 66 Fed. Reg. 58,607 (Jan. 3, 2001) (codified at 42 C.F.R. pt.52)—which means that economic factors would inevitably come into play in determining how far states must go in their SIPs to move toward attainment of a greenhouse gas NAAQS.

By contrast, in *Michigan v. EPA*, the Court found that a different Clean Air Act provision, providing for the EPA to regulate certain sources where “appropriate and necessary,” required consideration of cost factors in determining whether to regulate *at all*, regardless of the role such factors may play in implementing the standards, because, the Court found, unlike the terms that govern standard-setting under the NAAQS program, the phrase “‘appropriate and necessary’ requires at least some attention to cost.” 135 S. Ct. 2699, 2707 (2015).

148. See BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK (April 23, 2018), available at <https://www.bls.gov/ooh/fastest-growing.htm> (finding that “solar photovoltaic installers” and “wind turbine service technicians” will be the two fastest growing occupations through 2026); Erin Winick, *Five Jobs that are Set to Grow in 2018*, MIT TECH. REV. (Jan. 8, 2018), <https://www.technologyreview.com/s/609644/five-jobs-that-are-set-to-grow-in-2018/> (explaining that renewables “will be the fastest-growing professions by percentage over the next 10 years”).

149. See *Ethyl Corp. v. EPA*, 541 F.2d 1, 14 (D.C. Cir. 1976) (*en banc*) (explaining that the NAAQS program is designed to be “technology forcing”).

150. See, e.g., Jacobson et al., *100% Clean and Renewable Wind, Water, and Sunlight All-Sector Energy Roadmaps for 139 Countries of the World*, JOULE (2017) (setting out roadmaps that “envision 80% conversion by 2030 and 100% by 2050”); Richard J. Millar, et al., *Emission budgets and pathways consistent with limiting warming to 1.5 °C*, NATURE GEOSCIENCE (Sept. 18, 2017); Jacobson et al., *100% Clean and Renewable Wind, Water, and Sunlight (WWS) All-Sector Energy Roadmaps for the 50 United States*, 8 ENERGY ENV'T SCI. 2093, 2093 (2015); S. Pacala & R. Socolow, *Stabilization Wedges: Solving the Climate Problem for the Next 50 Years with Current Technologies*, 305 SCI. 968, 968 (2004).

hampering the nation's ability to continue to thrive as it has under all the existing NAAQS.

Nonetheless, it remains inevitable that the unique nature of greenhouse gases will raise issues that have not been addressed in prior NAAQS or the cases considering them. The first set of issues concerns how the EPA will formulate the NAAQS, and how to comply with the statutory requirement for attainment of a primary standard within ten years. As section 1 below explains, the fact that it will require multiple decades to stabilize the climate to the point where greenhouse gases no longer endanger public health and welfare is not an obstacle to a greenhouse gas NAAQS.

The second set of issues concerns how the EPA will address compliance with a greenhouse gas NAAQS, given the global nature of the climate change problem caused by greenhouse gas emissions. As detailed in section 2 below, particularly in light of the Paris Agreement, the work that has been done on climate budgets, and the Supreme Court's decision in *Homer*, the EPA can rely on existing Clean Air Act provisions that consider pollution that crosses state and national boundaries in designing a program whereby each state makes allocated reductions in emissions to contribute to greenhouse gas emission attainment goals.

## 1. The Time Period Necessary to Achieve Attainment is No Impediment to a Greenhouse Gas NAAQS

### *a. What a Greenhouse Gas NAAQS Could Look Like*

In order to address the various objections to a greenhouse gas NAAQS, one must begin by considering what such a NAAQS might look like. A NAAQS does not consist solely of a "level"—that is, a concentration of pollutants in the ambient air—but also an averaging time, and a "form." The "averaging time" specifies the span of time across which the amount of a pollutant in the air will be averaged.<sup>151</sup> For example, some NAAQS require a certain average annual level, while others require a certain average daily level.

The "form" of a NAAQS, in turn, describes how compliance with the level will be determined within the averaging time. The form often includes an element allowing for exceedance of the standard, for a certain number of times over the averaging period.<sup>152</sup>

Under existing NAAQS these elements are used in combination to address the specific health and welfare effects of different pollutants. For instance, different levels

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151. *E.g.*, *Am. Farm Bureau Fed'n v. EPA*, 559 F.3d 512, 516 (2009).

152. For example, the hourly nitrogen dioxide NAAQS allows exceedances as long as the 98<sup>th</sup> percentile of measured levels at each monitoring site in each year, averaged over three years, does not exceed the standard. 40 C.F.R. §§ 50.11, pt. 50 app. S(c)(2).

can be set in relation to different averaging times to capture the health and welfare effects associated with shorter- and longer-term exposures to specific pollutants.<sup>153</sup>

In contemplating a greenhouse gas NAAQS, a particularly useful model to consider would be the most recent NAAQS the EPA promulgated for lead. For that standard, based on the close relationship between lead levels in children and effects on IQ, the EPA determined that “an allowable airborne lead-related loss of two IQ points should be used to set the NAAQS standard.”<sup>154</sup> To achieve that objective, the EPA established a lead air exposure level, and then found that “the appropriate averaging time for the air lead level standard is a rolling three-month period with a maximum (not-to-be-exceeded) form evaluated over a period of three years.”<sup>155</sup>

For a greenhouse gas NAAQS, the endangerment finding, and the 2015 Paris Agreement, provide the EPA with the basis for determining the first part of the NAAQS. Thus, the EPA has already determined that greenhouse gases endanger public health and welfare, and in the Paris Agreement, the United States and the rest of the world’s nations agreed that to protect the planet from these dangers, humanity must hold “the global average temperature to well below 2° Celsius above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5° Celsius above pre-industrial levels . . . .”<sup>156</sup> Thus, just as the lead NAAQS sought to determine the necessary limitations on airborne lead exposure to avoid a loss of two IQ points, a greenhouse gas NAAQS would be set based on the limitations on greenhouse gases necessary to achieve no more than a 1.5° Celsius increase in temperatures.

#### *b. How a Greenhouse Gas NAAQS can be Formulated*

In order to translate a greenhouse gas NAAQS temperature objective into a greenhouse gas standard, the EPA will have to determine the target concentrations of greenhouse gases necessary to keep global temperatures below the target level—just as, with lead, the Agency had to find the level of airborne lead exposure that would keep IQ levels from dropping more than two IQ points. As a threshold matter, because current greenhouse gas concentration levels are far above what is necessary to stabilize the climate, it is inevitable that these standards must be set far *below* current levels, which will mean that the entire country will immediately be in “nonattainment”—that is, out of compliance with the standard.<sup>157</sup>

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153. See, e.g., National Ambient Air Quality Standards for Particulate Matter, 71 Fed. Reg. 61144, 6144 (Oct. 17, 2006) (setting different standards for fine particulate matter exposures over 24-hour and annual time periods).

154. See 73 Fed. Reg. 66964, 67005 (Nov. 12, 2008) (final lead NAAQS); Coalition of Battery Recyclers Ass’n v. EPA, 604 F.3d 613, 616 (D.C. Cir. 2010) (rejecting challenges to the standard).

155. 604 F.3d at 617.

156. UNFCCC Paris Agreement, art. 2, ¶ 1(a)

157. 42 U.S.C. § 7407(d)(1)(A) (emphasis added).



This status, in turn, would trigger the Act's Section 172 provisions for nonattainment areas, under which the EPA must establish an attainment date for the primary standard that may be "*no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.*"<sup>158</sup> The statute contains no similar deadline for the secondary standard.

In light of current greenhouse gas concentration levels, and the long-lived nature of greenhouse gases in the atmosphere, there are currently no measures the EPA could require that would achieve attainment for greenhouse gases on this ten-year primary standard timetable. This is because even if *emissions* of carbon dioxide and other long-lived pollutants were cut rapidly to zero, it would still take longer than ten years for *atmospheric concentrations* to fall to below the primary standard. Consequently, this statutory deadline for attainment has been the basis for one of the arguments against the suitability of greenhouse gases for NAAQS designation. In short, the argument goes, because the NAAQS program requires attainment in no more than ten years, and that cannot be achieved for greenhouse gases, the statute must not permit a greenhouse gas NAAQS.<sup>159</sup>

To the contrary, as the following subsections explain, this deadline is no impediment at all.<sup>160</sup>

*i. The EPA Could Design a Greenhouse Gas NAAQS that Meets the Deadline for a Primary Standard*

Although it will take longer than a decade to reach attainment for greenhouse gases, the EPA could design a greenhouse gas NAAQS that satisfies the requirements for a primary standard. Specifically, one option is for the EPA to rely on the "averaging" feature of a NAAQS, as the EPA has done for other pollutants.<sup>161</sup> Under this approach, while the EPA would set binding benchmarks to maximize reductions and insure "reasonable further progress" on a strict timetable toward attainment,<sup>162</sup> the final attainment level requisite to protect the public health might not be achieved for several decades or even longer.

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158. 42 U.S.C. § 7502(a)(2)(A) (emphasis added).

159. *E.g.*, Oren, *Is The Clean Air Act At A Crossroads*, *supra* note 9, at 1247.

160. In discussing the feasibility of a NAAQS in 2011, Rich Raiders questioned whether the public health effects of greenhouse gas concentrations at then-current levels were sufficient to allow the EPA to set attainment below those levels. Raiders, *supra* note 9, at 277–78. Whatever the import of that argument then, seven years later the EPA would have little difficulty finding current greenhouse gas concentration have concrete adverse public health impacts, given the mega-hurricanes, droughts, wildfires and heat waves that have become so common in the past few years. *See* U.S. GLOBAL CHANGE RESEARCH PROGRAM, CLIMATE SCIENCE SPECIAL REPORT, FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II), *supra* note 40.

161. *See supra* pp. 263–64 (discussing averaging for nitrogen oxides and lead).

162. *See* 42 U.S.C. §§ 7501(1); 7502(c)(2) (defining and applying reasonable further progress requirements).

For several existing NAAQS, the unique nature of the pollutants has led the EPA to measure attainment by considering average pollutant levels for as long as three years.<sup>163</sup> As has been done for other NAAQS, the three elements of a NAAQS—level, form and averaging time—could be used to structure a NAAQS reflecting the specific harm caused by climate pollutants.<sup>164</sup>

The averaging time for a greenhouse gas NAAQS today could reasonably span decades. Although this is a far longer averaging time than for other NAAQS pollutants, the approach may be appropriate given both the long-lived nature and effects of carbon dioxide and other climate pollutants, and the long-term strategies necessary to protect public health and welfare. Because the EPA has long tailored averaging times to the effects of particular pollutants, it would be within its authority to follow the same course with greenhouse gases, relying on a longer averaging time to reflect the necessarily slow atmospheric response of even aggressive steps to curb emissions of carbon dioxide and other long-lived pollutants.

Moreover, such an averaging time could be combined with a form that would comply with the Act's standard for attainment within ten years. In particular, the form could allow a certain number of decades of non-attainment over the long averaging period. If the resulting standard, for example, allowed for seventy years of non-attainment over an averaging time of one-hundred years, then so long as attainment has been achieved in year seventy and maintained for the following thirty years, states will have been in attainment over the entire period.

Assuming, for purposes of discussion, that the EPA determined that the appropriate attainment level is 350 parts-per-million (ppm) of GtCO<sub>2eq</sub>,<sup>165</sup> the Figure below shows what this might look like.

The challenge of such an approach, of course, would be that there would be no way to determine, in year ten, whether states had reached “attainment,” because that would only be quantifiable at the end of the averaging period. However, by establishing binding benchmarks over the averaging period, reflecting the greenhouse gas concentration targets that would need to be reached at, for example, each ten-year interval in order to achieve the ultimate standard, the EPA could

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163. See, e.g., National Ambient Air Quality Standards for Lead, 73 Fed. Reg. 66,964 (Nov. 12, 2008).

164. Because the existing endangerment finding concerns the six principal climate-changing pollutants, see 81 Fed. Reg. 54,434, 54,422 (Aug. 15, 2016), the simplest approach may be for the EPA to craft its NAAQS for the same group of pollutants. Alternatively, the EPA has also relied on an indicator pollutant as a surrogate for multiple pollutants, and might do so with CO<sub>2</sub> here. See Primary National Ambient Air Quality Standard for Sulfur Dioxide, 75 Fed. Reg. 35,520, 35,537 (June 22, 2010) (retaining SO<sub>x</sub> as indicator for all species of gaseous sulfur oxides).

165. This Article does not propose to resolve the appropriate level of the standard, which would be determined by the best available science. However, leading scientists have suggested that an appropriate level may be 350 ppm. See, e.g., James Hansen et al., *Ice Melt, Sea Level Rise and Superstorms: Evidence from Paleoclimate Data, Climate Modeling, and Modern Observations that 2 C Global Warming Could be Dangerous*, 16 ATMOS. CHEM. PHYS. 3761, 3801 (2016).



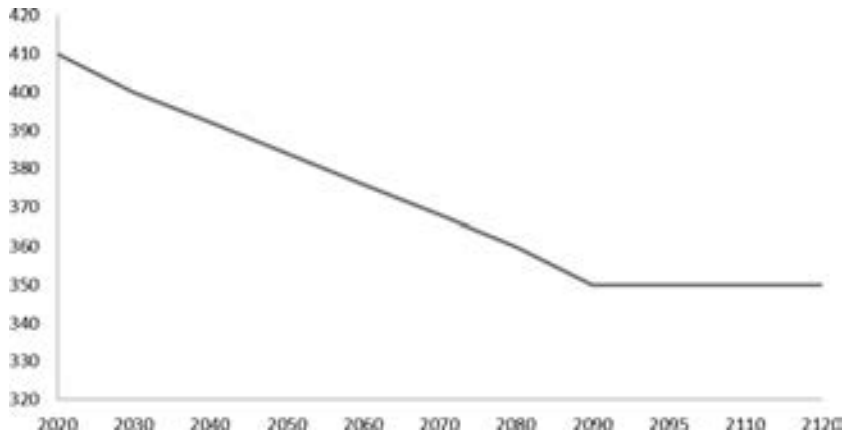


FIGURE 2 Potential Greenhouse Gas PPM Under a NAAQS Over The Next Century

ensure “reasonable further progress,”<sup>166</sup> “as expeditiously as practicable,”<sup>167</sup> towards the attainment goal. Thus, the EPA would model and establish shorter-term concentration targets, reflecting the emissions reductions necessary to ensure that the country remains on track toward the long-term concentration goal over the full averaging period.<sup>168</sup>

In sum, given that the EPA has some flexibility in setting a NAAQS, including the averaging and form elements, there is no reason that the requirement for attainment within ten years should stand in the way of a greenhouse gas NAAQS primary standard.

*ii. The EPA has Discretion to Establish a Secondary NAAQS for Greenhouse Gases that Will Not Be Fully Attained for Decades*

To be sure, the long-term averaging approach would be novel. However, even if a reviewing court were to find that the statute does not permit such a long averaging period for a primary standard, there would still be the secondary NAAQS. Once the EPA establishes air quality criteria, the Agency must establish not just primary standards necessary to protect public health, but also the *secondary* standards necessary to protect public welfare,<sup>169</sup> which is defined to expressly include effects on “weather, visibility, *and climate*.”<sup>170</sup>

166. See 42 U.S.C. §§ 7501(1); 7502(c)(2).

167. 42 U.S.C. § 7502(a)(2).

168. Of course, success on this path will require emission reductions not just in the United States, but around the world. The next section addresses that issue.

169. 42 U.S.C. § 7502(a)(2)(B).

170. 42 U.S.C. § 7602(h) (emphasis added).

Because the secondary standard does not contain a specific attainment deadline, such a standard for greenhouse gas emissions would be—relatively speaking—more straightforward. The EPA would issue standards that will satisfy the ultimate attainment goal and would determine a pathway toward that goal “as expeditiously as practicable,”<sup>171</sup> considering the emission reductions necessary for the United States to make an appropriate contribution to reducing worldwide emissions over time.

That leaves the question as to whether the EPA would have the authority to impose a secondary standard even if there were no method to appropriately craft a primary standard. Given how the Supreme Court addressed an analogous statutory interpretation question in *UARG v. EPA*,<sup>172</sup> the answer is yes. Thus, if the EPA establishes primary and secondary standards for greenhouse gases, even if a reviewing court were to determine that the primary standard is not allowable, that should still leave the secondary standard intact.<sup>173</sup>

*UARG* concerned the regulations the EPA crafted to address greenhouse gas emissions under the Act’s Title V and PSD permitting programs.<sup>174</sup> The Clean Air Act Section 302(j) defines “major” sources of air pollution to include any stationary source emitting more than 100 tons per year of “any air pollutant.”<sup>175</sup> The EPA had concluded that since the term “air pollutant” includes greenhouse gases, the Act requires the Agency to regulate these emissions from major sources.<sup>176</sup>

However, compared to other regulated pollutants, a far greater number of pollution sources emit greenhouse gases above the statutory threshold for regulation, and thus, according to the EPA, a literal application of the “major source” standard for greenhouse gas emissions would have encompassed *millions* of sources.<sup>177</sup> To address that regulatory burden, the EPA created much higher thresholds for greenhouse gases—the “tailoring rule”—on the grounds that applying the statute to greenhouse gases would have been otherwise unworkable.<sup>178</sup>

In *UARG*, the Supreme Court rejected this approach as an impermissible “rewriting of the statutory thresholds,” which must be done by Congress, not by

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171. Both the primary and secondary standards require EPA action “as expeditiously as practicable,” but it is the secondary standard that contains no firm deadline. 42 U.S.C. § 7502(a)(2).

172. *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014).

173. The only legislative history that appears to exist concerning secondary standards suggests Congress contemplated that they would be “generally more restrictive” than primary standards, which is consistent with Congress not providing a strict timetable for achieving them. See ENVIRONMENTAL PROTECTION AGENCY, *Legal Compilation: Air, Volume Three*, 1680 (1973).

174. *Utility Air Regulatory Group*, 134 S. Ct. 2427.

175. 42 U.S.C. § 7602(j) (2017). Similarly, for purposes of the PSD program, Section 169 defines the term to encompass any stationary source emitting more than 250 tons of “any air pollutant.” *Id.* § 7479 (1).

176. *Utility Air Regulatory Group*, 134 S. Ct. at 2437; see generally Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 (2010) (tailoring rule).

177. *Id.*

178. *Id.*

the EPA.<sup>179</sup> In the majority's view, the fact that the term "air pollutant" encompassed greenhouse gases under the "Act-wide definition" does not dictate whether the same term includes greenhouse gases under these programs.<sup>180</sup> And because the parties agreed that it would be an absurd result to read the statute as requiring permits for the millions of sources that would arguably be covered at the statutory thresholds, the Court found, Congress must not have intended the term "air pollutant" in the definition of "major sources" to encompass greenhouse gases.<sup>181</sup>

The question then remained as to whether the Court's reading of these specific provisions excluded the EPA from engaging in the regulation of greenhouse gases under these permit programs *at all*. In particular, Section 165(a)(4) of the PSD program requires that covered facilities must impose the "best available control technology [BACT] for each pollutant subject to regulation."<sup>182</sup> Petitioners argued that if the term "air pollutant" in the definition of "major source" did not include greenhouse gas emissions, the term "pollutant" in the BACT provision necessarily also excluded greenhouse gas emissions – a result which would mean that even if a plant were a "major source" due to emissions of *other* pollutants, it would not be subject to greenhouse gas PSD BACT requirements.<sup>183</sup>

However, just as the Court had rejected the EPA's effort to interpret the term "air pollutant" consistently throughout the Act, the Court also rejected the view that its conclusion about the proper reading of covered pollutants under the definition of a "major source" dictates the scope of the term throughout the PSD program.<sup>184</sup> Rather, the Court looked at *the specific provision at issue*, and concluded that, under the BACT provision, the EPA *could* reasonably interpret the requirement to impose BACT for "each pollutant subject to regulation under [the] Act"<sup>185</sup> to include greenhouse gas emissions, without any absurd result. Thus, with regard to sources that the EPA regulates as major sources due to their emissions of other pollutants, the Court found that the EPA can require those sources to be subject to BACT for the control of greenhouse gas emissions.<sup>186</sup>

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179. *Id.* at 2445–47.

180. *Id.* at 2439–41 ("Massachusetts does not strip EPA of authority to exclude greenhouse gases from the class of regulable air pollutants under other parts of the Act where their inclusion would be inconsistent with the statutory scheme").

181. *Id.*

182. 42 U.S.C. § 7475(a)(4) (2017).

183. *Utility Air Regulatory Group*, 134 S. Ct. at 2447; *see also* Brief for Petitioner, at 26, *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, (No. 12-1146). ("Regulation of carbon dioxide as an 'air pollutant' under the PSD program, therefore, is contrary to congressional intent and thus unlawful"); *id.* at 28 (specifically arguing that the term "pollutant" in the definition of BACT does not include greenhouse gases); *see also* *Utility Air Regulatory Group*, 134 S. Ct. at 2456 (Justice Alito, in dissent, arguing that if the term "pollutant" excludes greenhouse gases for purposes of defining "major sources," it should exclude greenhouse gases from these programs altogether).

184. *Utility Air Regulatory Group*, 134 S. Ct. at 2447–49.

185. 42 U.S.C. § 7475(a)(4).

186. *Utility Air Regulatory Group*, 134 S. Ct. at 2447–49.

Applying that reasoning here, even if a court were to conclude that the ten-year deadline for a primary standard indicates that Congress did not intend a primary standard for greenhouse gases—because, like the unachievable numeric limit at issue in *UARG*, there is no practical way to achieve that primary standard deadline—that would not resolve whether greenhouse gases can be regulated under the NAAQS program altogether. It would only resolve that the EPA may not impose a primary standard.

To be more precise, because Section 172(a)(2)(A) provides that “[t]he attainment date for an area designated nonattainment with respect to a *national primary ambient air quality standard*”<sup>187</sup> shall be no longer than ten years, this result would simply mean that, as in *UARG*, the obligation to impose a “national primary ambient air quality standard”—defined under the Act as the “air quality standards the attainment of which . . . are requisite to protect the public health”<sup>188</sup>—would not apply to greenhouse gases.

The question would then remain whether greenhouse gases can be regulated under other portions of this Clean Air Act program. And just as the Court in *UARG* found that these emissions can be regulated under the BACT provision, there is no impediment to their regulation under the NAAQS program through a secondary standard.

Indeed, Congress defined a “secondary ambient air quality standard” differently from a primary standard, providing that the term refers to the “level of air quality the attainment and maintenance of which . . . is requisite to protect the public welfare [which, again, includes the climate<sup>189</sup>] from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air.”<sup>190</sup> Following the reasoning in *UARG*, and given that the Act provides no specific deadline by which the EPA must require attainment for a secondary standard, there is no reason the term “air pollutant” in the context of a secondary standard could not include greenhouse gases, regardless of its application to a primary standard.<sup>191</sup>

In sum, just as the Court in *UARG* concluded the definition of the term “pollutant” can differ within different parts of the PSD program, there is no reason the definition could not similarly differ under the different parts of the NAAQS program—that is, the primary, as distinguished from the secondary standard. Furthermore, unlike the Tailoring Rule, where the Court found the EPA’s

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187. 42 U.S.C. § 7502(a)(2)(A) (emphasis added).

188. *Id.* § 7409(b)(1).

189. *Id.* § 7602(h).

190. *Id.* § 7409(b)(2).

191. See also Carolyn McNiven, *Using Severability Clauses To Solve The Attainment Deadline Dilemma In Environmental Statutes*, 80 CALIF. L. REV. 1255 (Oct. 1992) (arguing that to the extent an agency cannot reasonably comply with an attainment deadline, a reviewing Court should invoke the statute’s severability clause to invalidate that deadline); 42 U.S.C. § 7615 (“If any provision of this chapter . . . is held invalid . . . the remainder of this chapter shall not be affected thereby”).

reliance on a threshold to exclude certain sources from regulation to be impermissible in the absence of any indication that this is what Congress had in mind, here the primary and secondary standards are simply different forms of protection, set out in the statute itself, for regulating the *same* sources. Thus, the fact that Congress chose to direct the EPA to consider two different forms of protection indicates that even were a court to reject the promulgation of a primary standard in this instance, it would still remain within the EPA's authority to impose the secondary standard.

To be sure, a faithful implementation of even only a secondary standard would still require sweeping changes across the many sectors with significant greenhouse gas emissions. Consequently, opponents are likely to argue that, in light of *UARG* even this more limited approach would go beyond what Congress intended in the NAAQS program.

This argument will have no force. In particular, the problem in *UARG* was that the definition at issue—of a “major source”—could not be reasonably applied to greenhouse gases in light of the levels of pollution requiring regulation, and it was on that basis that the Court found the term “air pollutant” in the definition of “major source” did not include greenhouse gases.<sup>192</sup> In the NAAQS program, by contrast, Congress expressly provided that in setting a secondary standard, the EPA must determine the pollutant levels “requisite to protect the public welfare,” which Congress expressly defined as including “effects on . . . *climate*,”<sup>193</sup> and required the EPA to do so only “as expeditiously as practicable.”<sup>194</sup>

Thus, contrary to the situation in *UARG*, through the secondary standard Congress itself determined that the EPA must regulate pollutants—like greenhouse gases—causing adverse impacts on the climate. Given that the EPA has already determined that these pollutants are adversely impacting the climate (and thus public welfare), it will be well within the Agency's authority to impose a greenhouse gas NAAQS, which, the Court has also made clear, must be imposed irrespective of economic factors.<sup>195</sup> In sum, there would be no substantial argument that the EPA lacks the authority to regulate greenhouse gases under a secondary standard, irrespective of how the authority to impose a primary standard is resolved.

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In conclusion, the ten-year deadline for attainment of a primary NAAQS is not an obstacle to a greenhouse gas NAAQS. The EPA can design a greenhouse gas NAAQS with an average and form that complies with the ten-year primary standard. Alternatively, it may impose a secondary standard designed to reach attainment as expeditiously as possible.

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192. *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2445–47(2014).

193. 42 U.S.C. §§ 7409(b)(2); 7602(h) (emphasis added).

194. *Id.* § 7502(a)(2)(B).

195. *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 471(2001).

## 2. The Unique Nature of the SIPs That Will Address Greenhouse Gas Emissions Also Poses No Obstacle to a Greenhouse Gas NAAQS

### *A New Approach To The Greenhouse Gas Allocation Challenge: Brief Summary*

Critics have objected to a greenhouse gas NAAQS on the grounds that, unlike the existing NAAQS pollutants, greenhouse gases are well-mixed throughout the atmosphere—and thus no state, or even combination of states, can alone provide the necessary reductions in greenhouse gas concentrations in the atmosphere.

The Clean Air Act is as well-designed to address these pollutants as those already regulated. In particular, Section 110(2)(D) expressly instructs the EPA, in setting attainment objectives for states, to consider the role that the *other states* are playing in causing the same pollution problem. Indeed, in 2014 the Supreme Court approved a complicated apportionment scheme to address other air pollutants that cross state lines, finding the EPA’s approach an “efficient and equitable solution to the allocation problem.”<sup>1</sup> Similarly, the EPA can craft an efficient and equitable apportionment of greenhouse gas emission reductions among the states.

The Act also provides for the EPA to account for the pollution contribution emanating from *outside* the United States. Section 179B calls for the EPA to approve SIPs where the obstacle to a state achieving attainment is “emissions emanating from outside of the United States.” The 2015 Paris Agreement, and recent work on carbon budgets, allows the EPA to rely on Section 179B to determine overall United States contributions to greenhouse gas reductions.

Taken together, these provisions provide a roadmap for a greenhouse gas NAAQS. The road begins with a global carbon budget, equitably allocated among countries. The 2015 Paris Agreement and work on carbon budgets provide a framework for allocating the United States emissions budget, and the EPA would rely on Section 179B to carry over the requisite budget for purposes of setting the NAAQS. The road then moves to the states, where the EPA would equitably allocate the United States’ carbon budget. Under this approach, each state would ultimately be allocated a specific budget to achieve in its SIP, with all the standard SIP flexibility to achieve that budget on the provided timetable.

<sup>1</sup>EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584, 1607 (2014).

Another principal argument against a greenhouse gas NAAQS has been the claim that there is no reasonable approach to apportioning greenhouse gas emission reductions, given that emissions all over the world have the same impacts on

climate change and their well-mixed nature.<sup>196</sup> Developments over the past few years also address these concerns. *First*, with regard to international emissions, the 2015 Paris Agreement gives the EPA the framework to determine the greenhouse gas reductions necessary in the United States to achieve a greenhouse gas NAAQS. *Second*, once a United States carbon budget is established, the Supreme Court's 2014 decision in *Homer* demonstrates that the EPA has the necessary discretion to reasonably apportion emission reductions within each nonattainment area. Moreover, the significant work that went into developing the CPP provides a critical starting point from which the EPA can build in order to develop a NAAQS program that will address greenhouse gas emissions in the context of state SIPs.<sup>197</sup>

One obvious obstacle to a greenhouse gas NAAQS has been how the EPA would determine the levels of greenhouse gas emission reductions necessary to move towards attainment. With traditional NAAQS pollutants, which have more localized (even if cross-border) effects, the EPA can set attainment levels, and air quality agencies can develop SIPs that will achieve that end level of attainment (again, taking into account cross-border pollution) on the determined schedule. For greenhouse gases, of course, there is no obvious approach to prescribing what each state must do to move toward attainment.

The significant research that has been done in recent years on carbon budgets addresses this threshold concern. In particular, scientists have evaluated how much more greenhouse gases can be emitted into the atmosphere to avoid exceeding 1.5° Celsius of warming.<sup>198</sup> This body of research provides the EPA with a new tool on which to rely when evaluating the emission reductions necessary to move toward attainment goals.

As with all NAAQS, the EPA will be charged with determining those emission reductions based on the best available science.<sup>199</sup> For present purposes, it is sufficient to note that one recent scientific study concluded that to avoid exceeding 1.5° Celsius of warming, the remaining carbon budget is approximately 477

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196. See, e.g., *Regulating Greenhouse Gas Emissions Under the Clean Air Act*, 73 Fed. Reg. 44,354, 44,481 (July 30, 2008).

197. Any argument that greenhouse gases are unsuited for regulation simply because they have no localized effects is foreclosed both by *Massachusetts v. EPA*—which already rejected the argument that these pollutants may not be regulated under the Clean Air Act because their impacts are global—as well as by the EPA's endangerment finding, which determined that these pollutants are endangering public health and welfare. Final Rule, 74 Fed. Reg. 66,499 (2009) (codified at 40 C.F.R. ch. 1). Accordingly, there would be no impediment to the EPA relying on the well-established greenhouse gas concentration measuring station in Mona Loa, Hawaii to evaluate concentration levels for purposes of the NAAQS regime. See, Earth System Research Laboratory, Global Monitoring Division (available at <https://www.esrl.noaa.gov/gmd/obop/mlo/news.php>) (last visited Jan. 17, 2019).

198. See, e.g., Katarzyna B. Tokarska & Nathan P. Gillett, *Cumulative Carbon Emissions Budgets Consistent with 1.5C Global Warming*, 8 NATURE CLIMATE CHANGE 296 at Supplementary Table S1: 477 GtCO<sub>2</sub> from January 2016 onward.

199. And a reviewing court can reasonably be expected to be deferential to the EPA's judgments. See, e.g., *Coalition of Battery Recyclers Ass'n v. EPA*, 604 F.3d 613 (D.C. Cir. 2010).



billion tons, or approximately 13 years at current emissions levels.<sup>200</sup> This will provide the EPA with the requisite baseline to develop a greenhouse gas NAAQS.

*a. Clean Air Act Section 179B Calls on the EPA, in Considering SIPs, to Take Emissions from Outside the United States into Account, and the Paris Agreement Provides a Framework for Approaching That Task*

While determining a global carbon budget will provide the initial baseline from which to allocate carbon emission reductions, the obvious next step requires the EPA to determine how much of those reductions will come from the United States, which will in turn become the baseline from which to allocate reductions among states.<sup>201</sup>

The EPA's authority to establish a United States allocation derives from Clean Air Act Section 179B, in which Congress explicitly addressed the problem of taking pollution emitted from outside the country into account in the NAAQS program.<sup>202</sup> In particular, Section 179B expressly provides for the EPA to approve SIPs that would otherwise comply with the Act "but for emissions emanating from outside of the United States."<sup>203</sup> Thus, if there is a reasonable basis on which

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200. Tokarska & Gillett, *supra* note 198. Other studies have suggested the budget is significantly lower, or higher. Compare Nicholas J. Leach et al., *Current level and rate of warming determine emissions budgets under ambitious mitigation*, NATURE GEOSCIENCE (2018) (estimating remaining budget at 700 billion tons), with, e.g., Millar et al., *Emission budgets and pathways consistent with limiting warming to 1.5°C*, *supra* note 150; Joeri Rogelj, et al., *Scenarios Towards Limiting Global Mean Temperature Increase to Below 1.5°C*, 8 NATURE CLIMATE CHANGE 325 (2018). This Article does not propose a specific carbon budget, which must be based on the best science available to the EPA at the time it makes its decision, and will be subject to appropriate revision as the science advances. Rather, the legal question explored here is whether, once such a budget is established, the Act provides the EPA with the necessary tools to implement a greenhouse gas NAAQS by allocating appropriate budgets among the states.

201. The EPA will also need to account for non-anthropogenic sources of greenhouse gas emissions, as it does for other pollutants. See, e.g., National Air Ambient Quality Standards for Ozone, 73 Fed. Reg. 16,436, 16,443 note 13 (Mar. 29, 2008) (codified at 40 C.F.R. §§50.15-58) (setting the "Policy Relevant Background" for ozone).

202. 42 U.S.C. § 7509a(a).

203. *Id.* Skeptics could point to the title of the Section—"International border areas"—as evidence that Section 179B is only intended to apply to pollutants emitted from those countries that share a border with the United States. However, nothing in the plain language of the provision itself provides such a limitation, and in such cases the title of a section does not circumscribe its application. See, e.g., *Lapina v. Williams*, 232 U.S. 78, 92 (1917) ("[I]t is only in a doubtful case that the title of an act can control the meaning of the enacting clauses . . ."). Moreover, in his April, 2018 Presidential Memorandum on implementing the NAAQS program, President Trump also specifically directed that, in addressing the extent to which "international transport of criteria pollutants" impact each "State's ability to meet and attain NAAQS," the EPA must consider, "where appropriate, emissions that may emanate from any location outside the United States, including emissions from Asia," and also including "future trends in pollution from foreign sources . . ." Promoting Domestic Manufacturing and Job Creation - Policies and Procedures Related to Implementation of Air Quality Standards, 83 Fed. Reg. 16,761 (April 16, 2018) (emphasis added). The Memorandum thus reinforces the conclusion that Section 179B applies to pollution sources everywhere, not just from United States border countries.



the EPA can determine the levels of emissions from outside the United States that are the obstacle to attainment for greenhouse gases, they can be taken into account in establishing a greenhouse gas NAAQS.<sup>204</sup>

Five years ago, it was considerably more difficult to articulate how the EPA could make these determinations. First, how would the EPA determine what portion of the carbon budget the United States would be limited to? Second, on what basis could the EPA presume that other countries would take the steps necessary to reduce their own emissions in the manner required to stay within the overall budget, and thus move the world toward attainment?

The carbon budget work discussed above, taken together with the 2015 Paris Agreement, significantly advance the feasibility of such allocations and assumptions.

To achieve the Paris Agreement's objectives, countries established "nationally determined contributions" ("NDCs") reflecting their commitments to necessary emission reductions.<sup>205</sup> To date, the initial NDCs are insufficient to achieve the Paris Agreement's goals. Thus, for example, one analysis indicates that the current United States NDC, which is "reducing its greenhouse gas emissions by 26%–28% below its 2005 level in 2025 and to make best efforts to reduce its emissions by 28%,"<sup>206</sup> is only about one-fifth of the reductions required for the country to make the necessary contribution to reducing greenhouse gas emissions.<sup>207</sup> Collectively, the world's existing NDCs are far below the requisite reductions required to achieve the Paris Agreement's emission temperature increase targets.<sup>208</sup>

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204. One scholar has argued that Section 179B could be wielded as a shield by states to force approval of SIPs that do not reduce greenhouse gas emissions, because states could show that emissions outside the United States are responsible for ongoing nonattainment. Oren, *When Must EPA Set Ambient Air Quality Standards? Looking Back at NRDC v. Train*, *supra* note 9, at 159; Oren, *Is The Clean Air Act At A Crossroads*, *supra* note 9, at 1248. However, to invoke this provision a state must show it is complying with "all the requirements applicable to it" *except for the attainment deadline*, and thus it provides no loophole at all. 42 U.S.C. § 7509a(a)(1).

205. UNFCCC Paris Agreement, art. 3. While the Trump Administration has announced its intention to withdraw from the Paris Agreement, the United States will remain in the Agreement at least until after the next Presidential election. UNFCCC Paris Agreement, art. 28. ¶¶ 1–2. In any event, even if the United States withdraws from the Agreement, it will remain in effect for the other countries of the world, and thus the EPA can continue to rely on it to project the reductions in greenhouse gases from other countries that will be necessary to move the world toward a greenhouse gas NAAQS.

206. *See Intended Nationally Determined Contributions (INDCs) as Communicated by Parties*, UN FRAMEWORK CONVENTION ON CLIMATE CHANGE, <http://www4.unfccc.int/Submissions/INDC/Published%20Documents/United%20States%20of%20America/1/U.S.%20Cover%20Note%20INDC%20and%20Accompanying%20Information.pdf>.

207. *See Equity and The Ambition Ratchet, Towards a Meaningful Dialogue in 2018: Report* (Nov. 2017) at 3.

208. *See United Nations Environment Programme, The Emissions Gap Report 2018*, at 14 (Nov. 27, 2018) (explaining that the "current NDCs imply global warming of about 3°C by 2100, with warming continuing afterwards").

However, the Paris Agreement’s “ratchet mechanism” expressly contemplates the submission of increasingly ambitious NDCs, in order to limit warming to the temperature target set out in the Agreement.<sup>209</sup> Thus, given the temperature targets of the Paris Agreement and the commitment of the world’s nations to achieving those targets, the EPA could reasonably assume that countries around the world will, over time, take the necessary steps to reduce emissions sufficiently to move toward the attainment objective.<sup>210</sup>

The Paris Agreement and the work on climate budgets thus provide the EPA with multiple avenues for determining the domestic carbon budget it could rely on as a baseline to establish state NAAQS, as discussed in the next subsection. For example, under the most ambitious approach, the EPA could look at all other nations’ NDCs at the time it conducts its analysis and determine that the United States carbon budget should be the *remaining* emissions that would be available to reach attainment, assuming those NDCs are not further strengthened. This would have the benefit of not requiring more ambitious NDCs in order to achieve attainment, but, depending on the level of the NDCs at the time the EPA undertakes this evaluation, such an approach may leave an unworkably small emissions budget for the United States.

Alternatively, the EPA might set a greenhouse gas NAAQS by relying on the United States’ *then-current* NDC as the country’s emission goal, if that NDC were science-based and appropriate for reaching the temperature targets set out in the Paris Agreement. Under this scenario, when the United States submits increasingly ambitious NDCs, as expressly contemplated by the Paris Agreement, the NAAQS would be adjusted to reflect the latest emission reduction goals. The strength of this approach would be that, if the NDC were science-based and sufficient, the EPA would not need to determine the United States carbon budget, and instead would incorporate the NDC determined by the government as a whole.

As a third alternative, rather than relying on the NDCs, the EPA could rely on the carbon budget research work itself to determine the levels of emissions reduction the United States must achieve to reach attainment, assuming each country reduces its emissions to the levels required to meet the Paris Agreement’s goals,

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209. The first updated NDCs are due by 2020, and every five years thereafter. UNFCCC Paris Agreement, art. 4.

210. There is certainly precedent for an agency to base its decision-making on the fruits of an international agreement. *See, e.g.,* *Defenders of Wildlife v. Gutierrez*, 532 F.3d 913 (D.C. Cir. 2008). Indeed, in *Gutierrez*, the agency at issue, the Coast Guard, argued that it not only had the *authority* to defer to the International Maritime Organization’s (“IMO”) determinations regarding appropriate locations for shipping lanes, it was *required* to conform its decisions with those made by the IMO. *Id.* at 924. Although the D.C. Circuit rejected the Coast Guard’s specific argument, and instead concluded that the Agency retained discretion whether to conform its decisions with those made by the IMO, there was not even a dispute as to whether the Agency had the discretion to *choose* to do so. *Id.*; *see also, e.g.,* *Sluss v. U.S. Dept. of Justice*, 898 F.3d 1242 (D.C. Cir. 2018) (evaluating agency compliance with an international agreement).

as each party to the agreement has committed to do. As noted, present research suggests the United States budget to limit temperature rise to well below 2° Celsius averages 25 GtCO<sub>2</sub>eq to 57 GtCO<sub>2</sub>eq.<sup>211</sup> To even meet even these more moderate goals, United States global emissions would need to peak by 2020, decline sharply thereafter, and typically reach zero net emissions by 2050.<sup>212</sup>

This Article does not argue that the EPA should pursue any particular approach to the allocation question in order to set a baseline carbon budget for the United States. Rather, these options merely serve to illustrate that, in light of the research on carbon budgets and the 2015 Paris Agreement, the EPA can reasonably rely on Section 179B to determine the level of greenhouse gas reductions that will collectively be required by the United States, by finding that the states will reach attainment “but for emissions emanating from outside of the United States.”<sup>213</sup> The next section considers how that U.S carbon budget can reasonably be allocated *among* the states.<sup>214</sup>

*b. The Supreme Court’s Decision in Homer Demonstrates that the EPA Can Meaningfully Apportion Greenhouse Gas Reductions Within the United States, and the Clean Power Plan Provides an Initial Structure from Which the EPA Can Frame a Greenhouse Gas NAAQS*

Once the EPA has determined the level of emission reductions the United States will need to achieve to move towards attainment, the remaining task will be to apportion those reduction obligations among the states. Because each state’s greenhouse gas emissions are well-mixed in the atmosphere, it is more challenging to consider how that apportionment might be carried out for a greenhouse gas NAAQS than for the existing NAAQS pollutants. However, two developments in the past five years suggest a possible path forward on this issue: the Supreme Court’s 2014 decision in *Homer*, and the CPP.

First, the Supreme Court explained in *Homer* that, in crafting the Clean Air Act, Congress recognized that “[a]ir pollution is transient, heedless of state boundaries.”<sup>215</sup> Section 110(2)(D) of the Act addresses this problem, providing that state SIPs must contain provisions to prohibit emissions that would “contribute

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211. See Equity and The Ambition Ratchet, *supra* note 207, at 3; Schleussner, et al., *Science and Policy Characteristics of the Paris Agreement Temperature Goal*, 6 NATURE CLIMATE CHANGE 827 (2016).

212. Rogelj et al., *supra* note 200.

213. 42 U.S.C. § 7509a(a)(2).

214. The EPA could also take emissions from other countries into account by invoking Clean Air Act Section 115, which authorizes the EPA to require states to address emissions that contribute to air pollution endangering public health or welfare in other countries, if the other countries provide the United States with reciprocal protections. See Burger, et al., *Legal Pathways To Reducing Greenhouse Gas Emissions Under Section 115 of the Clean Air Act*, 28 GEO. ENVTL. L. REV. 359 (2016). Indeed, the EPA might fruitfully combine an initiative to develop a greenhouse gas NAAQS with a separate, but complementary, regulation under Section 115.

215. EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584, 1593 (2014).

significantly to nonattainment in . . . any other state . . . .”<sup>216</sup> This “Good Neighbors” Provision addresses how emissions *among* the states may impact each state’s ability to implement its respective SIPs.

*Homer*, the Supreme Court’s most recent case addressing cross-state air pollution, concerned how the EPA could appropriately address upwind pollution traveling into downwind states. Relying on the Good Neighbors Provision, the EPA crafted a regulation — called the Transport Rule — under which each upwind state meaningfully contributing to this problem would be required to implement cost-effective pollution controls. In particular, under the EPA’s two-step approach, the Agency first identifies which states contribute at least 1% of one of the NAAQS pollutants to a downwind state. Then, under step two, the EPA determines the cost level at which the contributing states, taken together, would sufficiently reduce their contributions, and crafts state emission budgets based on those results.<sup>217</sup>

The D.C. Circuit concluded that the EPA’s approach was impermissible because, among other concerns, it did not limit emission controls within each state to the state’s *proportional* contribution to pollution in downwind states. According to the majority opinion, the Agency had exceeded its discretion by focusing on the most cost-effective pollution reduction measures, rather than limiting the regulations to what was necessary to reduce each state’s emissions based solely on those contributions.<sup>218</sup>

In a 6-2 decision, the Supreme Court disagreed. Noting that the Good Neighbors Provision is aimed at eliminating “‘amounts’ of pollution that ‘contribute significantly to nonattainment’ in downwind states,” the Court explained that the statute “calls upon the agency to address a thorny causation problem: How should the EPA allocate among multiple contributing upwind States responsibility for a downwind State’s excess pollution?”<sup>219</sup> Because the EPA’s approach to addressing that thorny problem—by limiting regulation to those states contributing more than 1% of a NAAQS pollutant to a downwind state, and then, among those qualifying states, eliminating emissions based on cost-thresholds that apply uniformly across states and sources—was “an efficient and equitable solution to the allocation problem,” the Court determined that it was a permissible approach under the statute.<sup>220</sup>

Here, the EPA could similarly craft an “efficient and equitable solution to the allocation problem” as regards greenhouse gas emissions, by determining the most cost-effective means to reduce those emissions, and using those results to

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216. 42 U.S.C. § 7410(a)(2)(D)(i)(I).

217. See Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 Fed. Reg. 48,208 (Aug. 8, 2011).

218. See *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *rev’d*, 572 U.S. 489 (2014).

219. *Homer*, 134 S. Ct. at 1602–04.

220. *Id.* at 1606–07.

develop state emission budgets. *Homer* thus supports the proposition that the EPA should have sufficient discretion to apportion greenhouse gas emission reductions among the states in a manner that will equitably address each state's contribution to greenhouse gas nonattainment.

To be sure, the Court in *Homer* explained that the EPA may not require any one state to reduce pollution "more than the amount necessary to achieve attainment in every downwind state to which it is linked."<sup>221</sup> Subsequently, the D.C. Circuit ruled in favor of several as-applied challenges to the Transport Rule, finding that the manner in which parts of the Rule allocated pollution-reduction obligations meant that several states were impermissibly required to reduce pollution below the levels necessary to ensure attainment in linked downwind states.<sup>222</sup>

The uniform nature of greenhouse gases makes this limitation irrelevant to a greenhouse gas NAAQS. In particular, all states will be uniformly linked to each other, as each state will be contributing to *all* states' greenhouse gas NAAQS exceedances.<sup>223</sup> Thus, the disproportionate burdens which were at issue in *Homer* would not be present for a greenhouse gas NAAQS.

*Second*, the CPP, which is premised on modifications to SIPs in carrying out compliance, as provided in Section 111(d), could also provide a useful framework for developing the SIP approaches necessary to implement a greenhouse gas NAAQS.<sup>224</sup> In the CPP, the EPA began by determining the emissions reductions that could be achieved by implementing the Best System of Emission Reduction ("BSER") for power plants, as required by Clean Air Act Section 111.<sup>225</sup> Through that analysis, the EPA calculated the overall emission reductions that each state must achieve, without dictating that those reductions come from the power plants themselves.<sup>226</sup>

For a greenhouse gas NAAQS, the EPA's analysis at this step of the process would be to determine the overall annual greenhouse gas emissions coming from all sectors in the United States, and to compare that to the United States carbon budget. Comparing those values will allow the EPA to determine the overall level of emission reductions necessary.<sup>227</sup>

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221. *Id.* at 1608.

222. *EME Homer Generation L.P v. EPA*, 795 F.3d 118 (D.C. Cir. 2015).

223. *See also, e.g., Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000) (upholding the EPA's cross-state pollution rule for nitrogen oxides).

224. *See Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Sources*, 80 Fed. Reg. 64,661, 64,664 (2015).

225. *See id.*

226. *Id.*

227. For example, if the United States carbon budget were 50 billion tons of CO<sub>2</sub>, and annual total baseline emissions were 5 billion tons, then the analysis would start by assuming that in the coming years total emissions would need to be reduced sufficiently from that baseline to reach zero emissions before exceeding the 50-billion-ton threshold.

For the CPP, in the next step of the process the EPA provided each state with “broad flexibility” as to the manner in which it would achieve the required emission reductions.<sup>228</sup> In particular, although a state could simply choose to incorporate the plant-specific performance requirements that the EPA had determined to be BSER, the state could alternatively adopt a different approach, so long as it would achieve the same “state-specific CO<sub>2</sub> goals.”<sup>229</sup> Thus, critically for comparing the CPP to a greenhouse gas NAAQS, the CPP provided states “considerable flexibility” to determine both how to best allocate the reduction goals and the timeframes for implementation.<sup>230</sup> The CPP also included programs to speed adoption of renewable energy and energy efficiency measures that could help states achieve their emission reduction goals.<sup>231</sup>

Many of these elements can be appropriately modified for a greenhouse gas NAAQS. Thus, for example, applying the same approach as in *Homer*, the EPA might determine the most cost-effective thresholds of measures that can be taken to sufficiently reduce the country’s emissions to stay within the carbon budget. Applying these measures across sectors in each state, the EPA could then reasonably allocate emission reduction targets among states.

Once that is accomplished, and relying on the CPP model, the EPA could then provide each state with flexibility in how it will achieve the required emission reductions, along with federal programs—such as renewable energy and energy efficiency initiatives—that will assist the states in meeting their goals. Under that approach, as with the CPP, each state would ultimately be permitted to develop the SIP measures most appropriate for that state, as long as those measures will accomplish the required emission reductions. And, with each state taking the required measures, the United States would be reducing its emissions as necessary to make its appropriate contribution towards overall attainment goals.<sup>232</sup>

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Putting these pieces together, then, it is apparent that the Act contains the necessary provisions to design and implement a NAAQS for greenhouse gas emissions. *First*, the EPA would add greenhouse gases to the list of criteria air pollutants, establish air quality criteria, and set primary and secondary standards. *Second*, the EPA would—either through reliance on carbon budgeting research or through some other appropriate method—rely on Section 179B to determine the United States’ contribution toward greenhouse gas emission reductions over

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228. 80 Fed. Reg. at 64,665.

229. *Id.*

230. *Id.* at 64,666.

231. *Id.* at 64,664–65.

232. To be sure, the legality of the CPP has not been definitively resolved. However, as noted, CPP opponents themselves have argued that the program’s broad flexibility is more suited to a NAAQS. See *supra* note 64.



time. And *third*, the EPA would rely on Section 110(d) to reasonably apportion those domestic emissions among the states.

### III. THE CLEAN AIR ACT'S SECTION 111(D) EXCLUSION, AND CONCERNS ABOUT CONGRESSIONAL BACKLASH, SHOULD NOT STAND IN THE WAY OF A GREENHOUSE GAS NAAQS

The final concerns with a greenhouse gas NAAQS are whether such regulations would preclude action on greenhouse gases under Clean Air Act Section 111(d) and whether, if the EPA were to move forward, Congress might amend the Clean Air Act to remove the EPA's power to regulate.<sup>233</sup> As this Part explains, neither of these concerns should be an obstacle to the EPA finally proceeding with greenhouse gas NAAQS regulations.

#### A. THE RELATIONSHIP BETWEEN A NAAQS AND REGULATION UNDER SECTION 111(D) IS NOT AN OBSTACLE TO A GREENHOUSE GAS NAAQS

Clean Air Act Section 111 provides that, upon listing a stationary source category, and identifying new source standards, the EPA must also set such standards for existing sources in that category under Section 111(d), "for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under" Section 108—the NAAQS program.<sup>234</sup> The CPP was promulgated pursuant to this Clean Air Act authority.

When the EPA was promulgating the CPP, it was natural to ask whether, in light of this restrictive language prohibiting Section 111(d) regulations for NAAQS pollutants, a greenhouse gas NAAQS would preclude the CPP. Years after the CPP was issued, however, that concern has lost much of its force, for several reasons. *First*, while a pre-existing greenhouse gas NAAQS may have precluded the CPP, the most reasonable reading of Section 111(d) is that imposing such a NAAQS now would have no effect on a *pre-existing* regulation under Section 111(d). In particular, the exclusion prevents a Section 111(d) rule for pollutants as to which "air quality criteria *have . . . been issued*" previously, or which have been "*included* on [the] list" of NAAQS.<sup>235</sup> Thus, the plain language suggests that if a Section 111(d) Rule precedes a NAAQS, the 111(d) Rule would not be excluded by the NAAQS.

Moreover, any argument that a new greenhouse gas NAAQS could somehow eliminate a *pre-existing* Section 111(d) regulation for greenhouse gases like the CPP would be inconsistent with both the text of this provision and the logic behind it. The text addresses the EPA's *mandate* to issue Section 111(d) regulations, confining that mandate to pollutants "for which [NAAQS] have not been

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233. Mullins & Enion, *supra* note 9, at 10884–85.

234. 42 U.S.C. § 7411(d).

235. *Id.* (emphasis added).

issued or which is not included on [the] list” of criteria air pollutants.<sup>236</sup> Nothing in that language states, or even suggests, that if a NAAQS is issued *after* a Section 111(d) regulation, the Section 111(d) regulation somehow disappears.

It is also unclear how Congress would have intended such a result to work. Most importantly, under the NAAQS program, the addition of a pollutant to the list of criteria air pollutants and issuance of air quality criteria are only the first steps towards the control of such a pollutant—which does not occur until SIPs are approved several years later. Thus, reading this language to *immediately cancel* a Section 111(d) regulation as soon as a pollutant is listed under Section 108 would mean that Congress intended a significant *gap* in the regulation of the same pollutants that are so severe that they are found to endanger public health and welfare. Nothing in the text or legislative history suggests such a counter-intuitive result. Rather, at minimum the Section 111(d) regulation would remain in effect until the NAAQS regulation is implemented through SIP approvals.

*Second*, while it will take several years to implement the SIPs for a greenhouse gas NAAQS, the many years of delay surrounding the CPP—which has been stayed since shortly after it was finalized—demonstrate that there is no basis to assume that regulating under the Section 111 sector-by-sector approach can bring about emission reductions more quickly. Indeed, the Trump Administration is now working to repeal the CPP or at least significantly weaken it.<sup>237</sup> Although there will be strong grounds to challenge these regulatory roll-back efforts, the salient point is that these developments demonstrate there are no longer likely to be significant timing gains to be had from regulating these sources’ greenhouse gas emissions through the CPP rather than a NAAQS.

*Finally*—and perhaps most importantly—once SIPs that include greenhouse gas emissions are in effect, *regulations under Section 111(d) should no longer be necessary*, because the sources that would have become subject to 111(d) source regulations will all be regulated under the NAAQS program. Thus, although a greenhouse gas NAAQS may preclude the EPA from issuing new Section 111(d) rules for those pollutants following the NAAQS promulgation—the most important aspects of those standards would simply be incorporated into the SIPs.<sup>238</sup>

That leaves the uncertain question as to the outcome of the CPP. If the current EPA finalizes the proposed repeal<sup>239</sup> and/or completes its replacement rule

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236. *Id.*

237. See Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 82 Fed. Reg. 48,035 (Oct. 16, 2017); Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, 83 Fed. Reg. 44,746 (Aug. 31, 2018).

238. See Mullins & Enion, *supra* note 9, at 10885–86.

239. 82 Fed. Reg. 48,035 (Oct. 16, 2017) (repeal proposal).



limited to modest improvements of the plants themselves,<sup>240</sup> states and environmental advocacy groups are likely to challenge the new regulation as contrary to the Act. If they prevail, the appropriate relief could be for the Court to reinstate the CPP by vacating the repeal—in which case, the CPP would still precede a greenhouse gas NAAQS, and remain in place.<sup>241</sup> On the other hand, if such a challenge were to fail, then it would be even clearer that there is no meaningful trade-off to be made between the CPP and a greenhouse gas NAAQS.

To be sure, these outcomes remain uncertain, and regardless of the 111(d) exclusion, as a practical matter a new administration may find itself faced with a choice between re-starting the process of regulating stationary sources on a sector-by-sector level under Section 111(d) or proceeding with a greenhouse gas NAAQS. For all the reasons discussed herein, however, the argument that the EPA should avoid a greenhouse gas NAAQS to clear a path for more timely and efficient regulation of greenhouse gases from stationary sources under Section 111 has far less force than it may have had years ago.

For all these reasons, concerns about the impacts of a greenhouse gas NAAQS on the EPA's power to regulate these emissions under Section 111(d) should not stand in the way of the EPA finally moving forward.

B. CONCERNS THAT CONGRESS COULD REMOVE THE EPA'S AUTHORITY TO REGULATE GREENHOUSE GASES UNDER THE NAAQS PROGRAM DOES NOT COUNSEL AGAINST THE AGENCY FINALLY MOVING FORWARD

A last major objection posed to a greenhouse gas NAAQS concerns the possibility that Congress might amend the statute to expressly preclude the EPA's authority to issue a NAAQS for greenhouse gases. The recent election results, which have given Democrats control of the House of Representatives, certainly alleviates that concern in the short-term. More importantly, however, because the decade-long uncertainty about the scope of the EPA's power poses obstacles to *other* efforts to address the climate crisis, this concern also should also not deter the EPA from moving forward.<sup>242</sup>

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240. Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, 83 Fed. Reg. 44,746 (Aug. 31, 2018).

241. *See, e.g.*, In re Polar Bear Endangered Species Act Listing, 818 F. Supp. 2d 214, 239 (D.D.C. 2011) (concluding that “the effect of vacating the final Special Rule for the polar bear will be to reinstate the rule previously in force”); *Oceana, Inc. v. Evans*, 389 F. Supp. 2d 4, 7 n. 2 (D.D.C. 2005) (“numerous courts of appeals have stated that the effect of vacating a rule is generally to reinstate the rule previously in force”); *Georgetown Univ. Hospital v. Bowen*, 821 F.2d 750, 757 (D.C. Cir. 1987) (“this circuit has previously held that the effect of invalidating an Agency rule is to reinstat[e] the rules previously in force”)(citations omitted).

242. Of course, a larger concern could be whether Congress might remove the EPA's authority over greenhouse gases altogether. However, given that such efforts failed while Republicans controlled both Houses of Congress and the Presidency, that outcome is extremely unlikely. *See, e.g.*, Stopping EPA Overreach Act of 2017, H.R. 637 (115th Cong.) (February 2017 bill that would have amended the Clean

For example, numerous municipalities have recently filed tort suits seeking to hold fossil fuel companies financially responsible for the harms their activities are causing through rising sea levels, severe weather, and other consequences of climate change.<sup>243</sup> Defendants have been seeking dismissal of these cases by arguing, *inter alia*, that plaintiffs' claims are barred in light of the EPA's authority to regulate greenhouse gases under the Clean Air Act, and two cases have already been dismissed largely on that basis.<sup>244</sup>

To be sure, in 2011 the Supreme Court ruled that federal nuisance claims against power plants over greenhouse gas emissions are displaced by Clean Air Act Section 111, because that provision expressly provides for the EPA to regulate those plants' greenhouse gas emissions (which it did with the CPP).<sup>245</sup> However, in more recent cases defendants and their allies are arguing that even entities that are *not* regulated under Section 111 remain immune from tort liability, on the grounds that any and all such regulation of greenhouse gases must be done by the EPA in light of its comprehensive power under the Clean Air Act.<sup>246</sup>

If it turns out the EPA cannot enact a greenhouse gas NAAQS, these defenses to climate change tort suits will have less force. Accordingly, resolving the scope of the EPA's power to regulate under a NAAQS—even if it meant Congress expressly removing that power—may be an improvement over the current *status quo*, under which the *possibility* of a greenhouse gas NAAQS theoretically exists, but the EPA refuses to act.

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Air Act to exclude carbon dioxide, water vapor, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride pollution from the scope of the Act).

243. See, e.g., *Richmond v. Chevron*, No. c18-00055 (Super Ct. Cal. Jan. 22, 2018); Patrick Parenteau, *US governments are suing the world's largest oil companies for making climate change a 'public nuisance'*, Business Insider, July 18, 2018, <https://perma.cc/44LA-GQMQ>.

244. See *Oakland v. BP*, 325 F.Supp.3d 1017, (N.D. Cal. June 25, 2018); *City of New York v. BP*, 325 F. Supp. 3d 466 (S.D.N.Y. July 19, 2018).

245. *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011).

246. Thus, in these decisions, courts are painting a much broader brush than in *AEP*, finding that claims against other entities are also preempted given the Clean Air Act's broad scope. See *Oakland*, 325 F.Supp.3d 1017, 1025 (granting motions to dismiss against fossil fuel companies on several grounds, including that "plaintiffs' claims require a balancing of policy concerns—including the harmful effects of greenhouse gas emissions, our industrialized society's dependence on fossil fuels, and national security," and concluding that, through the Clean Air Act, "Congress entrusted such complex balancing to the EPA in the first instance, in combination with state regulators") (citations omitted); *City of New York*, 325 F. Supp. 3d 466 (similarly dismissing action based on Clean Air Act displacement); see also Brief of Indiana and 11 other States in *King County v. B.P.*, No. 18-758RSL (W.D. Wash. Oct. 3, 2018) (arguing that the political question doctrine precludes review of greenhouse gas tort claims because of the comprehensive nature of the Clean Air Act, including the NAAQS program); accord Brief of the United States in *Juliana v. United States*, No. 15-1517 (D. Or. Oct. 5, 2018) at 9 (in litigation under the Public Trust Doctrine to force federal agencies to take action to reduce greenhouse gas emissions, Defendants argue that a "[t]rial would force the government to address climate policy not through APA procedures and other Agency actions authorized by statutes such as the Clean Air Act, but instead through a judicially-supervised and as-yet unknown process imposed by this Court." (emphasis added)).

Similarly, opponents of greenhouse gas regulation under other provisions of the Clean Air Act have referred to the EPA's unutilized authority to impose a greenhouse gas NAAQS to object to addressing the climate crisis with other tools in the Act itself. For example, in seeking to restrict the EPA's authority to address greenhouse gas emissions from aircraft, opponents have argued that the EPA cannot act because the EPA has not acted to regulate greenhouse gases under the NAAQS program.<sup>247</sup>

Accordingly, the current *status quo* arguably provides the worst of all worlds: no greenhouse gas NAAQS, but the outstanding possibility of such regulations being used to oppose *other* regulatory efforts.

In short, it is painfully clear—more than ten years after the Supreme Court established greenhouse gases are an air pollutant that the Clean Air Act is designed to address—that the fear of legislative change should not delay action to harness the Act's strongest tool to fight the largest air pollution threat facing the nation and the world. Indeed, given how close humanity has come to the tipping point where the worst effects of climate change simply cannot be forestalled,<sup>248</sup> it matters less and less with each passing year whether Congress removes a power that the EPA refuses to invoke.

#### CONCLUSION

At bottom, although the outcome may be uncertain, when the EPA returns to its science-based mission in a new administration, it will be time to act on a greenhouse gas NAAQS. The worst outcomes—be it a legislative removal of the EPA's authority, a court ruling that the EPA has no power to act, or any other outcome that does not actually result in the outcome sought—will be no worse than the current *status quo*, and can only provide guidance for what comes next. The world simply cannot wait another decade to resolve any remaining questions about this crucial EPA power.

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247. See, e.g., Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare, 81 Fed. Reg. at 54,438 (endangerment finding for aircraft, summarizing arguments made by opponents relying on NAAQS). As another example, when the D.C. Circuit rejected the EPA's effort to regulate hydrofluorocarbons based on their adverse climate change impacts, the Court specifically relied on the EPA's authority under the NAAQS program as a basis to restrict the Agency's authority to act under Clean Air Act Section 612, 42 U.S.C. § 7671k. See *Mexichem Fluor, Inc. v. EPA*, 866 F.3d 451, 460 (D.C. Cir. 2017). Indeed, as noted, see *supra* note 64, even in the CPP litigation industry opponents and their state allies relied on the NAAQS program in support of their argument that Congress did not intend to allow the EPA to rely on Section 111(d) to require generation-shifting or other measures that go beyond the fence-line of the power plants themselves—suggesting that these are the kinds of measures that could only be imposed under the NAAQS program. See *State of West Virginia v. EPA*, No. 15-1363, Brief of Petitioners at 54–56 (Apr. 22, 2016).

248. See IPCC [Intergovernmental Panel on Climate Change], *Global Warming of 1.5°C, an IPCC special report*, <http://www.ipcc.ch/report/sr15/>.

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

EXXON MOBIL CORPORATION,

Petitioner-Plaintiff,

v.

SANTA BARBARA COUNTY BOARD  
OF SUPERVISORS,

Respondent-Defendant,

v.

ENVIRONMENTAL DEFENSE  
CENTER; GET OIL OUT!; SANTA  
BARBARA COUNTY ACTION  
NETWORK; SIERRA CLUB;  
SURFRIDER FOUNDATION; CENTER  
FOR BIOLOGICAL DIVERSITY; and  
WISHTOYO FOUNDATION,

Defendant-Intervenors.

Case No. CV 22-3225-DMG (MRWx)

**ORDER RE CROSS-MOTIONS FOR  
SUMMARY JUDGMENT [33] [34] [44]**

1 This case seeks reversal of a decision by Respondent-Defendant Santa Barbara  
2 County Board of Supervisors (“the County” or “the Board”) to deny an interim trucking  
3 permit sought by Respondent-Defendant Exxon Mobil Corporation (“Exxon Mobil” or  
4 “Exxon”) to transport oil inland from three of its offshore platforms until a pipeline  
5 becomes available.

6 Before the Court are three cross-motions for summary judgment (“MSJs”), brought  
7 by Defendant-Intervenor non-governmental organizations (“NGOs” or “Intervenors”)  
8 Environmental Defense Center, Get Oil Out!, Santa Barbara County Action Network,  
9 Sierra Club, Surfrider Foundation, Center for Biological Diversity, and Wishtoyo  
10 Foundation [Doc. # 33-1 (“NGO MSJ”)]; the Board [Doc. # 34-1 (“Board MSJ”)]; and  
11 Exxon Mobil [Doc. # 44-1 (“Exxon MSJ”)]. Exxon’s MSJ also contains its Opposition to  
12 the NGO MSJ and Board MSJ. The County and NGOs filed omnibus Oppositions to  
13 Exxon’s MSJ and Reply Briefs in support of their own MSJ. [Doc. # 46 (“Board Reply”),  
14 47 (“NGO Reply”).] Exxon also filed a Reply. [Doc. # 48 (“Exxon Reply”).]

15 Pursuant to the parties’ proposed bifurcated schedule which was ordered by the  
16 Court [Doc. ## 16, 21], these cross-motions for summary judgment solely address the  
17 Complaint’s first cause of action for a writ of mandate pursuant to California Code of Civil  
18 Procedure section 1094.5. [Doc. ## 33, 34, 44.] The Court held a hearing on the motions  
19 on September 22, 2023. For the following reasons, the Court **DENIES** Exxon’s MSJ and  
20 **GRANTS** the Board’s and Intervenors’ respective MSJs.

21  
22 **I.**  
23 **FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

24 **A. Santa Ynez Unit**

25 In 1987, the County approved Exxon Mobil’s Development Plan for its Santa Ynez  
26 Unit (“SYU”). *See generally* Conditions of Approval, Admin. Record (“A.R.”) 30841–

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27 <sup>1</sup> The facts in this section are drawn from the Administrative Record, except where otherwise  
28 indicated. The Court has reviewed the entire record, but only discusses the facts that are necessary to or  
affect its analysis.

1 922 (Vol. 67 at 41–Vol. 68 at 49) [Doc. # 28].<sup>2</sup> The SYU contains three offshore platforms  
2 in the Santa Barbara Channel and some onshore facilities, including the Las Flores Canyon  
3 processing plant (“LFC”), as well as infrastructure to allow transportation of the oil to  
4 refineries. *See* Executive Summary, Revised Final Suppl. Environmental Impact Report  
5 (“Revised Final SEIR”), A.R. 14802 (Vol. 37 at 633). The 1987 Conditions of Approval  
6 for the original Permit state:

7 All oil processed by ExxonMobil’s oil treatment facility shall be transported from  
8 the facility and the County by pipeline in a manner consistent with the Santa Barbara  
9 County Local Coastal Plan Policy 6-8. Transportation by a mode other than pipeline  
10 may be permitted only in accordance with Coastal Zoning Ordinance Section 35-  
11 154.5(i), applicable Local Coastal Plan policies and Control Measure R-12 of the  
Air Quality Attainment Plan, to the extent it is applicable.

12 Conditions of Approval, A.R. 30865 (Vol. 67 at 65).

13 Until 2015, Exxon used two pipelines to transport the oil out of the County, Lines  
14 901 and 903, but both were shut down after Line 901 ruptured in May 2015 and spilled  
15 142,000 gallons of oil into the ocean near Refugio State Beach. *See* Planning &  
16 Development Letter to County (1st), A.R. 14548 (Vol. 37 at 379); Sept. 8, 2021 Staff  
17 Report, A.R. 14580 (Vol. 37 at 411).

18 In response, Exxon shut down SYU production in June 2015 and implemented  
19 preservation plans for its facilities. Sept. 8, 2021 Staff Report, A.R. 14581 (Vol. 37 at  
20 412). After initially denying Exxon’s application to do so, the County granted it an  
21 emergency permit in February 2016, allowing it to transport its inventory of 400,000  
22 barrels of crude oil via approximately 2,500 trucks. *Id.*, A.R. 14580–81 (Vol. 37 at 411–  
23 12). This “de-inventory” process was successfully completed without incident. *Id.*, A.R.  
24 14581 (Vol. 37 at 412). In or about August 2017, Plains All American, LLC (“Plains”),  
25 which owned Lines 901 and 903 until 2023, submitted an application to the County to  
26 replace the pipelines. *Id.*, A.R. 14582 (Vol. 37 at 413); Exxon MSJ at 7 n.2. Exxon

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27 <sup>2</sup> All citations to the A.R. herein will have the following format: Bates Citation (Volume Number  
28 at CM/ECF Page Number). All other citations to the docket will refer to the page numbers inserted by the  
CM/ECF system.

1 estimates that it spends tens of millions of dollars to maintain the facilities and pays the  
2 County more than \$1 million in taxes annually while SYU is shut down. Sept. 8, 2021  
3 Staff Report, A.R. 14639 (Vol. 37 at 470).

#### 4 **B. Interim Trucking Plan**

5 On September 22, 2017, Exxon Mobil applied to the County to allow for trucking  
6 from LFC to local refineries while the new pipelines were being constructed (the “Interim  
7 Trucking Plan”), which was estimated to take four to seven years after the Plan’s approval.  
8 Sept. 8, 2021 Staff Report, A.R. 14567 (Vol. 37 at 398); *see* Interim Trucking Plan  
9 Application, A.R. 29885–92 (Vol. 65 at 140–46).

10 Under the Interim Trucking Plan, Exxon Mobil initially proposed to transport  
11 approximately 11,000 barrels of crude oil each day from LFC to either the Phillips 66 Santa  
12 Maria Pump Station (“SMPS”) near the City of Santa Maria, or to the Pentland Terminal  
13 in Kern County (“Pentland”). Interim Trucking Plan Application, A.R. 29889, 29891,  
14 29903 (Vol. 65 at 143, 145, 157); Executive Summary, Revised Final SEIR, A.R. 14805  
15 (Vol. 37 at 636). The trucking would occur seven days per week, 24-hours per day, with  
16 no more than 70 trucks leaving the facility within a 24-hour period. *Id.*, A.R. 29891 (Vol.  
17 65 at 145). The Interim Trucking Plan would only be in effect for seven years, or until a  
18 pipeline was operational. *Id.*, A.R. 29903–04 (Vol. 37 at 157–58).

19 The County found the Interim Trucking Plan Application complete on February 20,  
20 2018, and determined it was subject to environmental review under the California  
21 Environmental Quality Act (“CEQA”). Revised Final SEIR, A.R. 14845 (Vol. 37 at 676).  
22 Accordingly, the County prepared a Notice of Preparation (“NOP”) for the Interim  
23 Trucking Plan and solicited comments throughout a 30-day comment period from June to  
24 July 2018. *Id.* The County issued a Draft SEIR on April 12, 2019, with a public comment  
25 period that ran through June 4, 2019. *Id.* A public meeting on the Draft SEIR was held on  
26 May 6, 2019. *Id.* After considering the public’s input, the County released a Proposed  
27 Final SEIR in July 2020, along with a Staff Report that recommended approval of a  
28 modified project eliminating Pentland as a receiver site, requiring Exxon to solely truck to



1 SMPS. *Id.*; July 22, 2020 Staff Report, A.R. 26641, 26694–95 (Vol. 60 at 615, 668–69);  
2 *see generally* July 22, 2020 Staff Report, A.R. 26640–836 (Vol. 60 at 614–810).

### 3 **C. Shutdown of Phillips 66 Facility**

4 In August 2020, Phillips 66 announced that it would be shutting down the SMPS.  
5 *Id.*, A.R. 14843 (Vol. 37 at 674). Hearings on the Interim Trucking Plan were scheduled  
6 to begin in September 2020, but were put on hold pending review of the impact of this  
7 announcement. *Id.*, A.R. 14845 (Vol. 37 at 676); *see also* Letter to County Planning  
8 Commission, A.R. 26639 (Vol. 60 at 613).

9 The County determined that a Revised Final SEIR should be prepared that addressed  
10 the future shutdown of the SMPS, since it was likely to occur during the lifetime of the  
11 Interim Trucking Plan. *Id.*, A.R. 14846 (Vol. 37 at 677).

### 12 **D. Modified Interim Trucking Plan**

13 In August 2021, the County issued its Revised Final SEIR, which contemplated the  
14 eventual closure of the SMPS facility. *See generally* A.R. 14787–851 (Vol. 37 at 618–Vol.  
15 41 at 148). The Revised Final SEIR identified one “significant unavoidable adverse  
16 impact[,]” categorized as a “Class I” impact, which “cannot be effectively avoided or  
17 mitigated.” Revised Final SEIR, A.R. 14584–85, 14811–12 (Vol. 37 at 415–16, 642–43).  
18 The identified impact was “an offsite accidental spill of crude oil from a truck accident that  
19 has the potential to impact sensitive resources including biological, cultural, and water  
20 resources.” *Id.*

21 Following completion of the Revised Final SEIR, County Staff issued a Staff Report  
22 to the Planning Commission, dated September 8, 2021, recommending approval of a  
23 modified version of the Interim Trucking Plan (the “Modified Plan”). Sept. 8, 2021 Staff  
24 Report, A.R. 14582 (Vol. 37 at 413). Under the Modified Plan, there would be no trucking  
25 during heavy rain periods and Pentland Terminal would not be a main receiver site for the  
26 duration of SMPS’s normal operations, since it had previously determined that trucking  
27 only to SMPS would alleviate the risk of a severe oil spill entering a waterway. Sept. 8,  
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1 2021 Staff Report, A.R. 14571 (Vol. 37 at 402); SEIR Revision Letter, A.R. 26828 (Vol.  
2 60 at 802).

3 **E. Planning Commission and County Board of Supervisors Review**

4 The Planning Commission held a hearing on the Modified Plan on September 29,  
5 2021, at which time its Staff recommended conditional approval. Certified Tr. of Sept. 29,  
6 2021 Planning Commission Hrg. (“Sept. 29, 2021 Tr.”), A.R. 26388–591 (Vol. 60 at 363–  
7 565). After that hearing, the Planning Commission continued the item to November 3,  
8 2021, and directed Staff to return with draft findings to deny the Modified Plan. Sept. 29,  
9 2021 Planning Commission Meeting Marked Agenda, A.R. 26386 (Vol. 60 at 360). On  
10 November 3, 2021, the Planning Commission recommended by a 3-2 vote that the Board  
11 make the findings for denial. Certified Tr. of Nov. 3, 2021 Planning Commission Meeting  
12 (“Nov. 3, 2021 Tr.”), A.R. 26365 (Vol. 60 at 339).

13 The Board held a hearing on March 8, 2022, to consider the Planning Commission’s  
14 recommendation of denial. *See* Minute Ord. re Mar. 8, 2022 Board of Supervisors Hrg.,  
15 A.R. 000014–16 (Vol. 1 at 34–36); *see also generally* Certified Tr. of Mar. 8, 2022 Board  
16 of Supervisors Meeting (“Mar. 8, 2022 Tr.”), A.R. 000043–193 (Vol. 1 at 63–213). After  
17 considering the evidence presented, the Board denied the Modified Plan by a 3-2 vote on  
18 the basis that it could not make the requisite findings to approve the Modified Plan. Minute  
19 Ord. re Mar. 8, 2022 Board of Supervisors Hrg., A.R. 000016 (Vol. 1 at 36). In doing so,  
20 the Board adopted findings for denial. *Id.*

21 Specifically, the Board moved to make required findings for denial of the Modified  
22 Plan pursuant to section 35.82.080.E.1 of the County Land Use and Development Code  
23 (“LUDC”) and CZO section 35-174.5, determine that denial of the Modified Plan is exempt  
24 from CEQA pursuant to CEQA Guidelines Section 15270(a), and deny the Modified Plan.  
25 *See* County Action Letter to Exxon Mobil (“Action Letter”), A.R. 000006–13 (Vol. 1 at  
26 26–33). The legally-required findings the Board found it could not support were: (1)  
27 “Streets and highways will be adequate and properly designed to carry the type and  
28 quantity of traffic generated by the proposed use” and (2) “The proposed project will not

1 be detrimental to the comfort, convenience, general welfare, health, and safety of the  
2 neighborhood and will not be incompatible with the surrounding area.” *Id.*, A.R. 000011–  
3 12 (Vol. 1 at 31–32).

4 **F. Exxon Mobil Files Suit**

5 On March 11, 2022, Exxon Mobil filed the instant lawsuit against the Board,  
6 challenging its decision to deny a permit for the Modified Plan. [Doc. # 1.] On November  
7 1, 2022, the Court granted the NGOs’ Motion to Intervene. [Doc. # 25.] These cross-MSJs  
8 seek summary adjudication of the Complaint’s first cause of action, a petition for a writ of  
9 mandate pursuant to California Code of Civil Procedure section 1094.5.

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11 **II.**  
12 **LEGAL STANDARD**

13 Summary judgment should be granted “if the movant shows that there is no genuine  
14 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
15 Fed. R. Civ. P. 56(a); *accord Wash. Mut. Inc. v. United States*, 636 F.3d 1207, 1216 (9th  
16 Cir. 2011). Material facts are those that may affect the outcome of the case. *Nat’l Ass’n*  
17 *of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1147 (9th Cir. 2012) (citing  
18 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A dispute is genuine “if the  
19 evidence is such that a reasonable jury could return a verdict for the nonmoving party.”  
20 *Anderson*, 477 U.S. at 248.

21 In an action challenging the final decision of an administrative agency, “the Court  
22 does not utilize the standard analysis for determining whether a genuine issue of material  
23 fact exists.” *California RSA No. 4 v. Madera Cnty.*, 332 F. Supp. 2d 1291, 1301 (E.D. Cal.  
24 2003). Instead, courts must determine “whether or not as a matter of law the evidence in  
25 the administrative record permitted the agency to make the decision it did.” *Id.* (quoting  
26 *In Occidental Engineering Co. v. INS*, 753 F.2d 766, 769–70 (9th Cir. 1985)); *see also* Cal.  
27 Civ. Proc. Code § 1094.5(b).

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### III. DISCUSSION

#### A. Standard of Review

As a threshold matter, the parties dispute which standard of review the Court should apply to its review of the administrative record in this case. *See* Board MSJ at 13–16; Exxon MSJ at 17–22; NGO MSJ at 17–25.

To resolve this dispute, the Court must determine whether the Board’s denial of Exxon’s Modified Interim Trucking Plan Application interfered with a “fundamental vested right.” *See Bixby v. Pierno*, 4 Cal. 3d 130, 144 (1971). In *Bixby*, the California Supreme Court explained “[i]f the decision of an administrative agency will substantially affect such a right, the trial court not only examines the administrative record for errors of law but also exercises its independent judgment upon the evidence disclosed in a limited trial de novo.” *Id.* at 143.

When addressing whether a right is “vested” for an administrative writ of mandate, California courts use the term “in a nontechnical sense to denote a right already possessed or legitimately acquired.” *Harlow v. Carleson*, 16 Cal. 3d 731, 735 (1976) (internal quotation marks and citations omitted).

As for whether the right is “fundamental” for this purpose, *Bixby* also instructs that this determination must be decided “on a case-by-case basis,” considering not just “the economic aspect of it, but the effect of it in human terms and the importance of it to the individual in the life situation.” 4 Cal. 3d at 144–45; *see also Interstate Brands v. Unemployment Ins. Appeals Bd.*, 26 Cal. 3d 770, 780 (1980) (“[A] right may be deemed fundamental within the meaning of *Bixby* on either or both of two bases: (1) the character and quality of its economic aspect; (2) the character and quality of its human aspect.”). This distinction is intended to “preclude” the “extinction or abridgement” of such important rights by an administrative body, “lacking in judicial power.” *301 Ocean Ave. Corp. v. Santa Monica Rent Control Bd.*, 228 Cal. App. 3d 1548, 1556 (1991) (emphasis deleted) (citations omitted).

1 Exxon contends that the Board’s decision in this case interfered with its fundamental  
2 vested right to operate its SYU facilities, and thus the Court should apply its “independent  
3 judgment,” *i.e.*, *de novo* review of the record. Exxon MSJ at 17; Exxon Reply at 6–11.  
4 The Board and NGOs characterize the issue more narrowly and maintain that the  
5 “substantial evidence” standard applies because Exxon does not have a fundamental,  
6 vested right to truck oil from its SYU facilities. *See* Board MSJ at 13–16; NGO MSJ at  
7 17–25; Board Reply at 8–14; NGO Reply at 13–16.

8 Overall, courts rarely uphold the application of the independent judgment test in  
9 judicial review of land use decisions by administrative agencies such as this one. *Amerco*  
10 *Real Est. Co. v. City of W. Sacramento*, 224 Cal. App. 4th 778, 784 (2014) (citing *Goat*  
11 *Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 1526 (1992)); *see also Acad. of*  
12 *Our Lady of Peace v. City of San Diego*, 835 F. Supp. 2d 895, 903 (S.D. Cal. 2011) (“Cases  
13 involving abuse of discretion charges in the area of land use regulation do not involve  
14 fundamental vested rights.”) (quoting *Topanga Ass’n. for a Scenic Community v. County*  
15 *of Los Angeles*, 214 Cal. App. 3d 1348, 1356 n.4 (1989)). Even so, Exxon urges the Court  
16 to do so here.

### 17 **1. Exxon’s Right to Truck Oil is Not Vested**

18 Exxon’s claim to a vested right stems from the County’s grant of a Final  
19 Development Plan Permit in 1987 to build and operate the SYU facilities. Exxon MSJ at  
20 7–8. According to Exxon, the Permit gave it a vested right “to restart and operate SYU at  
21 any time without the County’s permission,” which the Board’s withholding of permission  
22 to truck oil renders hollow. Exxon MSJ at 7, 17, 19; *see also* Mar. 8, 2022 Tr., A.R. 146  
23 (Vol. 1 at 166) (“ExxonMobil currently has a vested right to operate the asset. Our facilities  
24 require no additional permits to restart. And we’re just here for the temporary trucking  
25 permit.”). Additionally, Exxon has invested significant work and funds into the SYU  
26 facilities over the years. Revised Final SEIR, A.R. 14848 (Vol. 37 at 679).

27 The Conditions of Approval for the 1987 Permit state that Exxon’s oil “shall” be  
28 transported by pipeline “in a manner consistent with the Santa Barbara County Local

1 Coastal Plan Policy 6-8,” and that “[t]ransportation by a mode other than pipeline may be  
2 permitted only in accordance with Coastal Zoning Ordinance Section 35-154.5(i),  
3 applicable Local Coastal Plan policies and Control Measure R-12 of the Air Quality  
4 Attainment Plan, to the extent it is applicable.” Conditions of Approval, A.R. 30865 (Vol.  
5 67 at 65).

6 For its part, the County Local Coastal Plan Policy 6-8—adopted in 1982 and  
7 republished in June 2019—expresses a policy preference that “[t]he County should assure  
8 that [oil] producers have access to competitive markets” and allows for other methods of  
9 oil transportation “[u]ntil pipelines become available.”<sup>3</sup> County Local Coastal Plan Policy  
10 6-8 at 5–6 [Doc. # 45-1]. The Coastal Zoning Ordinance (“CZO”) section 35-154.5(i)  
11 provides several necessary conditions for oil transportation by a mode other than pipeline,  
12 including “[w]hen the environmental impacts of the alternative transportation mode are  
13 required to be mitigated to the maximum extent feasible,” and when a shipper has  
14 committed to using a pipeline in the future whenever feasible. [Doc. # 45-2 at 5–6].

15 Under California law, there is a common law doctrine allowing a landowner or  
16 builder to claim a “vested right,” estopping the government from preventing development  
17 pursuant to a land use permit even when there is an intervening change of law. This is not  
18 the same use of “vested” at issue when interpreting Section 1094.5. The term “vested” for  
19 the purpose of determining standard of review of an administrative writ of mandate is used  
20 in a more general, “nontechnical” sense, to merely mean a preexisting right. *Harlow*, 16  
21 Cal. 3d at 375. These terms refer to similar concepts but are not doctrinally identical. *See*  
22 *McCarthy v. Cal. Tahoe Reg’l Plan. Agency*, 129 Cal. App. 3d 222, 230 (1982).

23 To claim a common law “vested right” for development on a particular piece of land,  
24 a builder must show that the business “has performed substantial work and incurred

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<sup>3</sup> Both Exxon Mobil and the Board submitted requests for judicial notice (“RJNs”) in support of  
their motions, seeking judicial notice of the County Coastal Plan Policy 6-8, CZO §§ 35-174 and 35-154,  
and LUDC §§ 35.52.060.B.10 and 35.82.080.E.1(c). [Doc. ## 35, 45.] All exhibits to both RJNs are  
official government documents and ordinances of uncontested authenticity, which are properly the subject  
of judicial notice. *See* Fed. R. Evid. 201; *Santa Monica Food Not Bombs v. City of Santa Monica*, 450  
F.3d 1022, 1025 n.2 (9th Cir. 2006). The Court therefore **GRANTS** both RJNs in full.

1 substantial liabilities in good faith reliance upon a permit issued by the government.” See  
2 NGO Reply at 9 n.1 (quoting *Avco Cmty. Devs., Inc. v. S. Coast Reg’l Comm’n*, 17 Cal. 3d  
3 785, 791 (1976)); see also *Russ Bldg. P’ship v. City and Cnty. of San Francisco*, 44 Cal.  
4 3d 839, 854 (1988) (traditional vested rights are “no greater than those specifically granted”  
5 via permit). In general, this right can be claimed by an individual or entity that already  
6 possesses the right to do that which it seeks. See *Harlow*, 16 Cal. 3d at 735 (“[T]his court  
7 has distinguished generally between applicants and recipients in determining whether a  
8 right is ‘vested’ for the limited purpose of determining the applicable scope of review.”).  
9 Exxon argues that it has done so here, but its estoppel arguments do not extend to its desired  
10 *modification* of its permit. See *Russ Bldg.*, 44 Cal. 3d at 845 (common law “vested rights”  
11 do not exceed the scope of “those specifically granted” by permit).

12 But Exxon does not have a vested right to transport SYU oil by truck per the  
13 Modified Plan that would trigger “independent judgment” review. The original Conditions  
14 of Approval of its Permit do not guarantee transportation by a mode other than pipeline—  
15 only that non-pipeline transport “*may* be permitted” if in accordance with the applicable  
16 local ordinances and policies. A.R. 30865 (Vol. 67 at 65) (emphasis added). The Permit  
17 makes clear that Exxon must obtain a new or modified permit if it seeks to modify the  
18 Permit’s material terms. Conditions of Approval, A.R. 30851 (Vol. 67 at 51). The general  
19 statements in the 1987 Permit, Coastal Plan Policy, CZO, and other County documents are  
20 not the “functional equivalent” of a permit to transport oil by truck in this specific manner,  
21 nor could those statements be taken to override the Board’s discretion to consider  
22 alternative modes of transport. See, e.g., *Toigo v. Town of Ross*, 70 Cal. App. 4th 309, 324  
23 (1998) (non-binding policy documents or government actions encouraging development  
24 do not bestow a vested right or give rise to an estoppel theory regardless of the property  
25 owner’s detrimental reliance on them).

26 When the California Supreme Court stated that “the independent judgment standard  
27 of review is proper when a developer seeks review of a Commission decision denying a  
28 vested rights claim,” in *Halaco Engineering Co. v. South Central Coast Regional*



1 *Company*, it referred to the common law definition of vested rights. 42 Cal. 3d 52, 57  
2 (1986); *cf.* Cal. Pub. Res. Code § 30608 (defining “vested rights” pursuant to California  
3 Coastal Act). *Halaco* involved a scrap metal plant that had been continuously operating  
4 pursuant to a building permit containing information about its “settling pond” and “waste  
5 disposal” area since its first approval in 1970. *Id.* at 58. After the state’s adoption in 1972  
6 of the California Coastal Act, the plant applied to the Regional Commission to approve a  
7 claim of vested rights to continue using the settling pond and waste disposal area—  
8 explicitly contained in its previously-obtained permit—without applying for an additional  
9 permit after the change in law. *Id.* at 59. The Regional Commission partially rejected  
10 *Halaco*’s claim, and the trial court applied the independent judgment standard to overturn  
11 the Regional Commission’s determination. *Id.* at 57. On review, the California Supreme  
12 Court determined that, considering the Coastal Act’s specific statutory scheme, the trial  
13 court’s independent judgment review was appropriate. *Id.* at 66. Since Exxon’s existing  
14 permit does not guarantee it the right to transport oil by truck, *Halaco* is distinguishable.

15 The parties do not dispute that Exxon has a vested right to operate the SYU facilities  
16 to extract oil and transport it via pipeline per its 1987 Permit, but the Court does not  
17 consider that vested right to encompass its Modified Interim Trucking Plan in light of the  
18 permissive language in the County’s policies, plans, and ordinances.

19 **2. Exxon’s Permit Modification Does Not Implicate a Fundamental Right**

20 Exxon’s right to transport oil by truck is neither vested nor “fundamental” under  
21 *Bixby*. Exxon relies heavily on *Goat Hill Tavern* to argue that the right is fundamental,  
22 and thus independent judgment review applies.

23 In this case, unlike *Goat Hill Tavern*, Exxon seeks a permit to change the current  
24 status quo, SYU’s dormancy. 6 Cal. App. 4th at 1529–30; Executive Summary, Revised  
25 Final SEIR, A.R. 14802 (Vol. 37 at 633) (“The proposed Project would allow for the  
26 phased *restart* of the SYU facilities . . . until a pipeline alternative becomes available.”)  
27 (emphasis added); *see* County Reply at 14 (“Exxon has presented no evidence that denial  
28 of the interim trucking plan would do anything more than leave Exxon in the same position

1 it has been in since the pipeline rupture.”). In *Goat Hill Tavern*, the owner sought to renew  
2 a permit he already possessed, to continue his ongoing, “pre-existing use of his property.”  
3 *Id.* at 1529. The agency’s decision would change the status quo and put the tavern out of  
4 business completely, and part of his investment was undertaken specifically at the city’s  
5 behest. *Id.* at 1529–30. Here, it is not the denial of the Interim Trucking Plan Application  
6 that has caused Exxon to cease oil production in its SYU facilities, but an unrelated,  
7 intervening event (the shuttering of the pipelines). *See* NGO Reply at 12. This situation  
8 is also unlike the facts of *Termo*, which involved a Supervisor’s Order directly ordering  
9 plaintiff’s oil wells to be plugged and abandoned and that all production facilities be  
10 removed. *Cf. The Termo Co. v. Luther*, 169 Cal. App. 4th 394, 400 (2008).

11 For the purposes of judicial review, “[a]dministrative decisions which result in  
12 restricting a property owner’s return on his property, increasing the cost of doing business,  
13 or reducing profits are considered impacts on economic interests,” instead of involving  
14 “fundamental” rights. *E.W.A.P., Inc. v. City of Los Angeles*, 56 Cal. App. 4th 310, 325  
15 (1997); *cf. Amerco Real Estate Co.*, 224 Cal. App. at 782–85 (“the independent judgment  
16 test is applied to review administrative decisions that will drive an owner out of business  
17 or significantly injure the business’s ability to function.”).<sup>4</sup>

18 The Board’s decision in this case does not permanently implicate Exxon’s vested  
19 right to use its SYU facilities, but only halts its proposed “restart” which itself was a  
20 temporary fix to a bigger problem: the lack of viable pipeline transport. That is a problem  
21 not caused by the Board’s decision. And since Exxon is actively pursuing reinstatement  
22

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23 <sup>4</sup> In *Interstate Brands*, cited by Exxon, the California Supreme Court expresses “disagreement”  
24 with a bright-line rule applied in unemployment insurance cases that reviewing courts use independent  
25 judgment review *only* when the employer can show that the agency decision could put them out of business  
26 entirely. 26 Cal. 3d at 776–77; *see* Exxon Reply at 10. *Interstate Brands* primarily discusses the  
27 distinction between judicial review sought by *employees* versus *employers* in that specific context. *See*  
28 26 Cal. 3d at 776–77. It does not support a conclusion that the “case-by-case” analysis of whether a vested  
right exists *cannot* consider the magnitude of the economic harm caused by an agency decision, especially  
in cases unrelated to unemployment insurance. *Cf.* Exxon Reply at 10. This Court did not find, nor did  
Exxon provide, any cases citing *Interstate Brands* in judicial review of a decision about a development  
permit or anything similar to the facts of this case.



1 of the pipelines, its economic harm is not indefinite. Revised Final SEIR, A.R. 14581 (Vol.  
2 37 at 413); *cf. Hardesty v. Sacramento Metro. Air Quality Mgmt. Dist.*, 202 Cal. App. 4th  
3 404, 417 (2011) (distinguishing *Goat Hill Tavern* and *Termo* and determining that no  
4 fundamental vested right was implicated where administrative decision required plaintiff  
5 to temporarily cease operation until obtaining a permit).

6 For the foregoing reasons, the Court will apply the substantial evidence standard to  
7 its review of the Board’s decision.

## 8 **B. Analysis**

9 California Code of Civil Procedure section 1094.5 instructs reviewing courts to find  
10 an abuse of discretion when (1) the decision is contrary to law; (2) it is not supported by  
11 the findings, or (3) the findings are not supported by the evidence. Cal. Civ. Proc. Code  
12 §§ 1094.5(b), (c); *Topanga Ass’n*, 11 Cal. 3d at 515. Here, the Board’s inability to make  
13 the necessary findings under the LUDC and CZO dovetails with the Board’s denial of the  
14 Modified Plan Application, so the Court will focus its analysis on whether the Board’s  
15 findings are supported by substantial evidence and conclude with an analysis of whether  
16 the Board’s decision is contrary to law. *See* LUDC §§ 35.82.080.E.1(c), (e); CZO § 35-  
17 174.5; *see also* Board MSJ at 16–17.

### 18 **1. Substantial Evidence Standard**

19 The substantial evidence standard asks whether the Board’s findings were  
20 “supported by substantial evidence in the light of the whole record.” Cal. Civ. Proc. Code  
21 §§ 1094.5(b), (c). In land use cases applying this standard, the Court may reverse the  
22 Board’s decision “only if, based on the evidence before the agency, a reasonable person  
23 could not have reached the conclusion reached by the agency.” *Bowman v. Cal. Coastal*  
24 *Com.*, 230 Cal. App. 4th 1146, 1150 (2014) (quoting *La Costa Beach Homeowners’ Assn.*  
25 *v. Cal. Coastal Com.*, 101 Cal. App. 4th 804, 814 (2002)).

26 For evidence to be “substantial,” it “must be of ponderable legal significance[,] . . .  
27 reasonable in nature, credible, and of solid value; it must actually be ‘substantial’ proof of  
28 the essentials which the law required in a particular case.” *Bank of Am. v. State Water Res.*

1 *Control Bd.*, 42 Cal. App. 3d 198, 213 (1974) (citation omitted). Courts must “resolve  
2 reasonable doubts in favor of the administrative findings and decision,” and “deny the writ  
3 if there is any substantial evidence in the record to support the findings.” *Topanga Ass’n*,  
4 11 Cal. 3d at 514; *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1244  
5 (2000) (citation omitted). A petitioner seeking to overturn an agency decision has the  
6 burden to show “there is no substantial evidence whatsoever to support” the agency’s  
7 findings. *Desmond v. Cnty. of Contra Costa*, 21 Cal. App. 4th 330, 336–37 (1993) (citation  
8 omitted).

## 9 **2. Substantial Evidence Supports the Board’s Findings**

10 The purpose of the findings requirement for judicial review under California Code  
11 of Civil Procedure section 1094.5 is “to bridge the analytic gap between the raw evidence  
12 and ultimate decision or order” by the agency, and to show “the analytic route the  
13 administrative agency traveled from evidence to action.” 11 Cal. 3d at 515. An agency’s  
14 findings should be “liberally construed to support rather than defeat the decision under  
15 review.” *Fair Employment Practice Com. v. State Personnel Bd.*, 117 Cal. App. 3d 322,  
16 329 (1981). “The possibility of drawing two inconsistent conclusions from the evidence  
17 does not prevent an administrative agency’s finding from being supported by substantial  
18 evidence.” *California RSA No. 4*, 332 F. Supp. 2d at 1302 (citation omitted).

### 19 **a. Traffic Safety**

#### 20 **i. The Board’s Findings**

21 The Board determined that it could not approve the Modified Plan, in relevant part,  
22 because of “the impact of the project on the residents of the County and other users of the  
23 proposed route related to traffic safety.” See Action Letter, A.R. 000012–13 (Vol. 1 at 26–  
24 33). Exxon argues that this finding is not supported by substantial record evidence, and  
25 thus the Board abused its discretion in making this finding, ignoring the material evidence  
26 in Section 4.5 of the Revised Final SEIR (“Transportation and Circulation”) which favored  
27 approval. Exxon MSJ at 24; Exxon Reply at 13–15.

28

1 The Modified Plan provides that the trucks would use Calle Real and the  
2 Refugio/U.S. Highway 101 interchange to enter and exit LFC, heading to two terminals.<sup>5</sup>  
3 See Executive Summary, Revised Final SEIR, A.R. 014805 (Vol. 37 at 636). The closer  
4 terminal, the SMPS, is accessible directly from Highway 101, but travel to and from  
5 Pentland, which is located in Kern County, requires significant additional travel on State  
6 Route 166. A map of the routes to both terminals is below.



16 Figure ES-2, Proposed Truck Routes to Receiving Facilities, Revised Final SEIR, A.R.  
17 014806 (Vol. 37 at 637). The distance from LFC to SMPS is 54.2 miles, and the distance  
18 to Pentland is 140 miles. See Table 2, Site Information, Revised Final SEIR, A.R. 14576  
19 (Vol. 37 at 407). Due to an ongoing Caltrans project, there would be short intermittent  
20 periods during which the Highway 101 southbound off-ramp would be closed to trucks,  
21 rerouting them to use the El Capitan State Beach Road exit and to take surface roads to the  
22 LFC facility. Executive Summary, Revised Final SEIR, A.R. 014805 (Vol. 37 at 636).

23 Based on its consideration of the evidence, the Board found that the Modified Plan  
24 would “create impacts regarding traffic safety along Calle Real, Highway 101, and State  
25 Route 166 due to the addition of tanker truck trips to and from [LFC] to [Pentland].” Action  
26 Letter, A.R. 000012 (Vol. 1 at 32). It cited “[e]xisting accident rates on certain segments

27

28 <sup>5</sup> Exxon proposed the risk mitigation measure of not allowing crude oil truck traffic on Calle Real between the Refugio/Highway 101 exchange and the LFC facility during the hours that school students are in transit to and from school. Section 4.5.4, Revised Final SEIR, A.R. 15102 (Vol. 38 at 217).

1 of Highway 101 and State Route 166” which were “currently above the state average,” and  
2 concluded that the Modified Plan would generate even more risk. *Id.*; *see also* Table 4.5-  
3 8, SMPS Route Collision Analysis, Revised Final SEIR, A.R. 15093 (noting statistically  
4 significant collision rates on Highway 101 north of Refugio Road and Highway 101  
5 southbound off-ramp at Betteravia Road); Table 4.5-12, Pentland Terminal Route Collision  
6 Analysis, Revised Final SEIR, A.R. 15096 (Vol. 38 at 211).

7 “Of particular concern” to the Board was traffic safety along State Route 166, a  
8 narrow two-lane highway across difficult terrain, with few turnouts and passing lanes. *Id.*  
9 Between 2018 and 2020, there were numerous fatal trucking accidents on State Route 166,  
10 including four recent tanker truck incidents that caused oil to spill into nearby waterways.  
11 *Id.* Several of these incidents were not considered by the Revised Final SEIR’s figures  
12 because they postdate the traffic study data. Board Reply at 20; NGO Reply at 15.

13 The Board’s decision “incorporated by reference all of the public comments  
14 submitted for the March 8, 2022 hearing, which detail additional accident data and safety  
15 concerns.” *Id.* Its findings cite a lengthy comment letter submitted by Intervenors Get Oil  
16 Out!, Santa Barbara County Action Network, and the Environmental Defense Center  
17 (“EDC”) dated September 27, 2021, which goes into detail about these accidents. *See* A.R.  
18 00013 (Vol. 1 at 33); A.R. 25307–13 (Vol. 57 at 112–18). In particular, the Board  
19 highlights the evidence about a 2020 tanker truck incident (after the data used for the  
20 Revised Final SEIR) on Route 166 which spilled 4,500 gallons of crude oil into the Cuyama  
21 River. Action Letter, A.R. 000008 (Vol. 1 at 28); Sept. 8, 2021 Staff Report, A.R. 26646  
22 (Vol. 60 at 620).

23 In addition, Calle Real is a rural road with pedestrian and bicycle traffic connecting  
24 to two California state parks, not equipped for tanker truck traffic. *See* Transportation and  
25 Circulation, Revised Final SEIR, A.R. 15109–10 (Vol. 38 at 224–25).

26 **ii. Evidence Supporting the Board’s Findings**

27 The record is replete with different statistics, figures, and measurements attempting  
28 to quantify the amount of additional truck traffic that would be generated by the Modified

1 Plan. The Revised Final SEIR based its analysis on Exxon’s estimate of 70 trucks going  
2 to the SMPS or 68 going to Pentland per day, with no more than 70 trucks leaving the LFC  
3 facility within a 24-hour period. *Id.*, A.R. 14805, 14807 (Vol. 37 at 636, 638). It also says  
4 that the number of trucks that would be going to each terminal each day is “unknown,” at  
5 least until the closure of SMPS (at which time all traffic would go to Pentland). *See*  
6 Executive Summary, Revised Final SEIR, A.R. 14807 (Vol. 37 at 638).

7 Exxon insists that the Modified Plan would “cumulatively only add nine additional  
8 trucks per day” to current figures after the SMPS closes, since the baseline number of trucks  
9 would decrease, and deemphasizes that the Plan would “generate up to 70 trucks per day.”  
10 Exxon Reply at 10 n.6; Transportation and Circulation, Revised Final SEIR, A.R. 15103  
11 (Vol. 38 at 218); *see also* Exxon Mobil Powerpoint, SYU Trucking Application (from Sept.  
12 29, 2021 Hrg.), A.R. 26630 (Vol. 60 at 604).

13 While this math is explained in the Revised Final SEIR, A.R. 15121 (Vol. 38 at 236),  
14 the figure only compares the 2018 figures with the projected figures after the SMPS shuts  
15 down. *See* Table 4.5-20, Baseline Average Daily Truck Deliveries to SMPS by Location,  
16 Revised Final SEIR, A.R. 15119 (Vol. 38 at 234) (noting baseline data derived from  
17 averages from Q1-2016 to Q2-2018); *see also* Table 4.5-23, Peak Cumulative Oil Truck  
18 Trips, Revised Final SEIR, A.R. 15123 (Vol. 38 at 238). Exxon’s representative at the  
19 September 29, 2021 Hearing, Brian Anderson, emphasized the “nine additional trucks”  
20 figure in his presentation to the Commission, as did Scott Schell from Associated  
21 Transportation Engineers (“ATE”), the consulting company that did the traffic study. *See*  
22 Sept. 29, 2021 Tr., A.R. 26340, 26423 (Vol. 60 at 314, 397). After public comment  
23 concluded, Commissioner C. Michael Cooney asked Schell about this figure and confirmed  
24 that it was only the *net* increase before and after the SMPS closure. *Id.*, A.R. 26539–40  
25 (Vol. 60 at 513–14). Ultimately, the Board found it more significant that the Plan “would  
26 generate up to 78 daily round truck trips” in their findings. County Action Letter to Exxon  
27 Mobil, A.R. 000013 (Vol. 1 at 33). Even without considering the net impact of nine  
28



1 additional trucks, there is already a statistically significant number of collisions on that  
2 route.

3 Additionally, it was established at the September 29, 2021 Planning Commission  
4 Hearing that ATE's traffic data used by Exxon (and on which the Final SEIR was based)  
5 incorporated the 2018 figures as the "baseline," which themselves were extrapolated from  
6 raw numbers collected earlier. *See* Sept. 29, 2021 Tr., A.R. 26538 (Vol. 60 at 512); Video  
7 at 5:19:22–5:20:25; Table 4.5-20, A.R. 15119 (Vol. 38 at 234). When speaking to  
8 Commissioner Cooney, Schell acknowledged that at the time of the hearing, future traffic  
9 levels were still somewhat difficult to predict due to the impact of the pandemic and other  
10 factors. *Id.* Commissioner Parke stated at the November 3, 2021 hearing that he was not  
11 comfortable with the "baseline" traffic estimates in the SEIR for these reasons. Nov. 3,  
12 2021 Tr., A.R. 26335 (Vol. 60 at 309).

13 The Board submits that it did properly consider Section 4.5 of the SEIR, *see* County  
14 Reply at 15–16, and that it was required to consider public comment from local residents  
15 describing their experiences driving on State Route 166, *id.* at 16. It argues that the Revised  
16 Final SEIR relied on statistical probabilities, while the Board looked to the "actual history"  
17 of 14 tanker truck accidents in 15 years, eight of which occurred along the planned route.  
18 *See* Mar. 8, 2022 Tr., A.R. 000179–80 (Vol. 1 at 200–01). Many public comments  
19 addressed these accidents and the fear of worsening conditions on State Route 166 with  
20 more tanker trucks. *See, e.g.,* Mar. 8, 2022 Video from 1:19:08–1:21:19 (video re traffic  
21 incidents); Letter from Sierra Club (Sept. 21, 2021), A.R. 22860–22863 (Vol. 51 at 24111–  
22 14) (showing photos of crashes); A.R. 25307–13 (Vol. 57 at 112–18) (EDC Letter); Mar.  
23 8, 2022 Tr., Testimony of Lynn Carlisle, Executive Director of the Cuyama Valley  
24 Resource Center, A.R. 132–33 (Vol. 1 at 152–53) ("[State Route 166] is already a  
25 dangerous road. Every single person I've ever talked to in Cuyama has a horror story about  
26 166. We've all seen folks passing on blind curves, passing across double yellow lines, all  
27 trying to get past the trucks that already use the route every day. Add more truck traffic,  
28 as this proposal recommends, and the road becomes even more dangerous."). Supervisor

1 Williams stated at the March 8, 2022 deliberations that he believed that the safety impacts  
2 of the Modified Plan would be “significant and unmitigable,” and inherent to the trucking  
3 itself. Mar. 8, 2022 Tr., A.R. 160 (Vol. 1 at 180). These are all legitimate reasons for the  
4 Board to conclude it could not make the requisite finding even though the Modified Plan  
5 ostensibly would not exceed any safety or capacity thresholds. *See* Exxon MSJ at 25.

6 Before voting to recommend denial of the Modified Plan Application to the Board,  
7 multiple Planning Commissioners spoke about their own harrowing experiences on that  
8 road in their deliberations and were struck by the magnitude of public concern about traffic  
9 safety on Route 166. *See, e.g.*, Sept. 29, 2021 Tr., A.R. 26551, 26567 (Vol. 60 at 525, 541)  
10 (Commissioner Parke’s comments that “I know I’ll have a hard time looking people in the  
11 face that regularly travel this and say it’s no different than any other highway” and  
12 describing his “darn scary” personal experience driving on State Route 166); A.R. 26561  
13 (Vol. 60 at 535) (Commissioner Bridley noting “[t]he amount of public comment, the very,  
14 very heavy weighted concerns from the public about accepting these trucks on the 166”).

15 Additionally, the March 8, 2022 hearing raised some issues of local concern that  
16 were not considered in the Revised Final SEIR’s data analysis. Route 166 is the only road  
17 that goes through the Cuyama Valley, and the school district had already submitted a  
18 resolution raising concerns about the truck traffic passing by their schools. *See* Letter from  
19 Cuyama Joint Unified School District board, A.R. 23388–92 (Vol. 52 at 400–04). Another  
20 aggravating factor is the growth of the cannabis industry also increasing trucking along  
21 State Route 166. As Commissioner Parke pointed out at the September 29, 2021 Hearing,  
22 the Caltrans data and projections used in the Revised Final SEIR did not reflect the traffic  
23 pattern changes brought by the cannabis industry because the ordinance was not even  
24 passed until 2018, which contributed to the Planning Commission’s recommendation. *See*  
25 Sept. 29, 2021 Tr., A.R. 26526–27 (Vol. 60 at 500–01); *see also* Testimony of Soham Ray  
26 on behalf of University of Santa Barbara Environmental Affairs Board, Mar. 8, 2022 Tr.,  
27 A.R. 109–10 (Vol. 1 at 129–30) (discussing growth of cannabis industry in Cuyama  
28 Valley).

1 The public input addressed Exxon’s proposed traffic safety mitigation measures,  
2 such as driver training and truck safety. *See* Exxon MSJ at 10, 29–31; Proposed Modified  
3 Conditions of Approval (Exhibit B to Sept. 8, 2021 Staff Report), A.R. 14737–38 (Vol. 37  
4 at 567–69); *see also* Cal. Pub. Res. Code § 21100(b)(3) (CEQA requires EIR to propose  
5 mitigation measures “to minimize significant impacts on the environment”). The SEIR’s  
6 mitigation measures include a “Truck Hazard Mitigation Plan” aimed at reducing the risk  
7 of traffic incidents, and several other mitigation measures aimed at reducing the impact of  
8 an oil spill if one occurs. Transportation and Circulation, Revised Final SEIR, A.R. 15028–  
9 32 (Vol. 38 at 143–47).

10 According to EDC’s letter to the Board, these mitigation measures are insufficient  
11 because they cannot address the external factors such as reckless driving, road conditions,  
12 or unexpected hazards. Mar. 4, 2022 EDC Letter, A.R. 868–74 (Vol. 3 at 26–32). Exxon  
13 responds that the Board did not actually analyze their Truck Hazard Mitigation Plan, which  
14 addresses the risks of their own trucks causing incidents. Exxon Reply at 12, 16–17. But  
15 the Board’s consideration of the Plan’s impact on traffic safety does not need to be limited  
16 only to potential accidents caused by Exxon’s trucks, given that there was immense public  
17 concern regarding the overall conditions on Route 166 and the large number of other  
18 drivers on the road. *See* Mar. 8, 2022 Tr., A.R. 00155–56 (Vol. 1 at 175–76) (comments  
19 of Supervisor Williams). Furthermore, the Revised Final SEIR itself acknowledges that  
20 the risk of oil spills relating to trucking accidents “may not be fully mitigated” by its  
21 proposed mitigation plan, as demonstrated by the estimate that the measures would only  
22 reduce the likelihood of a truck incident by about 33 percent. Executive Summary, Revised  
23 Final SEIR, A.R. 14823 (Vol. 37 at 654); Sept. 8, 2021 Staff Report, A.R. 014585 (Vol.  
24 37 at 416). The Plan’s compliance with the County Comprehensive Plan Circulation  
25 Element and land use codes is necessary to, but not sufficient for, the project’s approval.  
26 *See* Transportation and Circulation, Revised Final SEIR, A.R. 15099–100 (Vol. 38 at 214–  
27 15).



1           These issues raised in public comment are not adequately reflected in a pure  
2 statistical analysis of averages, and were properly considered by the Board. *See Banker’s*  
3 *Hill, Hillcrest, Park W. Cmty. Pres. Grp. v. City of San Diego*, 139 Cal. App. 4th 249, 274  
4 (2006) (“In the context of an administrative hearing, ‘relevant personal observations are  
5 evidence. For example, an adjacent property owner may testify to traffic conditions based  
6 upon personal knowledge.’”) (quoting *Leonoff v. Monterey County Bd. of Supervisors*, 222  
7 Cal. App. 3d 1337, 1351–52 (1990)); *see also Pocket Protectors v. City of Sacramento*,  
8 124 Cal. App. 4th 903, 928 (2004) (“Relevant personal observations of area residents on  
9 nontechnical subjects may qualify as substantial evidence”). When the public comment  
10 raises new information substantiating facts already in the record, such as the school  
11 district’s resolution and the growth of the cannabis industry, it may constitute substantial  
12 evidence. *Banker’s Hill*, 139 Cal. App. at 274. It is reasonable for the Board to conclude  
13 that a 33% reduction of accidents was insufficient in light of the four tanker truck accidents  
14 on the route between 2018–2020 and the SEIR’s apparent failure to consider those in the  
15 data it used to predict the probability of an oil spill. *See* Board Reply at 20; EDC Letter,  
16 A.R. 25312 (Vol. 38 at 117). CEQA does not require a project to “rigidly conform” to  
17 other local standards and policies as long as there is a general rationale which is consistent  
18 with those policies. *Cf. Holden v. City of San Diego*, 43 Cal. App. 5th 404, 412 (2019)  
19 (acknowledging that agency discretion is not strictly tethered to parameters of local plans  
20 and policies when finding is still supported by substantial evidence).

21           Having considered the evidence in the record regarding traffic safety, the Court finds  
22 that the Board’s decision is supported by substantial evidence. *Cf. Topanga Ass’n*, 11 Cal.  
23 3d at 514; *Desmond*, 21 Cal. App. 4th at 336–37. Under the substantial evidence standard,  
24 “all conflicts in the evidence are resolved in favor of the prevailing party and all legitimate  
25 and reasonable inferences are made to support the agency’s decision.” *Holden*, 43 Cal.  
26 App. 5th at 410. There is voluminous evidence in this record of a traffic safety issue on  
27 Route 166, and the data used to project the Modified Plan’s impact on that issue does not  
28 account for many significant recent developments, including the pandemic, growth of new

1 industry along the route, and additional serious tanker truck accidents. Substantial  
2 evidence supports the Board’s decision to deny the project even though the SEIR identified  
3 strong mitigation measures.

4 **b. General Welfare**

5 Much of the Board’s reasoning regarding its second finding is closely related to the  
6 traffic concerns discussed above. *See supra* Part II.B.2; *see also* Action Letter, A.R.  
7 00008–09 (Vol. 1 at 28–29). Since it is the Court’s assessment that the Board’s finding on  
8 traffic safety was supported by substantial evidence, it need not address the Board’s second  
9 finding, that the Modified Project might be “detrimental to the comfort, convenience,  
10 general welfare, health, and safety of the neighborhood.” *See* LUDC § 35.82.080.E.1(c);  
11 CZO § 35-174.7.1(c).

12 The Board’s conclusion that it could not support a finding that the “[s]treets and  
13 highways will be adequate and properly designed to carry the type and quantity of traffic  
14 generated by the proposed use,” A.R. 000011 (Vol. 1 at 31), was based on substantial  
15 evidence and supports denial of the Application. *See* LUDC §§ 35.82.080.E.1(c), (e); CZO  
16 § 35-174.5. Since one finding supported by substantial evidence is sufficient to uphold the  
17 Board’s decision, the Court need not address whether the Board abused its discretion in  
18 finding that no “overriding conditions” existed to mitigate the identified Class I  
19 environmental impact in the Revised Final SEIR. *See* Board MSJ at 23–27; Cal. Pub. Res.  
20 Code § 21081.

21 **3. Contrary to Law**

22 Lastly, the Court will address Exxon’s argument that the Board’s action was contrary  
23 to law and County policy. *See* Exxon MSJ at 39–43; Exxon Reply at 22–24.

24 Exxon cites the language of the 1987 Conditions of Approval, which acknowledge  
25 the possibility of non-pipeline oil transportation, as well as the language in the County  
26 Coastal Plan that “[t]he County should assure that producers have access to competitive  
27 markets . . . . Since pipelines are not yet in place and may not be constructed to all refining  
28 centers, other methods of oil transportation are needed for production that precedes pipeline

1 construction and operation and for refining centers not served by pipeline.” Conditions of  
2 Approval, A.R. 30865 (Vol. 67 at 65); County Coastal Plan at 5. Policy 6-8 in the Coastal  
3 Plan also provides that “[u]ntil pipelines become available, and for refining centers not  
4 served by pipeline, other modes of oil transportation are allowed consistent with County  
5 policies.” County Coastal Plan at 6. Additionally, the Modified Plan satisfied every  
6 element of CZO 35-154.5(i) and LUDC 35.52.060.B.10.b: it limited trucking to the  
7 permitted capacity, all “Class risks” would be mitigated per Exxon’s agreement to accept  
8 the proposed mitigation measures, the permit was limited to seven years or the restart of  
9 pipeline operations, and there was no current alternative. Exxon MSJ at 40.

10       It is undeniable that there are comments in the record—both by the public and some  
11 Planning Commission members and County Supervisors—that reflect a desire to end oil  
12 production in Santa Barbara County altogether. *See, e.g.*, Mar. 8, 2022 Tr., A.R. 000155–  
13 56 (Vol. 1 at 175–76) (Supervisor Williams’ comments), A.R. 170–71 (Vol. 1 at 190–91)  
14 (Supervisor Hart’s comment that “I believe our community wants to send a clear message  
15 that we are unwilling to risk damage to our environment in exchange for short-term  
16 corporate profits, uncertain local jobs, and modest tax revenue” and expressing interest in  
17 “phasing out oil production”). And the Supervisors who voted to deny the Application,  
18 Williams, Hart, and Hartmann, each did express concerns about the environmental impacts  
19 of oil trucking writ large and dependence on fossil fuels. *See* Mar. 8, 2022 Tr., A.R.  
20 000155–58 (Vol. 1 at 175–78) (Supervisor Williams), A.R. 000166–67, 69–70 (Vol. 1 at  
21 186–87, 189–90) (Supervisor Hart), A.R. 182 (Vol. 1 at 202) (Chair Hartmann).

22       But their expression of these concerns does not mean they acted contrary to law, nor  
23 that there is no set of conditions under which the Board would approve a permit to transport  
24 oil in Santa Barbara County. The County Coastal Plan explains that the County “need not  
25 provide unlimited flexibility to all [oil] producers,” and contemplates non-pipeline  
26 transport for only a “fraction” of oil in the County. County Coastal Plan at 5; LUDC §  
27 35.52.060.B.10.b.

28

1           Indeed, Supervisors Williams, Hart, and Hartmann expressed concerns specific to  
2 the Modified Plan before them. Supervisor Williams, for example, expressed that he “will  
3 support denial of the project” because “I cannot see how the safety impacts are mitigable  
4 . . . not because of the behavior of your drivers” but because of the overall dangerous  
5 driving that happens on Route 166. *See* Mar. 8, 2022 Tr., A.R. 000155–56 (Vol. 1 at 175–  
6 76). Chair Hartmann also expressed deep concern over the risks of accidents on Highway  
7 101 and Route 166, noting that trucking on Route 166 is “inherently risky.” *Id.*, A.R.  
8 000180–81 (Vol. 1 at 200–01). The original County Staff Report in July 2020  
9 recommended solely allowing Exxon to truck oil to SMPS, and not to Pentland, for this  
10 exact reason. *See* July 22, 2020 Staff Report, A.R. 26641, 26694–95 (Vol. 60 at 615, 668–  
11 69). There is no “*de facto* ban” on trucking oil in Santa Barbara County, nor does this  
12 decision cause one. At the March 8, 2022 meeting, Supervisor Nelson asked about whether  
13 any ordinance banned trucking, and was reminded by one of Exxon’s representatives that  
14 most oil transport in the County occurs by truck. Mar. 8, 2022 Tr., A.R. 000152 (Vol. 1 at  
15 172).

16           The Supervisors also expressed that the articulated benefits of allowing the Modified  
17 Plan did not outweigh the risks, another reason counseling them to exercise their discretion  
18 in favor of denying the Application. *See* Mar. 8, 2022 Tr., A.R. 000170 (Vol. 1 at 190)  
19 (Supervisor Williams’ statement that “I will be voting to deny this application, because I  
20 cannot make the finding that the significant adverse environmental impacts, as identified  
21 in the [Revised Final SEIR], can be overridden by the project benefits”). There is no  
22 evidence of any Board member improperly “bow[ing] to political pressure over their better  
23 judgment,” since each one expressed rational reasons, supported by the evidence, to justify  
24 their exercise of discretion on this vote. *Cf. Harrington v. City of Davis*, 16 Cal. App. 5th  
25 420, 436 (2017). Even Supervisor Nelson, in his comments in support of his vote to  
26 approve the project, acknowledged that “our Board does have broad discretion here.” Mar.  
27 8, 2022 Tr., A.R. 000177 (Vol. 1 at 197). A writ of mandate “cannot be used ‘to force a  
28 public entity to exercise discretionary powers in any particular manner.’” *Lafayette*

1 *Bollinger Dev. LLC v. Town of Moraga*, 93 Cal. App. 5th 752, 772 (2023) (citing *Ellena v.*  
2 *Dep't of Ins.*, 230 Cal. App. 4th 198, 205 (2014)).

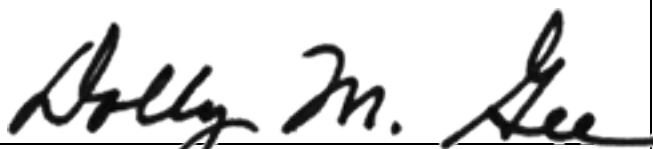
3 General plans, like the County Coastal Plan, “typically reflect a range of competing  
4 interests.” *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807, 816 (2007)  
5 (citation omitted). “Nevertheless, a city’s land use decisions must be consistent with the  
6 policies expressed in the general plan.” *Id.* (citation omitted). When it approved the 1987  
7 Permit, the Board acted consistently with the County Coastal Plan’s policy preferences,  
8 and now it exercises its discretion to deny Exxon’s request to modify that permit in this  
9 specific manner. None of the law cited by Exxon *requires* the Board to approve oil trucking  
10 if the conditions are met, only that the enumerated conditions are necessary to approval of  
11 such a plan. Since each Supervisor voting to deny the Application provided rational  
12 reasons for their vote, supported by the evidence in the record, the Board did not abuse its  
13 discretion or act contrary to law when it denied Exxon’s Application.

14  
15 **IV.**  
16 **CONCLUSION**

17 In light of the foregoing, the Court **DENIES** Exxon’s MSJ on the Writ of Mandate  
18 claim, and **GRANTS** the Board’s and Intervenors’ respective MSJs. Pursuant to the  
19 Court’s previous Scheduling Order [Doc. # 21-1], the parties will meet and confer and will  
20 submit a Joint Status Report by **October 27, 2023** with a proposed schedule for Phase II  
21 of this litigation.

22 **IT IS SO ORDERED.**

23  
24 DATED: September 27, 2023

25   
26 **DOLLY M. GEE**  
27 **UNITED STATES DISTRICT JUDGE**

**From:** [Kassie Siegel](#)  
**To:** [Jana Staniford](#)  
**Cc:** [Jessica Gordon](#)  
**Subject:** Follow-ups  
**Date:** Monday, November 27, 2023 3:39:20 PM  
**Attachments:** [Rothschild Response to API memo 3.29.23.pdf](#)  
[ThePlattnerPerspective\\_Costs of Climate Change.pdf](#)

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**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jana,

Thanks so much for taking the time to talk – it is wonderful to meet you.

Here is a little info about the [Climate Change Superfund Act](#) that passed the NY Senate this year. In short, the bill would collect \$75 billion over 25 years by establishing the climate change adaptation cost recovery program and requiring companies responsible for substantial greenhouse gas emissions to pay into the program. The bill summary, text, and other info is here: <https://www.nysenate.gov/legislation/bills/2023/S2129/amendment/A>

Here's one [news article](#) from this session.

I'm also attaching a short piece that very concisely discusses some of the main initial questions one might have about such legislation, as well as a short memo responding to assertions from the American Petroleum Institute about the NY bill.

I look forward to being in touch. All best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]



## Coping With the Costs of Climate Change: Make the Polluters Pay

by Robert D. Plattner



Robert D. Plattner

Robert D. Plattner is a former deputy commissioner for tax policy in the New York State Department of Taxation and Finance. He now serves as a senior adviser to New York Senate Finance Committee Chair Liz Krueger (D) and consults on state and local tax policy and New York state tax matters.

In this installment of The Plattner Perspective, Plattner reviews New York Senate bill S. 9417, which would require polluting companies deemed responsible parties to pay the state \$30 billion over 10 years to cover a portion of the state's anticipated costs incurred in adapting to climate change.

### Preface

There is a life lesson that thoughtful parents teach their kids when the kids are quite young. The lesson is this — “If you make a mess, it is your responsibility to help clean it up.”

### I. Introduction

As Captain Obvious would be happy to point out, most articles in *Tax Notes State* are about state and local taxes — this article is not. That is because climate change will severely test the ability of state governments to govern, including the essential task of raising the new revenues needed to build an infrastructure capable of protecting the health and welfare of its citizens. State governments will have no choice but to look beyond traditional taxes for revenues sufficient to respond to the

wrenching effects of pollution-driven climate change. Where will that revenue come from? A good place to start is with those who made the mess.

New York Senate bill S. 9417, the Climate Change Superfund Act, sponsored by Sen. Liz Krueger (D), would tap into a revenue stream for adapting to climate change based on the bedrock rule of good behavior cited above.<sup>1</sup> For purposes of the grown-up world of public policy, substitute “pollution” for “mess” and restate the guiding principle as “polluters pay.” That is, the entities responsible for pollution should be financially liable for the resulting harms.<sup>2</sup> Under S. 9417, the major fossil fuel companies, who bear primary responsibility for the buildup of greenhouse gases in the atmosphere, would pay billions of dollars to New York over a decade as compensation for part of the costs incurred by the state and its localities in dealing with the climate change crisis.

### II. The Backdrop

#### A. What the Future Holds

As stated in the legislative findings of S. 9417, climate change, resulting primarily from the combustion of fossil fuels, poses a grave, immediate threat to New York's communities, environment, and economy. New York has responded with an ambitious effort to advance a sustainable low-carbon energy future,<sup>3</sup> but the state must also respond to the consequences of

<sup>1</sup> N.Y. Senate bill S. 9417 (2021-2022 session), sponsored by Krueger, chair of the Senate Finance Committee. The corresponding Assembly bill, A. 10556, is sponsored by Assembly member Jeff Dinowitz (D).

<sup>2</sup> See, e.g., Boris N. Mamylyuk, “Analyzing the Polluter Pays Principle through Law and Economics,” 12 *Southeastern Env't L.J.* 39, 41-42 (2009).

<sup>3</sup> Chapter 106, N.Y. Laws of 2019, enacting the “Climate Leadership and Community Protection Act.”

climate change that are irreversible. These include rising sea levels, warmer temperatures, extreme weather events, flooding, toxic algal blooms, and other climate change-driven threats. The state's response will entail a huge investment in upgraded infrastructure, including money for sea walls and other basic coastal defenses; upgrades of stormwater drainage systems; defensive upgrades to roads, bridges, subways, and transit systems; moving, raising, and retrofitting sewage treatment plants; and installing air conditioning in public buildings, including schools. Major expenditures will be required to strengthen the public health system to address a range of climate change impacts that can threaten the water supply or cause increased incidences of diseases such as Lyme disease and West Nile virus. The price tag for the next two decades may well exceed \$150 billion.

### B. A Broken Moral Compass

Liability under the Climate Change Superfund does not require any finding of wrongdoing. Nonetheless, it should be underscored that many of the largest companies in the fossil fuel industry committed a profound breach of the public trust. There is irrefutable evidence that many of the multinational oil giants were aware of the disastrous long-term effects of burning fossil fuel as early as the 1970s. In response, they first chose to conceal the damning scientific knowledge they had acquired. Later, they engaged in a successful decades long campaign of deception to convince the public that climate change science was uncertain when they knew better.<sup>4</sup> The industry's strategy was remarkably successful in perpetuating the status quo while climate change evolved from a solvable problem to an existential threat. The world is several decades behind where it otherwise might be in converting to a carbon-free energy system.

The industry's moral failure to look beyond its own bottom line is breathtaking. Even so, and despite the indisputable evidence, the industry has never acknowledged its wrongdoing, and some of the major players continue to traffic in

disinformation. They assert, for example, that they are committed to investing in renewable energy in a significant way, but the actual level of investment is a tiny percentage of overall investment. Likewise, they tout approaching their target of achieving "net zero" carbon emission, but their calculation conveniently excludes the carbon emissions from the use of their products that are the leading cause of the greenhouse gases warming the planet. These attempts to deceive are so common they have acquired a name — greenwashing.<sup>5</sup> Lawmakers, unless and until convinced otherwise, should be on guard for more of the same from the industry.

## III. The Climate Change Superfund Act

### A. Conceptual Overview

The Climate Change Superfund Act is modeled on existing state and federal programs (CERCLA)<sup>6</sup> structured to implement the principle of "polluters pay." The state's Inactive Hazardous Waste Disposal Site Remediation program,<sup>7</sup> known as the state Superfund, and the state's oil spill law<sup>8</sup> are long-standing programs that seek compensation to pay for the remediation of polluted sites. Under the state and federal Superfund programs, the standard is strict liability, imposed jointly and severally.

The Climate Change Superfund is the first "polluters pay" program to target air pollution, specifically greenhouse gas emissions. The primary source of these emissions is the combustion of fossil fuels — coal, oil, and natural gas — extracted, refined, and sold by some of the world's most profitable and powerful corporations.<sup>9</sup>

<sup>5</sup> *Id.* at 43-62.

<sup>6</sup> The Comprehensive Environmental Response, Compensation and Liability Act, also known as Superfund, P.L. 96-510, 42 U.S.C. section 9601 et seq.

<sup>7</sup> Inactive Hazardous Waste Disposal Sites, New York Environmental Conservation Law, chapter 43-B, article 27, section 1301 et seq.

<sup>8</sup> The Oil Spill Law, chapter 845, Laws of 1977.

<sup>9</sup> Work on the Climate Change Superfund legislation began in New York in 2019. Federal legislation loosely modeled on New York's "polluters pay" initiative sponsored by Sen. Chris Van Hollen, D-Md., received serious consideration in the Senate in 2021 as a revenue measure that could help pay for environmental program initiatives but was ultimately rejected. The focus has since returned to state legislation.

<sup>4</sup> See, e.g., Complaint of Plaintiff State of Vermont in *Vermont v. ExxonMobil*, Superior Court of Vermont, Chittenden Unit, Civil Division, Sept. 14, 2021, at 15-35.



Under the proposal, polluting companies deemed responsible parties, described below, would, as a group, pay \$30 billion over 10 years to the state to pay for a portion of the state's anticipated costs in adapting to climate change. Each responsible party would pay its share of the \$30 billion based on its percentage share of total greenhouse gas emissions by all responsible parties between 2000 and 2018. At least 35 percent of the funds would be spent to benefit communities that have been historically disadvantaged by the state's environmental policies.<sup>10</sup>

For the Superfund to work, the state must be able to determine these proportionate shares — which might seem a tall order. In fact, it can do so with a good deal of precision. The shares are readily determined in part because the applicable science dictates that the concentration of greenhouse gases in the atmosphere is roughly constant everywhere. That is, a company responsible for, say, 5 percent of total greenhouse gas emissions by the fossil fuel industry is responsible for that same 5 percent at any and every given location around the globe. The second essential element in the determination of company-specific shares is the work of researchers, led by Richard Heede,<sup>11</sup> who has used company data reported to the government to determine the amount of product placed into the stream of commerce by every large fossil fuel company. Formulas for each of the fossil fuels convert the amount of product into an amount of greenhouse gas emitted into the atmosphere. These formulas are written into the bill language.<sup>12</sup>

A key feature of the program is that assessments against the companies are not taxes but demands for compensation for damages resulting from past behavior. This distinction has favorable economic and legal consequences, discussed below. Most importantly, unlike a carbon tax or hike in gas taxes, the economic

incidence of Superfund compensation assessments would fall almost exclusively on the corporations and their shareholders, not consumers. On the legal front, the nature of the payments as assessments for damages to New York resulting from past behavior should defeat any argument that the state is trying to regulate industry activities in an area in which the federal Clean Air Act preempts state action.

As noted, the total claim assessed against the industry is set at \$30 billion payable over 10 years. To put that figure in perspective, it is well less than half the expected spending by the state and its localities on climate change over the next decade. Meanwhile, the industry is recording record profits. Saudi Aramco earned nearly \$50 billion in profits in the second quarter of this year.

The program would be administered by the Department of Environmental Conservation (DEC), which would promulgate regulations necessary for its implementation.<sup>13</sup> The Climate Change Adaptation Fund would be established in the law with money deposited in the fund kept separate from other revenues and available only to be expended on qualifying activities.<sup>14</sup>

## B. S. 9417 — Section by Section

### 1. Legislative Findings

The bill begins with legislative findings enumerating the threats climate change poses for New York. The findings expound on the “polluters pay” principle and describe how the program would work; condemn the industry for its unthinkable behavior in deceiving the public about the catastrophic long-term consequences of the continued burning of fossil fuel; highlight the record profits the industry is recording in 2022; detail the kinds of projects that would be funded; and state the intention not to intrude where federal law has preempted states' right to legislate.<sup>15</sup>

<sup>10</sup> S. 9417, section 3, adding section 76-0101 et seq. to the Environmental Conservation Law (ECL), at ECL 76-0103(4)(e).

<sup>11</sup> Richard Heede leads the Climate Accountability Institute's carbon majors project. His publications include “Carbon Majors: Accounting for Carbon and Methane Emissions 1854-2010” (2019).

<sup>12</sup> S. 9417, section 3 at ECL section 76-0103(3)(e).

<sup>13</sup> S. 9417 at ECL section 76-0103(4).

<sup>14</sup> S. 9417, section 4, adding a new section 97-k to the State Finance Law.

<sup>15</sup> S. 9417, section 2.

## 2. Definitions

Among the key definitions:

“Responsible party” is the term applied to a fossil fuel company subject to an assessment under the program. A responsible party is an entity in the fossil fuel business responsible for more than 1 billion tons of greenhouse gas emissions during 2000-2018. The definition excludes any entity with whom the state lacks sufficient nexus under the due process clause of the federal Constitution.<sup>16</sup>

“Covered greenhouse gas emissions” is defined, for any potential responsible party, as the total quantity of greenhouse gases released into the atmosphere during the identified period 2000-2018, expressed in metric tons of carbon dioxide equivalent, resulting from the use of fossil fuels or petroleum products extracted, produced, refined, or sold by such party.<sup>17</sup>

A “notice of cost recovery demand” is the written communication from DEC informing a responsible party of the charge asserted against it under the program.<sup>18</sup>

A “climate change adaptive infrastructure project” is defined as a project designed to avoid, moderate, or repair damage caused by climate change, with many examples provided.<sup>19</sup>

A “qualified expenditure” is an authorized payment from the fund in support of a climate change adaptive infrastructure project.<sup>20</sup>

## 3. Program Details

A new section 76-103 of the Environmental Conservation Law establishes the climate change adaptation cost recovery program. The section outlines the purposes and structure of the program; details the method for calculating the cost recovery demand amount for each fossil fuel company found to be a responsible party; requires DEC to promulgate regulations to implement the program, including the identification of responsible parties, the procedures for issuing notices of cost recovery demands, the collection of

payments for those demands, and the procedures for identifying eligible projects; authorizes the Department of Taxation and Finance and the attorney general, along with DEC, to enforce the provisions of the act; entitles companies to contest proposed actions in an administrative proceeding with judicial appeal rights; and requires DEC to conduct an independent evaluation of the program.<sup>21</sup>

## 4. The Fund

A new section 97-k of the State Finance Law establishes the Climate Change Adaptation Fund under the comptroller and the commissioner of taxation and finance and authorizes the fund to receive payments and issue funds for qualifying expenditures.<sup>22</sup>

## 5. Nonexclusive Remedy

Section 5 of the bill states that nothing in the act is intended to preclude the pursuit of civil actions or other remedies. There are now more than two dozen suits nationwide filed by states and localities seeking damages from a handful of oil companies based on common law theories of public nuisance and common law or statutory consumer fraud. These cases have been caught up in procedural battles for years, but the furthest along are finally entering the discovery phase in state court proceedings.<sup>23</sup>

## IV. The Polluters – Responsible Parties

Preliminary research like that the DEC would be required to undertake to determine assessment amounts produced the following outcomes:

- Approximately 35 fossil fuel companies would qualify as responsible parties and face assessments. Of these, 12 would be domestic investor-owned companies, 12 foreign investor-owned utilities, and 11 state-owned enterprises.
- Three domestic-owned companies would be among the top 10 polluters – ExxonMobil USA, Chevron USA, and ConocoPhillips USA. Domestic-owned companies would in

<sup>16</sup> S. 9417, section 3 at ECL section 76-0101(19).

<sup>17</sup> S. 9417, section at ECL section 76-0101(6).

<sup>18</sup> S. 9417, section at ECL section 76-10101(15).

<sup>19</sup> S. 9417, section at ECL section 76-0101(2).

<sup>20</sup> S. 9417, section at ECL section 76-0101(18).

<sup>21</sup> S. 9417, section at ECL section 76-0103(1-8).

<sup>22</sup> S. 9417, section 4.

<sup>23</sup> S. 9417, section 5.

total be charged with less than 20 percent of total assessments.

- Major foreign investor-owned companies include Shell (Dutch) and BP (British); and
- Saudi Aramco would be the single biggest payer.

## V. Economic Incidence

Although it's not obvious to those untrained in economics — a group I belong to — the Superfund proposal has a huge political advantage over a carbon tax or excise tax on motor fuel. In brief, because an assessment is based solely on past activities, it does not directly affect the cost of new fossil fuel production. Thus, set at a reasonable level, the assessment should have a negligible, if any, effect on gasoline prices at the pump.

Stated differently, in a market economy, firms can be expected to charge prices that maximize their profits. The price at which profits are maximized for any good will be a function of the cost of production and demand. Firms will increase the price of their goods up to the point at which the marginal increase in profits from the price increase is offset by a decline in profits because of a reduction in demand for the good. If the oil companies can increase their profits by raising prices, they will do so. Faced with an assessment based on past activity that would not affect future production costs, the price point for maximizing profits would not change. The assessment would be a one-time fixed cost that would be borne by the owners of the business.

A second economic consideration constraining firms from raising prices is that the assessments imposed on individual firms will vary from zero to several billion dollars. A firm that faced a large assessment and sought to pass that cost along to consumers through higher prices would lose market share to firms that had small assessments or no assessment at all and maintained their prices.

To be clear, the Superfund does not have the signaling effect a carbon tax would have — that is, it does not encourage changes in consumer behavior toward more environmentally friendly sources of energy. In that respect, a carbon tax is preferable. But a carbon tax is a non-starter in the current political environment, and tens of billions

of dollars are needed to address climate change. There is a great deal to be said in favor of a program that can raise billions of dollars in revenue from an industry that has generated enormous profits while polluting the planet's atmosphere yet shows no inclination to help mitigate the harm.

## VI. Legal Issues<sup>24</sup>

### A. Due Process — Retroactivity and Proportionality

On occasion, laws that impose economic liability retroactively have been struck down by the courts on due process grounds. There is little likelihood, however, that a due process claim based on retroactivity would prevail in this instance. The test courts generally apply is whether the government has shown that retroactive application of the law has a legitimate state purpose furthered by rational means. Regarding CERCLA, the courts have unanimously found that pollution remediation is a legitimate government purpose and that it is rational to impose liability for the cost of remediation on parties who created and profited from activities that caused the problem.

Also, courts will consider whether a liability imposed by a state on a defendant that is severely disproportionate to the harm suffered violates due process. The state Superfund program should pass muster for both constitutional issues. It addresses a harm resulting from historic activity and imposes costs on those that profited from the activities that caused the problem in proportion to both the total harm done by the industry as a whole and the percentage share of each company of that total.

### B. Preemption by the Clean Air Act

Under the Constitution's supremacy clause, federal action will override state law when Congress intends to preempt state authority to act. Preemption may be explicit or implicit.

<sup>24</sup>The discussion of legal issues that follows incorporates legal analysis done by the Institute for Policy Integrity at the New York University Law School. A copy of the memorandum of law, prepared by Rachel Rothschild of the Institute's staff, who recently joined the faculty of the University of Michigan Law School, is available at Rothschild, "Memorandum," Institute for Policy Integrity, Apr. 16, 2022.

Implicit preemption can occur when the federal government regulation intends to “occupy the field,” when federal and state law directly conflict, or when a state law would pose an obstacle to implementation of the federal law.

The courts have historically followed a doctrine known as the “presumption against preemption” in cases of federal statutes dealing with environmental pollution. A review of the legislative history of the Clean Air Act and relevant case law leads to the conclusion that it is highly unlikely a court would find that the Clean Air Act preempts New York’s proposed Climate Change Superfund. There is ample precedent to support a state’s authority to control air pollution more stringently than the federal government so long as state actions do not interfere with the federal regulatory scheme. The Climate Change Superfund program addresses only retroactive liability for greenhouse gas emissions and imposes liability only for in-state damages. It would therefore pose no obstacle to an Environmental Protection Agency permitting process, nor would it improperly seek to control emissions from out-of-state sources. Also, the EPA’s authority to regulate greenhouse gases was further limited by the Supreme Court’s decision this June in *West Virginia v. EPA*, weakening the argument that the federal government has occupied the field.<sup>25</sup>

### C. Jurisdictional Due Process

The proposal is intended to apply to all parties New York can legally reach under New York’s long-arm statute, the Foreign Sovereign Immunities Act, and the due process clause of the Constitution. Engaging in the marketing, sale, or distribution of fossil fuels in the United States with the reasonably foreseeable consequence that this fuel will be used in New York should be sufficient to create the minimum contacts necessary to find proper jurisdiction given the relationship between the combustion of fossil fuels and climate change harms. In contrast, a court may well be skeptical of extending jurisdiction when the only contact between the fossil fuel company and the state is the fossil fuel

company’s contribution to worldwide greenhouse gas emissions. In any event, a constitutional claim based on jurisdiction would pose an “as applied” challenge that would not attack the constitutionality of the statute as a whole.

### D. Commerce Clause Issues

There is no relevant precedent supporting a claim that the program violates the commerce clause. Most significantly, the commerce clause prohibits discrimination against interstate commerce, and there is nothing in the proposal that discriminates between in state and out-of-state activities. An argument could be asserted that the program imposes an undue burden on interstate commerce, but that would be misplaced under the facts here. The argument being offered is more appropriately one of proportionality, with the operative constitutional provision being the due process clause.

## VII. Conclusion

While modeled on existing, successful programs based on the principle of making polluters pay, the Climate Change Superfund is nonetheless groundbreaking legislation that will undoubtedly face strident opposition from the fossil fuel industry and litigation should it be enacted, with the outcome several years down the road. But that journey is better started sooner rather than later, as the costs of climate change continue to mount and the industry garners record profits. It would be best for other states not to sit on the sidelines and wait to see what happens in New York, only to realize some years later that the state has a judgment against fossil fuel companies for more than \$15 billion dollars while they have not yet introduced legislation. The states cannot afford to let those years go by before seeking to make the polluters pay. ■

<sup>25</sup>*West Virginia v. Environmental Protection Agency*, 590 U.S. \_\_\_\_ (2022).



## MEMORANDUM

TO: Interested Persons

FROM: Rachel Rothschild, Assistant Professor, University of Michigan Law School  
Affiliated Scholar, Institute for Policy Integrity, NYU School of Law

DATE: 3/29/2023

RE: American Petroleum Institute Opposition to a Climate Superfund Act

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### I. Introduction

This memorandum responds to the American Petroleum Institute (API)'s statement in opposition to the "Climate Change Superfund Act." As detailed below, API's claim that the bill may be unconstitutional is not supported by case law on similar types of environmental legislation. Nor is there support for API's claim that the state climate superfund is preempted by the Clean Air Act.

### **Response: Retroactive Law Making and Due Process**

There are numerous examples of retroactive liability laws that have withstood constitutional challenges under the due process clause.<sup>1</sup> These include environmental laws that impose retroactive liability on polluters just like the New York state climate superfund.<sup>2</sup> The appropriate inquiry under due process is not the "amount of potential liability," but whether the application of retroactive liability is based on a "legitimate legislative purpose furthered by rational means."<sup>3</sup> Courts have unanimously found that environmental improvements are a legitimate government purpose, and that it is rational to impose retroactive liability for environmental harms upon parties who "created and profited" from activities that caused the pollution.<sup>4</sup> Nor is the liability imposed in the state climate superfund bill "severely disproportionate" to the parties' contributions to the problem or the harm incurred.<sup>5</sup> Furthermore, the potentially responsible parties should have expected that they would be subject to regulation

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<sup>1</sup> See e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976).

<sup>2</sup> See, e.g., *United States v. Monsanto Co.*, 858 F.2d 160, 174 (4th Cir. 1988) (upholding retroactive application of liability for hazardous waste pollution).

<sup>3</sup> See *Pension Benefit Guar. Corp. v. R. A. Gray & Co.*, 467 U.S. 717, 729 (1984) ("Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches."); see also *United States v. Alcan Aluminum Corp.*, 49 F. Supp. 2d 96, 101 (N.D.N.Y. 1999) (explaining that "economic legislation enjoys a 'presumption of constitutionality' that can be overcome only if the challenger establishes that the legislature acted in an arbitrary and irrational way").

<sup>4</sup> See, e.g., *United States v. Ne. Pharm. & Chem. Co.*, 810 F.2d 726, 734 (8th Cir. 1986); *O'Neil v. Picillo*, 883 F.2d 176, 183 n.12 (1st Cir. 1989).

<sup>5</sup> See, e.g., *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1347 (Fed. Cir. 2001) (rejecting a due process challenge to the 1992 Energy Policy Act and noting that the responsible parties were only liable for a portion of the cleanup costs from uranium processing).

and/or liability for their greenhouse gas emissions after the year 2000. The companies knew that climate change was a serious global problem and were operating in a highly regulated industry at that time.<sup>6</sup> All of these factors indicate that a state climate superfund would not infringe on these companies due process rights.<sup>7</sup>

### **Response: The State Climate Superfund May Constitute a Taking**

The state climate superfund’s imposition of liability on responsible parties for the environmental harms that result from their activities is not a taking.<sup>8</sup> In evaluating a “regulatory” taking, courts examine several factors, including “the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the governmental action.”<sup>9</sup> Under this framework, courts have repeatedly upheld environmental laws and regulations that impose financial costs on polluters for environmental harms.<sup>10</sup> The responsible parties under a state climate superfund reap significant private profits from their activities while the public bears the broader health and environmental costs; these profits dwarf the financial liabilities imposed by the bill. And as noted above, it is unreasonable for companies to have expected no government regulation of fossil fuels after the year 2000.<sup>11</sup>

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<sup>6</sup> On the relevance of operating in a highly regulated industry with clear potential for environmental harm, see *Monsanto Co.*, 858 F.2d at 174 (“While the generator defendants profited from inexpensive waste disposal methods that may have been technically ‘legal’ prior to CERCLA’s enactment, it was certainly foreseeable at the time that improper disposal could cause enormous damage to the environment.”).

<sup>7</sup> See *United States v. Alcan Aluminum Corp.*, 315 F.3d 179, 190 (2d Cir. 2003) (“We are in accord with this consistent authority that both pre- and post-dates *Eastern Enterprises*. As a consequence, holding Alcan jointly and severally liable under CERCLA for the cleanup costs incurred at PAS and Fulton does not result in an unconstitutional taking adverse to Alcan, or a deprivation of its right to due process.”);

<sup>8</sup> See *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 217 (W.D. Mo. 1985) (“What defendants have loosely referred to as a ‘taking’ is, in reality, nothing more than an attempt to transform a substantive due process challenge of an economic regulation (which is subject only to the ‘rational purpose’ and ‘arbitrary and capricious’ standards), into a confiscation of defendants’ property rights. This characterization is, however, inappropriate and the claim lacks merit.”).

<sup>9</sup> *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124-25 (1978).

<sup>10</sup> See, e.g., *Alcan Aluminum Corp.*, 315 F.3d at 190; *United States v. Ne. Pharm. & Chem. Co.*, 810 F.2d 726, 734 (8th Cir. 1986) (“Appellants also summarily argue retroactive application of CERCLA constitutes an unconstitutional taking of property. We disagree.”); *United States v. Alcan Aluminum Corp.*, 49 F. Supp. 2d 96, 100 (N.D.N.Y. 1999) (distinguishing *Eastern Enterprises v. Apfel* from environmental liability in the context of a hazardous waste superfund because in the latter case the liability was connected to an environmental harm, rather than imposed for “no reason”); *United States v. Dico, Inc.*, 189 F.R.D. 536, 543 (S.D. Iowa 1999) (“[T]he only rationale embraced by at least five judges in *Eastern Enterprises* is that retroactive application of the Coal Act to *Eastern* did not violate the Takings Clause. It therefore remains settled in this circuit that retroactive application of CERCLA does not violate either the Due Process or Takings Clauses.”).

<sup>11</sup> See Peter H. Howard and Minhong Xu, *Enacting the “Polluter Pays” Principle: New York’s Climate Change Superfund Act and Its Impact on Gasoline Prices*, INST. POL’Y INTEGRITY 14 (2022), [https://policyintegrity.org/files/publications/Polluter\\_Pays\\_Policy\\_Brief\\_v2.pdf](https://policyintegrity.org/files/publications/Polluter_Pays_Policy_Brief_v2.pdf) (discussing reasons firms should expect liability for greenhouse gas emissions and noting that potentially responsible parties like Exxon, BP, Shell, and Chevron already put a price on carbon internally to account for this expected liability).

## **Response: The State Climate Superfund Imposes Arbitrary, Excessive Fines that May Violate Due Process**

The financial liability imposed under the state climate superfund is not arbitrary or excessive. Responsible parties must contribute funds in proportion to the amount of greenhouse gas emissions that result from their products;<sup>12</sup> an overwhelming number of scientific studies have connected greenhouse gas emissions to climate change and its attendant effects. Nor are the fines excessive given oil company revenue, market capitalization, and profits,<sup>13</sup> as well as the expected environmental damage to New York.

Courts have repeatedly found that the imposition of financial liability on parties that caused past environmental harm does not violate due process.<sup>14</sup> No court has suggested that the state needs precision in calculating liability in order to satisfy due process requirements.<sup>15</sup>

## **Response: Use of Strict Liability Standard and the Nexus between Fine and Liability**

Legislatures and the courts have historically imposed strict liability on parties engaging in a variety of harmful activities, including those that injure the environment, under the reasoning that the party who engaged in the activity for a specific purpose or profit is in the best position to absorb the cost of those harms.<sup>16</sup> In the environmental context, the requirement that companies who engaged in the polluting activity pay the costs of any resulting damage is known as the “polluter pays” principle, a longstanding legal doctrine.<sup>17</sup> Here, the responsible parties are not

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<sup>12</sup> See *Franklin Cty. Convention Facilities Auth. v. Am. Premier Underwriters, Inc.*, 240 F.3d 534, 553 (6th Cir. 2001) (upholding CERCLA’s constitutionality from due process and takings challenges, noting that “[a]lthough the economic impact on [the party] of retroactive CERCLA application is potentially significant, it is also directly proportional to [the party’s] prior acts of pollution).

<sup>13</sup> See *Howard and Xu*, *supra* note 11, at 16.

<sup>14</sup> See *Alcan Aluminum Corp.*, 315 F.3d at 190; *Dico, Inc.*, 189 F.R.D. at 543; *Franklin Cty. Convention Facilities Auth. v. Am. Premier Underwriters, Inc.*, 240 F.3d at 552 (finding no due process violation for imposing liability on hazardous waste polluters because “Congress acted rationally by spreading the cost of cleaning hazardous waste sites to those who were responsible for creating the sites. Cleaning abandoned and inactive hazardous waste disposal sites is a legitimate legislative purpose which is furthered by imposing liability for response costs upon those parties who created and profited from those sites.”); *United States v. Newmont USA Ltd.*, No. CV-05-020-JLQ, 2007 U.S. Dist. LEXIS 63726, at \*14 (E.D. Wash. Aug. 28, 2007) (“[C]ourts that have been asked to reconsider whether CERCLA’s retroactive liability scheme is constitutional in light of *Eastern Enterprises* have “uniformly held that CERCLA continues to pass constitutional muster.”);

<sup>15</sup> See *United States v. Hardage*, Case No. CIV-86-1401-P, 1989 U.S. Dist. LEXIS 17878, at \*14 (W.D. Okla. Nov. 28, 1989) (finding that the imposition of joint and several liability for parties who caused environmental harms that were “indivisible” did not violate due process); *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 214 (W.D. Mo. 1985) (“there is no support for the underlying premise . . . that imposition of joint and several liability creates a constitutional question. . . The application of the principle of joint and several liability where there is indivisible injury resulting from multiple causes has been applied in many contexts, without constitutional challenge”); see also *Monsanto Co.*, 858 F.2d at 174.

<sup>16</sup> See Alexandra Klaas, *From Reservoirs to Remediation: The Impact of CERCLA on Common Law Strict Liability Environmental Claims*, 39 WAKE FOREST L. REV. 903, 907 (2004) (noting that “strict liability has been historically applied through common law and statutory developments in a wide range of areas,” including environmental pollution).

<sup>17</sup> Boris N. Mamlyuk, *Analyzing the Polluter Pays Principle through Law and Economics*, 18 SOUTHEASTERN ENV’T L.J. 39, 41-42 (2009) (“In domestic law, the polluter pays principle states that polluting entities are legally and financially responsible for the harmful consequences of their pollution.”).



just “one segment of the economy” but those who engaged in the activity and profited from it. API’s statements here are thus policy critiques of the bill rather than arguments about its legal validity. API may wish that the doctrine of strict liability didn’t exist, or believe that New York should add a causation requirement to the bill, but the legislature is legally allowed to impose strict liability on responsible parties and determine financial contributions based on greenhouse gas contributions.

### **Response: Disproportionate Penalties**

It is reasonable for the New York state legislature to impose joint and several liability on responsible parties for the harms resulting from climate change, thus requiring some companies to pay more to help with adaptation and mitigation efforts. This is the approach taken in other environmental laws where the harms cannot be specifically attributed to individual polluters as well as situations where some responsible parties are insolvent or otherwise unable to contribute to remedying the environmental damages resulting from their activities.<sup>18</sup>

### **Response: Federal Preemption**

The state climate superfund is not preempted by the Clean Air Act. Under the Clean Air Act, states do not need permission from the federal government to enact environmental laws, on climate change or any other air pollution problem. The Clean Air Act takes what is known as a “cooperative federalist” approach to air pollution problems, preserving state authority to regulate more stringently than the federal government through a savings clause,<sup>19</sup> with a few specific exceptions like setting new motor vehicle emission standards.<sup>20</sup> The Clean Air Act’s savings clause would apply to a state climate superfund in the same way it does to state laws concerning other types of pollution problems.<sup>21</sup>

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<sup>18</sup> See *United States v. Monsanto Co.*, 858 F.2d 160, 172 (4th Cir. 1988) (noting that under CERCLA the uniform federal rule is that if parties “cause a single and indivisible harm [], they are held liable jointly and severally for the entire harm”).

<sup>19</sup> See 42 U.S.C. § 7416 (2022) (“Except as otherwise provided . . . nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution.”); see also Holly Doremus & W. Michael Hanemann, *Of Babies and Bathwater: Why the Clean Air Act’s Cooperative Federalism Framework Is Useful for Addressing Global Warming*, 50 ARIZ. L. REV. 799, 817 (2008) (“The Clean Air Act was the first modern federal environmental statute to employ a ‘cooperative federalism framework,’ assigning responsibilities for air pollution control to both federal and state authorities.”).

<sup>20</sup> See 42 U.S.C.S. § 7543(a) (2022) (“No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines . . .”). Another exception concerns the Acid Rain trading provisions. See *Clean Air Mkts. Group v. Pataki*, 338 F.3d 82 (2d Cir. 2003).

<sup>21</sup> Indeed, many states have programs to address greenhouse gas emissions; though different in form than a state climate superfund, the same principles of federalism and preemption analysis apply. See, e.g., William Funk, *Constitutional Implications of Regional CO<sub>2</sub> Cap-and-Trade Programs: The Northeast Regional Greenhouse Gas Initiative as a Case in Point*, 27 J. ENV’T L. 353, 357 (2009) (explaining that the regional greenhouse gas initiative should not be preempted by federal law, at least until a federal cap-and-trade program passes Congress).

The decision of the U.S. Court of Appeals for the Second Circuit in *City of New York v. Chevron Corp* does not suggest that the Clean Air Act preempts legislation like a climate superfund.<sup>22</sup> The *Chevron* case solely concerned whether nuisance lawsuits against fossil fuel companies could be brought under state law or whether they had to be brought under federal common law.<sup>23</sup> Musings from the Second Circuit about whether the federal government is better positioned to address climate change are immaterial to a legal analysis of preemption. Only Congress – not the Second Circuit – has the power to amend the Clean Air Act and preempt state action; under the Act’s current framework, states have the authority to create a climate superfund.

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<sup>22</sup> See, e.g., Jonathan Adler, *Displacement and Preemption of Climate Nuisance Claims*, 17 J. L., ECON. & POL’Y 217, 221 (2022) (criticizing the 2<sup>nd</sup> circuit decision for holding “that state law claims against fossil fuel companies are preempted, despite the lack of any preemptive legislative action, implicit or otherwise . . . [w]hether state law nuisance actions are to be preempted is a choice for Congress to make, and is a choice Congress has not yet made”).

<sup>23</sup> *City of N.Y. v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021)

**From:** [Jessica Gordon](#)  
**To:** [Kassie Siegel](#)  
**Subject:** Re: California climate suit filed today  
**Date:** Tuesday, September 19, 2023 9:24:55 PM

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No reason to apologize! I'm at the Doubletree Times Square West. Let's meet at Grind NYC, 602 9th Ave, at 10:00. See you soon!

On Sep 19, 2023, at 6:17 PM, Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)> wrote:

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

That sounds great! 10 or 10:30 both work for me, would it be most convenient if I meet you in your hotel lobby? Or do you have a better place in mind?

And sorry I was not free earlier today!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, September 19, 2023 3:05 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** Re: California climate suit filed today

Ok, thanks for your patience! I am staying in Times Square and trying to get into IETA for the lawyer's panel at 11:45 in the same area, so how's 10 or 10:30 coffee around there? Thanks!

On Sep 19, 2023, at 2:56 PM, Jessica Gordon  
<[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks, Kassie. I find myself at the Javits Center with about 40 free minutes now, just in case you're in the area. Otherwise I'll send you a time/place for tomorrow ASAP.

On Sep 19, 2023, at 9:20 AM, Kassie Siegel  
<[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)> wrote:

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Super thanks! I know it is an incredibly hectic week. I'll stand by for a time on Wednesday. All best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](https://www.biologicaldiversity.org/)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, September 18, 2023 10:42 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** Re: California climate suit filed today

Sorry for the slow reply! Let's do Weds. Still figuring out where I'll be but probably midtown. Thanks!

On Sep 18, 2023, at 9:01 AM, Kassie Siegel  
<[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)> wrote:

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Thanks Jessica! Congrats again and I hope you had a good day yesterday.

Shall we do today, 11 or 11:30? Happy to come to wherever is most convenient for you. Tomorrow 10-11 and Weds before 1 also work great, so if those are better just let me know.

Cell is [REDACTED] if it is easier to text re: meeting up.

Thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](http://www.biologicaldiversity.org)  
Phone: [REDACTED]

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**From:** Jessica Gordon  
<[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Sunday, September 17, 2023 9:57 PM  
**To:** Kassie Siegel  
<[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: California climate suit filed today

Thanks again, Kassie, and sorry for the slow reply. I'm also sorry that we couldn't take you up on the press conference offer but I hope it was great. I could meet tomorrow (Monday) before 1, Tuesday 10-11, or Weds. before 1 or after 3. What works for you? Looking forward to it.

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**From:** Kassie Siegel  
<[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Saturday, September 16, 2023  
6:04 AM  
**To:** Jessica Gordon  
<[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: California climate suit filed today

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EMAIL:**  
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suspicious.

Tremendous congratulations and thanks to you and your entire team on the filing of this historic case!  
I am in NY now through Thurs and would love to meet in person – please just let me know what works for you.

Would the Attorney General (or you, or the appropriate representative) like to speak about the lawsuit at the press

conference for the March to End Fossil Fuels in NY? It is at the stage on 53rd Street, on the South East corner of Broadway, at noon tomorrow.

If it's of interest I can send more info.  
Many thanks! - Kassie Siegel

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon  
<[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Friday, September 15, 2023 11:28 PM  
**To:** Kassie Siegel  
<[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** California climate suit filed today

Hi, Kassie,  
We met on a zoom with CCI back in March; I hope you're having a good weekend. I wanted to let you that AG Bonta [filed suit](#) against 5 oil companies and API today for their decades-long campaign of deception and climate change harms in California. The article came out sooner than expected, but we'll be issuing a press release and linking to the complaint at <https://oag.ca.gov/media/news> around 8 am PT.

I will be heading to NYC for Climate Week tomorrow through Weds., but would be happy to set up a meeting in person, if you'll be there, or remotely. Looking forward to talking soon!

Best,

Jessica

Jessica Gordon  
Special Assistant Attorney General for  
Environmental Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

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**From:** Jessica Gordon  
**Sent:** Thursday, November 30, 2023 9:59 PM  
**To:** Kassie Siegel  
**Subject:** RE: Center for Biological Diversity Team Contact List

Thank you so much!!

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 30, 2023 9:59 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** Center for Biological Diversity Team Contact List

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Hi Jessica,

Please use Karuna as your primary point of contact for anything you need while in Dubai. But here is contact info for all our staff there, just in case you need it for any reason, don't hesitate to reach out. I'll also be supporting from home.

Karuna Jaggar, Climate Campaign Director, [REDACTED], [kjaggar@biologicaldiversity.org](mailto:kjaggar@biologicaldiversity.org)  
Jean Su, Energy Justice Program Director, [REDACTED], [jsu@biologicaldiversity.org](mailto:jsu@biologicaldiversity.org)  
Nyshie Perkinson, Senior Media Specialist, [REDACTED], [nperkinson@biologicaldiversity.org](mailto:nperkinson@biologicaldiversity.org)  
Ben Goloff, Senior Campaigner, [REDACTED], [BGoloff@biologicaldiversity.org](mailto:BGoloff@biologicaldiversity.org)

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon  
**Sent:** Sunday, November 12, 2023 10:23 PM  
**To:** Kassie Siegel  
**Subject:** RE: Climate Reality Project

Thanks!

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Sunday, November 12, 2023 8:05 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** Climate Reality Project

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, here are some contacts at Climate Reality Project. You might try just writing to Ethan and asking if he can share programming they may have during the relevant time period, and/or put you in touch with the right person. I included a couple others in case Ethan is out, etc. I don't actually know these folks personally but others on my team do, if you prefer an intro just LMK. I can also pass along relevant events if and when they come across but haven't heard anything yet. All best, Kassie

Ethan Spaner [Ethan.Spaner@climatereality.com](mailto:Ethan.Spaner@climatereality.com); Kelly Yagatich [kelly.yagatich@climatereality.com](mailto:kelly.yagatich@climatereality.com); Sena Wazer [sena.wazer@climatereality.com](mailto:sena.wazer@climatereality.com);

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon  
**Sent:** Wednesday, October 18, 2023 11:22 AM  
**To:** Kassie Siegel; Heather Lewis; lyla Shornstein  
**Cc:** Alyssa Johl  
**Subject:** RE: community briefing re California v Exxon  
**Attachments:** Public Briefing: California's Climate Accountability Lawsuit

Thanks, Kassie! We don't want to get into legal analysis, so let's add these. Thanks!

- The section of the complaint that talks about how the deception campaigns continue today, and about greenwashing, is so powerful. Can you talk a little bit more about greenwashing – what is it – and some of the examples in the complaint (pp. 82-87)?
- What can people/organizations do to support this lawsuit?

For logistics, confirming that the attached is the panelist invite? And my boss says that she registered about 10-15 minutes ago and hasn't received a link yet – is it coming or is there an issue? Thanks!

---

**From:** Kassie Siegel <ksiegel@biologicaldiversity.org>  
**Sent:** Wednesday, October 18, 2023 10:29 AM  
**To:** Heather Lewis <Heather.Lewis@doj.ca.gov>; Jessica Gordon <Jessica.Gordon@doj.ca.gov>; lyla Shornstein <iyla@climateintegrity.org>  
**Cc:** Alyssa Johl <alyssa@climateintegrity.org>  
**Subject:** RE: community briefing re California v Exxon

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Here are some other possibilities. Please feel free to share any thoughts now or when we hop on 10 min beforehand. Tremendous thanks again for taking the time to do this. Interest in and appreciation for this case is extremely high! - Kassie

- What can people/organizations do to support this lawsuit?
- How can people best follow this case or get updates about it?
- The section of the complaint that talks about how the deception campaigns continue today, and about greenwashing, is so powerful. Can you talk a little bit more about greenwashing – what is it – and some of the examples in the complaint (pp. 82-87)?
- Regarding the public nuisance claim, people often refer to a 2017 California appellate decision, *People v. Con Agra*, finding paint companies liable for their lead paint advertising. Could you tell us a little bit about that case and its implications for this case?
- Sometimes you hear that companies are defending themselves from other accountability cases on the basis of free speech protections. Can you talk a little bit more about California's regulation of commercial speech – and the basic difference between my right to say what I want vs. a corporations' obligations when marketing their products to Californians?
- I thought it was really interesting that there is a special provision in California law that prohibits misleading environmental marketing – can you tell us anything more about that provision, like maybe when it was enacted, and have there been other enforcement actions?

- The strict and negligent products liability claims are really interesting - can you tell us more about that area of law in California, maybe some examples of how they have been previously used to protect the public?

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Sent:** Wednesday, October 18, 2023 10:19 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** RE: community briefing re California v Exxon

Yes, that approach works for me, thanks Iyla. Also confirming that I received the panelist invite.

Thanks,  
Heather

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, October 18, 2023 10:17 AM  
**To:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Subject:** RE: community briefing re California v Exxon

Thanks! I am fine with that, if it works for Heather and everyone else.

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Wednesday, October 18, 2023 10:15 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Subject:** Re: community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Great! I'll let Kassie send along a few additional questions.

One other suggestion -- Kassie and myself can drop questions into the "hosts/panelists" chat. Heather and Jessica can react with a 'thumbs up' emoji to the questions that would be good to answer in this setting. Then, I can send them privately to Alyssa. That way, Heather and Jessica only need to look at one chat and Alyssa only needs to look at one chat. The only people running between chats are Kassie and myself? Hopefully that didn't overcomplicate it! I am also fine with google or teams!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Wed, Oct 18, 2023 at 12:54 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks! Here are a couple of questions we'd like to address. Do you have others already in mind? And I'm still looking for a doc we can all easily edit together, but alternatives are for us to look at google docs on personal devices simultaneously or to use a Teams chat.

**Q: Why did California file its climate accountability suit now?**

**Q: Big cases like this one tend to move slowly. What do you see happening before the case is resolved?**

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>

**Sent:** Wednesday, October 18, 2023 9:27 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>

**Subject:** Re: community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi there,

Most recent list of elected officials/offices registered to attend:

LA County- Janice Hahn
City of Concord
Sen. Menjivar
City of Los Angeles - Yaroslavsky

ASM Schiavo
Assembly District 55, Majority Leader Isaac Bryan
Los Angeles County, Supervisor Lindsey Horvath
ASM Muratsuchi
ASM Holden
LA County Supervisor Hilda Solis
Los Angeles City - Raman
Asm. Bauer-Kahan
California Senate, Office of Senator Durazo
Office of the Governor
CA Senator Lena Gonzalez
California State Senate - Senate Environmental Quality Committee
Office of Rep. Katie Porter
State Senate - Lena Gonzalez
CA Senate - Joint Legislative Committee on Climate Change Policy
Office of Senator Henry Stern
Office of Congresswoman Anna Eshoo
Office of Assemblymember Steve Bennett
Asm. Boerner
US House of Representatives - Katie Porter
California State Senate - Steve Padilla

Iyla Shornstein ([pronounce](#)) (she/her)  
**Political Director, State and Local Programs**  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Wed, Oct 18, 2023 at 11:36 AM Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)> wrote:

Hi folks,

I can send you an updated list in a bit as we've had a jump in registrations. I also want to confirm that you each received the panelist invite?



Thanks!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Tue, Oct 17, 2023 at 9:43 AM Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)> wrote:

Hi Jessica,

No problem! The offices listed below are represented in the registrations either by the officeholder themselves or their staff:

LA County- Janice Hahn
City of Concord
Sen. Menjivar
City of Los Angeles - Yaroslavsky
ASM Schiavo
Assembly District 55, Majority Leader Isaac Bryan
Los Angeles County, Supervisor Lindsey Horvath
ASM Muratsuchi
ASM Holden
LA County Supervisor Hilda Solis
Los Angeles City - Raman
Asm. Bauer-Kahan
California Senate, Office of Senator Durazo
Office of the Governor

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Mon, Oct 16, 2023 at 7:42 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks again. Can you please tell me what elected officials are registered? Appreciate it.

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>

**Sent:** Monday, October 16, 2023 2:10 PM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>

**Subject:** Re: community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

Thanks so much! We will reach out to those groups. Here is the public zoom registration link: [https://climateintegrity-org.zoom.us/webinar/register/WN\\_eNlpQsDiRYigqjkaF8-oow#/registration](https://climateintegrity-org.zoom.us/webinar/register/WN_eNlpQsDiRYigqjkaF8-oow#/registration)

Have a great day!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Mon, Oct 16, 2023 at 4:52 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks again for the great conversation earlier. Can you please add these groups? And can you please share the public zoom link? Appreciate it.

Jessica

- Democracy Forward Foundation
- APEN
- Audubon
- Nature Conservancy
- Coalition for Clean Air
- Clean Air Task Force
- Sierra Club CA
- CEJA
- Communities for a Better Environment
- State Energy & Environmental Impact Center at NYU Law
- Harvard Environmental & Energy Law Program

Thanks!

---

**From:** Jessica Gordon

**Sent:** Monday, October 16, 2023 12:24 PM

**To:** 'Iyla Shornstein' <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Cc:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>

**Subject:** RE: community briefing re California v Exxon

Thanks for rescheduling! I'm hoping we can discuss your anticipated format and which groups you have invited. Thanks!

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>

**Sent:** Monday, October 16, 2023 11:09 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Cc:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>

**Subject:** Re: community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi again,

Looks like we can start early. I will change the invite to a start time of 12:30 PT. Let me know if anything changes and I look forward to speaking then!

Best,

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Mon, Oct 16, 2023 at 1:38 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Apologies for the slow reply but the invitation looks great.

Unfortunately I now have a conflict at 1:20 PT today, so either need to start our prep call earlier or reschedule. I am available all day until that time and from 2-2:30 PT. Thanks!

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Thursday, October 5, 2023 6:57 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** Re: community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Absolutely! We are grateful to you for joining! We are going to invite mainly nonprofits (CA-based and some national) and CA elected officials. We've been educating elected officials in CA about climate accountability for some time so we want to make sure folks know about and understand the recent filing.

We would be delighted if you suggested groups to add. The more the merrier! No specific parameters -- we wanted this to be largely educational.

I am attaching the event description to this email. Can you let me know if you are comfortable with this and then we can move forward promoting it?

Thanks Jessica

PS - I am just confirming the monday times for a prep call but will be back to you ASAP!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
Center for Climate Integrity  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Wed, Oct 4, 2023 at 8:53 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks again for organizing! Can you please tell us who you're inviting? I've gotten requests to speak with a number of NGOs, so it would be great to know who we'll already be briefing at this event. And if it would be appropriate for us to suggest groups to add, please let us know if you have parameters for invited groups (e.g., only orgs with legal teams).

Thanks,

Jessica

---

**From:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Sent:** Wednesday, October 4, 2023 9:53 AM  
**To:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** RE: community briefing re California v Exxon

Hi Iyla,

Jessica and I are available for a prep call during the 10/16 and 10/17 windows in Jessica's earlier email – those times would be preferable if possible as I'll be out much of the previous week.

Thanks,

Heather Lewis

Deputy Attorney General

Environment Section

California Department of Justice

1515 Clay St, 20th Floor

Oakland, CA 94612

(510) 879-1008

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>

**Sent:** Wednesday, October 4, 2023 6:38 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>

**Subject:** Re: community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Sorry for the double message! Realizing we should also get a prep call on the calendar. Kassie Siegel from Center for Biological Diversity and Michel Legendre from Corporate Accountability are helping us to organize this as well. Shall we aim to prep the week prior? Whatever works best for you!

Best,

Iyla Shornstein ([pronounce](#)) (she/her)

**Political Director, State and Local Programs**  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Wed, Oct 4, 2023 at 8:44 AM Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)> wrote:

Hi Jessica,

Thanks so much! Let's go with Wednesday, 10/18 at 12pm PT. I will work to get a registration link and language together so we can start promoting. I will send what I put together here before it goes live for your approval.

Thank you!

Best,

**Iyla Shornstein** ([pronounce](#)) (she/her)  
**Political Director, State and Local Programs**  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Tue, Oct 3, 2023 at 5:09 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks! We're currently available in these slots:

- Monday, 10/16/2023 – 11:00 AM, 1:00 PM
- Tuesday, 10/17/2023 – 10:00 AM – 12:00 PM
- Wednesday, 10/18/2023 – 12:00 PM, 1:00 PM



---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Monday, October 2, 2023 6:43 AM  
**To:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Cc:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Subject:** Re: community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi folks!

Sorry for the late reply! Yes, we were thinking an hour.

Thanks so much!

Best,

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
Center for Climate Integrity  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Fri, Sep 29, 2023 at 5:50 PM Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)> wrote:

I would imagine it will be an hour.

Iyla, is that what you're thinking?

On Sep 29, 2023, at 3:49 PM, Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Sounds good and nice to meet you, Ilya. How long an event were you thinking? Thanks.

---

**From:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Sent:** Friday, September 29, 2023 12:48 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Subject:** community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica (and Heather),

Thanks so much for getting back to me, and no worries! We're happy to hear that you and Heather are able to participate.

Could we schedule the briefing for the week of 10/16, sometime between 9 am-2 pm PT? We are flexible, so please let us know what works best for you. I'm cc'ing my colleague Iyla Shornstein, who is helping to organize behind the scenes.

Many thanks,

Alyssa

On Fri, Sep 29, 2023 at 2:42 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Alyssa, with further apologies for the slow reply, I'm adding Heather Lewis, a member of the legal team who will join me on the briefing. Please send a few potential dates/times that work for you. We're looking forward to it!

Thanks,

Jessica

---

**From:** Jessica Gordon  
**Sent:** Tuesday, September 26, 2023 10:51 AM  
**To:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** RE: California opens the floodgates on Big Oil

So sorry for the slow reply – it’s been hectic, as you can probably imagine! We are discussing internally and hope to get back to you in the next day or so. Thank you for your interest and patience!

---

**From:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Sent:** Thursday, September 21, 2023 11:26 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** Re: California opens the floodgates on Big Oil

**EXTERNAL EMAIL:** This message was sent from outside DCJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

I wanted to circle back on this, as we’d love to get this scheduled. Have you been able to consult with AG Bonta or others in your office re interest/availability for a briefing next week?

Many thanks,

Alyssa

On Sep 18, 2023, at 3:27 PM, Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks, Alyssa! Will get back to you ASAP.

On Sep 18, 2023, at 3:20 PM, Alyssa Johl  
<[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)> wrote:

**EXTERNAL  
EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi both,

I thought you would be interested in this piece my colleague Emily Sanders just published.

Also, I sent this message earlier (to Jessica), but know that you and others are caught up in the mayhem of Climate Week. Please let me know if this would be of interest, we'd love to get it scheduled and start promoting this week.

I spoke with Kassie from CBD, and we are interested in organizing a virtual briefing, ideally early next week (Monday or Tuesday) for elected officials, non-profits, and other members of the climate, environment, and justice communities. We'd love to have AG Bonta (or you or Ed or someone else from your office) join to share his perspective, and discuss why the state brought the suit, the specific claims, and how others can support as the case moves forward. Would the AG or someone else be interested and available?

Many thanks,

Alyssa

----- Forwarded message -----

From: **ExxonKnews**

<[exxonknews@substack.com](mailto:exxonknews@substack.com)>

Date: Mon, Sep 18, 2023 at 1:49 PM

Subject: California opens the floodgates on Big Oil

To: <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>

*Emily Sanders is the  
Center for Climate  
Integrity's editorial  
lead. Catch up with  
on Twitter [here](#).*

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# California opens the floodgates on Big Oil

Attorney General Rob Bonta's lawsuit against ExxonMobil and other oil giants signals a new era for climate accountability.

EXXONKNEWS

SEP 18

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Abbot

The state of California  
just launched a game  
changing climate  
lawsuit against oil  
majors, bringing the  
weight of one of the  
world's largest  
economies and the most  
populous state in the  
nation to bear against  
some of the biggest  
fossil fuel companies  
on earth.

California's size and  
political influence —  
and its position as the  
first major oil producing  
state to take the industry  
to court — give the  
lawsuit distinction and  
likely the most powerful  
action to date to hold  
Big Oil companies  
accountable for lying  
about their products  
role in climate change.  
The Golden State's  
action could very likely  
open the floodgates for  
other states that might  
have been waiting to

make their own mo  
while Attorney Gen  
Rob Bonta is the ni  
attorney general to  
Big Oil, 16 attorney  
general signed on to  
[latest legal brief](#) in  
support of a climate  
accountability case.

Both Bonta and  
Governor Gavin  
Newsom indicated  
much while speakin  
Climate Week NYC  
Sunday. Bonta [said](#)  
hopes California's m  
"will be an inspirati  
to other states and c  
entities to get invol  
and join us, to sue a  
be part of the effort  
hold the industry  
accountable."

"I just met with ano  
governor a moment  
ago," Newsom said  
shortly before posti  
photo with [Governor](#)  
[Wes Moore](#) of  
[Maryland](#), where th  
municipalities are  
already suing Big C  
"We want to see thi  
spread, we want mo

and more jurisdiction  
the United Nations  
more countries to m  
in this direction.”

The lawsuit, filed la  
Friday in California  
state court, argues t  
ExxonMobil, BP,  
Chevron,  
ConocoPhillips, Sh  
and the American  
Petroleum Institute  
“aggressive[ly]  
promot[ed] the use  
fossil fuel products  
while “misrepresent  
and concealing the  
hazards of those  
products to deceive  
consumers and the  
public.” As a result,  
climate action was  
delayed for decades  
case argues, and  
Californians now fa  
regular onslaught o  
disasters — from de  
wildfires and droug  
to dangerous heat  
waves, hurricanes, a  
floods.

“Californians and th  
families, communit  
and small businessse



should not have to bear  
all the costs of climate  
change alone,” read  
complaint, citing the  
billions of dollars  
residents have and will  
spend to recover from  
such disasters. “This  
lawsuit seeks to hold  
those companies  
accountable for the  
they have told and to  
damage they have  
caused.”

In a first for state  
climate lawsuits,  
California’s case looks  
to create an abatement  
fund that fossil fuel  
defendants would pay  
into to help residents  
foot the bill for  
adaptation and recovery.  
That remedy is based on  
a strong California  
which was successful  
used to create a \$30  
million abatement fund  
for lead paint.

Here are some other  
things to know about  
California’s case:

**Bonta’s lawsuit built on cases filed by others**

**California municipalities.**

In 2017 and 2018, California municipalities — San Francisco, Oakland, Santa Cruz, Richmond, Imperial Beach, and counties of San Mateo, San Marin, and Santa Cruz — filed some of the earliest climate liability lawsuits against the fossil fuel industry. According to the attorney general’s complaint, the state lawsuit won’t supersede any of those pending local actions, which are expected to reach trial first.

The latest of those was filed in Richmond at the site of a major Chevron oil refinery known for its chronic pollution, explosions, and fires. The city, mostly made up of people of color, is also home to soaring rates of cancer, cardiovascu

disease, and childhood asthma.

But many residents  
Chevron, which fun  
the city's newspaper  
(which it uses as a  
platform) and is its  
largest employer,  
continues to mislea  
public about its  
operations and push  
false climate solutio  
that will worsen  
environmental justic  
harms and continue  
oil and gas business  
the community. Sin  
the company built a  
much-touted hydrog  
plant at its  
“modernized”  
Richmond refinery  
2018, emissions fla  
incidents have  
skyrocketed.

Screenshot from a p  
on Chevron's webs  
last year.

“There's a daily eff  
to create this  
misinformation

campaign while we  
fighting to survive,”  
said Katt Ramos,  
Managing Director  
the Richmond Our  
Power coalition. “W  
[Chevron is] actual  
doing is prolonging  
their life while caus  
us harm with unpro  
technology.”

Chevron and the oth  
oil companies’ ong  
misinformation and  
greenwashing plays  
major role in  
California’s claims.

**California’s compl  
puts a spotlight on  
companies’ moder  
deception.**

California’s compl  
documents Big Oil’  
modern greenwashi  
and deception abou  
environmental bene  
of its operations.

“Through recent  
advertising campaig  
and public statemen  
California and/or  
intended to reach  
California, includin

not limited to online advertisements and social media posts, Defendants falsely and misleadingly portrayed these products as ‘green,’ and the Fossil Fuel Defendants portrayed themselves as climate friendly energy companies that are deeply engaged in finding solutions to climate change,” re the complaint.

Among many claims familiar to other climate accountability suits including public nuisance, false advertising, fraud, and negligence, the case also brings a new cause of action under California law: misleading environmental marketing. California argues the companies are violating the state law meant to protect consumers against greenwashing.

According to the complaint, the companies deceptively promoted natural gas as a climate solution; deceptively marketed fossil fuel products as “low carbon,” “emissions-reducing,” “clean” and/or “green” just as tobacco companies promote “low-tar” or “light” cigarettes as healthy alternatives to giving up smoking; marketed their businesses as contributing to “climate solutions” despite their negligible investments in clean energy as opposed to their increasing production of oil and gas; and claimed to be in alignment with international climate goals, all while protecting and growing their business in fossil fuels.

Just last week, the *Wall Street Journal* [reported](#) never-before-seen documentation of Exxon’s deception

under the reign of  
former CEO Rex  
Tillerson, who pled  
the company's support  
for climate actions  
the Paris Agreement  
while working to ca  
doubt on climate  
science behind the  
scenes. Exxon is the  
lead defendant in  
California's case.

**California's case is  
latest sign of the  
evolving politics of  
taking on Big Oil.**

Both Bonta, who filed  
the suit and has said  
is "seriously  
considering" a run for  
governor, and Newsom,  
who is expected to  
preparing for a future  
presidential run, are  
clearly embracing the  
issue.

"The scale and scope  
what the state of  
California can do with  
think can move the  
needle," Newsom told  
David Gelles of the  
New York Times at  
opening ceremony of

Climate Week NYC  
“We cannot address  
[climate change] unless  
we get serious about  
addressing the issue.  
And the issue is fossil  
fuels, the issue is the  
deceit from these  
companies.”

It’s the latest sign that  
politicians see taking  
Big Oil as an  
increasingly popular  
move, as we saw during  
last year’s midterm  
elections.

*A sign at Sunday’s  
March to End Fossil  
Fuels in New York*

**It’s a tipping point  
the legal fight for  
climate accountability**

California is the first  
state to file since the  
Supreme Court cleared  
the way for climate  
accountability suits  
against Big Oil to  
proceed toward trial in  
state courts. On Sun



Bonta told reporters  
the Supreme Court’s  
ruling “allows us to  
to where we want to  
to the merits, to hold  
them accountable for  
their deceit.”

The industry’s attempt  
to delay and derail the  
cases have persisted  
failed, and now  
California’s in the  
game, with all signs  
pointing to more  
lawsuits against Big  
to come.

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**From:** [Jean Su](#)  
**To:** [Jessica Gordon](#)  
**Cc:** [Roger Lin](#); [Howard Crystal](#); [Augusta Wilson](#)  
**Subject:** RE: connecting  
**Date:** Monday, December 18, 2023 6:54:51 AM

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

Apologies for the delay in response! Things ramped up at Dubai—and we half-won our 5-year global campaign to get the first-ever decision text on fossil fuels at a COP. Still lots of loopholes, but definitely a bird in hand for all of us to help push the global phase out of fossil fuels.

Re: the below, we'd love to touch base with you on the following efforts regarding utility accountability. **Would sometime this week still work?**

1. Last year, we [petitioned](#) the FTC to undergo a utility industry-wide investigation of their anti-competitive behavior against clean energy competitors. The Commission is still considering whether to take up the investigation, and we've held multiple roundtables with them including one with several AGs who support the investigation. **We would like to engage on two potential avenues where AG Bonta could get involved: (i) being part of a formal AG letter to FTC supporting the calls for an utility investigation; (ii) pursuing CA legal action on utilities' anticompetitive conduct against clean energy deployment .**
2. In 2021, we [petitioned](#) FERC to reform their accounting rules to prevent electric utilities from forcing ratepayers to finance anti-environment/climate trade groups. FERC then opened a [Notice of Inquiry](#) to examine these issues, but it has yet to start a rulemaking process. **We would like to engage AG Bonta on this issue to advocate FERC to open this rulemaking process.**

Thanks,  
Jean

**Jean Su**  
*Acting Co-Executive Director*  
*Director, Energy Justice Program // Senior Attorney*  
**Center for Biological Diversity**  
1411 K Street NW, Suite 1300  
Washington, D.C. 20005  
*Phone: (202) 849-8399*  
*Cell: [REDACTED]*  
*Twitter: @ajeansu*  
<https://www.biologicaldiversity.org/programs/energy-justice/>

---

**From:** Jessica Gordon <Jessica.Gordon@doj.ca.gov>  
**Sent:** Friday, December 8, 2023 9:35 PM  
**To:** Jean Su <JSu@biologicaldiversity.org>  
**Cc:** Roger Lin <rlin@biologicaldiversity.org>; Howard Crystal <HCrystal@biologicaldiversity.org>;

Augusta Wilson <[awilson@biologicaldiversity.org](mailto:awilson@biologicaldiversity.org)>

**Subject:** RE: connecting

Thanks, Jean. Are there particular topics you wanted to discuss, in case it makes sense for me to include colleagues as well? Looking forward to it.

Jessica

---

**From:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Sent:** Friday, December 8, 2023 9:03 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Roger Lin <[rlin@biologicaldiversity.org](mailto:rlin@biologicaldiversity.org)>; Howard Crystal <[HCystal@biologicaldiversity.org](mailto:HCystal@biologicaldiversity.org)>; Augusta Wilson <[awilson@biologicaldiversity.org](mailto:awilson@biologicaldiversity.org)>

**Subject:** RE: connecting

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica—

Thanks so much again for AG Bonta's keynote speech. We were thrilled.

Sounds great. Would you be available from Dec. 19-22? Cc:ing my teammates Howard Crystal, Roger Lin, and Augusta Wilson for their schedules.

Hope you got back home safely and resting up!

Jean

**Jean Su**

*Acting Co-Executive Director*

*Director, Energy Justice Program // Senior Attorney*

**Center for Biological Diversity**

1411 K Street NW, Suite 1300

Washington, D.C. 20005

Phone: (202) 849-8399

Cell: [REDACTED]

Twitter: @ajeansu

<https://www.biologicaldiversity.org/programs/energy-justice/>

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Sent:** Thursday, December 7, 2023 11:03 PM

**To:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** connecting

Jean, thank you for expertly moderating the side event discussion with AG Bonta and for all your and CBD's outstanding support for the event and COP overall. I am sorry that we weren't able to

connect you with AG Bonta in person before our departure – his schedule filled rapidly after folks heard he had some availability! – but I’m looking forward to chatting once you’ve returned and recovered from the trip. Best wishes for a productive and enjoyable second week, or however long you’re staying.

Jessica

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**From:** [Karuna Jaggar](#)  
**To:** [Kassie Siegel](#); [Jessica Gordon](#)  
**Cc:** [Elizabeth Scheller-Crowley](#)  
**Subject:** RE: COP badges  
**Date:** Thursday, November 30, 2023 10:34:15 AM  
**Attachments:** [image001.png](#)

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**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Liz,

I'm sorry to hear you're having trouble with the visa form. I can re-issue your UNFCCC acknowledgment letter to remove the hyphen from your name, but first it might be worth trying to do the visa log in from your phone rather than a laptop. Another delegate had a lot of difficulty but was able to make it work from her phone for some reason.

It's easy to re-issue the letter, so no worries if you're still having trouble. You can also feel free to send me a screenshot if you think that would be helpful. I'm also happy to jump on a call if none of this works.

We'll get it sorted out, so don't worry!

Cheers,  
Karuna

Karuna Jaggar (she or they)  
Climate Campaign Director

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 30, 2023 10:22 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Karuna Jaggar <[kjaggar@biologicaldiversity.org](mailto:kjaggar@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Subject:** RE: COP badges

Hi Elizabeth,

Adding my colleague Karuna in Dubai. She has done some visa troubleshooting has some ideas. More to come.

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Thursday, November 30, 2023 10:08 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

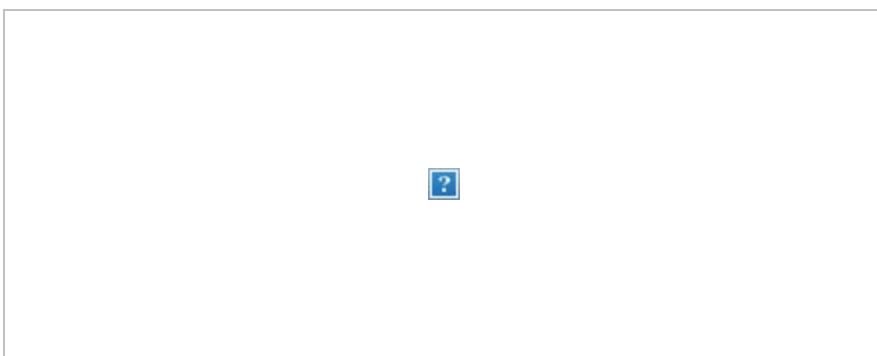
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>

**Subject:** RE: COP badges

Kassie, I'm connecting you with my colleague Liz in case you or colleagues have any insight into a visa question. Thank you!

My visa application won't go through. I am getting an error alert that my application doesn't match the acknowledgement letter from UNFCCC. The only difference I can see is that my acknowledgement letter has a hyphen in my last name (Scheller-Crowley, which is correct) but the visa application will not allow me to input a hyphen.

Jessica – is there someone I can reach out to at CBD who might be able to help? Otherwise I think I'd probably have to just do the tourist visa when I arrive.



Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

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**From:** [Jana Staniford](#)  
**To:** [Kassie Siegel](#); [Jessica Gordon](#)  
**Subject:** Re: Documents  
**Date:** Thursday, November 9, 2023 2:40:05 PM  
**Attachments:** [image001.png](#)  
[OutlookEmoji-Description intranet-seal.png5023ef43-2d5b-4fce-a8df-47f7811d03b8.png](#)

---

That would be great, thank you!

## Jana Staniford

Legislative Advocate, Office of Legislative Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814



[jana.staniford@doj.ca.gov](mailto:jana.staniford@doj.ca.gov)


---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 9, 2023 1:17:14 PM  
**To:** Jana Staniford; Jessica Gordon  
**Subject:** RE: Documents

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Thanks so much, Jana! How about Monday the 27<sup>th</sup> at 2 pm? I'm happy to send a Zoom link if desirable.

Many thanks and I look forward to meeting you!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: 

---

**From:** Jana Staniford <[Jana.Staniford@doj.ca.gov](mailto:Jana.Staniford@doj.ca.gov)>  
**Sent:** Thursday, November 9, 2023 11:25 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** Re: Documents

Good morning Kassie! Apologies for my delay in responding! I would be happy to meet, and would love to have Jessica join us too. Would the last week of November work for you? If so, Jessica and I are pretty open on either Monday 11/27 (except from 10:30am-Noon) or Thursday 11/30 (except 10-10:30am and 1-1:30pm).

## Jana Staniford

Legislative Advocate, Office of Legislative Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814



[jana.staniford@doj.ca.gov](mailto:jana.staniford@doj.ca.gov)

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Sent:** Monday, October 16, 2023 2:02 PM

**To:** Jessica Gordon

**Cc:** Jana Staniford

**Subject:** RE: Documents


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Absolutely no worries and thank you for the introduction, Jessica!

Jana, I had the pleasure of meeting Jessica at Climate Week in NYC; I raised a question about legislation and she suggested I might reach out to you. Would you have a few minutes sometime to talk by phone or video?

My calendar is pretty open the week of Oct. 30 and thereafter if you have time.

Many thanks, Kassie Siegel

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](https://www.biologicaldiversity.org/)  
Phone: 

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, October 16, 2023 10:30 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jana Staniford <[Jana.Staniford@doj.ca.gov](mailto:Jana.Staniford@doj.ca.gov)>  
**Subject:** RE: Documents

Thank you and sorry for the slow reply! I am adding my Leg Affairs colleague Jana here.

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Monday, October 16, 2023 10:24 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** FW: Documents

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Hi Jessica, just one more follow-up; I wanted to share that I wrote about your case [here](#) and tweeted about it [here](#).

Very best,

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Kassie Siegel  
**Sent:** Wednesday, October 4, 2023 3:26 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** Documents

Dear Jessica,

Thanks so much for speaking with me the other day! Here are a few of the documents I mentioned:

Recent [Carbon Tracker report](#) on oil and gas well decommissioning in California.

A three page write-up of how a NAAQS would work for GHGs, and a much longer law review article.

A ruling in our favor on cross motions for summary judgment in Exxon's lawsuit against Santa Barbara County for denying its proposal to transport oil by tanker trucks along hazardous highways. The summary judgment motions covered Exxon's writ claim. They have four other claims in the case, including takings and commerce clause challenges, and we do not yet know whether they will proceed to litigate those. Happy to send more from this case if it is of interest and you don't already have it.

If you're able to connect me with your colleagues Amy and Jana at your convenience, I'd be very grateful.

And finally for now, I understand I may see you the week of October 16<sup>th</sup> and I look forward to it!

Very best, Kassie Siegel

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon  
**Sent:** Wednesday, October 18, 2023 4:13 PM  
**To:** Kassie Siegel; Iyla Shornstein; Heather Lewis; Michel Legendre; Alyssa Johl  
**Cc:** Christopher Townsend-Diaz  
**Subject:** RE: THANK YOU

Thanks to all of you for the opportunity and for your own thoughtful talks, behind-the-scenes organizational work, and general support.

Best,  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, October 18, 2023 1:28 PM  
**To:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Michel Legendre <[mlegendre.consulting@gmail.com](mailto:mlegendre.consulting@gmail.com)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Cc:** Christopher Townsend-Diaz <[christopher@climateintegrity.org](mailto:christopher@climateintegrity.org)>  
**Subject:** RE: THANK YOU

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Echoing the thanks for your time and the excellent presentations, Jessica and Heather! A number of people commented in the chat that it was extremely helpful for them, and with their thanks as well. And please do pass along our gratitude to everyone on your team for all of the brilliant work!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Wednesday, October 18, 2023 1:23 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Michel Legendre <[mlegendre.consulting@gmail.com](mailto:mlegendre.consulting@gmail.com)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Cc:** Christopher Townsend-Diaz <[christopher@climateintegrity.org](mailto:christopher@climateintegrity.org)>  
**Subject:** THANK YOU

Jessica and Heather — a HUGE thank you from all of us at CCI and beyond. We have already received so much positive feedback from attendees who felt that the call was educational, substantive, and inspiring. We really appreciate you sharing your time with us to help folks understand the details of this monumentally important lawsuit.

Kassie and Michel — Thank you SO much for partnering with us to make this all happen. Because of your efforts and organizing, we had an incredible turnout of nonprofits, elected officials, activists, and beyond. We appreciate your comments and the work you put in to make this such a success.

Tomorrow, Christopher and I will get an email out to folks who attended with a few informational links. Jessica and Heather — we will also work on compiling the questions that we were not able to get to and attach the respective contact info so you can follow up, if you wish.

Thanks again to all for helping give the context and spotlight that this issue deserves.

Warmly,

Iyla Shornstein ([pronounce](#)) (she/her)  
**Political Director, State and Local Programs**  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

---

**From:** Jessica Gordon  
**Sent:** Tuesday, November 28, 2023 11:03 PM  
**To:** Kassie Siegel  
**Subject:** RE: badge info

Thanks, same here, and have a good night!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 28, 2023 11:02 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: badge info

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Sounds good, thanks, and further updates to come in the a.m.!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 10:49 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

Thank you for letting me know! The top 2 are the new ones, [REDACTED] and [REDACTED]. Still TBD on whether the third will be for Liz or me but if you could make that switch, that would be wonderful. Thank you so much.

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 28, 2023 10:42 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: badge info

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

They say they don't think that is possible, that the ability to do daily badge swaps this year is actually new and improved.

I will be up for a little while longer if you're able to send the top 3 this evening. If not, tomorrow should be completely fine, it's just that because this is new I don't want to wait till the last minute in case we run into any problems!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 10:38 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

Thanks!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 28, 2023 10:35 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: badge info

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Checking with team!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 10:23 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

Do you know whether it's possible for 2 of us to use a single badge at different times during the same day? No worries if you don't know or if it's not possible, of course. Thank you!

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 9:53 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** Re: badge info

That's amazing; thank you! I will get back to you ASAP.

On Nov 28, 2023, at 9:45 PM, Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)> wrote:

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi! We've got 3 for you – all under CBD – if you let me know the 3 priority names we'll get that going ASAP. We'll continue to look for a 4<sup>th</sup> from a partner organization.

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]



---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 3:42 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

[REDACTED] Thank you!

[REDACTED]

[REDACTED]

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Monday, November 27, 2023 5:53 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: badge info

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks that is news to me!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, November 27, 2023 5:52 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

I had to look it up, but it looks like newer passports start with letters!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Monday, November 27, 2023 5:50 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: badge info

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Great thanks! Just to make sure – is the [REDACTED] highlighted below really an [REDACTED]?

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, November 27, 2023 5:06 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** badge info

Jessica Michelle Gordon  


Elizabeth Frances Scheller-Crowley  


Thanks!!

Jessica Gordon  
Special Assistant Attorney General for Environmental Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

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prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

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**From:** [Kassie Siegel](#)  
**To:** [Jessica Gordon](#)  
**Subject:** RE: badge info  
**Date:** Wednesday, November 29, 2023 9:13:02 PM

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Hi! Just a note to say I am winding down for the evening, so probably no update until a.m. I'll let you know what I've got first thing tomorrow!

Kassie Siegel

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 29, 2023 6:36 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

Thanks! Sorry that wasn't clear – I know the badges are only needed for the blue zone, just remain astonished that [REDACTED] need to fight for the same credentials to access the blue zone that regular participants are competing for! My flight is Friday at 3 pm PT, but the decision point is the cancellation deadline for the flight and hotel, which I'm finding out. Thank you!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 29, 2023 6:33 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: badge info

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Got it. Sent to Karuna. All badges should be for the Blue Zone – I don't think that'll be an issue. We will do our absolute utmost to get it sorted today during Dubai business hours. What time is your flight on Friday and/or your decision point?

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 29, 2023 6:29 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

And! If your colleagues who go to the badging office could possibly confirm that subnational officials' [REDACTED] need the same blue zone credentials as substantive participants, that would be extremely extremely helpful. Thank you!

---

**From:** Jessica Gordon  
**Sent:** Wednesday, November 29, 2023 6:08 PM  
**To:** 'Kassie Siegel' <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

The 3 folks on the badges should be [REDACTED], and Liz. Thank you!

---

**From:** Jessica Gordon  
**Sent:** Wednesday, November 29, 2023 10:11 AM  
**To:** 'Kassie Siegel' <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: badge info

Thank you!

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Jessica Michelle Gordon  
[REDACTED]  
[REDACTED]  
San Francisco, CA  
Special Assistant Attorney General for Environmental Affairs  
Executive Unit

Office of the Attorney General  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

Elizabeth Frances Scheller-Crowley  
[REDACTED]  
[REDACTED]  
Sacramento, CA  
Executive Speechwriter  
Executive Unit, Office of Communications  
Office of the Attorney General  
California Department of Justice  
[elizabeth.schellercrowley@doj.ca.gov](mailto:elizabeth.schellercrowley@doj.ca.gov)

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 29, 2023 9:37 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** FW: badge info

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Sorry, the system also asks for job title / department / home organization. I've started adding that below based on your signature lines but could you check and complete that also? I think the badges will still say CBD – all this info doesn't show up on them – but we'll just fill it out as best we can. Thanks!

Hi Jessica, looks like we also need an email and city of residence for each – could you please add? Thanks!

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

Jessica Michelle Gordon

[REDACTED]  
[REDACTED]

Special Assistant Attorney General for Environmental Affairs  
Office of Attorney General Rob Bonta

California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

Elizabeth Frances Scheller-Crowley

[REDACTED]

[REDACTED]

Executive Speechwriter  
Office of the Attorney General  
[elizabeth.schellercrowley@doj.ca.gov](mailto:elizabeth.schellercrowley@doj.ca.gov)

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**From:** Jessica Gordon  
**Sent:** Wednesday, October 18, 2023 11:35 AM  
**To:** Iyla Shornstein  
**Cc:** Kassie Siegel; Heather Lewis; Alyssa Johl  
**Subject:** RE: community briefing re California v Exxon

Thanks!

An additional question is: "what has Big Oil's reaction to your lawsuit been like? Is it what you expected?"

---

**From:** Iyla Shornstein <iyla@climateintegrity.org>  
**Sent:** Wednesday, October 18, 2023 11:33 AM  
**To:** Jessica Gordon <Jessica.Gordon@doj.ca.gov>  
**Cc:** Kassie Siegel <ksiegel@biologicaldiversity.org>; Heather Lewis <Heather.Lewis@doj.ca.gov>; Alyssa Johl <alyssa@climateintegrity.org>  
**Subject:** Re: community briefing re California v Exxon

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That should be the panelist invite! I don't think you registered separately so that should be it.

And yes, everything is being approved right now!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Wed, Oct 18, 2023 at 2:22 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks, Kassie! We don't want to get into legal analysis, so let's add these. Thanks!

- The section of the complaint that talks about how the deception campaigns continue today, and about greenwashing, is so powerful. Can you talk a little bit more about greenwashing – what is it – and some of the examples in the complaint (pp. 82-87)?
- What can people/organizations do to support this lawsuit?



For logistics, confirming that the attached is the panelist invite? And my boss says that she registered about 10-15 minutes ago and hasn't received a link yet – is it coming or is there an issue? Thanks!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Sent:** Wednesday, October 18, 2023 10:29 AM

**To:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>

**Cc:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>

**Subject:** RE: community briefing re California v Exxon

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Here are some other possibilities. Please feel free to share any thoughts now or when we hop on 10 min beforehand. Tremendous thanks again for taking the time to do this. Interest in and appreciation for this case is extremely high! - Kassie

- What can people/organizations do to support this lawsuit?
- How can people best follow this case or get updates about it?
- The section of the complaint that talks about how the deception campaigns continue today, and about greenwashing, is so powerful. Can you talk a little bit more about greenwashing – what is it – and some of the examples in the complaint (pp. 82-87)?
- Regarding the public nuisance claim, people often refer to a 2017 California appellate decision, *People v. Con Agra*, finding paint companies liable for their lead paint advertising. Could you tell us a little bit about that case and its implications for this case?
- Sometimes you hear that companies are defending themselves from other accountability cases on the basis of free speech protections. Can you talk a little bit more about California's regulation of commercial speech – and the basic difference between my right to say what I want vs. a corporations' obligations when marketing their products to Californians?
- I thought it was really interesting that there is a special provision in California law that prohibits misleading environmental marketing – can you tell us anything more about that provision, like maybe when it was enacted, and have there been other enforcement actions?
- The strict and negligent products liability claims are really interesting - can you tell us more about that area of law in California, maybe some examples of how they have been previously used to protect the public?

Kassie Siegel, Director

Climate Law Institute

[Center for Biological Diversity](#)

Phone: [REDACTED]

---

**From:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Sent:** Wednesday, October 18, 2023 10:19 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** RE: community briefing re California v Exxon

Yes, that approach works for me, thanks Iyla. Also confirming that I received the panelist invite.

Thanks,

Heather

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, October 18, 2023 10:17 AM  
**To:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Subject:** RE: community briefing re California v Exxon

Thanks! I am fine with that, if it works for Heather and everyone else.

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Wednesday, October 18, 2023 10:15 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Subject:** Re: community briefing re California v Exxon

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Great! I'll let Kassie send along a few additional questions.

One other suggestion -- Kassie and myself can drop questions into the "hosts/panelists" chat. Heather and Jessica can react with a 'thumbs up' emoji to the questions that would be good to answer in this setting. Then, I can send them privately to Alyssa. That way, Heather and Jessica only need to look at one chat and Alyssa only needs to look at one chat. The only people running between chats are Kassie and myself? Hopefully that didn't overcomplicate it! I am also fine with google or teams!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Wed, Oct 18, 2023 at 12:54 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks! Here are a couple of questions we'd like to address. Do you have others already in mind? And I'm still looking for a doc we can all easily edit together, but alternatives are for us to look at google docs on personal devices simultaneously or to use a Teams chat.

**Q: Why did California file its climate accountability suit now?**

**Q: Big cases like this one tend to move slowly. What do you see happening before the case is resolved?**

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>

**Sent:** Wednesday, October 18, 2023 9:27 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>

**Subject:** Re: community briefing re California v Exxon

Hi there,

Most recent list of elected officials/offices registered to attend:

LA County- Janice Hahn
City of Concord
Sen. Menjivar
City of Los Angeles - Yaroslavsky
ASM Schiavo
Assembly District 55, Majority Leader Isaac Bryan
Los Angeles County, Supervisor Lindsey Horvath
ASM Muratsuchi
ASM Holden
LA County Supervisor Hilda Solis
Los Angeles City - Raman
Asm. Bauer-Kahan
California Senate, Office of Senator Durazo
Office of the Governor
CA Senator Lena Gonzalez
California State Senate - Senate Environmental Quality Committee
Office of Rep. Katie Porter
State Senate - Lena Gonzalez
CA Senate - Joint Legislative Committee on Climate Change Policy
Office of Senator Henry Stern
Office of Congresswoman Anna Eshoo
Office of Assemblymember Steve Bennett
Asm. Boerner
US House of Representatives - Katie Porter
California State Senate - Steve Padilla

**Iyla Shornstein** ([pronounce](#)) (she/her)  
**Political Director, State and Local Programs**  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Wed, Oct 18, 2023 at 11:36 AM Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)> wrote:

Hi folks,

I can send you an updated list in a bit as we've had a jump in registrations. I also want to confirm that you each received the panelist invite?

Thanks!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Tue, Oct 17, 2023 at 9:43 AM Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)> wrote:

Hi Jessica,

No problem! The offices listed below are represented in the registrations either by the officeholder themselves or their staff:

LA County- Janice Hahn
City of Concord
Sen. Menjivar
City of Los Angeles - Yaroslavsky
ASM Schiavo
Assembly District 55, Majority Leader Isaac Bryan

Los Angeles County, Supervisor Lindsey Horvath
ASM Muratsuchi
ASM Holden
LA County Supervisor Hilda Solis
Los Angeles City - Raman
Asm. Bauer-Kahan
California Senate, Office of Senator Durazo
Office of the Governor

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Mon, Oct 16, 2023 at 7:42 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks again. Can you please tell me what elected officials are registered? Appreciate it.

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Monday, October 16, 2023 2:10 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Subject:** Re: community briefing re California v Exxon

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Hi Jessica,

Thanks so much! We will reach out to those groups. Here is the public zoom registration link: [https://climateintegrity-org.zoom.us/webinar/register/WN\\_eNlpQsDiRYigqikaF8-ooW#/registration](https://climateintegrity-org.zoom.us/webinar/register/WN_eNlpQsDiRYigqikaF8-ooW#/registration)

Have a great day!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Mon, Oct 16, 2023 at 4:52 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks again for the great conversation earlier. Can you please add these groups? And can you please share the public zoom link? Appreciate it.

Jessica

- Democracy Forward Foundation
- APEN
- Audubon
- Nature Conservancy
- Coalition for Clean Air
- Clean Air Task Force
- Sierra Club CA
- CEJA
- Communities for a Better Environment
- State Energy & Environmental Impact Center at NYU Law
- Harvard Environmental & Energy Law Program

Thanks!

---

**From:** Jessica Gordon  
**Sent:** Monday, October 16, 2023 12:24 PM  
**To:** 'Iyla Shornstein' <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** RE: community briefing re California v Exxon

Thanks for rescheduling! I'm hoping we can discuss your anticipated format and which groups you have invited. Thanks!

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Monday, October 16, 2023 11:09 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** Re: community briefing re California v Exxon

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Hi again,

Looks like we can start early. I will change the invite to a start time of 12:30 PT. Let me know if anything changes and I look forward to speaking then!

Best,

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
Center for Climate Integrity  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Mon, Oct 16, 2023 at 1:38 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Apologies for the slow reply but the invitation looks great.



Unfortunately I now have a conflict at 1:20 PT today, so either need to start our prep call earlier or reschedule. I am available all day until that time and from 2-2:30 PT. Thanks!

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Thursday, October 5, 2023 6:57 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** Re: community briefing re California v Exxon


**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Absolutely! We are grateful to you for joining! We are going to invite mainly nonprofits (CA-based and some national) and CA elected officials. We've been educating elected officials in CA about climate accountability for some time so we want to make sure folks know about and understand the recent filing. We would be delighted if you suggested groups to add. The more the merrier! No specific parameters -- we wanted this to be largely educational.

I am attaching the event description to this email. Can you let me know if you are comfortable with this and then we can move forward promoting it?

Thanks Jessica

PS - I am just confirming the monday times for a prep call but will be back to you ASAP!

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  


On Wed, Oct 4, 2023 at 8:53 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks again for organizing! Can you please tell us who you're inviting? I've gotten requests to speak with a number of NGOs, so it would be great to know who we'll already be briefing at this event. And if it would be appropriate for us to suggest groups to add, please let us know if you have parameters for invited groups (e.g., only orgs with legal teams).

Thanks,

Jessica

---

**From:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Sent:** Wednesday, October 4, 2023 9:53 AM  
**To:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** RE: community briefing re California v Exxon

Hi Iyla,

Jessica and I are available for a prep call during the 10/16 and 10/17 windows in Jessica's earlier email – those times would be preferable if possible as I'll be out much of the previous week.

Thanks,

Heather Lewis

Deputy Attorney General

Environment Section

California Department of Justice

1515 Clay St, 20th Floor

Oakland, CA 94612

(510) 879-1008

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Sent:** Wednesday, October 4, 2023 6:38 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>  
**Subject:** Re: community briefing re California v Exxon

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Sorry for the double message! Realizing we should also get a prep call on the calendar. Kassie Siegel from Center for Biological Diversity and Michel Legendre from Corporate Accountability are helping us to organize this as well. Shall we aim to prep the week prior? Whatever works best for you!

Best,

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
Center for Climate Integrity  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Wed, Oct 4, 2023 at 8:44 AM Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)> wrote:

Hi Jessica,

Thanks so much! Let's go with Wednesday, 10/18 at 12pm PT. I will work to get a registration link and language together so we can start promoting. I will send what I put together here before it goes live for your approval.

Thank you!

Best,

Iyla Shornstein ([pronounce](#)) (she/her)  
Political Director, State and Local Programs  
Center for Climate Integrity  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)  
[REDACTED]

On Tue, Oct 3, 2023 at 5:09 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks! We're currently available in these slots:

- Monday, 10/16/2023 – 11:00 AM, 1:00 PM
- Tuesday, 10/17/2023 – 10:00 AM – 12:00 PM
- Wednesday, 10/18/2023 – 12:00 PM, 1:00 PM

---

**From:** Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>

**Sent:** Monday, October 2, 2023 6:43 AM

**To:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>

**Cc:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>

**Subject:** Re: community briefing re California v Exxon

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Hi folks!

Sorry for the late reply! Yes, we were thinking an hour.

Thanks so much!

Best,

Iyla Shornstein ([pronounce](#)) (she/her)

Political Director, State and Local Programs  
[Center for Climate Integrity](#)  
[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)

On Fri, Sep 29, 2023 at 5:50 PM Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)> wrote:

I would imagine it will be an hour.

Iyla, is that what you're thinking?

On Sep 29, 2023, at 3:49 PM, Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Sounds good and nice to meet you, Ilya. How long an event were you thinking? Thanks.

---

**From:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Sent:** Friday, September 29, 2023 12:48 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Heather Lewis <[Heather.Lewis@doj.ca.gov](mailto:Heather.Lewis@doj.ca.gov)>; Iyla Shornstein <[iyla@climateintegrity.org](mailto:iyla@climateintegrity.org)>  
**Subject:** community briefing re California v Exxon

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica (and Heather),

Thanks so much for getting back to me, and no worries! We're happy to hear that you and Heather are able to participate.

Could we schedule the briefing for the week of 10/16, sometime between 9 am-2 pm PT? We are flexible, so please let us know what works best for you. I'm cc'ing my colleague Iyla Shornstein, who is helping to organize behind the scenes.

Many thanks,

Alyssa

On Fri, Sep 29, 2023 at 2:42 PM Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Alyssa, with further apologies for the slow reply, I'm adding Heather Lewis, a member of the legal team who will join me on the briefing. Please send a few potential dates/times that work for you. We're looking forward to it!

Thanks,

Jessica

---

**From:** Jessica Gordon  
**Sent:** Tuesday, September 26, 2023 10:51 AM  
**To:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Subject:** RE: California opens the floodgates on Big Oil

So sorry for the slow reply – it's been hectic, as you can probably imagine! We are discussing internally and hope to get back to you in the next day or so. Thank you for your interest and patience!

---

**From:** Alyssa Johl <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>  
**Sent:** Thursday, September 21, 2023 11:26 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** Re: California opens the floodgates on Big Oil

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Hi Jessica,

I wanted to circle back on this, as we'd love to get this scheduled. Have you been able to consult with AG Bonta or others in your office re interest/availability for a briefing next week?

Many thanks,

Alyssa

On Sep 18, 2023, at 3:27 PM, Jessica Gordon  
<[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)> wrote:

Thanks, Alyssa! Will get back to you ASAP.

On Sep 18, 2023, at 3:20 PM, Alyssa Johl  
<[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)> wrote:

Hi both,

I thought you would be interested in this piece my colleague Emily Sanders just published.

Also, I sent this message earlier (to Jessica), but know that you and others are caught up in the mayhem of Climate Week. Please let me know if this would be of interest, we'd love to get it scheduled and start promoting this week.

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I spoke with Kassie from CBD, and we are interested in organizing a virtual briefing, ideally early next week (Monday or Tuesday) for elected officials, non-profits, and other members of the climate, environment, and justice communities. We'd love to have AG Bonta (or you or Ed or someone else from your office) join to share his perspective, and discuss why the state brought the suit, the specific claims, and how others can support as the case moves forward. Would the AG or someone else be interested and available?

Many thanks,

Alyssa

----- Forwarded message -----

From: **ExxonKnews**

<[exxonknews@substack.com](mailto:exxonknews@substack.com)>

Date: Mon, Sep 18, 2023 at 1:49 PM

Subject: California opens the floodgates on Big Oil

To: <[alyssa@climateintegrity.org](mailto:alyssa@climateintegrity.org)>

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*Emily Sanders is the  
Center for Climate  
Integrity's editorial  
lead. Catch up with  
on Twitter [here](#).*

## California opens the floodgates on Big Oil

Attorney General Rob Bonta's lawsuit against ExxonMobil and other oil giants signals a new era for climate accountability.

EXXONKNEWS

SEP 18



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Abbot

The state of California  
just launched a groundbreaking  
changing climate  
lawsuit against oil  
majors, bringing the  
weight of one of the  
world's largest  
economies and the  
populous state in the

nation to bear against  
some of the biggest  
fossil fuel companies on  
earth.

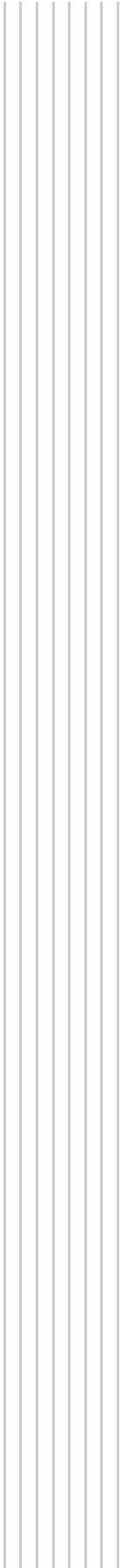
California's size and  
political influence  
and its position as the  
first major oil producing  
state to take the industry  
to court — give the  
lawsuit distinction  
likely the most powerful  
action to date to hold  
Big Oil companies  
accountable for lying  
about their production  
role in climate change.  
The Golden State's  
action could very likely  
open the floodgates to  
other states that may  
have been waiting  
to make their own move  
while Attorney General  
Rob Bonta is the new  
attorney general to  
Big Oil, 16 attorneys  
general signed on to the  
[latest legal brief](#) in  
support of a climate  
accountability case.

Both Bonta and  
Governor Gavin  
Newsom indicated

much while speaking at the  
Climate Week NY event on  
Sunday. Bonta said he  
hopes California's lawsuit  
"will be an inspiration  
to other states and  
entities to get involved  
and join us, to sue  
be part of the effort to  
hold the industry  
accountable."

"I just met with an  
governor a moment  
ago," Newsom said  
shortly before posting  
photo with Governor  
Wes Moore of  
Maryland, where t  
municipalities are  
already suing Big Oil.  
"We want to see this  
spread, we want more  
and more jurisdictions  
the United Nations  
more countries to move  
in this direction."

The lawsuit, filed Monday  
Friday in California  
state court, argues that  
ExxonMobil, BP,  
Chevron,  
ConocoPhillips, Shell  
and the American  
Petroleum Institute



“aggressive[ly] promot[ed] the use of fossil fuel products while “misrepresent[ing] and concealing the hazards of those products to deceive consumers and the public.” As a result, climate action was delayed for decades, case argues, and Californians now face regular onslaught of disasters — from wildfires and drought to dangerous heat waves, hurricanes, floods.

“Californians and families, communities and small businesses should not have to bear all the costs of climate change alone,” read the complaint, citing the billions of dollars residents have and spend to recover from such disasters. “The lawsuit seeks to hold those companies accountable for the they have told and

damage they have caused.”

In a first for state climate lawsuits, California’s case led to create an abatement fund that fossil fuel defendants would pay into to help residents foot the bill for adaptation and recovery. That remedy is based on a strong California precedent which was successfully used to create a \$300 million abatement fund for lead paint.

Here are some other things to know about California’s case:

**Bonta’s lawsuit based on cases filed by other California municipalities.**

In 2017 and 2018, California municipalities — San Francisco, Oakland, Santa Cruz, Richmond, Imperial Beach, and counties of San Mateo, San Marin, and Santa Cruz — filed some

the earliest climate liability lawsuits against the fossil fuel industry. According to the attorney general's complaint, the state lawsuit won't supersede any of those pending local actions, which are expected to reach the first.

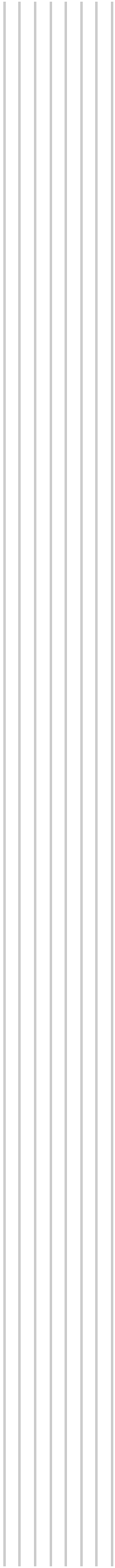
The latest of those was filed in Richmond at the site of a major Chevron oil refinery known for its chronic pollution, explosions and fires. The city, mostly made up of people of color, is home to soaring rates of cancer, cardiovascular disease, and childhood asthma.

But many residents of Chevron, which fu the city's newspaper (which it uses as a platform) and is its largest employer, continues to mislead the public about its operations and push false climate solutions.

that will worsen environmental justice harms and continue oil and gas business in the community. Since the company built the much-touted hydro plant at its “modernized” Richmond refinery in 2018, emissions fl incidents have skyrocketed.

Screenshot from a on Chevron’s web last year.

“There’s a daily effort to create this misinformation campaign while we’re fighting to survive,” said Katt Ramos, Managing Director of the Richmond Our Power coalition. “[Chevron is] actually doing is prolonging their life while causing us harm with unproven technology.”



Chevron and the other oil companies' ongoing misinformation and greenwashing played a major role in California's claims.

**California's complaint puts a spotlight on companies' modern greenwashing and deception about environmental benefits of its operations.**

California's complaint documents Big Oil's modern greenwashing and deception about environmental benefits of its operations.

“Through recent advertising campaigns and public statements in California and/or intended to reach California, including not limited to online advertisements and social media posts, Defendants falsely and misleadingly portrayed these products as ‘green,’ and the Fuel Defendants portrayed themselves as climate friendly energy companies that are deeply engaged in



finding solutions to  
climate change,” re  
the complaint.

Among many claim  
familiar to other cl  
accountability suit  
including public  
nuisance, false  
advertising, fraud,  
negligence, the cas  
also brings a new c  
of action under  
California law:  
misleading  
environmental  
marketing. Califor  
argues the compan  
are violating the st  
law meant to prote  
consumers against  
greenwashing.

According to the  
complaint, the  
companies decepti  
promoted natural g  
a climate solution;  
deceptively market  
fossil fuel products  
“low carbon,”  
“emissions-reducin  
“clean” and/or “gr  
just as tobacco  
companies promot  
“low-tar” or “light

cigarettes as health alternatives to giving smoking; marketed businesses as contributing to “clean solutions” despite negligible investment in clean energy as opposed to their increasing production of oil and gas; and claiming to be in alignment with international climate goals, all while protecting and growing their business in fossil fuels.

Just last week, the [Street Journal](#) [reported](#) never-before-seen documentation of Exxon’s deception under the reign of former CEO Rex Tillerson, who pleaded the company’s support for climate actions under the Paris Agreement while working to cast doubt on climate science behind the scenes. Exxon is the lead defendant in California’s case.

**California’s case  
latest sign of the  
evolving politics of  
taking on Big Oil.**

Both Bonta, who filed  
the suit and has said  
is “seriously  
considering” a run  
governor, and Newsom  
who is expected to  
preparing for a future  
presidential run, are  
clearly embracing  
issue.

“The scale and scope  
what the state of  
California can do  
think can move the  
needle,” Newsom  
David Gelles of the  
New York Times at  
opening ceremony  
Climate Week NY  
“We cannot address  
[climate change] unless  
we get serious about  
addressing the issue  
And the issue is fossil  
fuels, the issue is the  
deceit from these  
companies.”

It’s the latest sign  
politicians see taking  
Big Oil as an

increasingly popul  
move, as we saw d  
last year's midterm  
elections.

*A sign at Sunday's  
March to End Fos  
Fuels in New York*

**It's a tipping point  
the legal fight for  
climate accounta**

California is the fir  
state to file since th  
Supreme Court cle  
the way for climate  
accountability suit  
against Big Oil to  
proceed toward tri  
state courts. On Su  
Bonta told reporter  
the Supreme Court  
ruling "allows us t  
to where we want  
to the merits, to ho  
them accountable  
their deceit."

The industry's atte  
to delay and derail  
cases have persiste  
failed, and now  
California's in the

game, with all signs  
pointing to more  
lawsuits against BP  
to come.

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**From:** Jessica Gordon  
**Sent:** Friday, November 17, 2023 11:00 AM  
**To:** Kassie Siegel  
**Subject:** RE: COP planning

Thank you for all your help! We would be grateful for badge assistance for Dec. 3 and Dec. 4 for:

Jessica Gordon  
Elizabeth Scheller-Crowley

Thanks!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 16, 2023 9:43 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

I confirmed with my team that we don't believe the UN will allow any changes to what is printed on the schedule currently. That said, we can and will adjust the title, add the speakers once confirmed, and do our own publicity via email to conference participants. We'd be happy to work with you on a title and description that works for you, and you could also publicize however you'd like. We'd do our best to get the current title/description in as many places as possible with the caveat that what's currently on the schedule may also get reproduced other places – for example on screens around the venue that list events for each day - and that isn't under our control at this point. My sense is that most people will attend side events because they receive an email or hear about via word of mouth, not because they see it in the online schedule, but unfortunately there's only so much we can do at this point.

Also I confirmed re: badges that the best available info is that we can credential others on our badges on a day by day basis (for example, for the side event), but the badges will still have our name on them. And you can tell I'm adding caveats into all of this because this may be a particularly wild COP and they can and do sometimes change things at the last minute. But that's the best info I've got at this point. All best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](https://www.biologicaldiversity.org)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 14, 2023 11:39 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning



Kassie, thanks again. Do you know whether it would be possible to amend the title/description to include accountability as well as phase-out? As I'm sure you understand, it's important for us to stay within the accountability lane and avoid implying that our case pursues policy goals. Thanks!

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 9, 2023 10:32 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

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Thanks for reaching out and nice talking! I'd like to extend a very warm invitation to AG Bonta or to you to join our side event – info below. The organizers are typically not the speakers but Jean will very likely moderate this one, FYI. All best, Kassie

Sunday, 03 Dec 2023	11:30— 13:00 SE Room 2 (173 pax)	<b>Center for Biological Diversity (CBD)</b> Ms. Anchun Jean Su <a href="mailto:jsu@biologicaldiversity.org">jsu@biologicaldiversity.org</a> +1 415 7703187	<b>The Global Fight to End Fossil Fuels</b> Addressing the climate emergency doesn't only mean deploying renewable energy, it must also mean equitably and swiftly phasing out fossil fuels. Hear from grassroots leaders in the global fight to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.  <b>Speakers:</b> Grassroots activists from communities in South & Central America, Africa, Asia, Pacific Islands, Europe and the US, including members of the Global Gas & Oil Network and People vs Fossil Fuels. Speakers represent diverse communities impacted by pollution from the entire fossil fuel lifecycle.
		<b>Earthworks</b> Mr. Ethan Buckner <a href="mailto:ebuckner@earthworksaction.org">ebuckner@earthworksaction.org</a> +1 612 7183847	
		<b>Human Rights Foundation of Aotearoa New Zealand (HRF)</b> Mr. David Tong <a href="mailto:david@humanrights.co.nz">david@humanrights.co.nz</a> +64 21 2506375	
		<b>Institute for Policy Studies (IPS)</b> Mr. Oscar Reyes <a href="mailto:oscar@ips-dc.org">oscar@ips-dc.org</a> +1 202 2349382	

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](http://Center for Biological Diversity)  
Phone: [REDACTED]

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 9:11 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thanks! Let's talk at 9:30 am tomorrow.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 8, 2023 7:39 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, this is great to hear. Do you want to hop on the phone for a few minutes to discuss? I am free tomorrow before 11 or Friday until 1:30 or I can send an email tomorrow if that isn't convenient. Thanks and all best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](http://www.biologicaldiversity.org)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** COP planning

Kassie, hope you're doing well! Coming off the great discussion and press that our climate accountability suit generated at NYC Climate Week, I'm working to organize a COP side event where the AG and leaders of other jurisdictions that have filed similar suits can speak about legal action to hold the fossil fuel industry accountable. I'm talking with the America is All In and Scotland teams but would love any other suggestions you might have. Thanks!  
Jessica

Jessica Gordon  
Special Assistant Attorney General for Environmental Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

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**From:** Patricia LiceaChavez  
**Sent:** Wednesday, November 29, 2023 2:08 PM  
**To:** Kassie Siegel; Jessica Gordon; Elizabeth Scheller-Crowley  
**Cc:** Jean Su  
**Subject:** RE: COP planning  
**Attachments:** AG Bonta Bio.docx

Thank you so much for all this info!

I have discussed with our team regarding timing for the keynote/Q&A, we believe that a 20 minute keynote might be a little too long. By cutting the keynote in half we can allocate the extra 10 minutes to the Q&A giving both the audience and the AG a little more time for questions.

Attached is AG Bonta's bio, you can pick and choose what you would like to include during the intro.

In regards to where he speaks from, having somewhere to place any papers he brings along would help. If he were to speak from the podium, would he move "off stage" after his portion? This might be a better transition than having him sit.



**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

---

**From:** Kassie Siegel <ksiegel@biologicaldiversity.org>  
**Sent:** Wednesday, November 29, 2023 1:33 PM  
**To:** Patricia LiceaChavez <Patricia.LiceaChavez@doj.ca.gov>; Jessica Gordon <Jessica.Gordon@doj.ca.gov>; Elizabeth Scheller-Crowley <Elizabeth.SchellerCrowley@doj.ca.gov>  
**Cc:** Jean Su <JSu@biologicaldiversity.org>  
**Subject:** RE: COP planning

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Hi all, please see draft event description and answers to Paty's questions. 2 questions for you below are whether you would like to adjust the 20 minute keynote + 10 min Q&A, and whether you'd like to send us language for Jean's introduction of the AG. I've also attached a word doc, if you have line edits to the description that are easier in word. Many thanks! – Kassie

**The Global Fight to End Fossil Fuels & Ensure Climate Accountability**

Sunday, December 3<sup>rd</sup>, 11:30-1:00pm, Side Events (SE) Room 2, Building 78, Zone B6, Blue Zone. (Please refer to venue [map](#) to find your way to the Side Events space.)

Please join us for a keynote address from California Attorney General Rob Bonta on climate accountability, followed by a panel of grassroots leaders from around the world engaged in the global fight to end fossil fuels.

**Keynote:** California Attorney General [Rob Bonta](#) will discuss the major climate accountability [lawsuit](#) he recently filed against five of the world's largest oil companies and the American Petroleum Institute. From increasingly severe wildfire seasons to extreme heat and droughts, California's worsening climate conditions have been fueled by Big Oil's pollution and efforts to deceive the public. This lawsuit seeks to enjoin the deceptive practices and create an abatement fund for climate adaptation projects, which would help protect residents by ensuring that polluters, not communities, pay for the damages they knowingly caused.

**Panel:** Grassroots activists will discuss their work to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.

Speakers:

[John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX

[Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa

[Ivonne Yanez](#) - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Moderated by [Jean Su](#), Director, Energy Justice Program, Center for Biological Diversity and Co-Chair of the Board of Directors, CAN-International

Hosted by the Center for Biological Diversity, Earthworks, Human Rights Foundation of Aotearoa New Zealand (HRF), and Institute for Policy Studies.

1. Could you provide me with a run of show or program?

DRAFT:

11:30-11:35: Jean welcome and overall introduction of the event

11:35-11:40: Jean introduce AG & keynote on case

11:40-12:00: AG keynote address on climate accountability case

12:00-12:10: AG takes questions from moderator/audience?

[end climate accountability portion of program]

12:10-12:15: Jean introduces panel

12:15-1:00pm: Moderated panel on the Global Fight to End Fossil Fuels

2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?

We are flexible but have proposed 20 minute keynote + 10 minutes Q&A – please adjust as needed.

3. Do you have anyone you would like the AG to acknowledge?

Not at the moment, but if we do have other officials in the room we'll do our best to acknowledge them during Jean's introduction.

4. Will Jean in addition to moderate the conversation, introduce the AG?

Yes, Jean will also introduce the AG. If you have preferred language to include in introduction, could you please send it to us?

5. How many audience members are expected to attend?

The room fits 173 people. We'll do our best to fill it. There should also be a webcast – to be confirmed closer to the event.

6. What is the room set up like? Will there be a podium, mic, or teleprompter?

There will be a podium and mic, as well as a table with mics. No teleprompter.

7. Will the panelist be seated?

The AG could speak standing from the podium after Jean introduces, or from a table/chair arrangement if that is preferable.

8. Are the panelist finalized?

Our speakers are finalized – that said, due to travel interruptions or other logistical issues, last minute substitutions are a possibility.

John Beard, Port Arthur Community Action Network (PACAN), who just won a 5th Cir case against gas export terminal in Port Arthur, TX

Mohamed Adow, PowerShift Africa, leader of East Africa Crude Oil Pipeline (EACOP) fight across Sub-Saharan Africa

Ivonne Yanez - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>

**Sent:** Tuesday, November 28, 2023 1:16 PM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>;  
Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** RE: COP planning

Thank you for the add Jessica.

Hi both, it is nice to e-meet you. I am the AG's Briefing Coordinator. I will be drafting a briefing memo for the AG, so he is prepared for this event. With all that being said, I do have logistical questions.

1. Could you provide me with a run of show or program?
2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?
3. Do you have anyone you would like the AG to acknowledge?
4. Will Jean in addition to moderate the conversation, introduce the AG?
5. How many audience members are expected to attend?
6. What is the room set up like? Will there be a podium, mic, or teleprompter?
7. Will the panelist be seated?
8. Are the panelist finalized?

Thank you in advance.



**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:29 PM  
**To:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Subject:** RE: COP planning

Thanks again, Kassie and Jean. I will try to get you a description ASAP. I'm adding Paty Licea-Chavez, who may have additional logistical questions about the event. Thanks again.

---

**From:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:03 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** Re: COP planning

Hi Kassie and Jean –

Great to meet you via email and thank you for your work on this event! Do you have a preference of how long the AG's remarks should be?

Thanks,  
Liz

Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Date:** Tuesday, November 28, 2023 at 9:35 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>, Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

That's great news, Jessica, we are delighted he can join us!

Re: editing title and description, we can make some quick edits, e.g. change title to “The Global Fight to End Fossil Fuels & Ensure Climate Accountability”

Would you prefer to send us a blurb describing the keynote, or would you prefer us to take a first crack at it and send you a draft of the edited event description?

Does the timing work on your end for him to kick off the event at 11:30, and how many minutes would be ideal from your perspective?

Our senior media specialist Nyshie Perkinson, Jean, and I are in touch with a lot of journalists, and can start telling folks informally about the event in our various conversations – if there is interest in covering it and/or talking beforehand can we refer journalists to one of you, or to another colleague, or ? (and would you like me to also mention the America is All In event? I think that is 5:30-6:30 on the 3<sup>rd</sup>, but the program I’m looking at online doesn’t have speakers listed (<https://www.americaisallin.com/sites/default/files/2023-11/COP28%20Event%20Schedule.pdf>)).

Registration for badges is underway and I hope to hear that it is squared away tomorrow Dubai time.

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 9:04 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Belated but sincere thanks, Kassie and Jean! We would prefer for the AG to give a keynote and not join the panel. In terms of scheduling, it should be fine to have him up first. Thank you again – we’re really looking forward to it.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 21, 2023 8:54 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Terrific! Great to meet you, Elizabeth! I’m adding Jean. Some info is below, but basically, we’re flexible, so please let us know any constraints or preferences on your end and we can adjust as need be. Happy to hop on the phone to discuss today or tomorrow – my schedule is pretty open due to the holiday week.

Here’s some basics:

The event is 90 minutes. Typically we have 4 panelists moderated by Jean, talking for 1 hour in a roundtable format and then taking questions from the audience for the remaining 30 minutes. Names and affiliations of likely panelists are below – but not yet finalized.

If the AG can come, however, we'd love to feature him as the keynote speaker. We recognize that he may not be able to get there at the precise start time or stay for the full 90 minutes. At one end of the spectrum, he could come at the beginning, give a keynote address, and not stay for the entire event. At the other end of the spectrum, he can come, give a talk, join the panel, and stay for the full 90 minutes. If arriving at the beginning doesn't work with your schedule, we can put him on as the next speaker once he arrives in the room.

We edit the title and text for the event to reflect the new format and content.

Other likely panelists:

1. [John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX
2. [Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa
3. [Lidy Nacpil](#), Asian Peoples' Movement on Dept and Development (APMDD), who has won against coal plants in Philipinnes and across Asia

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, November 20, 2023 2:18 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Subject:** RE: COP planning

Kassie, thanks again. I'm adding Liz Scheller-Crowley, the AG's executive speechwriter who will also be staffing him at COP. Can you please share any additional info about format, presentation time, the other panelists, etc, when you have it? Or would it be easier if we communicate with Jean directly? Thanks so much.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 16, 2023 9:43 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

I confirmed with my team that we don't believe the UN will allow any changes to what is printed on the schedule currently. That said, we can and will adjust the title, add the speakers once confirmed, and do our own publicity via email to conference participants. We'd be happy to work with you on a title and description that works for you, and you



could also publicize however you'd like. We'd do our best to get the current title/description in as many places as possible with the caveat that what's currently on the schedule may also get reproduced other places – for example on screens around the venue that list events for each day - and that isn't under our control at this point. My sense is that most people will attend side events because they receive an email or hear about via word of mouth, not because they see it in the online schedule, but unfortunately there's only so much we can do at this point.

Also I confirmed re: badges that the best available info is that we can credential others on our badges on a day by day basis (for example, for the side event), but the badges will still have our name on them. And you can tell I'm adding caveats into all of this because this may be a particularly wild COP and they can and do sometimes change things at the last minute. But that's the best info I've got at this point. All best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 14, 2023 11:39 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Kassie, thanks again. Do you know whether it would be possible to amend the title/description to include accountability as well as phase-out? As I'm sure you understand, it's important for us to stay within the accountability lane and avoid implying that our case pursues policy goals. Thanks!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 9, 2023 10:32 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

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Thanks for reaching out and nice talking! I'd like to extend a very warm invitation to AG Bonta or to you to join our side event – info below. The organizers are typically not the speakers but Jean will very likely moderate this one, FYI. All best, Kassie

Sunday, 03 Dec 2023	11:30— 13:00 SE Room 2 (173 pax)	<p><b>Center for Biological Diversity (CBD)</b> Ms. Anchun Jean Su <a href="mailto:jsu@biologicaldiversity.org">jsu@biologicaldiversity.org</a> +1 415 7703187</p> <hr/> <p><b>Earthworks</b> Mr. Ethan Buckner <a href="mailto:ebuckner@earthworksaction.org">ebuckner@earthworksaction.org</a> +1 612 7183847</p> <hr/> <p><b>Human Rights Foundation of Aotearoa New Zealand (HRF)</b> Mr. David Tong <a href="mailto:david@humanrights.co.nz">david@humanrights.co.nz</a> +64 21 2506375</p>	<p><b>The Global Fight to End Fossil Fuels</b> Addressing the climate emergency doesn't only mean deploying renewable energy, it must also mean equitably and swiftly phasing out fossil fuels. Hear from grassroots leaders in the global fight to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.</p> <p><b>Speakers:</b> Grassroots activists from communities in South &amp; Central America, Africa, Asia, Pacific Islands, Europe and the US, including members of the Global Gas &amp; Oil Network and People vs Fossil Fuels. Speakers represent diverse communities impacted by pollution from the entire fossil fuel lifecycle.</p>
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	<b>Institute for Policy Studies (IPS)</b> Mr. Oscar Reyes <a href="mailto:oscar@ips-dc.org">oscar@ips-dc.org</a> +1 202 2349382	
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Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 9:11 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thanks! Let's talk at 9:30 am tomorrow.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 8, 2023 7:39 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, this is great to hear. Do you want to hop on the phone for a few minutes to discuss? I am free tomorrow before 11 or Friday until 1:30 or I can send an email tomorrow if that isn't convenient. Thanks and all best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** COP planning

Kassie, hope you're doing well! Coming off the great discussion and press that our climate accountability suit generated at NYC Climate Week, I'm working to organize a COP side event where the AG and leaders of other jurisdictions that have filed similar suits can speak about legal action to hold the fossil fuel industry accountable. I'm talking with the America is All In and Scotland teams but would love any other suggestions you might have. Thanks!  
Jessica

Jessica Gordon  
Special Assistant Attorney General for Environmental Affairs

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On April 23, 2021, Rob Bonta was sworn in as the 34th Attorney General of the State of California, the first person of Filipino descent and the second Asian-American to occupy the position. Attorney General Bonta's passion for justice and fairness was instilled in him by his parents, who served on the frontlines of some of America's most important social justice movements. It's why he decided to become a lawyer — to help right historic wrongs and fight for people who have been harmed. He worked his way through college and graduated with honors from Yale University and attended Yale Law School. Attorney General Bonta has led statewide fights for racial, economic, and environmental justice and worked to further the rights of immigrant families, renters, and working Californians. He previously worked as a Deputy City Attorney for the City and County of San Francisco, where he represented the City and County and its employees, and fought to protect Californians from exploitation and racial profiling. He went on to pursue elected office in Alameda County, first as an Alameda Council Member and later as an Assemblymember representing Oakland, Alameda, and San Leandro. In the State Assembly, Attorney General Bonta enacted nation-leading reforms to inject more justice and fairness into government and institutions. As the People's Attorney, he sees seeking accountability from those who abuse their power and harm others as one of the most important functions of the job. He is married to Mia Bonta, and they are the proud parents of three children Reina, Iliana, and Andres, as well as their dog Legolas.

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**From:** [Elizabeth Scheller-Crowley](#)  
**To:** [Patricia LiceaChavez](#)  
**Cc:** [Kassie Siegel](#); [Jessica Gordon](#); [Jean Su](#); [Tara Gallegos](#); [Bethany Lesser](#)  
**Subject:** Re: COP planning  
**Date:** Wednesday, November 29, 2023 7:16:40 PM  
**Attachments:** [image001.png](#)  
[image001.png](#)  
[image001.png](#)  
[AG Bonta Bio.docx](#)

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Kassie - with regard to your media question, please feel free to let journalists you're talking to know he'll be attending and speaking, and yes that's the correct other event - feel free to mention that too.

You can refer journalists to my colleagues Tara Gallegos and Bethany Lesser, CCed here, in addition to me.

Thanks!

On Nov 29, 2023, at 2:08 PM, Patricia LiceaChavez  
<[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)> wrote:

Thank you so much for all this info!

I have discussed with our team regarding timing for the keynote/Q&A, we believe that a 20 minute keynote might be a little too long. By cutting the keynote in half we can allocate the extra 10 minutes to the Q&A giving both the audience and the AG a little more time for questions.

Attached is AG Bonta's bio, you can pick and choose what you would like to include during the intro.

In regards to where he speaks from, having somewhere to place any papers he brings along would help. If he were to speak from the podium, would he move "off stage" after his portion? This might be a better transition than having him sit.

---

**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California

1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

---

**From:** Kassie Siegel <ksiegel@biologicaldiversity.org>  
**Sent:** Wednesday, November 29, 2023 1:33 PM  
**To:** Patricia LiceaChavez <Patricia.LiceaChavez@doj.ca.gov>; Jessica Gordon <Jessica.Gordon@doj.ca.gov>; Elizabeth Scheller-Crowley <Elizabeth.SchellerCrowley@doj.ca.gov>  
**Cc:** Jean Su <JSu@biologicaldiversity.org>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi all, please see draft event description and answers to Paty's questions. 2 questions for you below are whether you would like to adjust the 20 minute keynote + 10 min Q&A, and whether you'd like to send us language for Jean's introduction of the AG. I've also attached a word doc, if you have line edits to the description that are easier in word. Many thanks! – Kassie

### **The Global Fight to End Fossil Fuels & Ensure Climate Accountability**

Sunday, December 3<sup>rd</sup>, 11:30-1:00pm, Side Events (SE) Room 2, Building 78, Zone B6, Blue Zone. (Please refer to venue [map](#) to find your way to the Side Events space.)

Please join us for a keynote address from California Attorney General Rob Bonta on climate accountability, followed by a panel of grassroots leaders from around the world engaged in the global fight to end fossil fuels.

**Keynote:** California Attorney General [Rob Bonta](#) will discuss the major climate accountability [lawsuit](#) he recently filed against five of the world's largest oil companies and the American Petroleum Institute. From increasingly severe wildfire seasons to extreme heat and droughts, California's worsening climate conditions have been fueled by Big Oil's pollution and efforts to deceive the public. This lawsuit seeks to enjoin the deceptive practices and create an abatement fund for climate adaptation projects, which would help protect residents by ensuring that polluters, not communities, pay for the damages they knowingly caused.

**Panel:** Grassroots activists will discuss their work to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.

Speakers:

John Beard, Port Arthur Community Action Network (PACAN), who just won a 5th Cir case against gas export terminal in Port Arthur, TX

Mohamed Adow, PowerShift Africa, leader of East Africa Crude Oil Pipeline (EACOP) fight across Sub-Saharan Africa

Ivonne Yanez - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Moderated by Jean Su, Director, Energy Justice Program, Center for Biological Diversity and Co-Chair of the Board of Directors, CAN-International

Hosted by the Center for Biological Diversity, Earthworks, Human Rights Foundation of Aotearoa New Zealand (HRF), and Institute for Policy Studies.

1. Could you provide me with a run of show or program?

DRAFT:

11:30-11:35: Jean welcome and overall introduction of the event

11:35-11:40: Jean introduce AG & keynote on case

11:40-12:00: AG keynote address on climate accountability case

12:00-12:10: AG takes questions from moderator/audience?

[end climate accountability portion of program]

12:10-12:15: Jean introduces panel

12:15-1:00pm: Moderated panel on the Global Fight to End Fossil Fuels

2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?

We are flexible but have proposed 20 minute keynote + 10 minutes Q&A – please adjust as needed.

3. Do you have anyone you would like the AG to acknowledge?

Not at the moment, but if we do have other officials in the room we'll do our best to acknowledge them during Jean's introduction.

4. Will Jean in addition to moderate the conversation, introduce the AG?

Yes, Jean will also introduce the AG. If you have preferred language to include in introduction, could you please send it to us?

5. How many audience members are expected to attend?

The room fits 173 people. We'll do our best to fill it. There should also be a webcast – to be confirmed closer to the event.



6. What is the room set up like? Will there be a podium, mic, or teleprompter?

There will be a podium and mic, as well as a table with mics. No teleprompter.

7. Will the panelist be seated?

The AG could speak standing from the podium after Jean introduces, or from a table/chair arrangement if that is preferable.

8. Are the panelist finalized?

Our speakers are finalized – that said, due to travel interruptions or other logistical issues, last minute substitutions are a possibility.

John Beard, Port Arthur Community Action Network (PACAN), who just won a 5th Cir case against gas export terminal in Port Arthur, TX

Mohamed Adow, PowerShift Africa, leader of East Africa Crude Oil Pipeline (EACOP) fight across Sub-Saharan Africa

Ivonne Yanez - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>

**Sent:** Tuesday, November 28, 2023 1:16 PM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** RE: COP planning

Thank you for the add Jessica.

Hi both, it is nice to e-meet you. I am the AG's Briefing Coordinator. I will be drafting a briefing memo for the AG, so he is prepared for this event. With all that being said, I do have logistical questions.

1. Could you provide me with a run of show or program?
2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?

3. Do you have anyone you would like the AG to acknowledge?
4. Will Jean in addition to moderate the conversation, introduce the AG?
5. How many audience members are expected to attend?
6. What is the room set up like? Will there be a podium, mic, or teleprompter?
7. Will the panelist be seated?
8. Are the panelist finalized?

Thank you in advance.

**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:29 PM  
**To:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Subject:** RE: COP planning

Thanks again, Kassie and Jean. I will try to get you a description ASAP. I'm adding Paty Licea-Chavez, who may have additional logistical questions about the event. Thanks again.

---

**From:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:03 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** Re: COP planning

Hi Kassie and Jean –

Great to meet you via email and thank you for your work on this event! Do you have a preference of how long the AG’s remarks should be?

Thanks,  
Liz

Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Date:** Tuesday, November 28, 2023 at 9:35 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>, Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

That’s great news, Jessica, we are delighted he can join us!

Re: editing title and description, we can make some quick edits, e.g. change title to **“The Global Fight to End Fossil Fuels & Ensure Climate Accountability”**

Would you prefer to send us a blurb describing the keynote, or would you prefer us to take a first crack at it and send you a draft of the edited event description?

Does the timing work on your end for him to kick off the event at 11:30, and how many minutes would be ideal from your perspective?

Our senior media specialist Nyshie Perkinson, Jean, and I are in touch with a lot of journalists, and can start telling folks informally about the event in our various conversations – if there is interest in covering it and/or talking beforehand can we refer journalists to one of you, or to another colleague, or ? (and would you like me to also mention the America is All In event? I think that is 5:30-6:30 on the 3<sup>rd</sup>, but the program I’m looking at online doesn’t have speakers listed (<https://www.americaisallin.com/sites/default/files/2023-11/COP28%20Event%20Schedule.pdf>)).

Registration for badges is underway and I hope to hear that it is squared away tomorrow Dubai time.

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 9:04 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Belated but sincere thanks, Kassie and Jean! We would prefer for the AG to give a keynote and not join the panel. In terms of scheduling, it should be fine to have him up first. Thank you again – we're really looking forward to it.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 21, 2023 8:54 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Terrific! Great to meet you, Elizabeth! I'm adding Jean. Some info is below, but basically, we're flexible, so please let us know any constraints or preferences on your end and we can adjust as need be. Happy to hop on the phone to discuss today or tomorrow – my schedule is pretty open due to the holiday week.

Here's some basics:

The event is 90 minutes. Typically we have 4 panelists moderated by Jean, talking for 1 hour in a roundtable format and then taking questions from the audience for the remaining 30 minutes. Names and affiliations of likely panelists are below – but not yet finalized.

If the AG can come, however, we'd love to feature him as the keynote speaker. We recognize that he may not be able to get there at the precise start time or stay for the full 90 minutes. At one end of the spectrum, he could come at the beginning, give a keynote address, and not stay for the entire event. At the other end of the spectrum, he can come, give a talk, join the panel, and stay for the full 90 minutes. If arriving at the beginning doesn't work with your schedule, we can put him on as the next speaker once he arrives in the room.

We edit the title and text for the event to reflect the new format and content.

Other likely panelists:

1. [John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX
2. [Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa
3. [Lidy Nacpil](#), Asian Peoples' Movement on Debt and Development (APMDD), who has won against coal plants in Philipinnes and across Asia

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, November 20, 2023 2:18 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Subject:** RE: COP planning

Kassie, thanks again. I'm adding Liz Scheller-Crowley, the AG's executive speechwriter who will also be staffing him at COP. Can you please share any additional info about format, presentation time, the other panelists, etc, when you have it? Or would it be easier if we communicate with Jean directly? Thanks so much.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 16, 2023 9:43 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

I confirmed with my team that we don't believe the UN will allow any changes to what is printed on the schedule currently. That said, we can and will adjust the title, add the speakers once confirmed, and do our own publicity via email to conference participants. We'd be happy to work with you on a title and description that works for you, and you could also publicize however you'd like. We'd do our best to get the current title/description in as many places as possible with the caveat that what's currently on the schedule may also get reproduced other places – for example on screens around the venue that list events for each day - and that isn't under our control at this point. My sense is that most people will attend side events because they receive an email or hear about via word of mouth, not because they see it in the online schedule, but unfortunately there's only so much we can do at this point.

Also I confirmed re: badges that the best available info is that we can credential others on our badges on a day by day basis (for example, for the side event), but the badges will still have our name on them. And you can tell I'm adding caveats into all of this because this may be a particularly wild COP and they can and do sometimes change things at the last minute. But that's the best info I've got at this point. All best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](https://www.biologicaldiversity.org/)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 14, 2023 11:39 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Kassie, thanks again. Do you know whether it would be possible to amend the title/description to include accountability as well as phase-out? As I'm sure you understand, it's important for us to stay within the accountability lane and avoid implying that our case pursues policy goals. Thanks!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 9, 2023 10:32 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks for reaching out and nice talking! I'd like to extend a very warm invitation to AG Bonta or to you to join our side event – info below. The organizers are typically not the speakers but Jean will very likely moderate this one, FYI. All best, Kassie

Sunday, 03 Dec 2023	11:30 — 13:00 SE Room 2 (173 pax)	<p><b>Center for Biological Diversity (CBD)</b> Ms. Anchun Jean Su <a href="mailto:jsu@biologicaldiversity.org">jsu@biologicaldiversity.org</a> <b>+1 415 7703187</b></p> <hr/> <p><b>Earthworks</b> Mr. Ethan Buckner <a href="mailto:ebuckner@earthworksaction.org">ebuckner@earthworksaction.org</a> <b>+1 612 7183847</b></p> <hr/> <p><b>Human Rights Foundation of Aotearoa New Zealand (HRF)</b> Mr. David Tong <a href="mailto:david@humanrights.co.nz">david@humanrights.co.nz</a> <b>+64 21 2506375</b></p> <hr/> <p><b>Institute for Policy Studies (IPS)</b> Mr. Oscar Reyes <a href="mailto:oscar@ips-dc.org">oscar@ips-dc.org</a> <b>+1 202 2349382</b></p>	<p><b>The Global Fight to End Fossil Fuels</b> Addressing the climate emergency doesn't only mean deploying renewable energy, it must also mean equitably and swiftly phasing out fossil fuels. Hear from grassroots leaders in the global fight to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.</p> <p><b>Speakers:</b> Grassroots activists from communities in South &amp; Central America, Africa, Asia, Pacific Islands, Europe and the US, including members of the Global Gas &amp; Oil Network and People vs Fossil Fuels. Speakers represent diverse communities impacted by pollution from the entire fossil fuel lifecycle.</p>
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Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](https://www.biologicaldiversity.org/)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 9:11 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thanks! Let's talk at 9:30 am tomorrow.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 8, 2023 7:39 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, this is great to hear. Do you want to hop on the phone for a few minutes to discuss? I am free tomorrow before 11 or Friday until 1:30 or I can send an email tomorrow if that isn't convenient. Thanks and all best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** COP planning

Kassie, hope you're doing well! Coming off the great discussion and press that our climate accountability suit generated at NYC Climate Week, I'm working to organize a COP side event where the AG and leaders of other jurisdictions that have filed similar suits can speak about legal action to hold the fossil fuel industry accountable. I'm talking with the America is All In and Scotland teams but would love any other suggestions you might have. Thanks!  
Jessica

Jessica Gordon  
Special Assistant Attorney General for Environmental Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

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On April 23, 2021, Rob Bonta was sworn in as the 34th Attorney General of the State of California, the first person of Filipino descent and the second Asian-American to occupy the position. Attorney General Bonta's passion for justice and fairness was instilled in him by his parents, who served on the frontlines of some of America's most important social justice movements. It's why he decided to become a lawyer — to help right historic wrongs and fight for people who have been harmed. He worked his way through college and graduated with honors from Yale University and attended Yale Law School. Attorney General Bonta has led statewide fights for racial, economic, and environmental justice and worked to further the rights of immigrant families, renters, and working Californians. He previously worked as a Deputy City Attorney for the City and County of San Francisco, where he represented the City and County and its employees, and fought to protect Californians from exploitation and racial profiling. He went on to pursue elected office in Alameda County, first as an Alameda Council Member and later as an Assemblymember representing Oakland, Alameda, and San Leandro. In the State Assembly, Attorney General Bonta enacted nation-leading reforms to inject more justice and fairness into government and institutions. As the People's Attorney, he sees seeking accountability from those who abuse their power and harm others as one of the most important functions of the job. He is married to Mia Bonta, and they are the proud parents of three children Reina, Iliana, and Andres, as well as their dog Legolas.

**From:** [Kassie Siegel](#)  
**To:** [Patricia LiceaChavez](#); [Jessica Gordon](#); [Elizabeth Scheller-Crowley](#)  
**Cc:** [Jean Su](#)  
**Subject:** RE: COP planning  
**Date:** Wednesday, November 29, 2023 1:34:10 PM  
**Attachments:** [image001.png](#)  
[23 11 29 Draft Event Description.docx](#)

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi all, please see draft event description and answers to Paty's questions. 2 questions for you below are whether you would like to adjust the 20 minute keynote + 10 min Q&A, and whether you'd like to send us language for Jean's introduction of the AG. I've also attached a word doc, if you have line edits to the description that are easier in word. Many thanks! – Kassie

### **The Global Fight to End Fossil Fuels & Ensure Climate Accountability**

Sunday, December 3<sup>rd</sup>, 11:30-1:00pm, Side Events (SE) Room 2, Building 78, Zone B6, Blue Zone.  
(Please refer to venue [map](#) to find your way to the Side Events space.)

Please join us for a keynote address from California Attorney General Rob Bonta on climate accountability, followed by a panel of grassroots leaders from around the world engaged in the global fight to end fossil fuels.

**Keynote:** California Attorney General [Rob Bonta](#) will discuss the major climate accountability [lawsuit](#) he recently filed against five of the world's largest oil companies and the American Petroleum Institute. From increasingly severe wildfire seasons to extreme heat and droughts, California's worsening climate conditions have been fueled by Big Oil's pollution and efforts to deceive the public. This lawsuit seeks to enjoin the deceptive practices and create an abatement fund for climate adaptation projects, which would help protect residents by ensuring that polluters, not communities, pay for the damages they knowingly caused.

**Panel:** Grassroots activists will discuss their work to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.

Speakers:

[John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX

[Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa

[Ivonne Yanez](#) - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Moderated by [Jean Su](#), Director, Energy Justice Program, Center for Biological Diversity and Co-Chair of the Board of Directors, CAN-International

Hosted by the Center for Biological Diversity, Earthworks, Human Rights Foundation of Aotearoa New Zealand (HRF), and Institute for Policy Studies.

1. Could you provide me with a run of show or program?

DRAFT:

11:30-11:35: Jean welcome and overall introduction of the event

11:35-11:40: Jean introduce AG & keynote on case

11:40-12:00: AG keynote address on climate accountability case

12:00-12:10: AG takes questions from moderator/audience?

[end climate accountability portion of program]

12:10-12:15: Jean introduces panel

12:15-1:00pm: Moderated panel on the Global Fight to End Fossil Fuels

2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?

We are flexible but have proposed 20 minute keynote + 10 minutes Q&A – please adjust as needed.

3. Do you have anyone you would like the AG to acknowledge?

Not at the moment, but if we do have other officials in the room we'll do our best to acknowledge them during Jean's introduction.

4. Will Jean in addition to moderate the conversation, introduce the AG?

Yes, Jean will also introduce the AG. If you have preferred language to include in introduction, could you please send it to us?

5. How many audience members are expected to attend?

The room fits 173 people. We'll do our best to fill it. There should also be a webcast – to be confirmed closer to the event.

6. What is the room set up like? Will there be a podium, mic, or teleprompter?

There will be a podium and mic, as well as a table with mics. No teleprompter.

7. Will the panelist be seated?

The AG could speak standing from the podium after Jean introduces, or from a table/chair arrangement if that is preferable.

8. Are the panelist finalized?

Our speakers are finalized – that said, due to travel interruptions or other logistical issues, last minute substitutions are a possibility.

[John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX

[Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa

[Ivonne Yanez](#) - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Kassie Siegel, Director

Climate Law Institute

[Center for Biological Diversity](#)

Phone: [REDACTED]

---

**From:** Patricia LiceaChavez <Patricia.LiceaChavez@doj.ca.gov>

**Sent:** Tuesday, November 28, 2023 1:16 PM

**To:** Jessica Gordon <Jessica.Gordon@doj.ca.gov>; Elizabeth Scheller-Crowley <Elizabeth.SchellerCrowley@doj.ca.gov>; Kassie Siegel <ksiegel@biologicaldiversity.org>

**Cc:** Jean Su <JSu@biologicaldiversity.org>

**Subject:** RE: COP planning

Thank you for the add Jessica.

Hi both, it is nice to e-meet you. I am the AG's Briefing Coordinator. I will be drafting a briefing memo for the AG, so he is prepared for this event. With all that being said, I do have logistical questions.

1. Could you provide me with a run of show or program?
2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?
3. Do you have anyone you would like the AG to acknowledge?
4. Will Jean in addition to moderate the conversation, introduce the AG?
5. How many audience members are expected to attend?
6. What is the room set up like? Will there be a podium, mic, or teleprompter?
7. Will the panelist be seated?
8. Are the panelist finalized?

Thank you in advance.



**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:29 PM  
**To:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Subject:** RE: COP planning

Thanks again, Kassie and Jean. I will try to get you a description ASAP. I'm adding Paty Licea-Chavez, who may have additional logistical questions about the event. Thanks again.

---

**From:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 12:03 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** Re: COP planning

Hi Kassie and Jean –

Great to meet you via email and thank you for your work on this event! Do you have a preference of how long the AG's remarks should be?

Thanks,  
Liz

Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Date:** Tuesday, November 28, 2023 at 9:35 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>, Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

That's great news, Jessica, we are delighted he can join us!

Re: editing title and description, we can make some quick edits, e.g. change title to “**The Global Fight to End Fossil Fuels & Ensure Climate Accountability**”

Would you prefer to send us a blurb describing the keynote, or would you prefer us to take a first crack at it and send you a draft of the edited event description?

Does the timing work on your end for him to kick off the event at 11:30, and how many minutes would be ideal from your perspective?

Our senior media specialist Nyshie Perkinson, Jean, and I are in touch with a lot of journalists, and can start telling folks informally about the event in our various conversations – if there is interest in covering it and/or talking beforehand can we refer journalists to one of you, or to another colleague, or ? (and would you like me to also mention the America is All In event? I think that is 5:30-6:30 on the 3<sup>rd</sup>, but the program I’m looking at online doesn’t have speakers listed (<https://www.americaisallin.com/sites/default/files/2023-11/COP28%20Event%20Schedule.pdf>).

Registration for badges is underway and I hope to hear that it is squared away tomorrow Dubai time.

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 9:04 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Belated but sincere thanks, Kassie and Jean! We would prefer for the AG to give a keynote and not join the panel. In terms of scheduling, it should be fine to have him up first. Thank you again – we’re really looking forward to it.

Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 21, 2023 8:54 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Terrific! Great to meet you, Elizabeth! I'm adding Jean. Some info is below, but basically, we're flexible, so please let us know any constraints or preferences on your end and we can adjust as needed. Happy to hop on the phone to discuss today or tomorrow – my schedule is pretty open due to the holiday week.

Here's some basics:

The event is 90 minutes. Typically we have 4 panelists moderated by Jean, talking for 1 hour in a roundtable format and then taking questions from the audience for the remaining 30 minutes. Names and affiliations of likely panelists are below – but not yet finalized.

If the AG can come, however, we'd love to feature him as the keynote speaker. We recognize that he may not be able to get there at the precise start time or stay for the full 90 minutes. At one end of the spectrum, he could come at the beginning, give a keynote address, and not stay for the entire event. At the other end of the spectrum, he can come, give a talk, join the panel, and stay for the full 90 minutes. If arriving at the beginning doesn't work with your schedule, we can put him on as the next speaker once he arrives in the room.

We edit the title and text for the event to reflect the new format and content.

Other likely panelists:

1. [John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX
2. [Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa
3. [Lidy Nacpil](#), Asian Peoples' Movement on Debt and Development (APMDD), who has won against coal plants in Philippines and across Asia

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, November 20, 2023 2:18 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Subject:** RE: COP planning

Kassie, thanks again. I'm adding Liz Scheller-Crowley, the AG's executive speechwriter who will also



be staffing him at COP. Can you please share any additional info about format, presentation time, the other panelists, etc, when you have it? Or would it be easier if we communicate with Jean directly? Thanks so much.

Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Sent:** Thursday, November 16, 2023 9:43 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

I confirmed with my team that we don't believe the UN will allow any changes to what is printed on the schedule currently. That said, we can and will adjust the title, add the speakers once confirmed, and do our own publicity via email to conference participants. We'd be happy to work with you on a title and description that works for you, and you could also publicize however you'd like. We'd do our best to get the current title/description in as many places as possible with the caveat that what's currently on the schedule may also get reproduced other places – for example on screens around the venue that list events for each day - and that isn't under our control at this point. My sense is that most people will attend side events because they receive an email or hear about via word of mouth, not because they see it in the online schedule, but unfortunately there's only so much we can do at this point.

Also I confirmed re: badges that the best available info is that we can credential others on our badges on a day by day basis (for example, for the side event), but the badges will still have our name on them. And you can tell I'm adding caveats into all of this because this may be a particularly wild COP and they can and do sometimes change things at the last minute. But that's the best info I've got at this point. All best, Kassie

Kassie Siegel, Director

Climate Law Institute

[Center for Biological Diversity](#)

Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Sent:** Tuesday, November 14, 2023 11:39 AM

**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Subject:** RE: COP planning

Kassie, thanks again. Do you know whether it would be possible to amend the title/description to

include accountability as well as phase-out? As I'm sure you understand, it's important for us to stay within the accountability lane and avoid implying that our case pursues policy goals. Thanks!

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Sent:** Thursday, November 9, 2023 10:32 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks for reaching out and nice talking! I'd like to extend a very warm invitation to AG Bonta or to you to join our side event – info below. The organizers are typically not the speakers but Jean will very likely moderate this one, FYI. All best, Kassie

Sunday, 03 Dec 2023	Room 2 (173 pax)	<b>Center for Biological Diversity (CBD)</b> Ms. Anchun Jean Su <a href="mailto:jsu@biologicaldiversity.org">jsu@biologicaldiversity.org</a> <b>+1 415 7703187</b>	<b>The Global Fight to End Fossil Fuels</b> Addressing the climate emergency doesn't only mean deploying renewable energy, it must also mean equitably and swiftly phasing out fossil fuels. Hear from grassroots leaders in the global fight to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.  <b>Speakers:</b> Grassroots activists from communities in South & Central America, Africa, Asia, Pacific Islands, Europe and the US, including members of the Global Gas & Oil Network and People vs Fossil Fuels. Speakers represent diverse communities impacted by pollution from the entire fossil fuel lifecycle.
		<b>Earthworks</b> Mr. Ethan Buckner <a href="mailto:ebuckner@earthworksaction.org">ebuckner@earthworksaction.org</a> <b>+1 612 7183847</b>	
		<b>Human Rights Foundation of Aotearoa New Zealand (HRF)</b> Mr. David Tong <a href="mailto:david@humanrights.co.nz">david@humanrights.co.nz</a> <b>+64 21 2506375</b>	
		<b>Institute for Policy Studies (IPS)</b> Mr. Oscar Reyes <a href="mailto:oscar@ips-dc.org">oscar@ips-dc.org</a> <b>+1 202 2349382</b>	

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](http://CenterforBiologicalDiversity.org)  
Phone: [REDACTED]

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 9:11 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thanks! Let's talk at 9:30 am tomorrow.  
Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 8, 2023 7:39 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, this is great to hear. Do you want to hop on the phone for a few minutes to discuss? I am free tomorrow before 11 or Friday until 1:30 or I can send an email tomorrow if that isn't convenient. Thanks and all best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** COP planning

Kassie, hope you're doing well! Coming off the great discussion and press that our climate accountability suit generated at NYC Climate Week, I'm working to organize a COP side event where the AG and leaders of other jurisdictions that have filed similar suits can speak about legal action to hold the fossil fuel industry accountable. I'm talking with the America is All In and Scotland teams but would love any other suggestions you might have. Thanks!  
Jessica

Jessica Gordon  
Special Assistant Attorney General for Environmental Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

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## **The Global Fight to End Fossil Fuels & Ensure Climate Accountability**

Sunday, December 3<sup>rd</sup>, 11:30-1:00pm, Side Events (SE) Room 2, Building 78, Zone B6, Blue Zone. (Please refer to venue [map](#) to find your way to the Side Events space.)

Please join us for a keynote address from California Attorney General Rob Bonta on climate accountability, followed by a panel of grassroots leaders from around the world engaged in the global fight to end fossil fuels.

**Keynote:** California Attorney General [Rob Bonta](#) will discuss the major climate accountability [lawsuit](#) he recently filed against five of the world's largest oil companies and the American Petroleum Institute. From increasingly severe wildfire seasons to extreme heat and droughts, California's worsening climate conditions have been fueled by Big Oil's pollution and efforts to deceive the public. This lawsuit seeks to enjoin the deceptive practices and create an abatement fund for climate adaptation projects, which would help protect residents by ensuring that polluters, not communities, pay for the damages they knowingly caused.

**Panel:** Grassroots activists will discuss their work to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.

Speakers:

[John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX

[Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa

[Ivonne Yanez](#) - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador

Moderated by [Jean Su](#), Director, Energy Justice Program, Center for Biological Diversity and Co-Chair of the Board of Directors, CAN-International

Hosted by the Center for Biological Diversity, Earthworks, Human Rights Foundation of Aotearoa New Zealand (HRF), and Institute for Policy Studies.

1. Could you provide me with a run of show or program?

DRAFT:

11:30-11:35: Jean welcome and overall introduction of the event

11:35-11:40: Jean introduce AG & keynote on case

11:40-12:00: AG keynote address on climate accountability case

12:00-12:10: AG takes questions from moderator/audience?

[end climate accountability portion of program]

12:10-12:15: Jean introduces panel

12:15-1:00pm: Moderated panel on the Global Fight to End Fossil Fuels

2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?

We are flexible but have proposed 20 minute keynote + 10 minutes Q&A – please adjust as needed.

3. Do you have anyone you would like the AG to acknowledge?

Not at the moment, but if we do have other officials in the room we'll do our best to acknowledge them during Jean's introduction.

4. Will Jean in addition to moderate the conversation, introduce the AG?

Yes, Jean will also introduce the AG. If you have preferred language to include in introduction, could you please send it to us?

5. How many audience members are expected to attend?

The room fits 173 people. We'll do our best to fill it. There should also be a webcast – to be confirmed closer to the event.

6. What is the room set up like? Will there be a podium, mic, or teleprompter?

There will be a podium and mic, as well as a table with mics. No teleprompter.

7. Will the panelist be seated?

The AG could speak standing from the podium after Jean introduces, or from a table/chair arrangement if that is preferable.

8. Are the panelist finalized?

Our speakers are finalized – that said, due to travel interruptions or other logistical issues, last minute substitutions are a possibility.

John Beard, Port Arthur Community Action Network (PACAN), who just won a 5th Cir case against gas export terminal in Port Arthur, TX

Mohamed Adow, PowerShift Africa, leader of East Africa Crude Oil Pipeline (EACOP) fight across Sub-Saharan Africa

Ivonne Yanez - Acción Ecológica, Ecuador, leader of successful referendum to stop oil extraction in the Yasuni Reserve in Ecuador



**From:** Maya Golden-Krasner, Center for Biological Diversity

**Date:** January 31, 2023

**Subject:** Options for setting up a U.S. GHG NAAQS “Greenhouse Pollution Cap” Regime

---

## **INTRODUCTION**

The United States is experiencing an accelerating climate emergency. In 2021, President Biden promised to reduce US greenhouse gas (GHG) emissions by 50-52% (from 2005 levels) by 2030 — a goal that itself falls short of the fair share of emissions reductions the US owes the world. Yet even with the renewable energy incentives in the Inflation Reduction Act, the US has only closed half of the gap between the current emissions reductions and Biden’s pledge for a 50-52% reduction. We are therefore falling far short of what is necessary to stay on track for a 1.5-degree target.

Meanwhile, the Supreme Court’s decision last year in *West Virginia v. EPA* curtailed the Environmental Protection Agency’s (EPA) ability to regulate power plant GHG emissions under Section 111(d) of the Clean Air Act. In overturning the EPA’s use of “outside the fence line” measures in the Clean Power Plan, the majority contrasted EPA’s application of that provision to reduce emissions with setting a “cap that must be based on some scientific, objective criterion, such as the NAAQS [National Ambient Air Quality Standards].” Justice Roberts noted that “capping carbon dioxide emissions at a level that will force a nationwide transition away from the use of coal may be a sensible solution to the crisis of the day”—just not under the Act’s “ancillary” Section 111(d).

The Inflation Reduction Act (IRA, 2022) amended the Clean Air Act to affirmatively put to rest any doubt as to whether greenhouse gases are “air pollutants” under the Act, defining “greenhouse gas” as “the air pollutants carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride” throughout the Act amendments. Section 135 appropriates funding to ensure GHG reductions from the electricity sector “through the use of existing authorities of the Act,” but does not specify which authorities, leaving it to the discretion of EPA. It also provides funding for multipollutant monitoring stations—including in order “to expand the national ambient air quality monitoring network”—to monitor and reduce “greenhouse gas emissions and other air pollutants,” and other funding to monitor and reduce greenhouse gases at schools, from mobile sources, and from petroleum and gas facilities. The IRA clearly contemplates a multi-pollutant NAAQS regime that includes GHGs.

In 2009, the Center for Biological Diversity and 350.org [petitioned](#) EPA to list greenhouse gases as “criteria pollutants” under the Clean Air Act and set a GHG NAAQS. In July 2022, seven state attorneys general [wrote to the EPA](#) recommending the same. As one Oregon Justice Department lawyer [noted](#), the IRA- and transportation-related reductions already underway leave 48 percent of emissions unregulated – and source-by-source regulation under Section 111(d) is too slow to address the climate emergency.

The NAAQS program is the “engine that drives” the Clean Air Act. It provides a national framework for addressing the most pervasive forms of air pollution emitted from “numerous or diverse” sources and the best and most flexible way to achieve the emissions reductions needed across *all* sectors of the economy. Congress [explicitly envisioned](#) the NAAQS program to have “vast economic and political significance,” requiring “major action throughout the Nation,” major changes and investments in new technologies and fuels, generation shifting, facility closures, and brand new transportation and land use policies. It’s time to put the NAAQS to work addressing the climate crisis.

## **HOW A GHG NAAQS REGIME COULD WORK**

### **1) Setting the NAAQS**

Under the Paris Climate Agreement, the world committed to keep warming to well below 2°C above pre-industrial levels, striving to keep warming below 1.5°C above pre-industrial levels. In order to translate a temperature objective (e.g., below 1.5°C warming) to a NAAQS, EPA should determine the target concentration of GHGs necessary to keep global temperatures below the target level (e.g., 350 ppm).

- *One model is lead:* As EPA would set a NAAQS to keep warming below 1.5°C, EPA set a NAAQS for lead to keep IQ loss to less than 2 points. Since standards were set in 1978, air concentrations of lead have dropped dramatically, due in large part to the phase out of lead in gasoline, paint, and other products.

As there are at least six GHGs, EPA could use each pollutant's Global Warming Potential or Global Temperature Potential to estimate the effects of concentrations of each GHG on global temperature. Then, in order to normalize the standard across regions that may produce various GHGs in different proportions, EPA could use these calculations to develop an overall CO<sub>2</sub> equivalent metric for a GHG NAAQS.

### **2) Classification of Nonattainment Areas and Nonattainment Plan Provisions**

Once EPA sets the target atmospheric concentration, the entire U.S. will be in nonattainment.<sup>1</sup> EPA must set the attainment date at 10 years from the date of designation of nonattainment. (§ 172(a)(2).) It will take longer than 10 years for the atmospheric concentrations of GHGs to reach attainment. However, EPA has options for setting deadlines under the Act.

EPA can use three characteristics of a NAAQS – level, averaging time, and form – to set out binding benchmarks to ensure “reasonable further progress” on a strict timeline to achieve attainment “as expeditiously as practicable.”

- **Level** – concentration of pollutants in the ambient air.
- **Averaging time** – span of time across which the amount of a pollutant in the air will be averaged.
  - Some NAAQS require a certain average annual level, while others require a certain average daily level
- **Form** – how compliance will be determined within the averaging time, and often allows for exceedance of the standard, for a certain number of times over an averaging period

*Again, using the lead model:* after establishing a lead exposure level of 0.15 ug/m<sup>3</sup> to avoid a loss of 2 IQ points, EPA found the appropriate averaging time for the air lead level standard is a rolling three-month period with a maximum (not-to-be-exceeded) form evaluated over a period of three years.

Recognizing the slow atmospheric response of even aggressive steps to curb emissions of greenhouse gases, as with lead, EPA could combine the averaging time and form to allow a certain number of years of nonattainment over a long averaging period. For example (numbers for purposes of discussion):

- **Level** – 350ppm - final attainment after 70 years and stays at 350pm for the duration of the averaging time
- **Averaging time** – 100 years

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<sup>1</sup> Note that courts have ruled against petitioners who argued attaining the ozone NAAQS was impossible due to factors beyond the region's or state's control. They noted that “Congress is aware that some regions are having difficulty in meeting the national standards,” but that “[a]ttainability and technological feasibility are not relevant considerations in the promulgation of national ambient air quality standards.” This applies even when “attainment of the proposed standards would be precluded in *most areas* of the nation by natural background levels of ozone.” *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1185-86 (DC. Cir. 1980); see also *Murray Energy Corporation v. EPA*, 936 F.3d 597, 623–24 (D.C. Cir. 2019).



- **Form** – EPA could model and establish shorter-term concentration targets to be met at least every 10 years to comply with Section 172(a)(2). Measurements must demonstrate attainment of carbon budget (see below) benchmarks based on these targets to ensure “reasonable further progress” toward the longer-term concentration goal over the full averaging period.

### **3) Setting and Apportioning Reductions Among the States**

In setting the necessary reductions to achieve the NAAQS, EPA could determine the reductions needed to ensure the U.S. does not exceed its [domestic carbon budget](#), such as by using some combination of carbon budget research – the amount of carbon emissions that we have left to emit if we want to stay under 1.5°C – and the U.S. Nationally Determined Contributions (NDCs), which must regularly ratchet down under the Paris Agreement. Note that Section 179B of the Clean Air Act calls for the EPA to account for pollution emanating from outside the United States, and to approve State Implementation Plans where the obstacle to a state achieving attainment is emissions emanating from outside of the United States if the SIP otherwise meets the Act’s requirements.

Section 110(2)(D) of the Clean Air Act expressly instructs EPA, in setting attainment objectives for the states, to consider the role that other states are playing in causing the same pollution problem. (*See EPA v. EME Homer City Generation L.P.*, 572 U.S. 489 (2014), reviewing EPA’s Transport Rule.) In addition, EPA and many states maintain state-level GHG inventories.<sup>2</sup> Taking these inventories into account, EPA could determine cost-effective means to reduce GHG emissions across and among all states and sources to stay within the carbon budget.<sup>3</sup> Unlike under Section 111 (per the U.S. Supreme Court), for example, a NAAQS would allow for major changes in technology and flexibility across regions, sectors, and types of regulations.

#### **SECONDARY NAAQS**

Even if a reviewing court were to find that the statute does not permit a primary NAAQS over such a long averaging period, it may still uphold a secondary NAAQS. EPA must establish both primary standards to protect public health and secondary standards requisite to protect public welfare, including effects on wildlife, weather, visibility, and climate. (§§ 109(a), 302(h).) A secondary standard does not require a specific attainment deadline. EPA can issue standards that will achieve attainment “as expeditiously as practicable.” (§ 172(a)(2)(B).)

Secondary standards can be set at different levels than the primary standards. Given the urgent threats GHG pollution poses to the planet, the secondary standards should include the same *or more stringent* concentration targets and required reductions than EPA would set for a primary NAAQS.

EPA could set a secondary NAAQS without also having set a primary NAAQS. In *Utility Air Resources Group v. EPA*, 573 U.S. 302 (2014), the Supreme Court allowed the definition of “air pollutant” under the specific provisions at issue in the Title V and PSD programs of the Clean Air Act to incorporate GHGs differently, depending on whether including them would be impractical. Similarly, here—to the extent a court were to find there is no practical way to achieve a primary GHG NAAQS attainment deadline within 10 years—because a secondary NAAQS contains no attainment deadline provision, EPA could still set a secondary NAAQS.

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<sup>2</sup> EPA and various states each use varying methodologies for determining state-level inventories. EPA would need to develop a rigorous uniform methodology for state-level inventories.

<sup>3</sup> Note that EPA has calculated overall state emission reduction targets before. In the Clean Power Plan, EPA first determined the emissions reductions that could be achieved by implementing the Best System of Emissions Reduction for power plants, then calculated the overall emission reductions each state must achieve.

**From:** [Kassie Siegel](#)  
**To:** [Jessica Gordon](#); [Patricia LiceaChavez](#); [Elizabeth Scheller-Crowley](#)  
**Cc:** [Jean Su](#)  
**Subject:** RE: COP planning  
**Date:** Wednesday, November 29, 2023 8:19:05 AM  
**Attachments:** [image001.png](#)

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**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

No worries – we will send today with answers to the questions from Paty.

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 29, 2023 2:07 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Kassie, Jean, thanks again for your kind support. Kassie, I'm mired in logistics and have to take you up on your offer to take the first stab at a blurb. Thank you!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 28, 2023 1:35 PM  
**To:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks Paty, great to meet you too! Will get you answers on these ASAP. Our team has just arrived in Dubai and will physically check out the room when they can, but I'm not sure how much access we'll have before the side events start on Friday.

FYI, there is some big-picture info and helpful map of the location of the side event rooms in the Blue Zone if you scroll down on this page: <https://unfccc.int/process-and->

[meetings/conferences/side-events-and-exhibits#How-to-attend-COP-28-side-events](#)

All best,

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 1:16 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>; Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Thank you for the add Jessica.

Hi both, it is nice to e-meet you. I am the AG's Briefing Coordinator. I will be drafting a briefing memo for the AG, so he is prepared for this event. With all that being said, I do have logistical questions.

1. Could you provide me with a run of show or program?
2. Following up on what Jessica mentioned, how long are you planning for the AG to speak?
3. Do you have anyone you would like the AG to acknowledge?
4. Will Jean in addition to moderate the conversation, introduce the AG?
5. How many audience members are expected to attend?
6. What is the room set up like? Will there be a podium, mic, or teleprompter?
7. Will the panelist be seated?
8. Are the panelist finalized?

Thank you in advance.



**Paty Licea Chavez (she/her)** - Briefing Coordinator  
Office of the Attorney General | State of California  
1300 I Street, Sacramento, CA 95814  
Office: 916.210.6258  
Work Cell: [REDACTED]  
Fax: 916.327.7154

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Sent:** Tuesday, November 28, 2023 12:29 PM

**To:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>; Patricia LiceaChavez <[Patricia.LiceaChavez@doj.ca.gov](mailto:Patricia.LiceaChavez@doj.ca.gov)>

**Subject:** RE: COP planning

Thanks again, Kassie and Jean. I will try to get you a description ASAP. I'm adding Paty Licea-Chavez, who may have additional logistical questions about the event. Thanks again.

---

**From:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>

**Sent:** Tuesday, November 28, 2023 12:03 PM

**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** Re: COP planning

Hi Kassie and Jean –

Great to meet you via email and thank you for your work on this event! Do you have a preference of how long the AG's remarks should be?

Thanks,  
Liz

Liz Scheller-Crowley  
Executive Speechwriter  
Office of the Attorney General

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Date:** Tuesday, November 28, 2023 at 9:35 AM

**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>

**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>, Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>

**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

That's great news, Jessica, we are delighted he can join us!

Re: editing title and description, we can make some quick edits, e.g. change title to **"The Global Fight to End Fossil Fuels & Ensure Climate Accountability"**

Would you prefer to send us a blurb describing the keynote, or would you prefer us to take a first crack at it and send you a draft of the edited event description?

Does the timing work on your end for him to kick off the event at 11:30, and how many minutes would be ideal from your perspective?

Our senior media specialist Nyshie Perkinson, Jean, and I are in touch with a lot of journalists, and can start telling folks informally about the event in our various conversations – if there is interest in covering it and/or talking beforehand can we refer journalists to one of you, or to another colleague, or ? (and would you like me to also mention the America is All In event? I think that is 5:30-6:30 on the 3<sup>rd</sup>, but the program I'm looking at online doesn't have speakers listed (<https://www.americaisallin.com/sites/default/files/2023-11/COP28%20Event%20Schedule.pdf>).

Registration for badges is underway and I hope to hear that it is squared away tomorrow Dubai time.

Many thanks!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 28, 2023 9:04 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Belated but sincere thanks, Kassie and Jean! We would prefer for the AG to give a keynote and not join the panel. In terms of scheduling, it should be fine to have him up first. Thank you again – we're really looking forward to it.

Jessica

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 21, 2023 8:54 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>; Jean Su <[JSu@biologicaldiversity.org](mailto:JSu@biologicaldiversity.org)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Terrific! Great to meet you, Elizabeth! I'm adding Jean. Some info is below, but basically, we're flexible, so please let us know any constraints or preferences on your end and we can adjust as needed. Happy to hop on the phone to discuss today or tomorrow – my schedule is pretty open due to the holiday week.

Here's some basics:

The event is 90 minutes. Typically we have 4 panelists moderated by Jean, talking for 1 hour in a roundtable format and then taking questions from the audience for the remaining 30 minutes. Names and affiliations of likely panelists are below – but not yet finalized.

If the AG can come, however, we'd love to feature him as the keynote speaker. We recognize that he may not be able to get there at the precise start time or stay for the full 90 minutes. At one end of the spectrum, he could come at the beginning, give a keynote address, and not stay for the entire event. At the other end of the spectrum, he can come, give a talk, join the panel, and stay for the full 90 minutes. If arriving at the beginning doesn't work with your schedule, we can put him on as the next speaker once he arrives in the room.

We edit the title and text for the event to reflect the new format and content.

Other likely panelists:

1. [John Beard](#), Port Arthur Community Action Network (PACAN), who just won a [5th Cir case](#) against gas export terminal in Port Arthur, TX
2. [Mohamed Adow](#), PowerShift Africa, leader of East Africa Crude Oil Pipeline ([EACOP](#)) fight across Sub-Saharan Africa
3. [Lidy Nacpil](#), Asian Peoples' Movement on Debt and Development (APMDD), who has won against coal plants in Philippines and across Asia

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, November 20, 2023 2:18 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Elizabeth Scheller-Crowley <[Elizabeth.SchellerCrowley@doj.ca.gov](mailto:Elizabeth.SchellerCrowley@doj.ca.gov)>  
**Subject:** RE: COP planning

Kassie, thanks again. I'm adding Liz Scheller-Crowley, the AG's executive speechwriter who will also be staffing him at COP. Can you please share any additional info about format, presentation time, the other panelists, etc, when you have it? Or would it be easier if we communicate with Jean directly? Thanks so much.

Jessica

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 16, 2023 9:43 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica,

I confirmed with my team that we don't believe the UN will allow any changes to what is printed on the schedule currently. That said, we can and will adjust the title, add the speakers once confirmed, and do our own publicity via email to conference participants. We'd be happy to work with you on a title and description that works for you, and you could also publicize however you'd like. We'd do our best to get the current title/description in as many places as possible with the caveat that what's currently on the schedule may also get reproduced other places – for example on screens around the venue that list events for each day - and that isn't under our control at this point. My sense is that most people will attend side events because they receive an email or hear about via word of mouth, not because they see it in the online schedule, but unfortunately there's only so much we can do at this point.

Also I confirmed re: badges that the best available info is that we can credential others on our badges on a day by day basis (for example, for the side event), but the badges will still have our name on them. And you can tell I'm adding caveats into all of this because this may be a particularly wild COP and they can and do sometimes change things at the last minute. But that's the best info I've got at this point. All best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Tuesday, November 14, 2023 11:39 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning

Kassie, thanks again. Do you know whether it would be possible to amend the title/description to include accountability as well as phase-out? As I'm sure you understand, it's important for us to stay within the accountability lane and avoid implying that our case pursues policy goals. Thanks!

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>

**Sent:** Thursday, November 9, 2023 10:32 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks for reaching out and nice talking! I'd like to extend a very warm invitation to AG Bonta or to you to join our side event – info below. The organizers are typically not the speakers but Jean will very likely moderate this one, FYI. All best, Kassie

Sunday, 03 Dec 2023	Room 2 (173 pax)	<b>Center for Biological Diversity (CBD)</b> Ms. Anchun Jean Su <a href="mailto:jsu@biologicaldiversity.org">jsu@biologicaldiversity.org</a> <b>+1 415 7703187</b>	<b>The Global Fight to End Fossil Fuels</b> Addressing the climate emergency doesn't only mean deploying renewable energy, it must also mean equitably and swiftly phasing out fossil fuels. Hear from grassroots leaders in the global fight to stop fossil fuel expansion, imports and exports and advance a just renewable energy revolution.  <b>Speakers:</b> Grassroots activists from communities in South & Central America, Africa, Asia, Pacific Islands, Europe and the US, including members of the Global Gas & Oil Network and People vs Fossil Fuels. Speakers represent diverse communities impacted by pollution from the entire fossil fuel lifecycle.
		<b>Earthworks</b> Mr. Ethan Buckner <a href="mailto:ebuckner@earthworksaction.org">ebuckner@earthworksaction.org</a> <b>+1 612 7183847</b>	
		<b>Human Rights Foundation of Aotearoa New Zealand (HRF)</b> Mr. David Tong <a href="mailto:david@humanrights.co.nz">david@humanrights.co.nz</a> <b>+64 21 2506375</b>	
		<b>Institute for Policy Studies (IPS)</b> Mr. Oscar Reyes <a href="mailto:oscar@ips-dc.org">oscar@ips-dc.org</a> <b>+1 202 2349382</b>	

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](http://CenterforBiologicalDiversity.org)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 9:11 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** RE: COP planning



Thanks! Let's talk at 9:30 am tomorrow.  
Jessica

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 8, 2023 7:39 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** RE: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, this is great to hear. Do you want to hop on the phone for a few minutes to discuss? I am free tomorrow before 11 or Friday until 1:30 or I can send an email tomorrow if that isn't convenient. Thanks and all best, Kassie

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

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**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Wednesday, November 8, 2023 10:41 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Subject:** COP planning

Kassie, hope you're doing well! Coming off the great discussion and press that our climate accountability suit generated at NYC Climate Week, I'm working to organize a COP side event where the AG and leaders of other jurisdictions that have filed similar suits can speak about legal action to hold the fossil fuel industry accountable. I'm talking with the America is All In and Scotland teams but would love any other suggestions you might have. Thanks!  
Jessica

Jessica Gordon  
Special Assistant Attorney General for Environmental Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)

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**From:** [Kassie Siegel](#)  
**To:** [Jana Staniford](#); [Jessica Gordon](#)  
**Subject:** RE: Documents  
**Date:** Thursday, November 9, 2023 4:13:29 PM  
**Attachments:** [image001.png](#)

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Thanks so much and I sent an invite with this link: [REDACTED]

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](#)  
Phone: [REDACTED]

---

**From:** Jana Staniford <[Jana.Staniford@doj.ca.gov](mailto:Jana.Staniford@doj.ca.gov)>  
**Sent:** Thursday, November 9, 2023 2:40 PM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** Re: Documents

That would be great, thank you!

## Jana Staniford

Legislative Advocate, Office of Legislative Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814



(916) 224-3294

[jana.staniford@doj.ca.gov](mailto:jana.staniford@doj.ca.gov)

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Thursday, November 9, 2023 1:17:14 PM  
**To:** Jana Staniford; Jessica Gordon  
**Subject:** RE: Documents

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that appear suspicious.

Thanks so much, Jana! How about Monday the 27<sup>th</sup> at 2 pm? I'm happy to send a Zoom link if desirable.

Many thanks and I look forward to meeting you!

Kassie Siegel, Director  
Climate Law Institute  
[Center for Biological Diversity](https://www.biologicaldiversity.org/)  
Phone: [REDACTED]

---

**From:** Jana Staniford <[Jana.Staniford@doj.ca.gov](mailto:Jana.Staniford@doj.ca.gov)>  
**Sent:** Thursday, November 9, 2023 11:25 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>; Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** Re: Documents

Good morning Kassie! Apologies for my delay in responding! I would be happy to meet, and would love to have Jessica join us too. Would the last week of November work for you? If so, Jessica and I are pretty open on either Monday 11/27 (except from 10:30am-Noon) or Thursday 11/30 (except 10-10:30am and 1-1:30pm).

## Jana Staniford

Legislative Advocate, Office of Legislative Affairs  
Office of Attorney General Rob Bonta  
California Department of Justice  
1300 I Street  
Sacramento, CA 95814



(916) 224-3294

[jana.staniford@doj.ca.gov](mailto:jana.staniford@doj.ca.gov)

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Monday, October 16, 2023 2:02 PM  
**To:** Jessica Gordon  
**Cc:** Jana Staniford

**Subject:** RE: Documents

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Absolutely no worries and thank you for the introduction, Jessica!

Jana, I had the pleasure of meeting Jessica at Climate Week in NYC; I raised a question about legislation and she suggested I might reach out to you. Would you have a few minutes sometime to talk by phone or video?

My calendar is pretty open the week of Oct. 30 and thereafter if you have time.

Many thanks, Kassie Siegel

Kassie Siegel, Director

Climate Law Institute

[Center for Biological Diversity](#)

Phone: [REDACTED]

---

**From:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Sent:** Monday, October 16, 2023 10:30 AM  
**To:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Cc:** Jana Staniford <[Jana.Staniford@doj.ca.gov](mailto:Jana.Staniford@doj.ca.gov)>  
**Subject:** RE: Documents

Thank you and sorry for the slow reply! I am adding my Leg Affairs colleague Jana here.

---

**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Monday, October 16, 2023 10:24 AM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** FW: Documents

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Hi Jessica, just one more follow-up; I wanted to share that I wrote about your case [here](#) and tweeted about it [here](#).

Very best,

Kassie Siegel, Director

Climate Law Institute

[Center for Biological Diversity](#)

Phone: [REDACTED]

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**From:** Kassie Siegel  
**Sent:** Wednesday, October 4, 2023 3:26 PM  
**To:** Jessica Gordon <[Jessica.Gordon@doj.ca.gov](mailto:Jessica.Gordon@doj.ca.gov)>  
**Subject:** Documents

Dear Jessica,

Thanks so much for speaking with me the other day! Here are a few of the documents I mentioned:

Recent [Carbon Tracker report](#) on oil and gas well decommissioning in California.

A three page write-up of how a NAAQS would work for GHGs, and a much longer law review article.

A ruling in our favor on cross motions for summary judgment in Exxon's lawsuit against Santa Barbara County for denying its proposal to transport oil by tanker trucks along hazardous highways. The summary judgment motions covered Exxon's writ claim. They have four other claims in the case, including takings and commerce clause challenges, and we do not yet know whether they will proceed to litigate those. Happy to send more from this case if it is of interest and you don't already have it.

If you're able to connect me with your colleagues Amy and Jana at your convenience, I'd be very grateful.

And finally for now, I understand I may see you the week of October 16<sup>th</sup> and I look forward to it!

Very best, Kassie Siegel

Kassie Siegel, Director

Climate Law Institute

[Center for Biological Diversity](#)

Phone: [REDACTED]

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sender and destroy all copies of the communication.

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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Tuesday, November 14, 2023 11:39 AM  
**To:** Jessica Gordon  
**Subject:** Automatic reply: COP planning

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

I'm currently out of the office.

If you need something urgently please contact Maya Golden-Krasner at [mgoldenkrasner@biologicaldiversity.org](mailto:mgoldenkrasner@biologicaldiversity.org).

Thank you.

---

**From:** Kassie Siegel <ksiegel@biologicaldiversity.org>  
**Sent:** Saturday, December 2, 2023 7:37 AM  
**To:** Elizabeth Scheller-Crowley; Tara Gallegos; Bethany Lesser; Nyshie Perkinson; Mary K Reinhart  
**Cc:** Jessica Gordon; Patricia LiceaChavez; Jean Su  
**Subject:** COP Planning  
**Attachments:** Bonta event graphic.jpg

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

Good morning or evening, everyone. The media advisory we sent a little while ago on the event is below. We'll pass any media inquiries for AG to Liz, Tara, and Bethany per Liz's last note. One so far: David Gelles cannot be at the venue but is hoping to talk with the AG on Monday.

We are also promoting the event to COP attendees and through social media [posts](#), graphic for that attached.

Any promotion your team can do would of course be fabulous. Please let us know if you need anything at any point.

Very best, Kassie

<https://biologicaldiversity.org/w/news/press-releases/california-attorney-general-bonta-headlines-cop28-side-event-sunday-2023-12-02/>



CENTER for BIOLOGICAL DIVERSITY

*Because*

y, December 2, 2023

Contact:

Nyshie Perkinson, Center for  
Biological Diversity, +1 (718) 928-  
5148,

[nperkinson@biologicaldiversity.org](mailto:nperkinson@biologicaldiversity.org)

(Dubai)

Mary K Reinhardt, Center for  
Biological Diversity, +1 (602) 320-  
7309,

[mkreinhart@biologicaldiversity.org](mailto:mkreinhart@biologicaldiversity.org)

(U.S.)

## **California Attorney General Bonta Headlines COP28 Side Event Sunday**

### ***AG Talks Big Oil Lawsuit, Followed by Global Panel on Fossil Fuel Fights***

California Attorney General Rob Bonta will deliver remarks Sunday at a COP28 side event showcasing key global fights against fossil

fuel. In the groundbreaking [lawsuit](#) the state filed in September against five of the world's largest oil companies and the American Petroleum Institute, the most and most significant climate accountability lawsuit of its kind, it seeks to hold Big Oil accountable for lying about the science of climate change and its contribution to California's worsening climate crisis. It seeks creation of a climate abatement fund, forcing polluters to pay for the damage

followed by a panel of global climate justice advocates fighting fossil fuels across the world. Highlights will include a recent legal win on the U.S. Gulf Coast and the groundbreaking vote in Ecuador to stop oil drilling in the Amazon.

Highlights will include a recent legal win in the fight to halt gas exports on the U.S. Gulf Coast, building opposition to LNG development in the Arctic Circle, the Arctic Circle Island Passage, and the groundbreaking vote in Ecuador to stop oil drilling in the Amazon.

11:00 a.m. to 1:00 p.m. Dubai time, Sunday Dec. 3

Events (SE) Room 2, Building 78, Zone B6, Blue Zone, COP28 Dubai

<https://www.youtube.com/watch?v=ICUkODT3bUY>

Christina Beitz, California Attorney General

David Reardon, Center for Biological Diversity (moderator)

Dr. David Reardon, Global Alliance for the Rights of Nature, Ecuador

Dr. David Reardon, Center for Environment and Development, Cameroon

Dr. David Reardon, Center for Energy, Ecology and Development, Philippines

Dr. David Reardon, Port Arthur Community Action Network, United States

*Center for Biological Diversity is a national, nonprofit conservation organization with more than 1.7 million members and online activists working to protect the protection of endangered species and wild places.*

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If you prefer not to receive press releases from the Center for Biological Diversity, please reply to this message and let us know.



# HOLDING BIG OIL

# ACCOUNTABLE

OFFICIAL COP28 SIDE EVENT

SUN DEC 3 11:30 - 1:00PM

SIDE EVENTS (SE) ROOM 2, BUILDING 78, ZONE B6, BLUE ZONE

FEATURING CALIFORNIA ATTORNEY GENERAL

**ROB BONTA**

DISCUSSING THE STATE'S GROUNDBREAKING LAWSUIT AGAINST BIG OIL FOLLOWED BY A PANEL OF CLIMATE JUSTICE ADVOCATES FROM ASIA, AFRICA, SOUTH AMERICA AND NORTH AMERICA HIGHLIGHTING RECENT GRASSROOTS WINS AND STRATEGIES AGAINST FOSSIL FUELS.



#ENDFOSSILFUELS



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**From:** Kassie Siegel <[ksiegel@biologicaldiversity.org](mailto:ksiegel@biologicaldiversity.org)>  
**Sent:** Wednesday, November 29, 2023 10:00 AM  
**To:** Jessica Gordon  
**Subject:** FW: COP28 California Leadership Breakfast

**EXTERNAL EMAIL:** This message was sent from outside DOJ. Please do not click links or open attachments that appear suspicious.

**From:** Tom Steyer <[tom.steyer@galvanizeclimate.com](mailto:tom.steyer@galvanizeclimate.com)>  
**Date:** November 29, 2023 at 4:04:47 AM GMT+4  
**To:** Karuna Jaggar <[kjaggar@biologicaldiversity.org](mailto:kjaggar@biologicaldiversity.org)>  
**Subject:** COP28 California Leadership Breakfast

PLEASE JOIN US  
FOR A  
COP 28  
California  
Climate Leadership  
Breakfast

With California Elected and Appointed  
Leaders

Hosted by Galvanize Climate Solutions

Monday, December 4

Breakfast starts at 7 am, with  
conversation beginning at 7:30 am

Location TBA

Please RSVP to  
[secretary@resources.ca.gov](mailto:secretary@resources.ca.gov)

## MEMORANDUM

TO: Interested Persons

FROM: Rachel Rothschild, Assistant Professor, University of Michigan Law School  
Affiliated Scholar, Institute for Policy Integrity, NYU School of Law

DATE: 3/29/2023

RE: American Petroleum Institute Opposition to a Climate Superfund Act

---

### I. Introduction

This memorandum responds to the American Petroleum Institute (API)'s statement in opposition to the "Climate Change Superfund Act." As detailed below, API's claim that the bill may be unconstitutional is not supported by case law on similar types of environmental legislation. Nor is there support for API's claim that the state climate superfund is preempted by the Clean Air Act.

### **Response: Retroactive Law Making and Due Process**

There are numerous examples of retroactive liability laws that have withstood constitutional challenges under the due process clause.<sup>1</sup> These include environmental laws that impose retroactive liability on polluters just like the New York state climate superfund.<sup>2</sup> The appropriate inquiry under due process is not the "amount of potential liability," but whether the application of retroactive liability is based on a "legitimate legislative purpose furthered by rational means."<sup>3</sup> Courts have unanimously found that environmental improvements are a legitimate government purpose, and that it is rational to impose retroactive liability for environmental harms upon parties who "created and profited" from activities that caused the pollution.<sup>4</sup> Nor is the liability imposed in the state climate superfund bill "severely disproportionate" to the parties' contributions to the problem or the harm incurred.<sup>5</sup> Furthermore, the potentially responsible parties should have expected that they would be subject to regulation

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<sup>1</sup> See e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976).

<sup>2</sup> See, e.g., *United States v. Monsanto Co.*, 858 F.2d 160, 174 (4th Cir. 1988) (upholding retroactive application of liability for hazardous waste pollution).

<sup>3</sup> See *Pension Benefit Guar. Corp. v. R. A. Gray & Co.*, 467 U.S. 717, 729 (1984) ("Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches."); see also *United States v. Alcan Aluminum Corp.*, 49 F. Supp. 2d 96, 101 (N.D.N.Y. 1999) (explaining that "economic legislation enjoys a 'presumption of constitutionality' that can be overcome only if the challenger establishes that the legislature acted in an arbitrary and irrational way").

<sup>4</sup> See, e.g., *United States v. Ne. Pharm. & Chem. Co.*, 810 F.2d 726, 734 (8th Cir. 1986); *O'Neil v. Picillo*, 883 F.2d 176, 183 n.12 (1st Cir. 1989).

<sup>5</sup> See, e.g., *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1347 (Fed. Cir. 2001) (rejecting a due process challenge to the 1992 Energy Policy Act and noting that the responsible parties were only liable for a portion of the cleanup costs from uranium processing).



and/or liability for their greenhouse gas emissions after the year 2000. The companies knew that climate change was a serious global problem and were operating in a highly regulated industry at that time.<sup>6</sup> All of these factors indicate that a state climate superfund would not infringe on these companies due process rights.<sup>7</sup>

## **Response: The State Climate Superfund May Constitute a Taking**

The state climate superfund's imposition of liability on responsible parties for the environmental harms that result from their activities is not a taking.<sup>8</sup> In evaluating a "regulatory" taking, courts examine several factors, including "the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the governmental action."<sup>9</sup> Under this framework, courts have repeatedly upheld environmental laws and regulations that impose financial costs on polluters for environmental harms.<sup>10</sup> The responsible parties under a state climate superfund reap significant private profits from their activities while the public bears the broader health and environmental costs; these profits dwarf the financial liabilities imposed by the bill. And as noted above, it is unreasonable for companies to have expected no government regulation of fossil fuels after the year 2000.<sup>11</sup>

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<sup>6</sup> On the relevance of operating in a highly regulated industry with clear potential for environmental harm, see *Monsanto Co.*, 858 F.2d at 174 ("While the generator defendants profited from inexpensive waste disposal methods that may have been technically 'legal' prior to CERCLA's enactment, it was certainly foreseeable at the time that improper disposal could cause enormous damage to the environment.").

<sup>7</sup> See *United States v. Alcan Aluminum Corp.*, 315 F.3d 179, 190 (2d Cir. 2003) ("We are in accord with this consistent authority that both pre- and post-dates *Eastern Enterprises*. As a consequence, holding Alcan jointly and severally liable under CERCLA for the cleanup costs incurred at PAS and Fulton does not result in an unconstitutional taking adverse to Alcan, or a deprivation of its right to due process.");

<sup>8</sup> See *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 217 (W.D. Mo. 1985) ("What defendants have loosely referred to as a 'taking' is, in reality, nothing more than an attempt to transform a substantive due process challenge of an economic regulation (which is subject only to the 'rational purpose' and 'arbitrary and capricious' standards), into a confiscation of defendants' property rights. This characterization is, however, inappropriate and the claim lacks merit.").

<sup>9</sup> *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124-25 (1978).

<sup>10</sup> See, e.g., *Alcan Aluminum Corp.*, 315 F.3d at 190; *United States v. Ne. Pharm. & Chem. Co.*, 810 F.2d 726, 734 (8th Cir. 1986) ("Appellants also summarily argue retroactive application of CERCLA constitutes an unconstitutional taking of property. We disagree."); *United States v. Alcan Aluminum Corp.*, 49 F. Supp. 2d 96, 100 (N.D.N.Y. 1999) (distinguishing *Eastern Enterprises v. Apfel* from environmental liability in the context of a hazardous waste superfund because in the latter case the liability was connected to an environmental harm, rather than imposed for "no reason"); *United States v. Dico, Inc.*, 189 F.R.D. 536, 543 (S.D. Iowa 1999) ("[T]he only rationale embraced by at least five judges in *Eastern Enterprises* is that retroactive application of the Coal Act to *Eastern* did not violate the Takings Clause. It therefore remains settled in this circuit that retroactive application of CERCLA does not violate either the Due Process or Takings Clauses.").

<sup>11</sup> See Peter H. Howard and Minhong Xu, *Enacting the "Polluter Pays" Principle: New York's Climate Change Superfund Act and Its Impact on Gasoline Prices*, INST. POL'Y INTEGRITY 14 (2022), [https://policyintegrity.org/files/publications/Polluter\\_Pays\\_Policy\\_Brief\\_v2.pdf](https://policyintegrity.org/files/publications/Polluter_Pays_Policy_Brief_v2.pdf) (discussing reasons firms should expect liability for greenhouse gas emissions and noting that potentially responsible parties like Exxon, BP, Shell, and Chevron already put a price on carbon internally to account for this expected liability).

## **Response: The State Climate Superfund Imposes Arbitrary, Excessive Fines that May Violate Due Process**

The financial liability imposed under the state climate superfund is not arbitrary or excessive. Responsible parties must contribute funds in proportion to the amount of greenhouse gas emissions that result from their products;<sup>12</sup> an overwhelming number of scientific studies have connected greenhouse gas emissions to climate change and its attendant effects. Nor are the fines excessive given oil company revenue, market capitalization, and profits,<sup>13</sup> as well as the expected environmental damage to New York.

Courts have repeatedly found that the imposition of financial liability on parties that caused past environmental harm does not violate due process.<sup>14</sup> No court has suggested that the state needs precision in calculating liability in order to satisfy due process requirements.<sup>15</sup>

## **Response: Use of Strict Liability Standard and the Nexus between Fine and Liability**

Legislatures and the courts have historically imposed strict liability on parties engaging in a variety of harmful activities, including those that injure the environment, under the reasoning that the party who engaged in the activity for a specific purpose or profit is in the best position to absorb the cost of those harms.<sup>16</sup> In the environmental context, the requirement that companies who engaged in the polluting activity pay the costs of any resulting damage is known as the “polluter pays” principle, a longstanding legal doctrine.<sup>17</sup> Here, the responsible parties are not

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<sup>12</sup> See *Franklin Cty. Convention Facilities Auth. v. Am. Premier Underwriters, Inc.*, 240 F.3d 534, 553 (6th Cir. 2001) (upholding CERCLA’s constitutionality from due process and takings challenges, noting that “[a]lthough the economic impact on [the party] of retroactive CERCLA application is potentially significant, it is also directly proportional to [the party’s] prior acts of pollution).

<sup>13</sup> See *Howard and Xu*, *supra* note 11, at 16.

<sup>14</sup> See *Alcan Aluminum Corp.*, 315 F.3d at 190; *Dico, Inc.*, 189 F.R.D. at 543; *Franklin Cty. Convention Facilities Auth. v. Am. Premier Underwriters, Inc.*, 240 F.3d at 552 (finding no due process violation for imposing liability on hazardous waste polluters because “Congress acted rationally by spreading the cost of cleaning hazardous waste sites to those who were responsible for creating the sites. Cleaning abandoned and inactive hazardous waste disposal sites is a legitimate legislative purpose which is furthered by imposing liability for response costs upon those parties who created and profited from those sites.”); *United States v. Newmont USA Ltd.*, No. CV-05-020-JLQ, 2007 U.S. Dist. LEXIS 63726, at \*14 (E.D. Wash. Aug. 28, 2007) (“[C]ourts that have been asked to reconsider whether CERCLA’s retroactive liability scheme is constitutional in light of *Eastern Enterprises* have “uniformly held that CERCLA continues to pass constitutional muster.”);

<sup>15</sup> See *United States v. Hardage*, Case No. CIV-86-1401-P, 1989 U.S. Dist. LEXIS 17878, at \*14 (W.D. Okla. Nov. 28, 1989) (finding that the imposition of joint and several liability for parties who caused environmental harms that were “indivisible” did not violate due process); *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 214 (W.D. Mo. 1985) (“there is no support for the underlying premise . . . that imposition of joint and several liability creates a constitutional question. . . The application of the principle of joint and several liability where there is indivisible injury resulting from multiple causes has been applied in many contexts, without constitutional challenge”); see also *Monsanto Co.*, 858 F.2d at 174.

<sup>16</sup> See Alexandra Klaas, *From Reservoirs to Remediation: The Impact of CERCLA on Common Law Strict Liability Environmental Claims*, 39 WAKE FOREST L. REV. 903, 907 (2004) (noting that “strict liability has been historically applied through common law and statutory developments in a wide range of areas,” including environmental pollution).

<sup>17</sup> Boris N. Mamlyuk, *Analyzing the Polluter Pays Principle through Law and Economics*, 18 SOUTHEASTERN ENV’T L.J. 39, 41-42 (2009) (“In domestic law, the polluter pays principle states that polluting entities are legally and financially responsible for the harmful consequences of their pollution.”).

just “one segment of the economy” but those who engaged in the activity and profited from it. API’s statements here are thus policy critiques of the bill rather than arguments about its legal validity. API may wish that the doctrine of strict liability didn’t exist, or believe that New York should add a causation requirement to the bill, but the legislature is legally allowed to impose strict liability on responsible parties and determine financial contributions based on greenhouse gas contributions.

### **Response: Disproportionate Penalties**

It is reasonable for the New York state legislature to impose joint and several liability on responsible parties for the harms resulting from climate change, thus requiring some companies to pay more to help with adaptation and mitigation efforts. This is the approach taken in other environmental laws where the harms cannot be specifically attributed to individual polluters as well as situations where some responsible parties are insolvent or otherwise unable to contribute to remedying the environmental damages resulting from their activities.<sup>18</sup>

### **Response: Federal Preemption**

The state climate superfund is not preempted by the Clean Air Act. Under the Clean Air Act, states do not need permission from the federal government to enact environmental laws, on climate change or any other air pollution problem. The Clean Air Act takes what is known as a “cooperative federalist” approach to air pollution problems, preserving state authority to regulate more stringently than the federal government through a savings clause,<sup>19</sup> with a few specific exceptions like setting new motor vehicle emission standards.<sup>20</sup> The Clean Air Act’s savings clause would apply to a state climate superfund in the same way it does to state laws concerning other types of pollution problems.<sup>21</sup>

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<sup>18</sup> See *United States v. Monsanto Co.*, 858 F.2d 160, 172 (4th Cir. 1988) (noting that under CERCLA the uniform federal rule is that if parties “cause a single and indivisible harm [], they are held liable jointly and severally for the entire harm”).

<sup>19</sup> See 42 U.S.C. § 7416 (2022) (“Except as otherwise provided . . . nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution.”); see also Holly Doremus & W. Michael Hanemann, *Of Babies and Bathwater: Why the Clean Air Act’s Cooperative Federalism Framework Is Useful for Addressing Global Warming*, 50 ARIZ. L. REV. 799, 817 (2008) (“The Clean Air Act was the first modern federal environmental statute to employ a ‘cooperative federalism framework,’ assigning responsibilities for air pollution control to both federal and state authorities.”).

<sup>20</sup> See 42 U.S.C.S. § 7543(a) (2022) (“No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines . . .”). Another exception concerns the Acid Rain trading provisions. See *Clean Air Mkts. Group v. Pataki*, 338 F.3d 82 (2d Cir. 2003).

<sup>21</sup> Indeed, many states have programs to address greenhouse gas emissions; though different in form than a state climate superfund, the same principles of federalism and preemption analysis apply. See, e.g., William Funk, *Constitutional Implications of Regional CO<sub>2</sub> Cap-and-Trade Programs: The Northeast Regional Greenhouse Gas Initiative as a Case in Point*, 27 J. ENV’T L. 353, 357 (2009) (explaining that the regional greenhouse gas initiative should not be preempted by federal law, at least until a federal cap-and-trade program passes Congress).

The decision of the U.S. Court of Appeals for the Second Circuit in *City of New York v. Chevron Corp* does not suggest that the Clean Air Act preempts legislation like a climate superfund.<sup>22</sup> The *Chevron* case solely concerned whether nuisance lawsuits against fossil fuel companies could be brought under state law or whether they had to be brought under federal common law.<sup>23</sup> Musings from the Second Circuit about whether the federal government is better positioned to address climate change are immaterial to a legal analysis of preemption. Only Congress – not the Second Circuit – has the power to amend the Clean Air Act and preempt state action; under the Act’s current framework, states have the authority to create a climate superfund.

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<sup>22</sup> See, e.g., Jonathan Adler, *Displacement and Preemption of Climate Nuisance Claims*, 17 J. L., ECON. & POL’Y 217, 221 (2022) (criticizing the 2<sup>nd</sup> circuit decision for holding “that state law claims against fossil fuel companies are preempted, despite the lack of any preemptive legislative action, implicit or otherwise . . . [w]hether state law nuisance actions are to be preempted is a choice for Congress to make, and is a choice Congress has not yet made”).

<sup>23</sup> *City of N.Y. v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021)