Energy, Environment and Natural Resources

2020 Summer Board and Leadership Virtual Meeting
June 16-19, 2020
FEDERAL ADVOCACY GENERAL SESSION

2:00 p.m. – 2:45 p.m.

The NLC Federal Advocacy Team will provide an update on the Cities Are Essential Campaign and NLC’s top legislative priorities for 2020.

EENR COMMITTEE MEETING

3:00 p.m. – 4:30 p.m.

3:00 p.m. – 3:10 p.m.

WELCOME, INTRODUCTIONS AND MEETING OVERVIEW

The Honorable TJ Cawley, Chair
Mayor, Town of Morrisville, North Carolina

Mayor Cawley will welcome the committee and give an update from the NLC Board of Directors meeting.

3:10 p.m. – 3:50 p.m.

DISCUSSION: ADVANCING CLIMATE CHANGE ACTION AMID COVID-19 ECONOMIC RECOVERY

Cooper Martin
Director, Sustainability and City Solutions, City Solutions, National League of Cities

Committee members will discuss how communities and the federal government can continue to advance action on climate mitigation, adaptation and resilience as they rebuild their economies amid the coronavirus public health crisis. Committee members will also discuss NLC’s guide on emergency management considerations during the coronavirus pandemic.

Discussion Questions
1. What kind of policy resources do you need to create an equitable and resilient recovery in your community?
2. How can local leaders keep up their momentum on climate action? How can local leaders keep climate change as a top priority, both within their own local government and for their residents?
3. What environmental policies/actions are most at risk in your budget?
4. At the federal level, how can NLC continue to push action on climate and environmental protection generally and in the context of recovery?

3:50 p.m. – 4:20 p.m.  EENR POLICY DISCUSSION AND RESOLUTIONS REVIEW
Committee members will review and vote on changes to the current 2020 resolutions.

4:20 p.m. – 4:30 p.m.  BEST PRACTICES ROUND ROBIN
Committee members will share any challenges or innovative solutions from their city.

4:30 p.m.  NEXT STEPS AND ADJOURN

The Honorable TJ Cawley, Chair
Mayor, Town of Morrisville, North Carolina

Wednesday, June 17, 2020

4:30 p.m. – 5:00 p.m.  GENERAL SESSION
The Honorable Joe Buscaino
Councilmember, City of Los Angeles, California and President, National League of Cities

Clarence E. Anthony
CEO and Executive Director, National League of Cities

5:00 p.m. – 5:30 p.m.  OPEN RECEPTION/HAPPY HOUR

Next EENR Committee Meeting:
City Summit
Tampa, Florida
November 18-21, 2020
Enclosures

- NLC Policy Development and Advocacy Process
- Equitable Climate Resilience Project: Talking Points
- E&E Article, “Trump's NEPA rollback could fall hardest on minorities”
- EENR Resolutions
- Energy and Environment Legal Update
- Energy, Environment and Natural Resources Committee Roster
**NLC POLICY DEVELOPMENT AND ADVOCACY PROCESS**

As a resource and advocate for more than 19,000 cities, towns and villages, the National League of Cities (NLC) brings municipal officials together to influence federal policy affecting local governments. NLC adopts positions on federal actions, programs and proposals that directly impact municipalities and formalizes those positions in the *National Municipal Policy (NMP)*, which guides NLC’s federal advocacy efforts.

NLC divides its advocacy efforts into seven subject areas:
- Community and Economic Development
- Energy, Environment and Natural Resources
- Finance, Administration and Intergovernmental Relations
- Human Development
- Information Technology and Communications
- Public Safety and Crime Prevention
- Transportation and Infrastructure Services

For each of the seven issue areas, a Federal Advocacy Committee advocates in support of NLC’s federal policy positions. Members of each committee serve for one calendar year and are appointed by the NLC President.

**Federal Advocacy Committees**

Federal Advocacy Committee members are responsible for advocating on legislative priorities, providing input on legislative priorities, and reviewing and approving policy proposals and resolutions. Additionally, Committee members engage in networking and sharing of best practices.

Federal Advocacy Committees are comprised of local elected and appointed city and town officials from NLC member cities. NLC members must apply annually for membership to a Federal Advocacy Committee. The NLC President makes appointments for chair, vice chairs, and general membership. In addition to leading the Federal Advocacy Committees, those appointed as committee chairs will also serve on NLC’s Board of Directors during their leadership year.

At the Congressional City Conference, Federal Advocacy Committee members are called upon to advocate for NLC’s legislative priorities on Capitol Hill, as well as develop the committee’s agenda and work plan for the year. Committee members meet throughout the year to further the plan, hear from guest presenters, discuss advocacy strategies and develop specific policy amendments and resolutions. At the City Summit, committee members review and approve policy proposals and resolutions. These action items are then forwarded to NLC’s Resolutions Committee and are considered at the Annual Business Meeting, also held during the City Summit.

**Advocacy**

Throughout the year, committee members participate in advocacy efforts to influence the federal decision-making process, focusing on actions concerning local governments and communities. During the Congressional City Conference, committee members have an opportunity, and are encouraged, to meet with their congressional representatives on Capitol Hill. When NLC members are involved in the legislative process and share their expertise and experiences with Congress, municipalities have a stronger national voice, affecting the outcomes of federal policy debates that impact cities and towns.
**Equitable Climate Resilience Project: Talking Points**

The Institute for Building Technology and Safety (IBTS) was recently awarded a grant from The Kresge Foundation to lead a project exploring obstacles and opportunities that local governments face in addressing social equity and climate resilience.

- The project includes multiple phases, starting with a survey of elected and non-elected officials and staff from medium and large cities. The survey will be the first large-scale data collection effort on the intersection of these topics among U.S. cities.

- The survey will identify how issues related to equity and resilience affect cities and their residents, the extent to which cities are able to address these issues, the challenges and barriers they face, and actions they have taken and solutions they have developed.

- The new-to-the world data resulting from this survey will:
  - Help cities better understand how other cities address these issues.
  - Allow cities to better identify and address these issues during their resilience assessments and planning efforts.
  - Help those in the equitable climate resilience field address city needs and develop solutions.

- IBTS will update its Community Resilience Framework and Tools (CRAFT) using results from the survey, then test these revisions with pilot CRAFT assessments conducted in three cities.
  - This update will enable communities that use CRAFT to better understand and address social equity in their resilience assessment and planning efforts.

**Who is involved in the project?**

- **The Institute for Building Technology and Safety (IBTS):** IBTS is a nonprofit that specializes in resilience planning, disaster recovery, energy, building services, and local government services, helping communities meet governance challenges while enhancing public safety, economic development, and the general welfare of communities.

- **The Kresge Foundation:** The Kresge Foundation seeks to help communities build resilience in the face of climate change. As a foundation committed to creating opportunity for low-income people and communities, Kresge is particularly concerned about the disproportionate effect climate change has on people with limited economic resources.
• **National League of Cities (NLC):** NLC, which serves the interests of 19,000 cities, towns, and villages in the US as well as professionals working in municipal government, is partnering with IBTS on this project.

• **National Forum of Black Public Administrators (NFBPA):** The NFBPA, an independent, nonprofit organization dedicated to the advancement of black public leadership in local and state governments, is a partner on this project.

• **Advisory Panel:** IBTS has assembled an advisory panel of 24 national social equity, local government, and climate resilience experts to guide the work. These experts represent organizations including:
  - Irela Bague, Bague Group
  - Curtis Brown, Institute for Diversity and Inclusion in Emergency Management (I-DIEM); Virginia Department of Emergency Management
  - Jordan Carter, National League of Cities (NLC)
  - Joyce Coffee, Climate Resilience Consulting
  - Marcia Conner, National Forum of Black Public Administrators
  - Lois DeBacker, The Kresge Foundation
  - Dave Fowler, Association of State Floodplain Managers (ASFM)
  - Rebecca Guerriero, The Kresge Foundation
  - Patrick Howell, Institute for Building Technology and Safety (IBTS)
  - Crandall Jones, Norristown, PA
  - Beth Kellar, International City/County Management Association (ICMA)
  - Nicolette Louissaint, Ph.D., Healthcare Ready
  - Anna Marandi, National League of Cities (NLC)
  - Luis Monterrubio, Foundation for Puerto Rico
  - Andreanecia Morris, HousingNOLA
  - Cara Pike, Climate Access
  - Benjamin Preston, RAND
  - Rebecca Rehr, EcoAmerica
  - Monica Sanders, Bill Anderson Fund; University of Delaware
  - Laurie Schoeman, Enterprise Community Partners
  - Susy Torriente, Jacobs Engineering
  - Feliz Ventura, Hatch Consulting
  - Kathryn Wright, Urban Sustainability Directors Network
Project Objectives and Outcomes

- This effort is intended to help cities and professionals in the equitable climate resilience field develop a detailed understanding of the intersection of social equity and climate resilience at the local government level, and use these insights to develop resources and solutions.

- Results from both the survey and CRAFT pilots will be broadly shared with local governments and other stakeholders across the U.S.

Survey Participation

- The online survey will be available in late March/early April.
- Elected and non-elected officials, including mayors, city council members, city managers, sustainability officers, planners, and others who represent U.S. cities with populations of 50,000 or more are strongly encouraged to participate!
- This is a “Cities Helping Cities” initiative. Your thoughts, opinions, and experiences with these topics will help identify needs and solutions to the benefit of cities across the country. This is an opportunity to be part of and move the conversation at the national level.
- Survey results will be shared in aggregate. This means that results will not be attributed to you individually or to your specific city.

Ready to participate?

Please give us your card or share your contact information with Patrick Howell, IBTS Resilience Strategic Goal Lead, at phowell@ibts.org. We will send you the survey link when it is ready!
Chief Resilience Officers Launch Global Coalition: Cities for a Resilient Recovery

Cities for a Resilient Recovery (C2R) is a participatory and collaborative platform for resilient recovery planning from the COVID-19 pandemic

(New York City, May 7, 2020) - Global urban communities are experiencing the dramatic consequences of the COVID-19 pandemic; 95% of infected people live in cities. Urban citizens and in particular the poor are deeply affected by both the effects of containment measures and the further exacerbation of chronic stresses, like access to water and sanitation services, adequate jobs and safe and healthy food.

While cities are working to respond to this pandemic, we are seeing an overwhelming demand from cities to work together on a resilient recovery – and to fix the broken systems that exacerbated the impacts of the virus on our vulnerable communities. The members of the Global Resilient Cities Network trust one another’s knowledge and experience and we are committed to making this available to address the complex challenges of COVID-19, the resilience challenge of our generation.” said Lauren Sorkin, Acting Executive Director of GRCN.

Responding to the imperative to mobilize collective action for a better “day after” COVID-19, on May 7th Chief Resilience Officers from the Global Resilient Cities Network are launching a global Coalition to support cities to strengthen the resilience of their city systems and leave no one behind as they stand on the front line of the COVID-19 pandemic.

“The principle of a resilient recovery is simple: as we rebuild from the current crisis, we must also prepare for future shocks. Both COVID-19 and climate change are massive challenges that require transformative solutions on a global scale. This network will provide an invaluable forum for cities around the world to grow stronger together through sustained partnership and collaboration,” said Jainey Bavishi, Director of the NYC Mayor’s Office of Resiliency.

The “Cities for a Resilient Recovery” (C2R) initiative offers a participatory platform to all interested cities, including the 98 member cities of the GRCN and other urban centers that are willing to engage in short- and long-term planning for a sustained resilient recovery.

“As city practitioners, we have been working together for over six years, sharing knowledge and experiences to build coalitions to protect vulnerable communities, enabling us to turn challenges and crises into opportunities. We look forward to building on this work and our collaborations across businesses, governments, civil society, and academia. We will be sharing both more deeply within the network as well as broadening efforts beyond our network.” said Toby Kent, Chief Resilience Officer, Melbourne.
Through GRCN, C2R will align partners like World Bank, the Rockefeller Foundation, and The University of Manchester, existing programs and resources to support cities to achieve the aims of their initiatives, and to prioritize actions and investments with the highest resilience value. By offering accessible and relevant data, and planning tools and expertise, it will enable urban resilience leaders and innovators to seize this opportunity to strengthen city systems and improve the lives of millions for years to come.

“This pandemic has highlighted the importance of collaboration to address systemic vulnerabilities at a city level. This inclusive initiative will enable access to knowledge and information, to act today and build a better future for urban global communities.” said Grainia Long, Commissioner for Resilience of the city of Belfast.

As city leaders around the world are already talking about building a resilient future, we invite them to join the Coalition to work together in the resilience challenge of our time.

To learn more and join the Coalition visit: www.resilientcitiesnetwork.org/recovery

About the Global Resilient Cities Network
The Global Resilient Cities Network (GRCN) is the city-led organization that is driving urban resilience action to protect vulnerable communities from climate change and other physical, social and economic urban adversities and challenges. With support from The Rockefeller Foundation and other funding strategic partners, the Network aims to continue supporting cities and their Chief Resilience Officers in future-proofing their communities and critical infrastructure with a unique reach, strength and legacy to understand and support the challenges of the ever-growing urban society.

Media Contact:
Fabiola Guillen
fguillen@resilientcitiesnetwork.org
Communities of color will have fewer ways to protect themselves from pollution and climate change under President Trump's decision to curtail environmental reviews for infrastructure projects.

Citing an economic emergency associated with the coronavirus, Trump yesterday signed an executive order waiving reviews required under the National Environmental Policy Act.

The law is often used by the public to shape federal decisions related to infrastructure; it requires agencies to analyze alternatives that could minimize harm to the environment and allows the public to comment. Trump's order also seeks to circumvent the Endangered Species Act.

The president directed federal agencies to use emergency powers and "other authorities" to accelerate infrastructure development, according to a senior administration official, and "expedite construction of highways and other projects designed for environmental, energy, transportation, natural resource, and other uses."

Little to no precedent exists for the administration's action, experts and advocates said, adding that such a waiver would hurt communities of color disproportionately because of ingrained economic insecurity and existing pollution.

Trump's order coincided with a move by EPA to weaken the basis for climate and clean air regulations. Both unfolded against the backdrop of a coronavirus pandemic that's taken a disproportionate toll on people who are black or Hispanic, and as protests over police brutality against black people gripped the nation's cities.

"He couldn't have picked a worse time," said Mustafa Santiago Ali, a 24-year veteran of EPA who helped launch the agency's Office of Environmental Justice, referring to Trump's order.

There's a racial element to yesterday's announcement, he said. Past administrations fell short in protecting vulnerable communities, but only Trump has "supersized" their problems while trying to silence them by closing legal recourses in NEPA and elsewhere, Ali said.

"When folks say, 'I can't breathe,' they're not only talking about the actions that are happening from police officers. They're also talking about the actions that are happening from the Trump administration as they continue to put a stranglehold on many of the people who live in those vulnerable communities," said Ali, who is now a vice president at the National Wildlife Federation.

These NEPA waivers could reverberate for a generation, despite Trump framing them as an emergency response, said David Hayes, the deputy Interior secretary in the Clinton and Obama administrations.

"The stakes are incredibly high," he said. "The kinds of activities that could be permitted by this sort of a sweeping exemption involve projects that might last for 50 years or more."

That makes it likely that Trump's order will have a tough time standing up in court, Hayes added. Waivers enshrined in NEPA were written for fast-moving emergencies, he said, not an economic slowdown.
"Courts know the difference — everyone knows the difference. There will be no quarter given to the government on this kind of bald-faced excuse to make changes to the law," said Hayes, who was the Interior Department's top lawyer and is now executive director of New York University's State Energy & Environmental Impact Center, which works with state attorneys general to defend energy and environmental policies.

Democrats have sought to strengthen NEPA requirements to ensure agencies consult with vulnerable communities.

Sometimes it worked.

Tying environmental justice issues to NEPA has transformed remediation projects, most notably the cleanup of the Hudson River by General Electric, said Aaron Mair, the former Sierra Club president who helped lead the yearslong push.

He said the company had claimed the river would essentially clean itself of polychlorinated biphenyls. Then environmental justice advocates showed that minority communities downriver relied on the Hudson's fish for food. That changed the scope of the cleanup, because it was then framed around human costs.

Trump's order will put communities of color at risk across the country, Mair said.

"Following the law is critical even at this hour," he said. "Economic crisis or even social unrest crisis are no reason or an excuse for corporations to get a pass or an exemption to injure the rest of the populace or downwind or downstream communities as a result of their corporate practices, the result of their corporate profits."

The suspension of NEPA requirements could have disproportionate effects on minority communities as thousands of people march for equality across the country, said Robert Bullard, an environmental policy professor at Texas Southern University who helped develop the concept of environmental justice decades ago.

It could have dire immediate and long-lasting health effects on the communities most devastated by COVID-19, he said.

"It means the emergency room or cemetery for those front-line communities," he said. "It is so callous and so damaging that when you think about it, it's almost like saying come on in and do what you want to do, we don't have to assess the damage or the potential harm because it's more important to get these things done, and if you're in the way of this then you will have to either sink or swim or get out of the way, and if you can't get out of the way, then you're going to die. That's how cold-blooded it is."

Past administrations have waived environmental reviews after disasters that require real-time decisionmaking, like managing debris after Hurricane Katrina or deploying oil dispersant after the Deepwater Horizon oil spill.

Trump has long sought to minimize the reach of NEPA, which conservatives and some Democrats have blamed for delaying infrastructure projects. Some environmental groups have used NEPA to postpone projects they oppose, with the goal of making them too expensive to complete.

Trump is pursuing a separate rewrite of NEPA regulations that could exclude climate impacts and set timelines for reviews to end (Energywire, Jan. 6).
Trump's agencies have already minimized the way environmental reviews analyze cumulative impacts (ClimateWire, Oct. 9, 2019). That obscures the way individual projects contribute to climate change.

It also hides the way vulnerable communities suffer overlapping impacts from multiple projects, said Ali of NWF, and that will get worse under the new order.

"Even in their own writings, they say that this [deregulation] is less protective and more people are going to lose their lives," he said, citing environmental reviews that have acknowledged Trump's policies harm people, as happened in the environmental review for rolling back tailpipe emissions standards (ClimateWire, Aug. 15, 2018).

"That's part of the conversation [Trump's agencies] don't want to have," Ali said.
EENR RESOLUTIONS

NLC resolutions are annual statements of position that sunset at the end of the calendar year unless action is taken. The committee must review each of the 2020 resolutions that originated in the EENR Committee to determine recommendations for 2021. The committee has the following options:

1. Renew the resolution for the coming year (with or without edits)
2. Incorporate the resolution into permanent policy; or
3. Let the resolution expire.

The EENR resolutions that were approved for 2020 at the City Summit in San Antonio with NLC staff recommendations for 2021 are:

<table>
<thead>
<tr>
<th>Resolution</th>
<th>NLC Staff Recommendation</th>
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<tbody>
<tr>
<td>NLC RESOLUTION #8: Supporting Local PACE Programs</td>
<td>Renew with edits</td>
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<tr>
<td>NLC RESOLUTION #9: Supporting and Advancing Resilient Communities to Prepare for Changing Climate and Extreme Weather Events</td>
<td>Renew with edits</td>
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<td>NLC RESOLUTION #10: Supporting Urgent Action to Reduce Carbon Emissions and Mitigate the Effects of Climate Change</td>
<td>Renew with edits</td>
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<td>NLC RESOLUTION #11: Addressing Lead Contamination and Calling for Nationwide Federal Support for Water Infrastructure</td>
<td>Renew with edits</td>
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<td>NLC RESOLUTION #12: Increase Federal Investment in Water Infrastructure</td>
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<td>NLC RESOLUTION #13: Support for Integrated Planning and New Affordability Consideration for Water</td>
<td>Renew with edits</td>
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<tr>
<td>NLC RESOLUTION #14: Calling on the Federal Government to Take Action to Address PFAS Contamination</td>
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<td>NLC RESOLUTION #15: Improve the Benefit-Cost Analysis for Federally Funded Flood Control Projects</td>
<td>Renew with edits</td>
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<tr>
<td>NLC RESOLUTION #16: Increase Funding for Border Water Infrastructure Projects</td>
<td>Renew with edits</td>
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WHEREAS, utility bills represent a major part of operating costs for home and business owners; and

WHEREAS, the building sector accounts for 39 percent of the nation’s energy use, 72 percent of its electricity use, one third of all global greenhouse gas emissions and represents the single largest, most accessible opportunity for deep emission cuts in the United States; and

WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements to homes and businesses can save energy, cut utility bills up to $140 billion per year, create thousands of local jobs, reduce reliance on fossil fuels, and dramatically reduce greenhouse gas emissions; and

WHEREAS, a 2013 study that found default risks are on average 32 percent lower in energy efficient homes and recommends that the lower risks associated with energy efficiency should be taken into consideration when underwriting mortgages;¹ and

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative local government solution to help property owners finance energy efficiency and renewable energy improvements – such as energy efficient HVAC systems, upgraded insulation, new windows, solar installations, etc. – to their homes and businesses; and

WHEREAS, PACE programs can also be used for other types of projects that provide public and community benefits, such as improving community resilience to hurricanes and wildfires and managing stormwater and tidal flooding; and

WHEREAS, the PACE program removes many of the barriers of energy efficiency and renewable energy retrofits that otherwise exist for residential homeowners and businesses, particularly the high upfront cost of making such an investment and the long-term ability to reap the benefits of cost savings; and

WHEREAS, 367 states plus the District of Columbia have passed laws enabling local governments to develop PACE programs; and

WHEREAS, locally-administered PACE programs are an exercise of the traditional authority of local governments to utilize the tax code for public benefit; and

WHEREAS, PACE programs help local governments meet a core obligation to their citizens to maintain housing stock and improve housing opportunities for all citizens; and

WHEREAS, the PACE program is an achievement of the intergovernmental partnership to realize national policy goals, namely, reducing energy consumption, that will positively impact the fiscal conditions of every level of government; and

WHEREAS, PACE holds the potential to unlock private capital and jumpstart economic growth backed by the marketplace certainty of the federal government; and

WHEREAS, despite PACE’s great promise, in July 2010 the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency issued statements that immediately forced existing PACE residential programs to halt operations and froze the development of dozens of other residential PACE programs nationwide; and

WHEREAS, despite the FHFA directive, many commercial and a few residential PACE programs are operating or are in development in hundreds of municipalities across the country; and

WHEREAS, in 2010 the U.S. Department of Energy dedicated $150 million to assist in the development of local PACE programs and in 2016 issued Best Practice Guidelines for Residential PACE Financing Programs to help state and local governments develop and implement programs and recommended protections that PACE programs should put in place for consumers and lenders;² and

WHEREAS, in July 2016, the U.S. Department of Housing and Urban Development released guidance allowing the Federal Housing Administration to insure mortgages on properties that include PACE assessments,³ which has since been withdrawn; and

WHEREAS, in 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act banking reform bill that recognizes PACE as a tax assessment and directs the Consumer Financial Protection Bureau (CFBP) to develop rules in consultation with state and local governments that ensure consumers have the ability to pay their residential PACE financing obligations.

NOW, THEREFORE, BE IT RESOLVED that locally-administered PACE programs operating in accord with state and federal guidelines are a safe and sound investment of public and private funds; and

BE IT FURTHER RESOLVED that locally-administered PACE programs represent an essential contribution of local governments to reduce greenhouse gas emissions and promote renewable energy; and

BE IT FURTHER RESOLVED that the National League of Cities (NLC) urges FHFA to work with local governments seeking to establish PACE programs that benefit from the same senior lien status of all other projects that are funded through municipal assessments that improve private property and meet public policy objectives; and

BE IT FURTHER RESOLVED that NLC urges the CFPB to work with local governments to adopt regulations that clearly reaffirms the right of state and local governments to exercise liens or assess special taxes or other property obligations to protect and improve housing stock for the public good, including energy efficiency improvements, and establishes underwriting standards that are consistent with guidelines issued by the U.S. Department of Energy for PACE financing programs or by implementing any other appropriate measure.
NLC RESOLUTION #9

SUPPORTING AND ADVANCING RESILIENT COMMUNITIES TO PREPARE FOR CHANGING CLIMATE AND EXTREME WEATHER EVENTS

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, across the country local governments are seeing the devastating effects associated with a changing climate and recent extreme weather events, such as heat waves, droughts, heavy downpours, floods, hurricanes, and changes in other storms have brought renewed attention to the need for cities to anticipate, prepare for and adapt to these events; and

WHEREAS, these challenges are larger than individual communities can address on their own, making it beneficial to coordinate regionally and across levels of government; and

WHEREAS, while all regions of the country are impacted by climate change, approximately one third of the U.S. population—more than 100 million people—live in coastal communities that are threatened by rising sea levels, which could impact economic development, land availability, property values, insurance rates, beaches and tourism, and critical water, transportation and energy infrastructure; and

WHEREAS, the 2014 National Climate Assessment reports that current evidence of climate change appears in every region and impacts are currently visible in every state, and concludes that the evidence of human-induced climate change continues to strengthen;¹ and

WHEREAS, the effects of a changing climate are a national security issue with potential impacts to the U.S. Department of Defense (DoD) missions, operations plans and installations and the DoD must be able to adapt to current and future operations to address the impacts of a variety of threats and conditions, including those from weather and natural events²; and

WHEREAS, a report by the Intergovernmental Panel on Climate Change indicates that limiting global warming to 1.5°C is necessary to avoid the worst impacts of climate change;³ and

WHEREAS, climate change and extreme weather events can have severe impacts on local and regional infrastructure, economies, public safety, national security, public health, population migration, natural landscapes, water resources, and environmental quality; and

WHEREAS, the impacts of climate change and extreme weather events pose an especially pressing threat to persons with disabilities, economically disadvantaged households, the elderly and other vulnerable populations; and

WHEREAS, the capability of maintaining energy availability is a critical first order priority in maintaining critical infrastructure and building community resilience; and

WHEREAS, there is currently insufficient information, technical coordination or financial assessment of the costs and mechanisms to rapidly retrofit and redesign local energy systems to enable them to be more resilient to a range of potential disruptive events, such as extreme weather, terrorism, and energy price escalation; and

WHEREAS, the United States has seen 246-265 separate billion-dollar-plus disasters since 1980, including 146 in 2018 and 14 in 2019, with a cumulative cost exceeding $1.76 trillion (CPI-adjusted) and a total death toll of 13,210-14,223; and

WHEREAS, in 2005 Hurricane Katrina led to 1,833 deaths and more than $167.5 billion (CPI-adjusted) in losses, and a subsequent $120 billion in supplemental disaster assistance and in 2012 Hurricane Sandy led to 159 deaths and more than $73.5 billion in damages (CPI-adjusted), and a subsequent $60.4 billion in supplemental disaster assistance; and

WHEREAS, in 2017 three Category 4 hurricanes made landfall in the U.S. totaling more than $275 billion (CPI-adjusted) in damages and a death toll of 3,167, including 2,981 from Hurricane Maria, which made landfall in Puerto Rico; and

WHEREAS, in 2019 historic flooding hit the Midwest and southern plains significantly affecting agriculture, roads, bridges, levees, dams and other infrastructure, assets and industries, resulting in 124 deaths and $20.3 billion (CPI-adjusted) in yet-to-be determined economic costs; and

WHEREAS, rising temperatures are lengthening the wildfire season and increasing wildfire risks throughout the Western United States due to earlier snow melts and forests that are drier longer, the costs of putting out wildfires has increased dramatically, from $550 million in 1985 to over $3 billion in 2018 (2018 dollars), and the economic losses associated with wildfire continues to grow, with the 2018 western wildfires costing over $24.5 billion (CPI-adjusted); and

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WHEREAS, Congress approved over $50 billion in disaster relief in FY18;\(^1\) and [$12.5 billion in FY19 - [https://crsreports.congress.gov/product/pdf/R/R45484](https://crsreports.congress.gov/product/pdf/R/R45484)]

WHEREAS, 2019 was the second warmest year on record behind 2016 (warmest), followed by 2018 was the fourth warmest year on record behind 2016 (warmest), 2015 (third second-warmest), and 2017 (fourth third-warmest) and 2018 (fifth warmest);\(^2\) and

WHEREAS, as extreme weather events become more common, local governments in all geographic and climatic regions require resources to assist them in anticipating, preparing for and adapting to these events; and

WHEREAS, a preparedness response fund would provide financial assistance to accelerate the development of adaptive success models and provide a far-reaching damage prevention initiative that would help reduce the ultimate financial pressure on the federal government; and

WHEREAS, local governments are first responders—preparing in advance of emergency situations, offering immediate assistance to those impacted, and identifying strategies, solutions, and partnerships to address situations quickly and efficiently; and

WHEREAS, taking action now to adapt to a changing environment and create community resilience will help save lives, strengthen local economies, save taxpayer dollars and build preparedness for future events; and

WHEREAS, in 2014 the President’s Task Force on Climate Preparedness and Resilience, comprised of state, local and tribal leaders, including representatives from the National League of Cities (NLC) made recommendations to the President on ways the federal government can assist local efforts to address and prepare for the impacts of climate change.

NOW, THEREFORE, BE IT RESOLVED that NLC calls on Congress and the Administration to partner with local governments and to support local action on climate change adaptation and resilience; and

BE IT FURTHER RESOLVED that NLC urges Congress and the Administration to take urgent action to help states and local governments conduct vulnerability assessments, develop and implement long-term mitigation, adaptation and resiliency action plans, and identify innovative financing opportunities to implement these assessments and plans in order to prepare, plan for and more quickly recover from extreme weather events; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to recognize the unique risks and opportunities communities face and to offer customized tools and


incentives to local governments to encourage communities to plan for and rapidly respond to the
effects of climate change and extreme weather; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop a national
strategy to assist communities in integrating the risks of climate change and extreme weather
events into emergency management planning and responses to identify and quantify the
economic value of regional infrastructure at risk under different scenarios; and

BE IT FURTHER RESOLVED that NLC urges the federal government to work with state and
local governments, the insurance industry, and other stakeholders to develop an incentive-based
disaster insurance and mitigation system that would encourage property owners to retrofit
existing structures to reduce future losses from natural disasters; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to outline strategies
and actions to reduce the vulnerability of federal programs to the impacts of climate change and
extreme weather; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to better align
federal funding with local preparedness and resilience-building efforts; and

BE IT FURTHER RESOLVED that NLC calls on Congress to fully fund grant programs that
help local governments prepare, respond and recover from climate change and extreme weather
events and establish a preparedness and response fund to support local governments that are at
the forefront of developing adaptive solutions; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop grant and
technical assistance programs to enable communities to develop community energy transition
plans that ensure the capability of cities to maintain critical energy and infrastructure during
disruptions to local, regional or national energy infrastructure; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop a national
pilot project initiative to conduct detailed assessments and designs for resilient city energy
system retrofit and redesign across a range of different regions and city sizes.
NLC RESOLUTION #10

SUPPORTING URGENT ACTION TO REDUCE CARBON EMISSIONS AND MITIGATE THE EFFECTS OF CLIMATE CHANGE

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, climate change mitigation is a global problem that demands a global solution; and

WHEREAS, the 2014 National Climate Assessment reports that current evidence of climate change appears in every region and impacts are currently visible in every state, and concludes that the evidence of human-induced climate change continues to strengthen;¹ and

WHEREAS, a report by the Intergovernmental Panel on Climate Change indicates that limiting global warming to 1.5°C is necessary to avoid the worst impacts of climate change;² and

WHEREAS, while some impacts of climate change are inevitable, sharp reductions in greenhouse gas emissions will reduce the severity of the impacts and limit the rate of climate change; and

WHEREAS, the U.S. Environmental Protection Agency’s (EPA) 2015 Clean Power Plan set state-specific carbon emissions reductions goals that would have reduced carbon emissions from coal and natural gas fired power plants by 32 percent below 2005 levels by 2030; and

WHEREAS, EPA repealed the Clean Power Plan and replaced it with the Affordable Clean Energy Rule, which establishes emission guidelines for states to use when developing plans to limit carbon dioxide at their coal-fired power plants; and

WHEREAS, in order to meet the carbon emissions reductions goals necessary to help mitigate the effects of climate change on communities, improving energy efficiency, increasing energy conservation and deploying renewable energy systems will be essential at the local, state and federal levels; and

WHEREAS, improving energy efficiency, increasing energy conservation and deploying renewable energy systems will save taxpayer dollars, boost the national and local economy, enhance national security, increase our nation’s energy independence, and improve environmental quality; and

WHEREAS, technology exists and continues to be developed that will help families, businesses and communities reduce energy use, but without standards to encourage adoption of new technology, many of these technology options will be unavailable or unaffordable; and

WHEREAS, the transportation sector generates the largest share of greenhouse gas emissions, nearly 28.9 percent of 2018 greenhouse gas emissions, in the United States; and

WHEREAS, buildings account for nearly 40 percent of the nation’s energy consumption and more than 70 percent of its electricity use, and electricity production represents the second largest share of greenhouse gas emissions, nearly 27.5 percent of 2018 greenhouse gas emissions, in the United States; and

WHEREAS, indoor and outdoor lighting account for 8 percent of electricity consumed in the nation, and rapid conversion to efficient lighting would result in significant greenhouse gas reductions as well as a decrease in base load energy needs; and

WHEREAS, communities large and small nationwide are laboratories of innovation and are taking action on climate mitigation, including adopting greenhouse gas reduction goals, successfully pioneering and demonstrating cost-effective clean energy solutions, and pursuing local strategies that create jobs, save energy and taxpayer dollars, and promote renewable sources; and

WHEREAS, the Energy Efficiency and Conservation Block Grant (EECBG) helped local governments undertake projects to reduce energy use, diversify energy supplies and improve air quality and the environment; and

WHEREAS, all levels of government must work to become more resilient by achieving greater energy independence based on a multi-pronged strategy of aggressively expanding renewable energy, significantly increasing energy efficiency portfolio standards, and creating new financing mechanisms; and

WHEREAS, in 2014 the President’s Task Force on Climate Preparedness and Resilience, comprised of state, local and tribal leaders, including representatives from the National League of Cities (NLC), made recommendations to the President on ways the federal government can assist local efforts to address and prepare for the impacts of climate change; and

WHEREAS, 77 percent of millennial voters, ages 18-35, believe that the U.S. should try to stop or slow climate change.

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8 Poll, Alliance for Market Solutions, (March 5, 2018), available at: https://allianceformarketsolutions.org/public-opinion/
NOW, THEREFORE, BE IT RESOLVED that NLC calls on Congress and the Administration to partner with local governments, to support local action on climate change mitigation, and to provide essential tools, research, technology development, data, and funding, as well as workforce development, job training and community assistance, to help local governments achieve their greenhouse gas reduction targets and transition to a clean energy economy; and

BE IT FURTHER RESOLVED that NLC urges Congress and the Administration to take urgent action to reduce carbon emissions across a broad sector of the economy and become carbon neutral to mitigate the effects of climate change and hold warming to 1.5°C; and

BE IT FURTHER RESOLVED that NLC opposed efforts to repeal the Clean Power Plan and supports the U.S.’s reengagement in the Paris Climate Agreement; and

BE IT FURTHER RESOLVED that NLC opposes efforts to lower the CAFE standards or fuel efficiency for all types of vehicles; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass energy efficiency and conservation legislation to incentivize energy efficiency improvements in residential and commercial buildings, schools and federal buildings located in communities; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass a national renewable portfolio standard that increases the use of carbon neutral energy and promotes energy efficiency, with the goal of 50% carbon neutral energy by 2030 and 100% by 2050; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass a long-term extension of the investment tax credit and the production tax credit for renewable energy as an incentive for their development and deployment; and

BE IT FURTHER RESOLVED that NLC calls on Congress to reauthorize and fully fund the EECBG or other funding structure at the U.S. Department of Energy to further incentivize clean energy at the local level.
NLC RESOLUTION #11

ADDRESSING LEAD CONTAMINATION AND CALLING FOR NATIONWIDE FEDERAL SUPPORT FOR WATER INFRASTRUCTURE

[NER STAFF RECOMMENDATION: Renew with edits]

WHEREAS, access to clean drinking water is fundamental to the health and well-being of America’s communities and families; and

WHEREAS, Flint, Michigan, and Sebring, Ohio, are two recent examples of cities where high levels of lead have been found in the city’s drinking water; and

WHEREAS, in the early 2000s, the District of Columbia experienced a similar crisis, as have many other cities; and

WHEREAS, lead has negative and long-term neurological effects, particularly in infants and children; and

WHEREAS, in Flint, the elevated blood lead level was discovered in children after the city’s water source was switched to the Flint River by the state-appointed emergency manager, a decision made without coordination or consultation with local officials; and

WHEREAS, a contributing factor to the Flint, Michigan, drinking water crisis was the city’s aging infrastructure and the lack of investment in infrastructure and the community; and

WHEREAS, incidents like these can undermine citizens’ confidence in the safety and quality of the drinking water supply and water infrastructure of every community; and

WHEREAS, in January 2016, President Obama signed an emergency declaration in the State of Michigan, ordering federal aid to supplement state and local response efforts due to the emergency conditions caused by lead-contaminated water; and

WHEREAS, corrosion control and testing are essential to preventing lead leaching and alerting the public to potential dangers; and

WHEREAS, recent analysis by the National Resources Defense Council found that over 5,300 water systems nationwide have elevated levels of lead\(^1\) and a recent analysis by the American Water Works Association estimates 6.1 million lead service lines remain in U.S. communities, at an estimated $30 billion to replace;\(^2\) and

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WHEREAS, there is a need to invest in our aging water infrastructure nationwide and a failure to do so can have negative public health consequences; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) estimates the nation’s water infrastructure capital needs over the next 20 years to be approximately $743 billion in total, the American Society for Civil Engineers estimates the needed investment for water infrastructure to be $1.3 trillion over the next 20-25 years, and other estimates put the cost at more than $4 trillion to maintain and build a 21st century water system.

NOW, THEREFORE, BE IT RESOLVED that local planning and infrastructure decisions, including those related to clean drinking water, should not be preempted and should be made by locally elected leaders in coordination with state and federal officials; and

BE IT FURTHER RESOLVED that the National League of Cities (NLC) calls on Congress to provide direct assistance to the City of Flint, Michigan, and for EPA and the federal government to work directly with local officials, for as long as necessary, to resolve the drinking water crisis through the provision of safe drinking water and to support economic recovery; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to provide long-term support for the families affected by lead drinking water contamination in Flint, Sebring, and nationwide, including in the areas of education and mental health; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support robust funding for all water infrastructure funding mechanisms, including the Clean Water and Drinking Water State Revolving Loan Fund programs and the Water Infrastructure Finance and Innovation Act (WIFIA); and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support other mechanisms of infrastructure funding, including protecting the tax-exempt status of municipal bonds and reinstating the tax exemption for advance refunding bonds; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support grants to local governments, as well as school systems and daycare centers, for the replacement of lead service lines, testing, planning, corrosion control, and public education campaigns, and to assist small and disadvantaged communities in complying with the Safe Drinking Water Act.

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4 “2017 Infrastructure Report Card,” American Society of Civil Engineers (March 2017), available at: https://www.infrastructurereportcard.org/
NLC RESOLUTION #12

INCREASE FEDERAL INVESTMENT IN WATER INFRASTRUCTURE

[NLC STAFF RECOMMENDATION: Renew]

WHEREAS, the nation’s water infrastructure systems, both built and natural, are significant assets that protect public health and the nation’s water resources and well-maintained systems are essential to our citizens’ general welfare and the nation’s prosperity; and

WHEREAS, with much of our nation’s physical water infrastructure built in the post-World War II period—and some of it more than 100 years old—there are an estimated 240,000 water main breaks each year;¹ and

WHEREAS, cities and towns nationwide are finding that decentralized water solutions such as water use efficiency measures and green stormwater installations can effectively and affordably serve many of the same functions as conventional water infrastructure and can supplement and extend their existing centralized systems;² and

WHEREAS, federal loan and grant assistance to cities and local governments to assist in maintaining and upgrading water infrastructure systems has continued to decline in real dollars over the past decades³; and

WHEREAS, local governments are responsible for the vast majority of investment in water and sewer infrastructure, investing over $1.7 trillion between 1956-2010⁴ (not adjusted for inflation) and over $125 billion in 2017 alone;⁵ and

WHEREAS, tax-exempt municipal bonds are the primary funding mechanism for state and local government infrastructure projects with three-quarters of the total United States investment in infrastructure being accomplished with tax-exempt financing; and

WHEREAS, an estimated $271 billion is needed to meet current and future demands over the next 20 years for upgrading the nation’s wastewater infrastructure and an estimated $1 trillion is

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¹ 2017 Infrastructure Report Card, American Society of Civil Engineers, available at: https://www.infrastructurereportcard.org/cat-item/drinking-water/
⁵ 2017 Annual Surveys of State and Local Government Finances, U.S. Census Bureau (October, 2019), available at: https://www.census.gov/programs-surveys/gov-finances.html
necessary to maintain and expand service to meeting drinking water demands over the next 25 years;\(^6\) and

**WHEREAS,** this funding gap does not include anticipated expenditures to comply with new Clean Water Act and Safe Drinking Water Act mandates, consent decrees, new responsibilities and costs relating to water security and source water protection, additional needs for re-use of treated effluent, or impacts due to climate change; and

**WHEREAS,** municipal resources dedicated to water infrastructure are currently overwhelmingly directed to comply with new complex federal mandates and are therefore unavailable for critical maintenance, repair, and rehabilitation needs; and

**WHEREAS,** public-private partnerships can provide options for communities to access sources of private capital to meet water infrastructure needs, but are not a viable for all communities or all types of projects; and

**WHEREAS,** private activity bonds or tax-exempt facility bonds are a form of tax-exempt financing that can be used for water infrastructure projects that utilize private capital instead of public debt and shift the risk and long-term obligation from the municipality to the private equity partner; and

**WHEREAS,** Congress provides to states a capped annual allocation (“volume cap”) of tax-exempt bonds, based on population, but historically, most of the tax-exempt bonds are issued to short-term projects such as housing and education loans; and

**WHEREAS,** Congress has previously enacted legislation eliminating the state volume cap for such municipal infrastructure projects such as airports, landfills, and ports; and

**WHEREAS,** eliminating the state volume cap is estimated to make available $5-6 billion in private capital for water projects, while the cost in foregone revenue to the federal government is nominal.\(^7\)

**NOW, THEREFORE, BE IT RESOLVED** that the National League of Cities (NLC) continues to urge Congress and the Administration to reverse the decline in federal financial participation in funding municipal water infrastructure needs by developing a financial option that strikes the right balance between local responsibility and federal assistance; and

**BE IT FURTHER RESOLVED** that NLC calls on Congress and the Administration to support robust funding for water infrastructure funding through the Clean Water and Drinking Water State Revolving Loan Fund programs and to reauthorize the programs; and

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\(^7\) Testimony of Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency, before the Senate Appropriations Committee, March 4, 2008.
BE IT FURTHER RESOLVED that Congress should provide full appropriation to the Water Infrastructure Finance and Innovation Act (WIFIA) for loans and loan guarantees for water infrastructure projects; and

BE IT FURTHER RESOLVED that Congress should exempt from federal taxation rebates issued to consumers by local governments to pay for consumer-installed decentralized water infrastructure that benefits their communities; and

BE IT FURTHER RESOLVED that NLC supports legislation removing the federal volume cap on tax-exempt bonds for water and wastewater infrastructure projects; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support other mechanisms of infrastructure funding and financing, including protecting the tax-exempt status of municipal bonds and reinstating the tax exemption for advance refunding bonds; and

BE IT FURTHER RESOLVED that Congress and the Administration should enact new legislation which provides adequate and reliable long-term funding for municipal water infrastructure needs to help close the funding gap.
WHEREAS, in 2012 the U.S. Environmental Protection Agency (EPA) issued its Integrated Municipal Stormwater and Wastewater Planning Approach Framework (“Integrated Planning Framework”), which was intended to help local governments seek more efficient and affordable solutions to stormwater and wastewater issues and meet the requirements of the Clean Water Act (CWA) in a more flexible, affordable, and cost-effective manner; and

WHEREAS, in 2014 EPA issued its Financial Capability Assessment Framework for Municipal Clean Water Act Requirements (“Financial Capability Framework”), which allows the consideration of additional information, such as socio-economic factors, in determining the financial capability of residents and a community when developing compliance schedules for municipal projects necessary to meet CWA obligations; and

WHEREAS, these two policy frameworks demonstrate an awareness by EPA of the challenges local governments face in meeting CWA requirements, as well as the conflicts they face in balancing environmental protection with economic feasibility; and

WHEREAS, at a time where local financial resources are increasingly limited and the ability of local governments to raise revenue is also limited, local governments are facing costly unfunded federal and state regulatory requirements forcing them to make tough decisions about the services and maintenance that they can afford; and

WHEREAS, proposed federal budget cuts to critical local programs would further reduce the ability of cities and towns to meet the everyday needs of their community; and

WHEREAS, local water and sewer rates and stormwater fees are rapidly becoming unaffordable for many fixed- and low-income citizens, placing a disproportionate financial burden on these vulnerable populations who live at or below the poverty level; and

WHEREAS, the current reliance on two percent of median household income for wastewater and combined sewer overflows controls is a misleading indicator of a community’s ability to pay, and often places a particularly high burden on residents at the lower end of the economic scale; and

WHEREAS, green infrastructure, such as constructed swales, wetlands, green roofs, infiltration planters, rain gardens, cisterns, and enhanced floodplains and riparian buffers, augmented by permeable pavers, rain barrels, and trees, is a valuable part of water infrastructure systems and provides a multitude of community benefits such as helping local governments manage runoff, extending the life of local infrastructure, saving the city and taxpayers money, providing outdoor
recreation opportunities through parks and green spaces and promoting the joint use of city and
school facilities, and serve as an economic development tool; and

WHEREAS, National Pollutant Discharge Elimination System (NPDES) permits are
increasingly stringent, the treatment technologies and approaches necessary to meet permit limits
have become exceedingly expensive and time-intensive to implement, and project construction
timelines for clean water infrastructure projects can extend more than a decade.

NOW, THEREFORE, BE IT RESOLVED, that the National League of Cities (NLC) calls on
EPA to work with local governments to develop local integrated plans through the permit
process to comprehensively and collectively manage wastewater and stormwater needs, prioritize
investments in wet weather overflows and flooding, incorporate green infrastructure components,
and to ease the burden of unfunded mandates; and

BE IT FURTHER RESOLVED, that NLC calls on EPA to share integrated planning best
management practices, including those that take a regional watershed approach, from across the
country with all communities that are interested in pursuing an integrated planning approach; and

BE IT FURTHER RESOLVED, that NLC calls on Congress to modernize the NPDES
permitting process to approve legislation to allow states with delegated authority to administer
the NPDES permitting program to issue permits of up to ten years; and

BE IT FURTHER RESOLVED, that NLC calls on EPA to work with local governments to
revise the “Combined Sewer Overflows—Guidance for Financial Capability Assessment and
Schedule Development” (Feb. 1997) to eliminate reliance on median household income as the
critical metric for determining investment level and to allow for the consideration of additional
information, such as socio-economic factors, consistent with the Agency’s 2014 Financial
Capacity Framework; and

BE IT FURTHER RESOLVED, that NLC calls on the federal government to explore options
for addressing affordability and ratepayer assistance.
NLC RESOLUTION #14

CALLING ON THE FEDERAL GOVERNMENT TO TAKE ACTION TO ADDRESS
PFAS CONTAMINATION

[NLC STAFF RECOMMENDATION: Renew]

WHEREAS, Per- and polyfluoroalkyl substances (PFAS) are a class of nearly 5,000 man-made chemicals that includes PFOA, PFOS, PFBS and GenX manufactured and used in a variety of industries; and

WHEREAS, PFAS chemicals are known as “forever” chemicals because they are persistent in the environment and in the human body; and

WHEREAS, PFAS chemicals have been known to cause adverse health outcomes in humans including effects on prenatal development, low infant birth weights, early onset of puberty, negative effect on the immune system, cancer, liver damage, and thyroid disruption¹; and

WHEREAS, in 2016 the U.S. Environmental Protection Agency (EPA) established a lifetime exposure health advisory level of 70 parts per trillion for the combined concentration of PFOA and PFOS in drinking water;² and

WHEREAS, in 2018 the U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry released a draft report warning that PFAS chemicals could pose a health risk at levels lower than currently recommended by the EPA;³ and

WHEREAS, in 2019 EPA announced a comprehensive nationwide action plan for addressing PFAS, including identifying both short-term solutions for addressing these chemicals and long-term strategies that will help states, tribes and local communities provide clean and safe drinking water to residents and address PFAS at the source – before it gets into the water;⁴ and

WHEREAS, the EPA action plan notes that the agency will make a formal decision on whether to set a Maximum Contaminant Level under the Safe Drinking Water Act by the end of 2019; and

WHEREAS, there are significant technical challenges in detecting and measuring PFAS in water and other environmental media at the levels where health effects can occur, and analytical methodologies are still under development or are not yet generally available; and

¹ Fact Sheet: PFOA & PFOS Drinking Water Health Advisories, U.S. Environmental Protection Agency (Nov. 2016); available at: https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf
² Ibid
³ Toxicological Profile for Perfluoroalkyls, Draft for Public Comment, U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry (June 2018); available at: https://www.atsdr.cdc.gov/toxpath/toxpath.html
WHEREAS, while science predicts that the entire class of PFAS chemical may be associated with adverse health effects and many such chemicals are in industrial and commercial use, only a small fraction of these chemicals have been investigated sufficiently to establish quantitative measures of toxicity; and

WHEREAS, the Environmental Working Group and the Social Science Environmental Health Research Institute at Northeastern University updated an interactive map of known contamination of communities from PFAS; and

WHEREAS, as of March 2019, the interactive map shows at least 610 locations in 43 states are known to be contaminated, including drinking water systems serving an estimated 19 million people;\(^5\) and

WHEREAS, in February 2019, EPA and United States Geological Survey scientists published results on analysis for 17 PFAS compounds in water samples from 25 public drinking water supplies in 24 states (locations confidential) that detected PFAS in every sample tested, suggesting that PFAS is ubiquitous in our water;\(^6\) and

WHEREAS, PFAS chemicals were widely used in firefighting foams, particularly for airports, and were used in frequent training exercises at military air bases; and

WHEREAS, PFAS chemicals were required in firefighting foams used at airports to meet federal performance standards for extinguishing agents, but currently the Federal Aviation Administration is updating its standards to allow for a non-fluorinated option for airports; and

WHEREAS, the U.S. Department of Defense has ended its use of the foam in training exercises; and

WHEREAS, PFAS contamination is found at and around military bases, airports, manufacturing sites, landfills, and in local water supplies obtained from both rivers and groundwater; and

WHEREAS, local governments are responsible for protecting the health, safety and welfare of residents, including providing clean and safe water; and

WHEREAS, while treatment technology for removing PFAS from water is not well-developed, the more effective methods use technologies that are not conventionally available in existing water treatment plants, so removing these PFAS chemicals from water could require costly investments by local governments and other local water suppliers, which would be passed onto ratepayers; and

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\(^5\) EWG: PFAS Chemicals Must be Regulated as a Class, Not One by One (May 6, 2019), available at: https://www.ewg.org/release/mapping-pfas-contamination-crisis-new-data-show-610-sites-43-states

WHEREAS, local governments are owners and operators of airports and landfills and employ firefighters, some of whom may have been exposed to PFAS chemicals on the job through inhalation or skin absorption, and therefore present a pension and liability concern for local budgets; and

WHEREAS, PFAS contamination not only poses health risks, but also economic impacts on communities, including in the agriculture and fishing industries by contamination of food sources; and

WHEREAS, a number of states have adopted PFAS policies pertaining to prohibiting use, monitoring and reporting, cleanup, health studies, testing, liability provisions, and contamination limits, including Michigan, New Jersey and Vermont that have set maximum contamination levels lower than EPA health advisory levels; and

WHEREAS, a number of bills have been introduced in both the U.S. House of Representatives and U.S. Senate to survey, regulate, mitigate and phaseout the use of PFAS.

NOW, THEREFORE, BE IT RESOLVED, that the National League of Cities (NLC) calls on Congress and the Administration to holistically examine PFAS contamination and to take comprehensive action to address the problem, including through nationwide testing, monitoring, mapping, public education, and water supply treatment; and

BE IT FURTHER RESOLVED, that NLC calls on the federal government to ensure that the parties responsible for PFAS contamination, including the federal government, are held fully accountable for costs of cleanup and mitigation and to ensure that sites are cleaned up in a timely manner and to standards sufficiently stringent to permit reuse of the site and to obviate the need for additional cleanup and mitigation costs by affected local governments; and

BE IT FURTHER RESOLVED, that local governments, including drinking water and wastewater utilities, municipal airports and municipal landfills, should not be held liable for PFAS contamination or cleanup costs; and

BE IT FURTHER RESOLVED, that NLC calls on the federal government to accelerate research and technology development to advance the science needed to understand the health consequences of exposure to PFAS chemicals, detect and measure PFAS chemicals in water and other environmental media, treat water supplies to remove these substances, and find safe substitutes for PFAS chemicals; and

BE IT FURTHER RESOLVED, that NLC calls on the federal government to set drinking water standards, including for PFAS chemicals, based on sound science, public health protection, occurrence of the contaminant in drinking water supplies at levels of public health concern, risk reduction and cost; and

BE IT FURTHER RESOLVED, that NLC calls for the federal government to avoid passing costs onto local ratepayers and to provide financial and technical assistance to communities for

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7 States Forge Ahead with PFAS Regulations, PoliticoPro Datapoint on Energy (Feb. 28, 2019)
testing, monitoring, mapping, public education, water supply treatment, and pursuit of alternative
water supplies if necessary; and

BE IT FURTHER RESOLVED, that NLC calls on the federal government to prevent further
exposure to PFAS through multiple means, including promoting and funding the development
and use of firefighting alternatives and the phasing out the use of PFAS; and

BE IT FURTHER RESOLVED, that NLC should update the “Assessing the State Firefighter
Cancer Presumption Laws and Current Cancer Firefighter Cancer Research” that it conducted in
2009 to determine what linkages there are between firefighting and an elevated incidence of
cancer.
NLC RESOLUTION #15

IMPROVE THE BENEFIT-COST ANALYSIS FOR FEDERALLY FUNDED FLOOD CONTROL PROJECTS

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, the U.S. Army Corps of Engineers (Army Corps) at the U.S. Department of Defense is the primary federal agency associated with the design and construction of flood protection systems in communities across the country; and

WHEREAS, the White House Office of Management and Budget (OMB) works with the Army Corps to determine what water resources projects are funded with the budget allocation for the Army Corps enacted by Congress each year; and

WHEREAS, the Army Corps and OMB rely heavily on a benefit-cost analysis to determine which projects receive federal funding each year; and

WHEREAS, since Congress traditionally provides the Army Corps with far fewer resources than are necessary to fund the significant backlog of projects under their jurisdiction, the benefit-cost analysis has become a de facto filter for the Army Corps and OMB; and

WHEREAS, as a result, projects that have a benefit-cost ratio below a certain level are often not considered for funding at all; and

WHEREAS, the current system for determining benefit-cost ratios at the U.S. Army Corps of Engineers does not adequately consider replacement of structures in low-income, low-cost of living communities; and

WHEREAS, the current system for determining benefit-cost ratios at the U.S. Army Corps of Engineers does not adequately consider the impacts of the loss of a community’s livelihood associated with agricultural land; and

WHEREAS, the current system for determining benefit-cost ratio at the U.S. Army Corps of Engineers does not include the value of federal lands.

NOW, THEREFORE, BE IT RESOLVED, that the National League of Cities (NLC) calls on the U.S. Army Corps of Engineers and the White House Office of Management and Budget to add a quantitative indexed value to life and safety to determine the benefit of federal investments in flood control projects; and

BE IT FURTHER RESOLVED, that NLC calls on the Army Corps and OMB to add a quantitative indexed value to agricultural land value and the impacts of crop flooding to determine the benefit of federal investments in flood control projects; and

BE IT FURTHER RESOLVED, that NLC calls on the Army Corps and OMB to add a quantitative indexed value to protection of low-income communities and environmental benefits to determine the benefit of federal investments in flood control projects.
BE IT FURTHER RESOLVED, that NLC calls on the Army Corps and OMB to add a quantitative indexed value to potential benefits of projects on federal properties, as well as benefits to military readiness when developing coastal storm protection projects in the adjacent community.
NLC RESOLUTION #16

INCREASE FUNDING FOR BORDER WATER INFRASTRUCTURE PROJECTS

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, international transboundary rivers on the southern border of the United States are a major source of sewage, trash, chemicals, heavy metals and toxins; and

WHEREAS, transboundary flows threaten the health of 18 million residents in the United States and Mexico, harm important estuarine land and water of international significance, force closure of beaches, damage farmland, compromise border security, and directly affect U.S. military readiness; and

WHEREAS, a significant amount of untreated sewage, sediment, hazardous chemicals and trash have entered United States waters, such as via the Tijuana River Watershed and New Rivers in southern California, the Santa Cruz and San Pedro Rivers in Arizona and the Rio Grande in Texas, eventually draining into coastal waterways and waterbodies and inland waters, such as the Salton Sea; and

WHEREAS, the presence of pollution on state and federal public lands is creating unsafe conditions for visitors and residents—these lands are taxpayer supported and intended to be managed for recreation, resource conservation and the enjoyment by the public, and

WHEREAS, the current insufficient and degrading infrastructure in the border zone poses a significant risk to the public health and safety of residents and the environment on both sides of the border, and places the economic stress on cities that are struggling to mitigate the negative impacts of pollution; and

WHEREAS, the 1944 treaty between the United States and Mexico regarding Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande allocates flows on transborder rivers between Mexico and the United States, and provides that the nations, through their respective sections of the International Boundary Water Commission shall give control of sanitation in cross border flows the highest priority; and

WHEREAS, in 1993, the United States and Mexico entered into the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a North American Development Bank which created the North American Development Bank (NADB) to certify and fund environmental infrastructure projects in border-area communities; and

WHEREAS, on November 30, 2018 the United States, Mexico and Canada entered into the Agreement Between The United States of America, The United Mexican States, And Canada to replace the North American Free Trade Agreement, and on December 10, 2019 the United States, Mexico and Canada agreed to a protocol of amendment to the U.S.-Mexico-Canada Agreement (USMCA), which became effective in the United States on January 29, 2020; and

WHEREAS, the implementing language of USMCA authorizes and allocates funding for grants under the U.S.-Mexico Border Water Infrastructure Program (BWIP), the Trade Enforcement Trust Fund and recapitalization of the NADB;
WHEREAS, the funding package included $300 million to be available to address the problem of toxic sewage flowing from the Tijuana River watershed; and

WHEREAS, the increase in commerce and traffic across the border has resulted in economic benefits for both the U.S. and Mexico; and

WHEREAS, the ease of trade and commerce has resulted in increased car, truck and factory emissions, which negatively impact the water quality, land quality and air quality of the areas along the southern border; and

WHEREAS, border communities need to modernized and new water infrastructure to provide clean and sanitary drinking water to improve the quality of living and support the expanding communities; and

WHEREAS, the adverse environmental impact will worsen existing environmental issues and the strain on aging infrastructure, while also creating new environmental issues in the future; and

WHEREAS, public concerns in response to the widespread threats to public health and safety, damage to fish and wildlife resources and degradation to the environment resulting from caused by transboundary river flow pollution in the southernmost regions of the border states requires urgent action by the Federal and State governments; and

WHEREAS, Congress authorized funding under the Safe Drinking Water Act and established the State and Tribal Assistance Grants (STAG) program for the U.S.-Mexico Border Water Infrastructure Program (BWIP) in 1996 to provide grants for high-priority water, wastewater, and stormwater infrastructure projects within 100 kilometers of the southern border; and

WHEREAS, the EPA administers the STAG and BWIP, and coordinates with the NADB to allocate BWIP grant funds to projects in the border zone; and

WHEREAS, since its inception, the BWIP has provided funding for projects in California, Arizona, New Mexico and Texas that would not have been constructed without the grant program; and

WHEREAS, the BWIP program was initially funded at $100 million per year, but, over the last 20 years, the program has been continuously significantly reduced to its current level of $150 million in FY19 and $25 million in FY20; and

WHEREAS, in its FY 2021 Budget Request, the Administration proposed to eliminate the BWIP program and recommends that state revolving funds be used as a source of infrastructure funding; and

WHEREAS, officials from EPA Region 6 and 9 identified a multitude of BWIP-eligible projects along the southern border totaling over $300 million; and

WHEREAS, Mexico has identified multiple projects totaling hundreds of millions of dollars that would benefit from BWIP funding; and

WHEREAS, without federal partnership through the BWIP and state support to address pollution, cities that are impacted by transboundary sewage and toxic waste flows are left with

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limited resources to address a critical pollution and public health issue and limited legal remedies
to address the problem; and

WHEREAS, Mexico benefits from the bi-national funding program and relies on the North
American Development Bank to assist in funding projects on the Mexico side of the border,
which have an immediate and long-term environmental impact along the border in the U.S. due
to the upstream, transboundary flows of the major rivers; and

WHEREAS, local governments and the public support the State’s primary objectives in
complying with environmental laws including the Clean Water Act, Porter-Cologne Water
Quality Control Act, and Endangered Species Act, and their state law analogues, and are
supported by substantial public investments at all levels of government to maintain a healthy and
sustainable environment for the future.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities urges the
Federal government to restore and ensure proper funding for continue to fund the Border Water
Infrastructure Program, and to recommit to working bi-nationally to develop and implement
long-term solutions to address serious water quality and contamination issues, such as discharges
of untreated sewage and polluted sediment and trash-laden transboundary flows originating from
Mexico, that result in significant health, environmental, and safety concerns of affected
communities.
ENERGY AND ENVIRONMENT LEGAL UPDATE

1. Hawaii Wildlife Fund et al. v. County of Maui – U.S. Supreme Court

Update since Congressional City Conference: In April, the U.S. Supreme Court held 6-3 that when there is a “functional equivalent of a direct discharge” from a point source to navigable waters an appropriate permit is required under the Clean Water Act.

In 2016, NLC joined an International Municipal Lawyers Association amicus brief in the case Hawaii Wildlife Fund et al. v. County of Maui arguing that groundwater is neither a “Waters of the U.S.” nor a point source and that expanding the National Pollutant Discharge Elimination System (NPDES) program to include the migration of pollutants through groundwater is an expansion of the existing Clean Water Act regulatory program. Oral arguments in the case were heard in October 2017.

In February 2018, the Ninth Circuit Court of Appeals held that any discharge of pollutants to Waters of the United States through groundwater (or any other medium) that is “fairly traceable” to a point source falls within the NPDES program and requires a Clean Water Act permit. The Court also found that the County of Maui was liable for violating the Clean Water Act even though the State of Hawaii had declined to issue the county a permit. NLC supported the County of Maui in its request for a rehearing en banc with the 9th Circuit, which the court denied. NLC joined an amicus brief supporting the County of Maui in its appeal with the U.S. Supreme Court. The State and Local Legal Center filed an amicus brief on behalf of the state and local government organizations.

Local Government Impacts: This case appears to expand the coverage of the CWA significantly by using a novel “conduit” theory of liability. Under the conduit theory, according to the district court, any release of pollutants into groundwater that migrates to hydrologically-connected navigable waters violates the CWA. This theory and the 9th Circuit decision could have far-reaching implications and greatly expand the types of facilities and projects that are required to obtain an NPDES permit. This could include water supply entities and municipalities that are pursuing groundwater recharge projects, rely on groundwater storage, or use retention basins to hold or treat water, as well as projects involving underground storage tanks, surface impoundments, landfills, and pipelines that may release pollutants to groundwater that is hydrologically connected to navigable waters.

The case could significantly change the CWA landscape as it applies to groundwater, and extend the interconnected adjacent waters theory to a point where the CWA is being applied to groundwater. This extension should be a concern for any city that discharges to groundwater.

Additional impacts of this extension include local water reuse and/or recycling projects, particularly in states where there are drought conditions, such as western states. Cities and water districts or utilities in Florida could also be impacted by the ruling in this case because of the state’s high groundwater table and the local use of injection wells.

Background: The County of Maui operates a wastewater treatment facility that filters and disinfects the sewage it receives then releases the wastewater into four onsite injection wells. The injection wells are long pipes into which the wastewater is pumped. The wastewater
then travels approximately 200 feet underground into a shallow groundwater aquifer beneath the facility. It is undisputed that wastewater from these wells eventually makes its way into the Pacific Ocean and that the County was aware of that fact for some time. Specifically, a 2013 tracer study, conducted on behalf of the EPA, the Army Corps of Engineers and the Hawaii Department of Health, confirmed that treated wastewater from the County’s underground injection control wells reached the ocean roughly half a mile south of the treatment plant. On average, it took approximately 10 months for groundwater containing County wastewater to enter the ocean along approximately 2 miles of coastline.

Citizen groups sued, claiming the County needed a NPDES permit for its injection of treated wastewater into the underground injection control wells. The County did eventually apply for a NPDES permit.

**Related cases:** Four different circuit courts heard cases that revolved around the question, should groundwater pollution be federally regulated under the Clean Water Act (CWA) National Pollutant Discharge Elimination System program, rather than by the state, and, if so, under what circumstances? Even though all cases have different players and circumstances, the base question is the same: Does the federal government have the authority and the responsibility to federally regulate groundwater pollutants that ultimately release to a “waters of the U.S.”? These cases are relevant for local governments who oversee municipal wastewater and stormwater management responsibilities.

While the circuit courts ruled differently in the cases, only the *Maui* case went to the U.S. Supreme Court for review. NLC participated in two of these additional cases: *Upstate Forever and Savanna Riverkeeper v. Kinder Morgan Energy Partners* (Fourth Circuit) and *26 Crown Associates v. Greater New Haven Regional Water Pollution Control Authority, City of New Haven* (Second Circuit).

**NOTE:** At issue in cases 2-7 below is whether cities and counties may bring state common law claims seeking damages or compensation for climate change impacts. Given the long history of local government reliance on public nuisance and other state common law claims to address widespread social problems affecting the public health and welfare, it is imperative that the courts recognize the viability of this type of claim. Local governments everywhere have an interest in affirming the principles of federalism underlying state common law.

Cities and counties across the United States have brought lawsuits against major oil and gas companies claiming they knew for decades their products caused climate change but denied or downplayed the threat. These lawsuits have been brought under state common law (including public and private nuisance, trespass, negligence, design defect, and failure to warn). The suits seek damages or compensation for current and future costs associated with climate change. Lawsuits have been filed in California (eight separate lawsuits), New York, Colorado, Maryland and Washington. (The State of Rhode Island has also brought a suit.)

The lower courts all consider the following two cases: In *American Electric Power v. Connecticut* (2011) the Supreme Court held a federal common law public nuisance lawsuit seeking an injunction against power companies to reduce greenhouse gas emissions (GHGs), brought by cities and states, was displaced by the Clean Air Act, which delegates authority to
regulate GHGs to the U.S. Environmental Protection Agency (EPA). In *Native Village of Kivalina v. ExxonMobil* (2012) the Ninth Circuit held that a federal common law public nuisance lawsuit seeking damages for climate change brought by a Native village in Alaska was also displaced by the Clean Air Act. (Displacement of federal common law by a federal statute is, in essence, the same as preemption of state common law by a federal statute.)

2. **City of New York v. BP et al. – Second Circuit**

**Update since Congressional City Conference:** *Oral arguments were held in November 2019.*

In the case *NYC v. BP et al.*, the district court ruled that cities and counties may not bring state common law claims and dismissed the lawsuit. The district court relied on the above two cases to conclude that, first, a federal common law public nuisance claim for climate change does exist and, second, that as a result of the existence of a federal nuisance claim cities and counties cannot bring state common law claims for damages for climate change. (The lower courts also relied on separation of powers principles to hold that the courts should not consider any federal claims.) NLC filed an *amicus brief* in the case.

3. **City of Oakland v. BP et al. – Ninth Circuit**

**Update since Congressional City Conference:** *In May, the Ninth Circuit reversed the district court’s ruling to dismiss the case and remanded it back to the district court for further analysis and action, consistent with NLC’s amicus brief. In June, the court granted an extension of time to file for a rehearing en banc – due July 9.*

In the case *City of Oakland v BP et al.*, the district court ruled that cities and counties may not bring state common law claims and dismissed the lawsuit. Similar to New York City case, in this case, the district court concluded that, first, a federal common law public nuisance claim for climate change does exist and, second, that as a result of the existence of a federal nuisance claim cities and counties cannot bring state common law claims for damages for climate change. NLC filed an *amicus brief* in this case.

4. **County of San Mateo v. Chevron et al. – Ninth Circuit**

**Update since Congressional City Conference:** *In May, the Ninth Circuit upheld the district court’s ruling to dismiss the case and ordered the case remanded to state court. In June, the court granted an extension of time to file for a rehearing en banc – due July 9.*

In the case *County of San Mateo v. Chevron et al.*, the district court ruled cities and counties may bring state common law claims and ordered the case remanded to state court. In contrast to the New York City and Oakland cases, the district court concluded that the existence of a federal common law claim does not eliminate the state common law claim, and that the Clean Air Act’s delegation of regulatory authority to EPA doesn’t preempt state law claims. NLC filed an *amicus brief* in the case.

The district court stated:
“To the contrary, the Clean Air Act and the Clean Water Act both contain savings clauses that preserve state causes of action and suggest that Congress did not intend the federal causes of action under those statutes “to be exclusive.””

5. **Mayor and City Council of Baltimore v. BP et al. – Fourth Circuit**

Update since Congressional City Conference: Oral arguments were held in December 2019. On March 6, the Fourth Circuit upheld the district court’s ruling to remand the case to state court, consistent with NLC’s amicus brief. On March 31, the defendants filed a certiorari petition in the U.S. Supreme Court. A decision on whether to accept the case is expected later this year.

On June 10, 2019, the U.S. District Court for Maryland granted the City of Baltimore’s motion to remand to Maryland state court the City’s case against fossil fuel companies for climate change-related damages. In a lengthy and comprehensive opinion, the judge rejected each of defendants’ “proverbial ‘laundry list’ of grounds for removal.” The court held that the City’s public nuisance claim was not governed by federal common law, and that its claims did not necessarily raise substantial and disputed federal issues and were not completely preempted. The court also held that there was no federal enclave jurisdiction, no jurisdiction under the Outer Continental Shelf Lands Act, no federal officer removal jurisdiction, and no bankruptcy removal jurisdiction. The decision follows a similar order granting remand in the San Mateo County appeal currently pending in the Ninth Circuit. NLC filed an amicus brief in this case.

On July 31, 2019, the judge denied defendants’ motion for a stay pending appeal of her remand order. The 4th Circuit declined to stay the district court's remand of the case to state court pending the appeal. This then caused the defendants to ask the district court to extend its stay of the remand, pending a petition for an emergency stay to the U.S. Supreme Court. The district court agreed, but also gave plaintiffs the opportunity to move to rescind the stay by October 7. The petition for an emergency stay was denied by the U.S. Supreme Court in October. The only precedent for anything like this would be the Supreme Court's stay of the Clean Power Plan.

6. **Board of County Commissioners of Boulder County v. Suncor Energy et al. – Tenth Circuit**

Update since Congressional City Conference: NLC filed an amicus brief in this case. Oral argument was heard on May 6.

On Sept. 5, 2019, the U.S. District Court for Colorado granted the City and County of Boulder’s motion to remand to Colorado state court the local governments’ case against fossil fuel companies for climate change-related damages. The decision closely resembles the San Mateo, Baltimore, and Rhode Island decisions. Defendants have filed an appeal in the 10th Circuit Court of Appeals.

7. **State of Rhode Island v. Chevron et. al – First Circuit**

Update since Congressional City Conference: NLC filed an amicus brief in this case. Oral argument has not been scheduled.

On July 22, 2019, the U.S. District Court for Rhode Island granted the State of Rhode Island’s motion to remand to Rhode Island state court the State’s case against fossil fuel companies for
climate change-related damages. The decision rejected each of defendants’ grounds for removal. The court held that the State’s public nuisance claim was not governed by federal common law, and that its claims did not necessarily raise substantial and disputed federal issues and were not completely preempted. The court also held that there was no federal enclave jurisdiction, no jurisdiction under the Outer Continental Shelf Lands Act, no federal officer removal jurisdiction, and no bankruptcy removal jurisdiction. The decision follows a similar order granting remand in the San Mateo County appeal currently pending in the Ninth Circuit, and as well as a similar order granting remand in Baltimore’s case, currently pending in the Fourth Circuit. The defendants have filed an appeal in the 1st Circuit Court of Appeals.

8. California v. Chao et al. – DC Circuit

Update since Congressional City Conference: In February, the federal district court for the District of Columbia stayed this case pending resolution of related litigation in the DC Circuit.

Final regulations of the National Highway Traffic Safety Administration (NHTSA) called the “Preemption Regulation” declare that the Energy Policy and Conservation Act of 1975 (EPCA) preempts state laws that regulate greenhouse gas emissions from new passenger cars and light trucks. California has had emissions standards for light-duty vehicles for 60 years. The federal government has repeatedly granted California and other states who have adopted California’s standards waivers of preemption the Clean Air Act.

At issue in this case is whether the Preemption Regulation is unlawful, exceeds NHTSA’s authority, contravenes Congressional intent, and is arbitrary and capricious because the NHTSA has failed to conduct the analysis required under the National Environmental Policy Act (NEPA). In September, 23 states, the District of Columbia, and the cities of Los Angeles and New York, filed a lawsuit in federal district court in DC making numerous arguments against the U.S. Department of Transportation pursuant to the Administrative Procedures Act.

First, the states argue that the Preemption Regulation exceeds NHTSA’s statutory authority because “Congress has not delegated to NHTSA any authority to issue a regulation or other legally effective determination under EPCA regarding express or implied preemption under EPCA, nor to adopt regulations declaring particular state laws, or categories of state laws, preempted by EPCA.”

Second, the Preemption Regulation is ultra vires, meaning beyond NHTSA’s scope of authority because NHTSA “does not identify any statute or other authority that authorizes the regulation.”

Third, the lawsuit offers numerous arguments for why the Preemption Regulation is arbitrary and capricious including that it “interprets EPCA as expressly and implicitly preempting state laws regulating or prohibiting—or ‘having the direct or substantial effect of regulating or prohibiting,’” p. 224—tailpipe greenhouse gas emissions, regardless of whether EPA has waived Clean Air Act preemption of those laws under Section 209(b) of the Clean Air Act.”

Finally, the lawsuit describes NHTSA’s assertion that NEPA does not apply to the Preemption Regulation so it didn’t comply with it as “arbitrary, capricious, and an abuse of discretion.” The lawsuit notes that NEPA “requires the preparation of a detailed environmental impact
statement for any “major Federal actions significantly affecting the quality of the human environment.”

9. **California v. EPA – DC Circuit – California Waiver**

Update since Congressional City Conference: *NLC will file an amicus brief in this case, which are due on July 6. The DC Circuit will take briefing on both the California waiver and NHSTA preemption issues (via Union of Concerned Scientists v. National Highway Traffic Safety Administration).*

**Background:** On September 27, 2019, EPA and the National Highway Traffic Safety Administration (NHTSA) issued a withdrawal of waiver it had previously provided to California for that State’s greenhouse gas and zero-emissions vehicle programs under section 209 of the Clean Air Act.

Before this withdrawal of waiver, California had adopted emissions standards for passenger cars and light trucks for 60 years that were more rigorous than the federal standard. The federal government had repeatedly granted California and other states who have adopted California’s standards waivers under the Clean Air Act.

**Litigation Status:** To date, revocation of this waiver has generated four lawsuits: *California and other states;* three California air districts; the National Coalition for Advanced Transportation, which represents Tesla and other electric vehicle-aligned companies; and eleven environmental groups.

The waiver lawsuit brought by California and other states has been filed in the D.C. Circuit. The Trump administration asked the court to combine the waiver lawsuit and a related preemption lawsuit against the National Highway Traffic Safety Association (*California vs. Chao* above).

10. **New York v. EPA – DC Circuit – ACE Rule**

Update since Congressional City Conference: *In April, NLC filed an amicus brief in this case. No briefing schedule has been set.*

In *New York v. EPA* states and cities, environmental groups, and other organizations have filed a lawsuit challenging the Trump Administration’s repeal of the Clean Power Plan (CPP) and issuance of the Affordable Clean Energy (ACE) Rule, which establishes greenhouse gas emissions standards for existing power plants. The repeal of the CPP and the promulgation of the ACE Rule represent the Trump Administration’s most significant climate rollback to date.

The goal of the local government amicus brief in this case, as with our previous efforts in the EPA climate regulation cases, is to highlight the perspective of localities as the first responders to the impacts of climate change and as climate policy innovators. The brief will reflect signatory associations’ and local governments’ priority concerns related to climate impacts, to highlight local sustainability and climate action plans, and to support the legal arguments set forth by petitioners challenging the regulatory rollback. The brief will largely resemble the *one, filed* in support of the Clean Power Plan in terms of its approach, although of course the legal
arguments will be different, focusing on the arbitrary and capricious nature of the new rule and its lack of a rational basis.

To date, 18 cities have signed onto the brief and that number is expected to increase in the weeks ahead. For comparison, about 50 signed onto the brief supporting the Clean Power Plan.

11. **FERC’s PJM Market Capacity Order**

**New:** *NLC will file an amicus brief in this case. No briefing schedule has been set.*

In Dec. 2019, the Federal Energy Regulatory Commission (FERC) directed PJM, a regional wholesale electricity market covering 13 states in much of the mid-Atlantic and Ohio River Valley, to establish a price floor for state subsidized resources in PJM’s capacity market, seeking to ensure grid reliability by auctioning power delivery obligations three years before the electricity is needed. That price floor, called the Minimum Offer Price Rule, would block many wind, solar and nuclear plants from clearing those auctions.

The MOPR would increase the price of certain wind, solar, and nuclear power generation that receives subsidies from almost every state in PJM’s region, thereby removing the impact of the state’s subsidy. Specifically, three states in PJM’s territory—Ohio, Illinois and New Jersey—have nuclear subsidies, and eleven have renewable energy mandates that would make new clean energy subject to the MOPR. FERC Chairman Neil Chatterjee did note the MOPR will not apply to existing renewable energy plants, energy storage resources, or power generators that are already under ratepayer-funded “self supply” contracts, like those owned by municipal utilities. This is forecast to exempt about 5,000 MW, a small percentage of the total power usage in the region.

**Current status:** Following the rule’s publication, many states that participate in PJM, the nuclear industry and renewable energy groups asked FERC to rehear the subsidy case. In April 2020, FERC declined to review its Dec. 2019 decision to limit participation of state-subsidized renewable and nuclear energy in PJM, setting the stage for a raft of legal challenges and potential state exits from the region’s long-term electricity auctions.

FERC’s decision to toss out appeal requests allows opponents of the decision to file legal challenges at the D.C. Circuit Court. Illinois utility regulators, environmental groups and municipal utilities are filing suit. The Illinois filing in the U.S. 7th Circuit Court of Appeals was followed by a challenge from the American Public Power Association and American Municipal Power in the D.C. Circuit Court of Appeals. The Sierra Club, Natural Resources Defense Council and Environmental Defense Fund also plan to file at the D.C. Circuit. The National Rural Electric Cooperative Association is also planning to formally file suit against the PJM decision.

**Local government impact:** FERC’s decision to deny a rehearing could also push some PJM states with nuclear power subsidies and renewable energy mandates to end their participation in the region’s capacity market, while continuing to utilize its shorter-term real-time and day-ahead markets. This could make meeting local or state renewable energy goals or carbon mitigation goals difficult. PJM has proposed a June deadline for states to leave the market as part of its compliance filing, but some states are concerned that coronavirus complications will make that timeline unworkable.
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