



Energy, Environment and Natural Resources

2021 Congressional City Conference

Virtual

Sunday, March 7, 2021
3:30-5:00 p.m.

**Agenda: Energy, Environment and Natural
Resources Federal Advocacy Committee**

NLC Virtual Congressional City Conference
Sunday, March 7, 2021
3:30-5:00 p.m. eastern

Note: all times eastern

3:30 p.m. WELCOME, INTRODUCTIONS AND MEETING OVERVIEW

- **The Honorable Ellen Smith, Chair**
Councilmember, City of Oak Ridge, Tennessee

Introductions and overview of expected outcomes from the meeting.

3:40 p.m. NLC OFFICER GREETING

- **The Honorable Vince Williams, NLC 1st Vice President**
Mayor, City of Union City, Georgia

3:45 p.m. TAKING ACTION IN 2021 – NLC’S FEDERAL ACTION AGENDA

- **Carolyn Berndt**
Legislative Director for Sustainability, Federal Advocacy, National League of Cities

Committee members will hear an update on NLC’s Federal Action Agenda, as well as energy and environmental issues before Congress, the Administration and the courts. Committee members will also discuss advocacy actions they can take in 2021 to advance local priorities.

3:55 p.m. SUSTAINABILITY PROGRAM UPDATE

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

Committee members will hear an update on NLC’s sustainability programs, initiatives and research.

4:10 p.m. WATER INFRASTRUCTURE: EPA PRIORITIES AND RESOURCES

- **Casey Katims**
Deputy Associate Administrator for Intergovernmental Relations, Office of Congressional and Intergovernmental Relations, U.S. Environmental Protection Agency
- **Jamie Piziali**
Municipal Ombudsman, U.S. Environmental Protection Agency

- **Radhika Fox**
Acting Assistant Administrator for Water, U.S. Environmental Protection Agency

Committee members will learn about the U.S. Environmental Protection Agency's priorities around water infrastructure, resources and opportunities for cities, towns and villages, and how the agency will partner with local officials to address environmental challenges.

4:30 p.m. CLIMATE CHANGE AND COMMUNITY RESILIENCE

- **Jennifer A. K. Rivers**
Intergovernmental and External Affairs Specialist, Intergovernmental and External Affairs Office, U.S. Department of Energy
- **Robert Cowin**
Deputy Assistant Director of Public Engagement, Intergovernmental and External Affairs Office, U.S. Department of Energy

Committee member will learn about federal efforts and opportunities to strengthen our nation's energy infrastructure to withstand extreme weather events and build community resilience.

4:50 p.m. POLICY DISCUSSION: UPDATING EENR POLICY SECTIONS

- **The Honorable Ellen Smith, Chair**
Councilmember, City of Oak Ridge, Tennessee
- **Carolyn Berndt**
Legislative Director for Sustainability, Federal Advocacy, National League of Cities

Committee members will review Section 2.02 Energy and Section 2.04 Solid and Hazardous Waste of the [National Municipal Policy](#) to decide what, if any, action should be taken this year to update NLC's policy position.

Committee members should review NLC's current policy positions before the meeting.

5:00 p.m. ADJOURN

**Next EENR Committee Meeting:
NLC Summer Board and Leadership Forum
July 14-16, 2021**

Enclosures

- NLC Policy Development and Advocacy Process
- 2020 City Summit EENR Executive Summary
- 2021 EENR Work Plan
- Energy and Environment Legal Update

- [Blog: What Cities Want to See from the New Administration and Congress on Climate](#)
- [Blog: Moving Past 'Lessons Learned' on Resilience](#)
- [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.

2020 CITY SUMMIT
EENR EXECUTIVE SUMMARY

POLICY

There were no amendments to the EENR policy chapter.

RESOLUTIONS

Ten resolutions were adopted:

- **NLC Resolution #20:** Supporting Local PACE Programs
- **NLC Resolution #21:** Supporting and Advancing Resilient Communities to Prepare for Changing Climate and Extreme Weather Events
- **NLC Resolution #22:** Supporting Urgent Action to Reduce Carbon Emissions and Mitigate the Effects of Climate Change
- **NLC Resolution #23:** Addressing Lead Contamination and Calling for Nationwide Federal Support for Water Infrastructure
- **NLC Resolution #24:** Increase Federal Investment in Water Infrastructure
- **NLC Resolution #25:** Support for Integrated Planning and New Affordability Consideration for Water
- **NLC Resolution #26:** Calling on the Federal Government to Take Action to Address PFAS Contamination
- **NLC Resolution #27:** Improve the Benefit-Cost Analysis for Federally Funded Flood Control Projects
- **NLC Resolution #28:** Increase Funding for Border Water Infrastructure Projects
- **NLC Resolution #29:** Supporting Local Control of Water Infrastructure Projects

**ENERGY, ENVIRONMENT AND NATURAL RESOURCES
FEDERAL ADVOCACY COMMITTEE
2021 WORK PLAN**

The main purpose of the Energy, Environment and Natural Resources (EENR) Federal Advocacy Committee is to 1) advocate on legislative priorities, 2) provide input on legislative priorities, 3) review and approve policy proposals and resolutions, and 4) engage in networking and sharing of best practices.

In January, the NLC Executive Committee affirmed NLC's Federal Action Agenda, a biannual agenda mapped to the Congressional cycle to guide local advocacy efforts on Capitol Hill and with the Administration. The agenda builds off the Leading Together Cities Agenda and the local government priorities for the Biden-Harris Administration and Congress in the [first 100 days](#). The charge to each of NLC's federal advocacy committees is to develop a work plan to further the Federal Action Agenda, specifically around [Building Sustainable Infrastructure](#). The committee will meet over the course of the year to engage in advocacy activities and develop policy recommendations, as necessary.

Summary of Last Year's Activities

Last year, the EENR Committee continued advocacy efforts on climate change and water infrastructure. Specifically, the committee focused on building community resilience, disaster preparedness, water affordability and equity, and advocated for additional federal water infrastructure investments.

Legislative Victory:

- December 2020 – As Congress wrapped up the 116th session with several priority items remaining on the to-do list, Congressional leaders attached several bills related to [water resources and energy](#) to the must-pass [omnibus appropriations bill](#) funding the federal government in FY21. The Water Resources Development Act contained key local government priorities around natural infrastructure, resilience, and unlocking the Harbor Maintenance Trust Fund. Energy language in the bill supports efficiency and renewable energy projects and extended key energy-related tax incentives.

EENR Focus – Building Sustainable Infrastructure

Infrastructure investment is essential to moving America forward. Yet, much of our nation's infrastructure needs to be repaired and modernized to meet today's demands. Local governments and states have stepped up over the past 10 years with more than \$3.8 trillion in municipal bonds to address their most pressing infrastructure needs. However, a \$2 trillion infrastructure funding gap remains for our nation's transportation and water networks. This number does not reflect the costs of expanding broadband access, addressing climate change, and investing in workforce development and training programs. The costs of continued inaction are staggering. Strategic investments in our infrastructure will support a growing and strong economy.

Water

Much of the nation's water infrastructure was built in the post-World War II period—and some of it is more than 100 years old. It's no wonder there are an estimated 240,000 water main breaks across the country each year, according to the American Society for Civil Engineers. Adding to the challenge for local governments are new costly and complex federal mandates that are driving local water and

sewer rates to levels that are unaffordable for many residents. Local government investments account for nearly 98% of all water and sewer infrastructure spending, including more than \$130 billion in 2018, according to the U.S. Census Bureau. The federal government should recommit to being a significant partner in investing in our nation's water infrastructure.

What to watch in 2021:

- **Clean water and drinking water funding and financing** – The House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee are each drafting legislation to reauthorize and increase funding for the Clean Water and Drinking Water State Revolving Loan Funds, as well as WIFIA. The bills are expected to include funding authorization for Clean Water Act and Safe Drinking Water Act grant programs, such as for sewer overflows, workforce development, resilience, lead pipe removal and testing, and more.
- **Clean water and drinking water policy provisions** – Separate from authorization language, House and Senate leaders are discussing water-related policy provisions that could be included in standalone legislation or combined into larger water infrastructure legislation. Provisions being discussed relate to addressing PFAS drinking water contamination, National Pollutant Discharge Elimination System (NPDES) permit length, establishing a water affordability program similar to the Low Income Home Energy Assistance Program (LIHEAP), and a national moratorium on water shutoffs.
- House Democrat's 2020 **comprehensive infrastructure package**, [Moving Forward Act \(H.R. 2\)](#), will serve as a blueprint for legislation this Congressional session. The bill included significant funding for programs clean water, drinking water, water resources, water quality, harbors, ports and inland waterways, as well as investments for brownfields, clean energy, broadband and transportation programs.

Climate Change and Community Resilience

Cities across the country are seeing the effects of climate change and are taking action to mitigate the impacts of extreme weather events on their residents and businesses. With heat waves, droughts, wildland fires, heavy downpours, floods, and hurricanes becoming more frequent and more severe, communities need to be able to anticipate, prepare for and adapt to these events. Extreme weather can cost local, state and federal governments trillions of dollars and severely impact local and regional infrastructure, the economy, public safety, public health, natural landscapes, environmental quality and national security.

What to watch in 2021:

- Bipartisan efforts to reauthorize the **Energy Efficiency and Conservation Block Grant** ([H.R. 425](#)), which [NLC supports](#).
- Will there be **bipartisan action to address climate change**? Last Congress, both House Democrats and Republicans released proposals to address climate issues. Additionally, in the waning days of 2020, Reps. David McKinley (R-WV) and Kurt Schrader (D-OR) introduced a [bipartisan bill](#) to advance clean energy technologies and establish a clean energy standard to reduce greenhouse gas emissions 80% by 2050.
- **Climate resilience legislation** – Addressing climate change and resilience is a key priority for the Biden Administration and Congressional Democrats. Last session legislation included creating a resilience revolving loan fund, creating a permanent program under CDBG-DR and an Office of Disaster Recovery and Resilient Communities in HUD, enhancing the federal government's planning and preparation for extreme weather, and improving drinking water resilience/address drought. We expect to see many of these proposals included in comprehensive infrastructure/climate legislation this session.

- **Transportation Reauthorization** – Reauthorizing transportation programs is likely to be a key component of an infrastructure package. With the transportation sector accounting for 28% of U.S. greenhouse gas emissions—the largest share of any sector—the Biden Administration and Congressional Democrats are looking at opportunities for investments in electric vehicles and infrastructure, transit and the transportation alternatives program.
- **EPA/DOT rulemakings on vehicle emissions standards** – The Biden Administration has begun the process of undoing the Trump Administration rollback of vehicle emission standards. NLC is also participating in legal actions challenging the Trump Administration’s rules.
- **Climate litigation** – See legal update.

Parks and Open Space

Parks, natural areas and green infrastructure provide a multitude of community benefits, including stormwater management, providing recreation opportunities, extending the life of local infrastructure, saving the city and taxpayers money, positive impacts on public health, and community resilience and well-being. Parks, natural areas and green infrastructure serve as an economic development tool—they are part of what make a community a great place to live, work and play. Additionally, parks, natural areas and green infrastructure play an important role in helping cities mitigate the impacts of extreme weather event on their residents and businesses.

According to the [Trust for Public Land](#), 100 million U.S. residents, including 28 million children, do not have a park within a 10-minute walk of home. Moreover, many of the parks serving primarily nonwhite populations are half the size of parks that serve majority white populations and serve five times more people per acre. Just as America’s great outdoors have never been more in demand than they are during the pandemic, the consequences of park inequities—for our health, resilience, and prosperity—have never been more acute. COVID-19 is a wake-up call: the time to address the long-standing gaps in outdoor access and quality has come.

What to watch in 2021:

- **Outdoors for All Act** – The Outdoors for All Act, previously sponsored by Senator Kamala Harris and Reps. Nanette Barragan (D-CA) and Michael Turner (R-OH), would codify and establish a dedicated funding source for the Outdoor Recreation Legacy Partnership program (ORLP). Established by Congress in 2014 and administered through the National Park Service, ORLP is a competitive grant funded through the Land and Water Conservation Fund (LWCF) that helps communities create and improve parks and other outdoor recreation areas to improve public access, particularly in disadvantaged or low-income communities. In February, Rep. Nanette Barragan (D-CA) introduced the bill as an [amendment](#) to a public lands passage, which passed the House on Feb. 26.
- **21st Century Conservation Corps Act** – Legislation [introduced](#) by Sen. Ron Wyden (D-OR) and Rep. Joe Neguse (D-CO) would support natural resource management, develop a conservation workforce and bolster wildfire prevention and preparedness. The bill would invest in workforce training and jobs to support conservation programs and reforestation to restore our public lands; address deferred maintenance and expand recreation access on our public lands; provide direct relief for outfitters and guides; improve access to clean drinking water; and mitigate the risk of catastrophic wildfires.

Other Priorities

PFAS Drinking Water Contamination

For the past several years, there has been a growing concern across all levels of government about drinking water contamination from PFAS—a group of human-made chemicals that were made and used in a variety of industries around the globe, which have made their way into drinking water systems across the country, particularly in communities near military installations or industrial sites. NLC urges EPA and other federal agencies to continue to make progress on a comprehensive nationwide action plan for addressing PFAS contamination, 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.

What to watch in 2021:

- Continued **legislative action** to address PFAS contamination – will it be included in water infrastructure legislation? A key issue for local governments is around liability – local governments (including municipal airports, fire departments landfills and water utilities) should not be held liable for PFAS contamination or cleanup costs.
- Continued **federal action** to address PFAS contamination, including EPA’s recently reissued [final regulatory determination](#) for PFOA and PFOS in drinking water—the two most well-known and studied PFAS chemicals. With this determination, EPA will begin the rulemaking process to establish a National Primary Drinking Water Standard.

Rethinking and Reimagining our Nation’s Recycling Infrastructure and Programs

While solid waste management is a local issue, the federal government is an important partner. Cities, towns and villages across the country urge the federal government to develop a national policy that includes source reduction, volume reduction and resource recovery. Collaborative efforts to reimagine and restructure our nation’s waste management and recycling systems are even more critical given the wide-spread and significant budget shortfalls at the local level due to COVID-19 and the impacts the Chinese National Sword Policy has had on recycling markets.

What to watch in 2021:

- **Congressional legislation** to help local governments improve recycling infrastructure, develop recycling programs, and build community awareness. Additional legislation to create an extended producer responsibility/product stewardship framework, as well as addresses source reduction and the phasing-out of single use plastic products.
- Continued **federal action** on a [Draft National Recycling Strategy](#), which identifies strategic objectives and actions needed to create a stronger, more resilient, and cost-effective U.S. municipal solid waste recycling system. [NLC provided comments](#) on the draft strategy in December 2020.

CCC Workshops and Activities of Interest

Energy, Environment and Natural Resources Committee meeting – Sunday, March 7 at 3:30 p.m. eastern

Water 101 Workshop for Locally Elected Officials – Sunday, March 7 at 3:30 p.m. eastern (\$--NLCU Course)

The Lead and Copper Rule: What Cities Need to Know – Monday, March 8 at 3:30 p.m. eastern

Tuesday Mid-Day General Session – Tuesday, March 9 at 12:20 p.m. eastern (Gina McCarthy, National Climate Advisor, White House Office of Domestic Climate Policy speaking)

Climate Change: From City Leadership to Federal Action – Tuesday, March 9 at 2:00 p.m. eastern

Federal Agency Round Robin – Tuesday, March 9 at 3:15 p.m. eastern

Other Upcoming Events of Interest

[WaterNow Alliance Virtual Summit](#), April 6-8

Earth Day, April 22

[Infrastructure Week](#), May 10-14

ENERGY AND ENVIRONMENT LEGAL UPDATE

NOTE: At issue in cases 1-6 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), Colorado, Delaware, Hawaii, New Jersey, New York, Rhode Island, Washington and Washington, DC. There are at least 15 similar cases being litigated at various stages, of which NLC is participating in six. The circuit courts have ruled on five cases, with the local government position upheld in all.

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.)

1. Mayor and City Council of Baltimore v. BP et al. – U.S. Supreme Court

Update since City Summit: *The U.S. Supreme Court heard oral argument in this case in January. A ruling is expected by June. The State and Local Legal Center filed a [brief](#) in the case, with NLC participating.*

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.

Federal law allows defendants to "remove" a case brought in state court into federal court if the federal court has jurisdiction over the case. BP claims that the federal court has jurisdiction to hear this case on eight grounds, including the federal officer removal statute. This statute allows federal courts to hear cases involving a private defendant who can show that it "acted under" a

federal officer, has a “colorable federal defense,” and that the “charged conduct was carried out for [or] in relation to the asserted official authority.”

A federal district court rejected all eight grounds BP alleged supported removing this case to federal court. The federal district court remanded the case back to Maryland state court.

28 U.S.C. §1447(d) generally disallows federal courts of appeals to review federal district court orders remanding a case back to state court which was removed to federal court. The statute creates an exception for “an order remanding a case to the State court for which it was removed pursuant to” the federal officer removal statute or the civil-rights removal statute (not at issue in this case).

BP asked the Fourth Circuit to review all eight of its grounds for removing the case to federal court because one of the grounds it alleged--federal officer removal--is an exception allowing federal appellate court review.

The Fourth Circuit refused to review all eight grounds. It cited to a Fourth Circuit case decided in 1976, *Noel v. McCain*, holding that “when a case is removed on several grounds, appellate courts lack jurisdiction to review any ground other than the one specifically exempted from §1447(d)’s bar on review.” BP argued that a 1996 Supreme Court case and the Removal Clarification Act of 2011 “effectively abrogated” the 4th Circuit decision. The Fourth Circuit disagreed but acknowledged other courts have reached different conclusions.

NLC filed an [amicus](#) brief in this case in the Fourth Circuit. Oral arguments were held in December 2019. In March, the Fourth Circuit upheld the district court’s ruling to remand the case to state court, consistent with NLC’s amicus brief. Later in March, the defendants filed a certiorari petition in the U.S. Supreme Court.

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. 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.

In Oct. 2020, the U.S. Supreme Court decided to take up the case. The Court will decide whether a federal appellate court may review all the grounds upon which a defendant claims its case should not be sent back to state court when only one of the grounds the defendant alleges is specifically listed in federal statute as a basis for federal appellate court review.

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

Update since City Summit: *None – With oral arguments in November 2019, it seems likely the Second Circuit will not issue a decision while the Supreme Court decides the Baltimore case.*

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 City Summit: *In January, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The Court will hold the petition until it decides the Baltimore case.*

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. 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 August 2020, the Ninth Circuit denied a request for a rehearing en banc.

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

Update since City Summit: *In December, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The Court will hold the petition until it decides the Baltimore case.*

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. In May, the Ninth Circuit upheld the district court's ruling, consistent with NLC's amicus brief.

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.""

In August 2020, the Ninth Circuit denied a request for a rehearing en banc.

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

Update since City Summit: *In December, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The Court will hold the petition until it decides the Baltimore case.*

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. NLC filed an [amicus brief](#) in this case. Oral argument was heard in May. In July 2020, the Tenth Circuit [ruled](#) in favor of the local government position.

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

Update since City Summit: *In December, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The Court will hold the petition until it decides the Baltimore case.*

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. NLC filed an [amicus brief](#) in this case.

Oral argument was heard in the First Circuit in September. In October, the First Circuit issued its [decision](#), holding that federal officer removal only permits interlocutory appeal of that one issue and not other grounds for removal, agreeing with the local government position.

NOTE: Cases 7-9 below relate to the U.S. Environmental Protection Agency and U.S. Department of Transportation's joint rulemakings to rollback fuel economy standards and preempt the State of California and others from issuing more stringent greenhouse gas regulations on vehicles. In September 2019 the Trump Administration finalized two related actions that are collectively referred to as "Part 1" of the SAFE Rule: EPA withdrew California's authority to set its own motor vehicle standards, and NHTSA issued a rule holding that any state or local regulation on tailpipe greenhouse gas emissions is preempted by federal law. NHTSA's rule was challenged in *California v. Chao* and both actions were challenged in *Union of Concerned Scientists*.

7. California v. Chao et al. – DC District Court – Preemption

Update since City Summit: *None – In February 2020, the federal district court for the District of Columbia stayed this case pending resolution of [related litigation](#) in the DC Circuit (see *Union of Concerned Scientists v. National Highway Traffic Safety Administration* below).*

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."

8. Union of Concerned Scientists v. National Highway Traffic Safety Administration – DC Circuit – California Waiver

Update since City Summit: *Under the new Biden Administration, the U.S. Environmental Protection Agency asked the U.S. Department of Justice (DOJ) to seek a pause on the litigation while the Administration considers rewriting the rule. The DC Circuit has granted DOJ's request, placing the case on hold.*

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. NLC filed an [amicus brief](#) in the *Union of Concerned Scientists* case in July 2022 and the DC Circuit had planned to take briefing on both the California waiver and NHTSA preemption issues.

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).

9. California v. Wheeler – DC Circuit – Fuel Economy Standards Rollback

Update since City Summit: NLC filed an [amicus](#) brief in this case in January. Under the new Biden Administration, the U.S. Environmental Protection Agency asked the U.S. Department of Justice (DOJ) to seek a pause on the litigation while the Administration considers rewriting the rule. The DC Circuit has not yet ruled.

This case is the challenge to the Safer Affordable Fuel Efficient (SAFE) Vehicles Rule. The SAFE Rule was promulgated by the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) in March 2020. The rule significantly weakens greenhouse gas and fuel economy standards for new passenger motor vehicle rules and light trucks. In 2012 the Obama Administration issued standards that would have required a 5% improvement in both greenhouse gas emissions and fuel economy every year – the SAFE Rule replaces those standards and requires only a 1.5% improvement in each, and is expected to result in an additional 867-923 million metric tons of carbon dioxide. The SAFE Rule was challenged in the D.C. Circuit by 23 states, several cities, and a coalition of public interest groups, as well as some other petitioners. (Because the case is actually a number of consolidated cases it has a number of titles and is also referred to as *Competitive Enterprise Institute v. NHTSA*).

Similar to briefs NLC filed in support of the Clean Power Plan and in opposition to the Affordable Clean Energy Rule (see below), the intention is to seek a broad group of city and county signatories to this brief.

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

Update since City Summit: In January, the U.S. Court of Appeals for the District of Columbia Circuit [vacated and remanded](#) the Trump Administration Affordable Clean Energy (ACE) Rule.

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.

In April 2020, NLC filed an [amicus](#) brief in this case. The goal of the local government amicus brief, 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 reflects 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 largely resembles 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.

Twenty-three cities, counties and mayors have signed onto the brief. For comparison, about 50 signed onto the brief supporting the Clean Power Plan.

The U.S. Court of Appeals for the District of Columbia Circuit found that the ACE rule failed to provide adequate environmental and public health protections. The court ruled that EPA relied on a "fundamental misconception" of the Clean Air Act. "The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule), as a means of regulating power plants' emissions of greenhouse gases. It did not," the court wrote.

11. Illinois Commerce Commission v. FERC – Seventh Circuit – Market Capacity Order

Update since City Summit: *This case is being held in abeyance until April 19. NLC will file an amicus brief in this case.*

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 (MOPR), 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 case was initially held in abeyance pending FERC's ruling on several petitions for rehearing that were filed with it. FERC has now resolved those petitions and the abeyance will expire on December 14. The court is expected to issue a scheduling order around that time.

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. [New Jersey and Maryland](#) have also [filed in the DC Circuit](#). 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.

12. PennEast Pipeline Co. v. New Jersey – U.S. Supreme Court

New: *The State and Local Legal Center will file a brief in this case. Briefs are due April 7.*

PennEast Pipeline Company, a private company, intends to build a pipeline through Pennsylvania and New Jersey. The Natural Gas Act (NGA) authorizes private gas companies, like PennEast, to obtain necessary rights of way through eminent domain, as long as three conditions are met, including receiving a Certificate of Public Convenience and Necessity from the Federal Energy Regulatory Commission. Upon PennEast receiving the certificate, it asked a federal district court to condemn 131 properties—42 of which belong to New Jersey. New Jersey argued that Eleventh Amendment immunity prevents it from being brought into court by a private company.

At issue in the case is (1) Whether the Natural Gas Act delegates to Federal Energy Regulatory Commission certificate-holders the authority to exercise the federal government's eminent-domain power to condemn land in which a state claims an interest; and (2) whether the U.S. Court of Appeals for the 3rd Circuit properly exercised jurisdiction over this case.

Holding and Reasoning: The Third Circuit ruled in favor of New Jersey holding that PennEast could not bring an imminent domain action against it. The 11th Amendment prohibits states from being sued in federal court unless they have consented to suit but an exception applies to the federal government. New Jersey argued that "the federal government cannot delegate its exemption from state sovereign immunity to private parties like PennEast." The Third Circuit agreed.

The Third Circuit offered three reasons why it "doubt[ed]" the federal government can delegate its exemption to state sovereign immunity from lawsuits:

First, there is simply no support in the caselaw for PennEast's "delegation" theory of sovereign immunity. Second, fundamental differences between suits brought by accountable federal agents and those brought by private parties militate against concluding that the federal government can delegate to private parties its ability to sue the States. Finally, endorsing the delegation theory would undermine the careful limits established by the Supreme Court on the abrogation of State sovereign immunity.

Local interest: This case is important for state and local entities, given strong interests in standing up for our sovereign immunity.

From a state perspective it is not in states' interests that the federal government can delegate its exemption to sovereign immunity to private parties. Allowing a private party to state land via eminent domain gives that private party a lot of power. Also, if the federal government can give away its exemption to sovereign immunity in the imminent domain context, why couldn't it do so in other contexts?

Sovereign immunity does not apply to local governments but it is important to note that in this case several of the properties are co-owned by local entities, primarily municipalities and/or counties. Additionally, for municipalities, takings and imminent domain are extremely unpopular. Allowing private parties to engage in them will make them even more unpopular, which will harm local governments and make them more difficult. Second, local governments may have an interest in pipelines not being built—or not being built in particular locations. For example, it appears in this case the pipeline would be built over parkland.

What Cities Want to See from the New Administration and Congress on Climate

In 2020, communities struggled to maintain services and essential workers during the coronavirus pandemic. At the same time, they faced a record number of climate-related disasters, such as wildfires, extreme heat, and hurricanes, which further increased fiscal pressure on local governments, residents and businesses.

With 30 named storms, 2020 was a record year for Atlantic hurricanes. In the West, 2020 marked the most active fire year on record, and it was the hottest summer on record for many cities. In 2019, historic flooding hit the Midwest and southern plains significantly affecting agriculture, roads, bridges, levees, dams and other infrastructure, assets and industries.

The impacts of climate change and extreme weather events pose an especially pressing threat to persons with disabilities, economically disadvantaged households, the elderly, Black, Indigenous and People of Color (BIPOC), and other vulnerable populations.

NLC's [State of the Cities](#) reports gives us insights into why cities are taking action on climate change and what mayors are prioritizing in their actions and commitments. For example, mayors are thinking about [equity](#) and a green recovery. Chico, California adopted its own [Green New Deal](#) in response to the deadly Camp Fire in 2018. While some [large-scale climate resilience projects](#) in cities such as New York, San Francisco and Miami Beach have been delayed due to budget impacts of the coronavirus pandemic, cities such as Phoenix and Los Angeles have expressed a [commitment to a green recovery](#). [New Orleans](#) and [Miami](#) are forging ahead with important infrastructure projects that will make their communities more resilient to extreme weather events.

Mayors are thinking holistically about climate change and resilience. "Reaching these goals is critical, not only to our region's air quality, but to help stave off the effects of climate change which put at risk our water, forests, outdoor tourism, and the brave members of the Salt Lake City Fire Department," said then-Mayor Jackie Biskupski, Salt Lake City ([2019](#)).

Local leaders are encouraged by federal action taken so far this year – from recommitting to the [Paris Climate Agreement](#) to the recent [Executive Order on Tackling the Climate Crisis at Home and Abroad](#) and the continuing work of the House Select Committee on the Climate Crisis. Additionally, with Representative David McKinley (R-WV) serving as Ranking Member of the House Subcommittee on Environment and Climate Change, who last year cosponsored bipartisan clean energy standard legislation, and Senator Shelley Moore Capito (R-WV) expected to be Ranking Member of the Senate Environment and Public Works Committee, who has said climate change is a priority, shows positive indications that bipartisan action on emission reduction and climate innovations is possible. With Senator Joe Manchin (D-WV) serving as Chair of the Senate Energy and Natural Resources Committee, West Virginia has powerful champions in Congress who will be leading the debate.

Five things local leaders want to see from the Biden Administration and Congress to address climate change:

1. **National policy** – NLC's National Municipal Policy (NMP) calls for urgent action to reduce greenhouse gas 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. The NMP calls for a national renewable portfolio standard that increases the use of carbon-neutral energy and promotes energy efficiency, with the goal of 50 percent carbon-

neutral energy by 2030 and 100 percent by 2050. This kind of national policy setting is critical to supporting local efforts and driving markets.

2. **Funding** – Flexible federal funding for state and local energy efficiency, energy conservation and renewable energy projects would help jumpstart and expand efforts to reduce greenhouse gas emissions in communities across the country. In January, [bipartisan legislation](#) (H.R. 425) was introduced to reauthorize the Energy Efficiency and Conservation Block Grant, which [NLC supports](#).
3. **Tools, resources and incentives** – Cities, towns and villages across the country need financial and technical assistance to 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. National climate data and incentives, such as for acquisition of zero- or low- emission vehicles for public transportation and municipal fleets, would also support local efforts.
4. **Coordinated federal effort** – Cities have been leading the way on climate action and need the federal government to be a partner in those efforts. A coordinated, holistic federal approach and consideration of climate-related risks and vulnerabilities as part of all federal policies, practices, investments, regulatory and other programs is needed. The federal government should lead by example, as local governments have, to improve federal operations and facilities.
5. **Local voice in policy-setting and decision-making** – Local leaders want to at the table as the federal government is determining national policy and programs to address climate change. In 2014, local elected officials were part of the President’s Task Force on Climate Preparedness and Resilience to make recommendations to the President on ways the federal government can assist local efforts to address and prepare for the impacts of climate change. This effort should be renewed. Additionally, President Biden will host a Leaders’ Climate Summit on Earth Day to lay out the U.S.’s plan for reentering the Paris Climate Agreement. With over 250 cities saying [We Are Still In](#), local leaders are a key part of the U.S. commitment.

NLC shared these priorities with the Biden agency review teams to help frame the agendas. You can learn more about local government environment and energy priorities for the new Administration and Congress by reading our transition memos to the [U.S. Environmental Protection Agency](#), [U.S. Department of Energy](#) and [U.S. Department of the Interior](#).

By Carolyn Berndt, Legislative Director for Sustainability, Federal Advocacy, National League of Cities

Moving Past ‘Lessons Learned’ on Resilience

In 2015, Major General Warren Edwards was focused, and maybe a little impatient. The National League of Cities (NLC) and the U.S. Green Building Council had partnered to gather him, along with local elected leaders, nationally recognized planners, designers, and builders, to host the Resilient Cities Summit. The goal was to share strategies and solutions that would help cities build stronger, smarter, and better, and to mitigate costs of environmental disasters that have been growing dramatically for decades. After retiring from the Army, MG Edwards held several positions in facility operations and security before eventually taking his current role as Senior Fellow at the Community and Regional Research Institute (CARRI), which was one of the first organizations to champion resilience as a framework to help any organization strengthen its ability to prepare for, respond to, and rapidly recover from disasters, particularly with growing impacts from climate change.

As he helped to open the conversation and prod the room to think seriously about the challenges, interdependencies, and critical systems that needed to be addressed, MG Edwards bluntly asserted that we are a nation of “lessons learned,” and not “lessons applied.” Every time there is a federally declared disaster, he explained to the group, FEMA and other federal agencies write an after-action report. Every time the findings are largely the same. And every time a majority of the loss and destruction could have been averted with cost-effective steps that were proposed well in advance but never adopted. Often these recommendations were contained in the last after-action report for a disaster in the same region. Six years and dozens of billion-dollar federal disaster declarations later, the message is more urgent than ever.

A Texas-Sized Winter Disaster

A winter storm and extremely cold temperatures struck much of the south (much of the country, for that matter) for several days between Feb 13-18, and even a week later, the full cost is only beginning to come into focus. First and foremost, at least [80 deaths](#) have been attributed to the storm so far—half in Texas—but officials have warned that it may take [“weeks or months before the human cost is known and that it might never be fully accurate.”](#)

The crisis in the electric grid lasted more than four days for at least 2 million households. During the peak of the blackouts, [at least 4.2 million households](#) were without power. It’s almost certain to go down as one of the [10 worst outages](#) in U.S. history.

The energy disaster also contributed to an even more widespread water disaster, as even critical water treatment facilities went dark. More than [1,200 local water utilities](#) were affected and over [14 million residents](#) – roughly half the state – were under boil alerts that are still being enforced in many areas. As many residents went without water entirely, a boil order would have been a welcome relief. In Austin alone, Water Director Greg Meszaros estimated that there are [tens of thousands](#) of water line breaks. As is always the case but must be emphasized, all of these outages are [hardest on poor, Black, Hispanic, and other communities of color](#) who were already suffering disproportionately from COVID-19.

In just the last couple of days, a third disaster is beginning to emerge, as skyrocketing energy bills are reaching the few customers who maintained service. In one such instance, [the City of Denton, Texas](#) could be on the hook for \$207 million in four days. This would represent a 10,000% increase in average energy costs, and power expenses for a single day exceeding all costs in FY2020.

What Went Wrong?

The Texas disaster was caused by a cascading series of failures that have been thoroughly documented elsewhere. The details of these system failures will take time to unravel, but the common thread is that the state chose not to invest in its own critical infrastructure in its misguided pursuit of raw, cost-cutting efficiency.

In a [Texas Monthly interview](#) with Joshua Rhodes of IdeaSmiths Energy and the University of Texas at Austin Rhodes said, “At some point we do a cost-benefit analysis of how much risk we are willing to take. We have never had weather like this thrown at us, so it’s not surprising to me that we don’t have infrastructure that can support it.” Rhodes is not a decision-maker and we do not believe he was making an argument against investment or winterization, but this characterization – that it was an act of god and we can’t afford to do much better – is wrong, and with a mounting climate crisis it is proving deadlier by the year.

For starters, the idea that this weather was unprecedented is just untrue. Meteorology professor [David Titley](#) concluded that “This cold event was consistent with several Arctic episodes Texas has endured over the past four decades.” Those events caused a similar strain on the grid. The last [extreme cold weather event in 2011](#) left 3.2 million without power.

But even this foreshadowing doesn’t capture the extent of the infrastructure failure. This winter storm is likely to be the single largest insurance claim event in Texas history, according to the [Insurance Council of Texas](#), surpassing the \$19 billion from Harvey. Weatherizing generation facilities may be an added cost, but it’s nothing compared to \$19 billion. If the cost benefit analysis we followed brought us to this, what use was the analysis?

It’s important to note that the disaster was not limited to Texas. Water problems, in particular, have been more widespread in places like [Jackson, Mississippi](#), where there have been at least 28 water mains breaks and service is not yet restored. Natural disasters will always happen, and some level of damage and disruption will always occur, but it is hard to recall any catastrophe that was so comprehensively forewarned and preventable as the energy and water crisis still unfolding throughout the south and particularly in Texas.

Building Sustainable Infrastructure

Efficiency is fine for a short time, under an optimum range of expected conditions, and in systems that you don’t mind failing now and then. But cars don’t have seat belts for efficiency, buildings don’t have fire sprinklers for efficiency. Those things exist because when something goes wrong, you don’t want efficiency, you want resilience.

Texas Governor Greg Abbot has [publicly committed](#) to weatherizing the energy generation infrastructure. This is a good first step, but America’s cities need much more to become a nation of lessons adopted. While what happened in Texas is somewhat unique, communities across the country and across all geographic regions are seeing the impacts of climate change.

The capability of maintaining energy availability is a critical first priority in maintaining essential services, like water, during a disaster. As first responders, local leaders know this firsthand. Building community resilience means investing in our aging water systems and supporting improvements to and modernization of the electrical grid, including dramatic reduction in greenhouse gas emissions. NLC calls on the federal government to provide grants, tools and resources to support local efforts to strengthen infrastructure and make communities safer and more resilient in the face of extreme weather events.

More and more, as local leaders look to rebuild their economies and their communities, they know that maintaining the status quo is not sufficient to address the challenges of climate change and the inequities in our society.

Let's make these lessons adopted.

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



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