



Energy, Environment and Natural Resources Federal Advocacy Committee

2023 Congressional City Conference

Marriott Marquis Hotel
Washington, D.C.
Saturday, March 25, 2023
1:00-4:00 p.m.



**CONGRESSIONAL
CITY CONFERENCE**

March
26-28
2023



EXECUTIVE EDUCATION AND PRE-CONFERENCE ACTIVITIES

MARCH 24-25, 2023



Agenda: Energy, Environment and Natural Resources (EENR) Federal Advocacy Committee Meeting

Saturday, March 25, 2023, 1:00 – 4:00 p.m.

Room: Independence Salons FGH – M4 level

1:00 p.m. – WELCOME, INTRODUCTIONS AND MEETING OVERVIEW

1:10 p.m.

The Honorable Cindy Dyballa, Chair
Councilmember, City of Takoma Park, Maryland

Introductions, overview of expected outcomes from the meeting and Board of Directors report.

1:10 p.m. – NLC OFFICER WELCOME

1:15 p.m.

The Honorable David Sander, NLC 1st Vice President
Vice Mayor, City of Rancho Cordova, California

1:15 p.m. – TAKING ACTION IN 2023 – NLC'S FEDERAL ACTION AGENDA

1:35 p.m.

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 2023 to advance local priorities.

1:35 p.m. – SUSTAINABILITY PROGRAM UPDATE

1:55 p.m.

Peyton Siler Jones
Program Director, Center for Municipal Practice, National League of Cities

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

1:55 p.m. – 2:15 p.m. CRITICAL PARTNERSHIPS FOR BUILDING COMMUNITY RESILIENCE – POWER UTILITIES

Riaz Mohammad

Director, Resiliency and Environmental Policy, Edison Electric Institute

Frank Canavan

Senior Manager, State Affairs, American Gas Association

A key partner for local governments to meeting their greenhouse gas reduction goals and building community resilience are local energy utilities. Engage in a discussion on how to build successful partnerships to support local policies and programs.

2:15 p.m. – 2:45 p.m. LISTENING SESSION: FEDERAL FUNDING FOR IMPROVING BUILDING ENERGY CODES

Nora Efram

Senior Director of Research, American Council for an Energy-Efficient Economy

Harry Bergmann

Building Performance Standards and Zero Energy Codes Lead, State and Community Energy Programs, U.S. Department of Energy (DOE)

The Inflation Reduction Act provided \$1 billion to update to the latest building energy code and zero energy/stretch codes. Additionally, the Bipartisan Infrastructure Law provided \$225 million to implement and update building energy codes. Learn how your community can take advantage of these opportunities and share feedback with DOE on how these funds can be put to best use in communities. See discussion questions.

2:45 p.m. – 3:00 p.m. FEDERAL FUNDING SPOTLIGHT: URBAN TREES

Dr. Homer Wilkes

Under Secretary for Natural Resources and Environment, U.S. Department of Agriculture (USDA)

The Inflation Reduction Act provided \$1.5 billion for the USDA [Urban and Community Program](#). Learn how your community can take advantage of this upcoming Notice of Funding Opportunity.

3:00 p.m. – 3:10 p.m. FEDERAL FUNDING SPOTLIGHT: ELECTRIC VEHICLE COMMUNITY CHARGING

Gabe Klein

Executive Director, Joint Office of Energy and Transportation

Funded through the Bipartisan Infrastructure Law, the [Electric Vehicle Community Program](#) will provide \$1.25 billion to deploy publicly accessible EV charging infrastructure and hydrogen, propane or natural gas fueling

infrastructure in communities. Applications are due May 30. Learn how local governments can use the new Charging and Fueling Infrastructure program.

3:10 p.m. – 2023 FARM BILL REAUTHORIZATION
3:30 p.m.

Chris Neubert

Professional Staff Member, Senate Committee on Agriculture, Nutrition and Forestry (majority staff)

Learn about Congressional priorities and timeline for reauthorizing the Farm Bill, a five-year bill set to expire at the end of the fiscal year on September 30, 2023 that establishes federal farm, food and rural policy. Share feedback with Committee staff on local priorities for the Farm Bill.

The Chair and Ranking Member of the Senate Committee on Agriculture, Nutrition and Forestry are accepting stakeholder feedback [through this form](#) through March 31 at 5 pm eastern.

3:30 p.m. – ADDRESSING CLIMATE RESILIENCE AND SOCIAL EQUITY
3:45 p.m.

Chris Fennell

Chief Development Officer, Institute for Building Technology and Safety (IBTS)

IBTS's [Community Resilience Assessment Framework and Tools for Equitable Climate Resilience \(CRAFT-ECR\)](#) is a practical planning resource to help local governments address the complex intersection of climate resilience and social equity. Learn how the tool can help your community address and improve equitable outcomes to climate impacts.

3:45 p.m. – WRAP UP DISCUSSION, NEXT STEPS AND ADJOURN
4:00 p.m.

The Honorable Cindy Dyballa, Chair

Councilmember, City of Takoma Park, Maryland

Enclosures

- NLC Policy Development and Advocacy Process
- 2022 City Summit EENR Executive Summary
- 2023 EENR Workplan
- Energy and Environment Legal Update
- Discussion Questions – IRA Codes Funding Opportunities for Local Jurisdictions
- NLC Blog: Understanding the new EPA Financial Capability Assessment Guidance
- NLC Letter to the Hill: Local Government Priorities for 2023 Farm Bill Reauthorization
- 2023 Energy, Environment and Natural Resources Committee Roster

Upcoming EENR Committee Meetings

May Conference Call: Monday, May 8, 3 pm eastern – *calendar invite/link forthcoming*
NLC Summer Board and Leadership Meeting: July TBD, Tacoma, WA

Recommended Congressional City Conference Sessions for EENR Committee Members

Federal Clean Energy Funding for Your City or Town – Sunday, March 26, 2 – 3:15 pm – Room: Liberty Ballroom Salon L – M4 Level

Charging Forward: Preparing for Electric Vehicle Charging in Your City – Sunday, March 26, 2 – 3:15 pm – Room: Independence Salons FGH – M4 Level

Infrastructure and Cocktails Happy Hour – Sunday, March 26, 6:30 pm – Room: Tulip – Mezzanine Level

Please join NLC sponsor, the [Laborers' International Union of North America](#), to network with attendees offering expertise on the Bipartisan Infrastructure Law, workforce development, and the future of building in America. Come for food, drinks, and to hear from featured speaker, Yvette Pena-O'Sullivan, Executive Director, Office of the General President, LIUNA.

Water Equity and Affordability: How Federal and Local Solutions Can Drive Innovation – Monday, March 27, 10:30 am – 12 pm – Room: Liberty Ballroom Salon L – M4 Level

Federal Agency Office Hours – Monday, March 27, 2:15 – 5 pm – M4 Level

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 providing input and advocating on legislative priorities and reviewing and approving policy proposals and resolutions. Additionally, Committee members engage in networking and sharing of best practices throughout the year.

Federal Advocacy Committees are comprised of local elected and appointed city, town and village 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, towns and villages.

2022 CITY SUMMIT
EENR EXECUTIVE SUMMARY

POLICY

The following policy sections were amended:

- **Section 2.02 Energy**
 - A. Goals
 - E. Renewable Energy
 - 2. Fossil Fuels

RESOLUTIONS

Ten resolutions were adopted:

- **NLC RESOLUTION:** Supporting Local PACE Programs
- **NLC RESOLUTION:** Supporting and Advancing Resilient Communities to Prepare for Changing Climate and Extreme Weather Events
- **NLC RESOLUTION:** Supporting Urgent Action to Reduce Carbon Emissions and Mitigate the Effects of Climate Change
- **NLC RESOLUTION:** Addressing Lead Contamination and Calling for Nationwide Federal Support for Water Infrastructure
- **NLC RESOLUTION:** Increase Federal Investment in Water Infrastructure
- **NLC RESOLUTION:** Support for Integrated Planning and New Affordability Consideration for Water
- **NLC RESOLUTION:** Calling on the Federal Government to Take Action to Address PFAS Contamination
- **NLC RESOLUTION:** Improve the Benefit-Cost Analysis for Federally Funded Flood Control Projects and Supporting Beneficial Reuse of Dredged Material
- **NLC RESOLUTION:** Increase Funding for Border Water Infrastructure Projects
- **NLC RESOLUTION:** Supporting Local Control of Water Infrastructure Projects

**ENERGY, ENVIRONMENT AND NATURAL RESOURCES
FEDERAL ADVOCACY COMMITTEE
2023 WORK PLAN**

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

NLC's [Federal Advocacy 2023 Action Agenda](#) is a biannual agenda mapped to the Congressional cycle to guide local advocacy efforts on Capitol Hill and with the Administration. The agenda for 2023 builds off the success of NLC's advocacy efforts in 2021-2022 with the passage of the American Rescue Plan Act (ARPA), the Infrastructure Investment and Jobs Act (IIJA, also known as the Bipartisan Infrastructure Law or BIL), and the Inflation Reduction Act (IRA).

The charge to each of NLC's federal advocacy committees is to develop a work plan to further the Federal Action Agenda. Core EENR issues fall under several pillars of the 2023 Action Agenda. 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 supported advocacy efforts on climate change and water infrastructure as the top issues. In addition to federal financial resources for local governments, the committee focused on the need to build community resilience, strengthen disaster preparedness and mitigation, and address water affordability and equity.

Legislative Victory:

- August 2022 – Congress passed and the President signed the [Inflation Reduction Act](#), which includes \$369 billion in tax credits and funding for zero-emissions vehicles and technologies, building efficiency and resilience, home energy efficiency and appliance electrification rebates, and reducing air pollution and greenhouse gas emissions overall, with many programs targeting low-income and disadvantaged communities. Read more about the [climate and clean energy](#) priorities included in the legislation, which build on the investments from the IIJA.

EENR PRIORITY AREAS

Water

What to watch in 2023:

- **Clean water and drinking water grants** – While the IIJA included significant water infrastructure funding through the state revolving fund program, most of that funding will go from states to local governments in the form of loans. IIJA also authorized, but did not fund, a number of clean water and drinking water grant programs including for lead pipe replacement, low income water assistance, sewer overflows and stormwater reuse, alternative water source projects, individual household decentralized wastewater treatment systems (septic systems). NLC will continue to advocate for funding for these

programs through the annual appropriations process. Funding was included for some of these grant programs in the [President's FY24 budget](#), but not for all.

- **Clean water and drinking water policy changes** – NLC supports policy changes that would provide additional flexibility for communities.
 - [H.R. 1181](#), sponsored by Reps. Garamendi (D-CA) and Calvert (R-CA), the bill would extend the maximum term for National Pollutant Discharge Elimination System permits issued under the CWA from five to ten years to better reflect water utility project construction schedules.
 - [Financing Lead Out of Water \(FLOW\) Act](#) (H.R. 1407/S. 726), sponsored by Reps. Kildee (D-MI), Tenney (R-NY), Kelly (R-PA), Moore (D-WI) and Pascrell (D-NJ) and Senators Bennet (D-CO), Cardin (D-MD), Brown (D-OH), Feinstein (D-CA), Booker (D-NJ), Klobuchar (D-MN) and Van Hollen (D-MD), the bill would amend the tax code to allow water utilities to use tax-exempt bonds to pay for private-side lead service line replacement without navigating the IRS red tape.
- **Congressional Legislation on PFAS** – 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. Last Congress, NLC and others opposed the PFAS Action Act, which passed the House and would have set mandates and timelines on PFAS regulation for local governments superseding the EPA regulatory process. House and Senate leaders are working on drafting new PFAS legislation, that is expected to look different than last year's bill, but Congressional leaders are leery of providing CERCLA exemptions.
- **Forthcoming EPA Regulatory Actions** – EPA is moving at a fast pace in order to finalize a number of regulatory actions by the end of 2024. Many of these regulatory actions will have unfunded mandate implications for local governments.
 - **Lead and Copper Rule** – Currently, all community water systems must [complete](#) a lead pipe inventory by Oct. 2024. EPA is developing a proposed rule with additional changes and requirements, known as the Lead and Copper Rule Improvements. EPA expects to release a proposed rule in Aug. 2023 and finalize it by Oct. 2024.
 - **National Primary Drinking Water Regulation for PFAS** – On March 14, EPA released a proposed [National Primary Drinking Water Regulation](#), which would establish legally enforceable levels, called Maximum Contaminant Levels (MCLs), for six PFAS in drinking water. EPA will take comments on the proposal for 60 days following publication in the Federal Register. EPA expects to finalize the rule in Sept. 2024.
 - **PFAS Chemicals Designation Under CERCLA** – In Sept. 2022, EPA released a proposed rule to designate two PFAS chemicals as [hazardous substances under CERCLA](#). The proposed rule could have cost and liability concerns for local governments, including drinking water, wastewater and stormwater utilities and municipal airports and landfills. EPA expects to finalize the rule in Aug. 2023.

- **Final EPA Actions to Continue Watching** – Although the following items are final actions by EPA, there are pending issues and concerns from local governments that need to be resolved.
 - **Waters of the U.S.** – In December 2022, EPA and the U.S Army Corps of Engineers (Army Corps) released a new final rule on which waterbodies are federally regulated as [“waters of the U.S.” \(WOTUS\)](#) under the Clean Water Act. At the outset of the EPA and Army Corps rulemaking process, the agencies stated they would undertake a two-step process on WOTUS. This final rule represents step one. In October 2022, the U.S. Supreme Court heard oral arguments in the case of *Sackett v. EPA*, in which the court will decide the proper test for determining when wetlands are “waters of the U.S.” [NLC filed an amicus brief](#) in the case arguing that municipal water infrastructure is not a WOTUS. The Supreme Court will issue its ruling before the end of the term in June. Depending on the Supreme Court ruling, the agencies could pursue a second rule defining “Waters of the United States” and consider revisions to this rule. [Read more](#). On March 20 a district court judge stayed the 2022 rule in two states—Texas and Idaho—until the Supreme Court decision.
 - **Financial Capability Assessment Guidance** – After [many years](#) of working collaboratively with EPA on Integrated Planning and Financial Capability, in February EPA released a new [Financial Capability Assessment Guidance](#) that largely does not address local government [concerns](#) around equity and affordability challenges of low-income households.
 - **Cybersecurity at Public Water Systems** – On March 3, EPA released a [memorandum](#) conveying EPA’s interpretation that states must include cybersecurity when they conduct periodic audits of water systems (called “sanitary surveys”). While this guidance is designed to be used right away, EPA is also requesting public comment on Sections 4-8 of the guidance and all Appendices until May 31, 2023. NLC and others raised concerns that EPA was not following the proper legal or procedural processes.

Climate Change, Clean Energy and Community Resilience

What to watch in 2023:

- Bipartisan efforts to [reauthorize](#) the **Energy Efficiency and Conservation Block Grant** (EECBG, H.R. 1520), which [NLC supports](#). The EECBG program is a vital tool that can be used by cities, counties and states throughout the U.S. to promote energy efficiency, increase energy independence and reduce greenhouse gas emissions. Reauthorizing the EECBG program will provide much needed resources to increase and expand state and local sustainability and climate action. Additionally, the EECBG program will become more effective and more efficient as the funding becomes durable and predictable. The stability of funding is almost as important as the funding level, since the predictability of funding enables cities to build capacity and plan for future investments and sustained programs.
- **House Energy Bill/Clawback of IRA Funding and Programs** – On March 14, House Majority Leaders introduced the Lower Energy Costs Act (H.R.1), a comprehensive energy package that contains components from the [House Energy and Commerce Committee](#), [House Natural Resources Committee](#), and [House Transportation and Infrastructure Committee](#). (See [overview](#) and [section-by-section summary](#).) The House

is expected to bring HR 1 to the floor for a vote by the end of the month. The Senate is in the early stages of drafting energy/permitting reform legislation.

- The bill would also repeal provisions of the Inflation Reduction Act that benefit cities and residents. The programs and funding level the bill would repeal are:
 - \$27 billion for a [Greenhouse Gas Reduction Fund](#) to support the rapid deployment of low- and zero-emission technologies, with 40 percent for low-income and disadvantaged communities. There is also standalone legislation (HR 1023) to repeal this program, which NLC opposes. EPA has released initial program guidance and the NOFO is expected to open this summer. Cities are eligible to compete for a [\\$7B pot](#) from the \$27B overall funding.
 - \$1 billion to update to the latest **building energy code and zero energy/stretch codes**. Under this program DOE will award grants to states, local governments and other eligible entities. The Request for Information on how to design the program is expected to be released soon.
 - \$4.275 billion for a **high-efficiency electric home rebate program**. Under this program DOE will provide funding to state energy offices to offer rebates to individuals.
- **Climate resilience legislation** – Addressing climate change and resilience is a key priority for local government and a broad coalition of stakeholders. NLC is supporting legislation that would strengthen community resilience and federal-state-local pre-disaster mitigation and hazard mitigation. These bills from last Congress include the following, which are expected to be reintroduced soon:
 - [Resilient AMERICA Act \(H.R. 5689, bipartisan\)](#), which contains a host of provisions designed to create a significant number of new resources for communities to better protect themselves ahead of natural catastrophes such as increased funding for pre-disaster mitigation. The bill will also establish a new pilot program under the Federal Emergency Management Agency to provide resources to communities and homeowners for the purpose of retrofitting existing homes and buildings. It passed the House last Congress with overwhelming bipartisan support in a 383-41 vote.
 - [National Climate Adaptation and Resilience Strategy Act \(S. 3531/H.R. 6461, bipartisan\)](#) would require the development of a whole-of-government National Climate Adaptation and Resilience Strategy and authorize a Chief Resilience Officer in the White House to direct national resilience efforts and lead the development of the U.S. Resilience Strategy.
 - **Federal Agency Climate PREP Act (H.R. 5477)** to require each federal agency to maintain a Climate Action Plan.

Farm Bill Reauthorization

This year Congress is expected to reauthorize the Farm Bill, which expires on Sept. 30 and has a significant impact on both rural and urban communities. NLC will advocate for Congress's continued support for programs and policies in the legislation essential to local economic success and quality of life through important titles such as **Rural Development Title, Nutrition Title, and the Conservation Title**. NLC sent a letter to the Senate and House Agriculture Committees outlining top legislative priorities and published [this blog](#) overviewing the significance of the Farm Bill for communities of all sizes.

What to watch in 2023:

- The IRA provided nearly \$20 billion to USDA Conservation programs. There could be some effort in Congress to redirect some or all of this funding.

- Last Farm Bill, NLC fought back efforts to prevent states and local governments from implementing pesticide permit programs. Such language could be put forth again.
- The Senate, [as announced](#) by the Committee Chair and Ranking Member, is accepting stakeholder feedback [through this form](#) through March 31 at 5 pm eastern. Please note that this is a bipartisan form, so the information is available to Senator Stabenow's and Senator Boozman's teams.

OTHER PRIORITIES

Brownfields Reauthorization

In 2018, NLC successfully advocated for a reauthorization of the EPA Brownfields program with key changes to assist with the cleanup and redevelopment of large, complex brownfields sites. Specifically, these changes included:

- Authorizing multipurpose grants up to \$1 million
- Increasing funding for remediation grants to \$500,000, with the ability for EPA to go up to \$650,000 per site
- Allowing up to 5 percent of grant amounts to be used for administrative costs
- Allowing local governments to be eligible to receive brownfield assessment or remediation grants for brownfields properties that were acquired prior to Jan. 11, 2002
- Addressing liability concerns for the "voluntary" acquisition of properties
- Reauthorizing the program through 2023 and maintains the existing authorization level of \$200 million annually.

What to watch in 2023:

- The Brownfields program will be up for reauthorization in 2023. On the House side, the Energy and Commerce Committee and Transportation and Infrastructure Committee share jurisdiction over Brownfields. On the Senate side the issue falls under the Environment and Public Works Committee. NLC looks forward to working with Congressional leaders on reauthorization and any additional improvements to the program. NLC member feedback is critical to this advocacy effort.

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 recent impacts on local and national recycling markets.

What to watch in 2023:

- **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 address source reduction and the phasing-out of single use plastic products.

Parks and Open Space

What to watch in 2023:

- **Outdoors for All Act** – The Outdoors for All Act 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 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 2023, Reps. Barragan, Michael Turner (R-OH) and Sens. Alex Padilla (D-CA) and Susan Collins (R-ME) [introduced](#) standalone legislation (H.R. 1065/S. 448), with NLC support.

ENERGY AND ENVIRONMENT LEGAL UPDATE

NOTE: At issue in cases 1-9 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, Maryland, Minnesota, New Jersey, New York, Rhode Island, Washington and Washington, DC, among others. There are at least 15 similar cases being litigated at various stages, of which NLC is/was participating in 10. (Not listed below is the New York City case.) In all the cases in which the circuit courts have ruled (except the New York City case), the local government position has been upheld.

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. – Fourth Circuit

Update since City Summit: *None – Defendants have filed a cert petition in this case with the U.S. Supreme Court. The U.S. Supreme Court has not yet decided whether to take up the case.*

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 2020, 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, 2020, 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 question before the court was 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. The U.S. Supreme Court heard oral argument in this case in January 2021. The State and Local Legal Center filed a [brief](#) in the case, with NLC participating.

In June 2021, the U.S. Supreme Court held that a federal court of appeals may review any grounds the district court considered for trying to remove a case to federal court where one of the grounds was federal officer or civil rights removal. In September 2021, NLC filed an [amicus brief](#) in the remand of the case by the U.S. Supreme Court back to the Fourth Circuit. The Fourth Circuit heard oral argument in this case in January 2022 on the question of jurisdiction. Read more [here](#). In April 2022, the Fourth Circuit remanded the case to state court. In May, the Fourth Circuit denied a petition for rehearing en banc.

2. City of Oakland v. BP et al. – Ninth Circuit

Update since City Summit: *None – In June 2021, the U.S. Supreme Court denied cert. The case was remanded to the lower court to act on the original motion. No action to date from the Ninth Circuit.*

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 2020, 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.

In January 2021, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The petition for cert posed the following different questions from the other cases below: "Whether putative state-law tort claims alleging harm from global climate change are removable because they arise under federal law" and "Whether a plaintiff is barred from challenging removal on appeal after curing any jurisdictional defect and litigating the case to final judgment." In June 2021, the Court denied cert on that question, so the case goes back to the district court to act on Oakland's original motion to remand the case to state court. Oakland also filed a motion to amend its complaint to withdraw federal common law public nuisance claims, which they added only conditionally after the district court originally denied remand so that any trial that took place in federal court considered that issue as well.

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

Update since City Summit: *Defendants filed a cert petition in this case with the U.S. Supreme Court in November 2022. The U.S. Supreme Court has not yet decided whether to take up the 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 2020, 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. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The U.S. Supreme Court remanded the case to the lower court to reexamine its decision in light of the Baltimore holding. In April 2022, on remand from the Supreme Court, the Ninth Circuit affirmed the district court's order remanding global-warming related complaints to state court after they were removed by the energy company defendants. In May 2022, the defendants filed a petition for rehearing en banc, which was denied.

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

Update since City Summit: *The Solicitor General filed her views in response to the U.S. Supreme Court's request, arguing that cert should be denied. The Court has not yet ruled on the defendant's cert petition, which was filed in June 2022.*

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. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The U.S. Supreme Court has remanded the case to the lower court to reexamine its decision in light of the Baltimore holding.

In June 2022, defendants filed a cert petition with the U.S. Supreme Court. The U.S. Supreme Court asked the Solicitor General to weigh in on whether the case belongs in state or federal court. The Solicitor General filed her views in response to the Court's request, arguing that cert should be denied. The basic argument is that there is no federal common law applicable that would displace state law. This is a reversal of the position taken by the Trump administration.

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

Update since City Summit: *Defendants filed a cert petition in this case with the U.S. Supreme Court in December 2022. The U.S. Supreme Court has not yet decided whether to take up the case.*

In July 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 2020. In October 2020, 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. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. NLC filed an [amicus brief](#) in this case in September 2021. The U.S. Supreme Court remanded the case to the lower court to reexamine its decision in light of the Baltimore holding. In May 2022, the First Circuit remanded the case to state court. In July 2022, the First Circuit denied rehearing or rehearing en banc.

6. *State of Minnesota v. American Petroleum Institute, et al.* – Eighth Circuit

Update since City Summit: None – *In August 2021, NLC filed an [amicus brief](#) in this case. The Eighth Circuit heard oral argument on March 15, 2022. A decision has not been issued.*

The NLC brief focuses on the right of state and local governments to be the masters of their complaints, just as any other plaintiff is, that doing so and choosing to litigate state law issues in state court is not "artful pleading," and that there is no relevant federal cause of action that supplants the state causes of action pleaded.

It is important that each circuit is aware that there are important federalism issues in removal to federal court as articulated by groups that have a stake in federalism concerns.

7. *City and County of Honolulu v. Sonoco LP, et al.* – Ninth Circuit

Update since City Summit: *Defendants filed a cert petition in this case with the U.S. Supreme Court in December 2022. The U.S. Supreme Court has not yet decided whether to take up the case.*

While the Ninth Circuit is familiar with the Federalism arguments NLC has made in similar cases, it is possible that *Honolulu* will be heard by a new panel unfamiliar with the arguments. The brief serves as a "raise the flag" effort to make sure the Court understands that local

government groups support the right of cities to pursue state law causes of action as plaintiffs like this in state court. NLC filed an [amicus brief](#) in this case in September 2021. The Ninth Circuit heard oral argument in February 2022. Shortly after, the court put the case in abeyance pending the issuance in the San Mateo case. In July 2022, the Ninth Circuit upheld the District Court's ruling, ordering the case remanded to state court.

8. *City of Hoboken v. Exxon Mobil Corp. et. al. – Third Circuit*

Update since City Summit: *Defendants file a cert petition in this case with the U.S. Supreme Court in December 2022. The U.S. Supreme Court has not yet decided whether to take up the case.*

This is the first case for NLC to be on record with in the Third Circuit. The brief is similar to that for Minnesota and Rhode Island. One key difference, however, is a short section that addresses an argument made by the National Association of Manufacturers that these lawsuits cost other local governments money by causing prices to rise.

NLC filed an [amicus brief](#) in this case in December 2021. The Third Circuit heard oral argument in June 2022. In the [court's ruling](#), the Court adopted some of the arguments from the local government amicus brief, holding that the statutes the oil companies relied on must be read consistently with the principle of federalism and that federalism counsels in favor of limits on these federal statutes. In August 2022, the Third Circuit issued a consolidated opinion in the Delaware and Hoboken cases, holding that the cases belong in state court.

9. *State of Delaware v. BP et. al. – Third Circuit*

Update since City Summit: *Defendants file a cert petition in this case with the U.S. Supreme Court in December 2022. The U.S. Supreme Court has not yet decided whether to take up the case.*

NLC filed an [amicus brief](#) in this case in April 2022. The local government brief in this case is similar to that filed in support of the City of Hoboken. The brief includes some updated citations, including to the recent Baltimore decision. The Third Circuit heard oral argument in June 2022.

NOTE: Cases 10-12 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*.

10. 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.”

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

Update since City Summit: *None – This case remains in abeyance. While NHTSA has finalized their repeal of the preemption rule, EPA still has not. In January 2022, [state and local government petitioners](#) and [respondents](#) requested that the cases remain in abeyance while EPA continues its reconsideration of the challenged rule.*

Background: In September 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 2020 and the DC Circuit had planned to take briefing on both the California waiver and NHSTA 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).

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.

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

Update since City Summit: *None – This case remains in abeyance. In January 2022, respondents [requested](#) that the cases remain in abeyance until NHTSA concludes reconsideration of its part of the joint SAFE II Rule, with a motion to govern the case due 30 days after that action.*

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*). NLC filed an [amicus](#) brief in this case in January 2021.

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. In April 2021, the DC Circuit granted DOJ's request, placing the case on hold.

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

Update since City Summit: *None – This case is being held in abeyance until a related case in the Third Circuit is decided or April 24, 2023 if no final order has been issued. 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.

Related: In June, PJM proposed changes to the MOPR that effectively exempt “state-subsidized” renewables from the rule (see [here](#) for a brief overview). PJM requested FERC approval to implement the change but the Commission took no action. As a result, in accordance with section 205 of the Federal Power Act, the changes automatically took effect in September. This would seem to moot the case, but it hasn’t been formally dismissed, and actions challenging the revised MOPR are expected. Requests for rehearing have already been filed with FERC.

14. California Restaurant Association v. Berkeley – Ninth Circuit

Update since City Summit: *None – NLC filed an [amicus brief](#) in this case in February 2022. Oral argument was heard in May 2022. A decision has not yet been issued.*

In this case, a restaurant trade group plaintiff brought suit against the city of Berkeley, California, claiming that Berkeley’s 2019 “natural gas ban,” which prohibited or restricted gas connections to many new buildings within the city, was preempted by both the U.S. Energy Policy & Conservation Act (EPCA) and state law. The federal district court dismissed the EPCA preemption claims (i.e., all claims under federal law), holding that EPCA -- which preempts state and local standards relating to the energy efficiency or energy use of many appliances -- did not preempt the Berkeley gas ban. (More information about the case can be found on the Sabin Center [blog](#).)

The Restaurant Association has filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit. The *amicus* brief would address the perspective of cities advocating for the less expansive reading of EPCA preemption, consistent with the view of the district court. This less expansive reading would give cities more confidence that many of their policies would not be preempted simply because they have a very tangential relation to the energy efficiency or energy use of an appliance. Read the City of Berkeley’s [amicus](#) brief.

15. Sackett v. EPA – U.S. Supreme Court – “Waters of the U.S.”

Update since City Summit: *None – The U.S. Supreme Court heard oral argument in this case in October 2022. A decision is expected by June 2023.*

The U.S. Supreme Court has agreed to take up a case pertaining to the definition of “waters of the U.S.” under the Clean Water Act (*Sackett v. EPA* – read more [here](#)). While NLC has

weighed in on this issue through the regulatory process going back to [2013](#), this is the first case in which NLC will participate in any of the legal challenges to date against either the 2015 Obama Clean Water Rule or the 2020 Trump Navigable Waters Protection Rule.

NLC, via the State and Local Legal Center, filed an amicus brief in this case in April in support of neither party. The SLLC brief in Sackett is narrow in protecting municipal functions and responsibilities as owners and operators of drinking water, wastewater and stormwater systems in whatever definition of “waters of the US” the court decides. The Supreme Court will hear oral argument in October.

Facts: The Sackett’s purchased a “soggy residential lot” near Idaho’s Priest Lake. To the north of their lot, with a road in between, is a wetland that drains to a tributary that feed into a creek that flows southwest of the Sacketts’ property and empties into Priest Lake. The Sackett’s property is 300 feet from the lake.

After obtaining permits from the county the Sacketts began backfilling the property with sand and gravel to create a stable grade. EPA ultimately issued the Sacketts a “formal administrative compliance order” explaining that “the Sacketts’ placement of fill material onto half an acre of their property without a discharge permit constituted a violation of the CWA.” The order also informed the Sacketts that failure to comply could result in civil and administrative penalties of over \$40,000 per day. (In March 2020 the EPA withdrew the compliance order but the Ninth Circuit said the case isn’t moot).

Issue: Whether the Ninth Circuit set forth the proper test for determining whether wetlands are “waters of the United States” under the Clean Water Act, 33 U. S. C. §1362(7).

Holding and Reasoning: The Ninth Circuit held that Justice Kennedy’s definition of “waters of the United States” from *Rapanos v. United States* (2006) is controlling. The Sacketts argued that Justice Scalia’s definition is controlling.

The Clean Water Act (CWA) extends to all “navigable waters,” defined as “waters of the United States, including the territorial seas,” and it prohibits any person who lacks a permit from discharging pollutants, including rocks and sand, into those waters.

CWA regulations define “waters of the United States” to include “wetlands” that are “adjacent” to traditional navigable waters and their tributaries.

Rapanos concerns the “governing standard for determining CWA jurisdiction over wetlands.”

Justice Scalia, writing for four Justices, stated that “waters of the United States” extends only to “relatively permanent, standing or flowing bodies of water” and to wetlands with a “continuous surface connection” to such permanent waters.

According to Justice Kennedy, writing alone, “jurisdiction over wetlands depends upon the existence of a significant nexus between the wetlands in question and navigable waters in the traditional sense.” This “significant nexus” inquiry would turn on whether the wetlands, “either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as ‘navigable.’”

According to the Ninth Circuit, while the Scalia plurality did not entirely reject the concept of a “significant nexus,” it opined that only wetlands with a “physical connection” to traditional navigable waters had the requisite nexus to qualify as “waters of the United States.”

It is fair to say that the Kennedy opinion is more pro-wetland than the Scalia opinion.

The question before the Ninth Circuit was whether the Kennedy or the Scalia opinion controlled. The Ninth Circuit held that the Kennedy opinion controlled. In *Marks v. United States* (1977) the Court said if there aren’t five votes for one rationale the holding of the case is “the narrowest ground to which a majority of the Justices would assent if forced to choose in almost all cases.” The Ninth Circuit agreed with the Seventh Circuit that the Kennedy concurrence supplied the controlling rule in *Rapanos*.

16. Texas v. EPA – Fifth Circuit

NEW: NLC filed an [amicus brief](#) in this case in March 2023. Oral argument has not yet been scheduled.

On December 30, 2021, EPA issued a final rule under Section 202(a) of the Clean Air Act, updating the vehicle emissions standards applicable to cars produced in model years 2022-2026. These updated standards reduced the permissible greenhouse gasses (“GHGs”) “tailpipe emissions” from these vehicles. For 40 years, these standards have been set, not by per-vehicle measurements, but by “fleetwide averaging” - that is, by averaging the emissions of all vehicles produced by a manufacturer. EPA’s new thresholds assume that electric vehicle (“EV”) use will continue to increase, and for the purpose of averaging EPA treats EVs as though they have no tailpipe emissions. This rule was immediately challenged by a coalition of several Republican-controlled states (the “State Petitioners”), joined by a number of individual plaintiffs, private sector businesses, and nonprofits (together, the “Private Petitioners”). This coalition has broadly attacked EPA’s regulatory authority and cost-benefit methodology and argues that the new rule presents a “major question” that requires express Congressional authorization.

Impact on Local Governments

The local government position in the amicus addresses the familiar climate concerns we have addressed in previous briefs: the impacts climate has on cities nationwide, and the role of cities as climate innovators dependent, to some degree, on federal regulation to provide a predictable and helpful context to reduce GHGs. NLC’s *amicus* brief focuses on two narrow legal issues of particular concern to local governments.

First, it addresses Private Petitioners’ argument that EPA acted arbitrarily by regulating “tailpipe” emissions rather than considering the full “lifecycle emissions” of EVs (which would include emissions from power plants that charge EVs). This is particularly important to local

governments because tailpipe emissions are a major source of air pollution in municipalities across the country. The Clean Air Act prevents state and local governments from regulating tailpipe emissions on their own, and so municipalities have no tools to restrain these emissions except federal regulation. While EPA's rule focuses on GHG emissions, it will also save American communities more than \$12 billion in public health benefits by reducing non-GHG tailpipe emissions that cause asthma, heart attacks, respiratory illnesses and premature death. Private Petitioners ignore these benefits in their brief.

Second, the amicus brief addresses petitioners' proposed expansion of the "Major Questions Doctrine." Petitioners argue that EPA's rule will cause more EVs to be produced, and that more EVs may strain electrical grids, which are largely regulated by states. Petitioners argue that this causal chain means that any EPA action that might encourage EV use must be specifically approved by Congress. However, if the Major Questions Doctrine is expanded in the way that Petitioners ask, it could cause chaos in local governments. Many federal regulations overlap with and affect important areas of state and local policy; barring any federal regulation that would affect an area of state interest ignores the reality of American federalism and would cripple municipalities' ability to rely on and respond to federal regulation.

IRA Codes Funding Opportunities for Local jurisdictions

Background:

The U.S. [Inflation Reduction Act](#) (IRA) of 2022 allocates \$1 billion for grants to state- or local-level governments to update and achieve compliance with more stringent building energy codes (SEC. 50131). This is in addition to \$225 million made available for codes under the [Bipartisan Infrastructure Law \(BIL\)](#) (Section 40511). The IRA funding covers both adoption and implementation of the most recent national codes as well work to move toward net zero codes.

In collaboration with the National League of Cities and other NGOs, the American Council for an Energy-Efficient Economy is gathering input from cities and their stakeholders on how this federal funding can effectively support states and localities to meet their local needs and overcome barriers to adopting newer and zero energy codes (or equivalent provisions). We are facilitating in-person and virtual convenings to initiate a conversation with interested parties to better understand local governments' priorities, needs, and challenges. Our convenings will include but are not limited to the following questions:

- What are the building energy code priorities and most urgent needs from your jurisdiction?
 - What are the challenges to adopting IECC 2021 or ASHRAE 90.1-2019 or more-efficient energy codes and standards, zero energy codes, or equivalent codes in your jurisdiction?
 - Where is your jurisdiction regarding adopting and implementing new codes or innovative approaches?
- How can DOE help your jurisdiction achieve your current goals through the IRA codes program design and implementation?
 - What kind of DOE building energy code or innovative code programs would be the most useful for your jurisdiction? Any examples of successful programs?
 - Are there program elements that could make it more difficult to meet your current goals? Any examples of not-so-successful programs?
 - What other types of support are needed in addition to funding?
- What partners are needed to help you achieve your current goals and beyond?
 - What type of partners will help ensure success?
 - Who has not been historically involved, but are critical to scaling impact?
 - What type of partners could DOE help mobilize?
- State and local collaboration is important to ensure that energy code adoptions are effective. How can this funding help facilitate coordination and cooperation between States and their cities and counties?
- How can the IRA funding be used to ensure sustainable outcomes and capacity building support, such that jurisdictions have momentum to continue adopting and implementing building code policies well beyond the IRA funding?

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Understanding the New EPA Financial Capability Assessment Guidance

For over a decade, local leaders have worked in partnership with the U.S. Environmental Protection Agency (EPA) to develop frameworks that provide the flexibility local governments need to continue progress toward improving our nation's waterways. These efforts focused on prioritizing the investment of limited dollars to address the most pressing health and welfare issues first and resulted in several successes to benefit communities. While there have been many successes over the years, new guidance from EPA falls short.

What Is Financial Capability?

With local water and sewer rates and stormwater fees rapidly becoming unaffordable for many fixed- and low-income citizens, there is a disproportionate financial burden on these vulnerable populations who live at or below the poverty level. This has been compounded by and made even more evident in the wake of the coronavirus pandemic.

That is why NLC and local leaders have been calling 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 (MHI) as the critical metric for determining investment level when it comes to consent decrees and meeting requirements under the Clean Water Act (CWA). It has been shown that this reliance often places a particularly high burden on residents at the lower end of the economic scale.

The FY16 appropriations bill required EPA to contract with the National Academy of Public Administration to conduct a study to create a definition of and framework for community affordability of clean water. The [report](#), issued in 2017, recommended major changes to EPA's procedure for evaluating ratepayer affordability and utility financial capability. It found that EPA's reliance on 2% MHI to determine a community's financial capability puts an unfair and oppressive financial burden on low- and middle-income citizens.

2020 Proposed Financial Capability Guidance

In 2020, EPA released its proposed 2020 Financial Capability Assessment for the Clean Water Act, which included new metrics to establish a community's implementation schedule, including indicators that more accurately reflect how much low-income communities can afford to pay for water infrastructure upgrades.

NLC [applauded](#) the proposed Revised Financial Capability Assessment Guidance, which provided a more comprehensive methodology and transparent process for determining community affordability than EPA's 1997 Guidance. Notably, the proposed 2020 FCA Guidance promoted transparency and provided communities with alternatives to determine what their community and their citizens can afford. It also began the vital step of providing an alternative from utilizing MHI as the primary measurement for what a community can afford. Moreover, it added a poverty index and a lowest quintile residential indicator to provide a more comprehensive and holistic calculation of affordability. [NLC urged EPA](#) to finalize the proposed 2020 FCA Guidance in the near term.

The revised guidance was released on Jan. 14, 2021, but unfortunately, it was not published in the Federal Register before the new Biden Administration took office on Jan. 20. As is customary, President Biden paused all pending regulatory actions, and the 2020 FCA Guidance never went into effect.

Over the next two years the carefully crafted 2020 guidance was fundamentally changed without meaningful engagement or input from local governments. [NLC and others raised concerns](#) with the process and the substance of EPA's effort. On Feb. 1, 2023, EPA announced a new version of the [Financial Capability Assessment Guidance](#). Unfortunately, it misses the mark on addressing equity and affordability challenges of low-income households.

What the 2023 Financial Capability Guidance Means for Communities

- **Evaluating Financial Capability** – The Guidance establishes two alternative methods for evaluating financial capability for CWA implementation schedules. Alternative 1 considers metrics that measure the financial impact of current and proposed CWA controls on residential users, the financial capability of the community, and the lowest quintile income and poverty prevalence within the community's service area. Alternative 2 utilizes dynamic financial and rate models that evaluate the impacts of debt service on customer bills. Both alternatives allow consideration of wastewater, drinking water and stormwater requirements and both allow a community to put forth "other metrics" that would create a more accurate picture of financial capability.
- **Lowest Quintile Poverty Indicator** – This indicator is used to benchmark the severity and prevalence of poverty within the community's service area and compares the statistics to national averages. It does not evaluate the actual impact of meeting CWA obligations on low-income household water bills, and thus masks the true impacts of CWA compliance costs at the household level for low-income residents.
- **Financial Alternatives Analysis** – EPA requires an extensive consideration of alternatives to reduce costs and address impacts to low-income households. This can include the use of variable rate structures, customer assistance programs, and applications for grants or subsidies from the Clean Water State Revolving Fund. EPA acknowledges that certain financial alternatives may be prohibited by state law, such as variable rate structures, but encourages communities to "achieve the same goals" through other mechanisms. A Financial Alternatives Analysis is required before a community is even determined to be eligible for the relief the Guidance affords.
- **Compliance Schedules** – While the Guidance doesn't dictate a specific implementation or compliance schedule, it does include "benchmark" schedules based on a community's financial impact and whether the community conducts a comprehensive Financial Alternatives Analysis. These schedules generally range from 10-15 years for a medium impact community and 15-25 years for a high impact community. There is limited ability to negotiate a longer implementation schedule beyond 25 years, even though numerous consent decrees have gone beyond this term.
- **Small Communities** – EPA acknowledges that small communities, particularly those serving less than 3,000 people, may not have sufficient resources to complete a robust Financial Alternatives Analysis. For communities where dynamic financial and rate modeling may be a challenge, EPA recommends the use of Alternative 1. Small communities are encouraged to describe current and planned efforts to reduce costs and relieve impacts on low-income customers, and to document any constraints on the ability to complete a Financial Alternatives Analysis.

The EPA 2023 Financial Capability Assessment Guidance is a final action that leaves the MHI metric in place, along with other elements that fail to adequately address equity and affordability

on low-income residents, and falls short in providing flexibility to communities to reduce the high cost of regulatory compliance.

Integrated Planning Framework – How Did We Get Here?

In 2011, NLC [applauded](#) EPA for its Memorandum on Achieving Water Quality Through Integrated Municipal Stormwater and Wastewater Plans, which for the first time provided a new approach for local governments to meet their CWA obligations in a cost effective and efficient manner. The memo built on [previous](#) green infrastructure memos that encouraged the use of green infrastructure in meeting wet weather challenges and as a cost-effective, flexible and environmentally sound approach to reducing stormwater runoff and sewer overflows.

In 2012, NLC again advanced this issue for communities, working in partnership with EPA to develop the [Integrated Municipal Stormwater and Wastewater Planning Approach Framework](#) (Integrated Planning Framework). The Framework provides guidance to local governments to develop and implement an integrated and holistic approach utilizing flexibilities in the CWA to sequence and schedule of projects— allowing local governments to examine all their obligations and prioritize the projects that make the most economic and environmental sense for the community.

Taken together, these policy memos and new approaches recognized the limited financial resources of communities and a siloed regulatory regime and provided a new, flexible path forward for communities. In 2019, the Integrated Planning Framework was [codified](#) through the Water Infrastructure Improvement Act as a useful tool for local governments to comprehensively deal with wastewater and stormwater investments, as well as unfunded mandates.

Since this time, EPA has developed resources and facts sheets to support local governments in developing and implementing an integrated plan, and a compilation of municipal integrated plans on its [website](#).

While the establishment of the Integrated Planning Framework was a huge and positive step forward for communities, a missing piece of the puzzle was reevaluating the methodology that EPA uses to determine what a community and residents can afford when it comes to consent decrees and meeting requirements under the CWA.

In that regard, in 2013, EPA released a memo, [Assessing Financial Capability for Municipal Clean Water Act Requirements](#), and announced a new dialogue with local governments to clarify how the financial capability of a community will be considered when developing schedules for municipal projects necessary to meet CWA obligations.

The local government dialogue on community affordability resulted in the 2014 [Financial Capability Assessment Framework for Municipal Clean Water Act Requirements](#) (Financial Capability Framework), which allows for 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.

While the Financial Capability Framework was another positive step forward, the 1997 Guidance has been the main driver for local affordability discussions, and thus began the push to update the 20-year-old document.

Next Steps and Additional Resources

Local governments that want to pursue an integrated plan or financial capability assessment should contact their state agency and the regional EPA office to begin conversations on the path forward.

Local leaders can also reach out to the [EPA Office of the Municipal Ombudsman](#), established via the 2019 WIIN Act, which works directly with communities in complying with federal environment laws, particularly regarding the opportunity to prepare integrated plans in the context of consent decrees or administrative orders. The [Water Infrastructure and Resiliency Finance Center](#) is also a resource for communities.

NLC will continue to advocate for funding for water infrastructure grant programs, in addition to the State Revolving Funds and other loan programs, as a means for improving our nation's water infrastructure without placing an additional financial burden on fixed- and low-income households.

NLC also supports policy changes that would provide additional flexibility for communities.

- [H.R. 1181](#), sponsored by Reps. John Garamendi (D-CA) and Ken Calvert (R-CA), would extend the maximum term for National Pollutant Discharge Elimination System permits issued under the CWA from five to ten years to better reflect water utility project construction schedules.
- [Financing Lead Out of Water \(FLOW\) Act](#), sponsored by Reps. Dan Kildee (D-MI), Claudia Tenney (R-NY), Mike Kelly (R-PA), Gwen Moore (D-WI) and Bill Pascrell (D-NJ) would amend the tax code to allow water utilities to use tax-exempt bonds to pay for private-side lead service line replacement without navigating the IRS red tape.

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Clarence E. Anthony

March 15, 2023

The Honorable Debbie Stabenow
Chairwoman
Senate Committee on Agriculture,
Nutrition, & Forestry
Washington, D.C. 20510

The Honorable John Boozman
Ranking Member
Senate Committee on Agriculture,
Nutrition, & Forestry
Washington, D.C. 20510

The Honorable Glenn "GT" Thompson
Chairman
House Committee on Agriculture
Washington, D.C. 20515

The Honorable David Scott
Ranking Member
House Committee on Agriculture
Washington, D.C. 20515

Dear Chairwoman Stabenow, Ranking Member Boozman, Chairman Thompson, and Ranking Member Scott,

On behalf of the nation's 19,000 cities, towns and villages, we applaud the efforts that are underway in the Senate and House to reauthorize the Farm Bill in a bipartisan and timely manner to meet the September 30 deadline. This wide-ranging and critical legislation establishes federal farm, food, environment and rural policy that will have a tremendous impact on both rural and urban communities, farming livelihoods and food economies, which in turn will greatly affect the environment, local and regional economic growth, and public health.

As Congress begins drafting the new Farm Bill, we ask for your continued support for programs and policies that are essential to the economic success and quality of life of both rural and urban communities through important titles such as the Rural Development Title, Nutrition Title, and the Conservation Title. These areas promote economic growth and stability by investing in our nation's rural infrastructure, incentivizing regional collaboration, ensuring the success of the next generation of food producers, protecting public health, ensuring access to healthy foods, and promoting workforce training and job creation.

We would like to specifically highlight some obstacles rural residents are facing today, including increasing health disparities, the opioid epidemic, a growing digital divide, the adverse effects of extreme weather events, and a need to fill infrastructure jobs to put the recent federal infrastructure investments to work. The Farm Bill reauthorization is crucial now more than ever to ensure both rural and urban communities have the resources and investments necessary to overcome these challenges.

As you negotiate the priorities to be included in each of your respective versions of the Farm Bill, we encourage you to include and support the following local priorities to support a robust, comprehensive Farm Bill to benefit communities of all sizes:

Title II: Conservation

NLC supports efforts to reduce greenhouse gas emissions across all sectors of the economy, including agriculture. NLC urges Congress to encourage farmland conservation and regenerative agricultural practices, such as water conservation, organic fertilizers, crop rotation and the use of living covers by providing incentives to small, local farms in urban and rural areas. NLC supports at a minimum maintaining current funding levels for the following key programs:

- Regional Conservation Partnership Program (RCPP) provides grants for locally led conservation projects that address climate change, enhance water quality, and address other critical challenges on agricultural land.
- Conservation Reserve Program and the Conservation Reserve Enhancement Program incentivize farmers to remove environmentally sensitive land from agricultural production and plant species that will improve environmental quality.
- Emergency Conservation Program provides funding and technical assistance to restore farmland damaged by natural disasters and for emergency water conservation measures in severe droughts.
- Source Water Protection Program protects surface and ground water used as drinking water by rural residents.
- Watershed and Flood Prevention Operations Program provides funding and technical assistance for planning and implementation of projects that protect and restore watersheds.

Additional priorities:

- Allow projects under the RCPP to extend beyond the current five-year limit if approved by the U.S. Department of Agriculture. Allow organizations to receive funding for outreach and technical assistance, increase emphasis on conservation outcomes, and increase the funding allocation of projects selected at the state level to ensure local concerns are addressed. Expand the RCPP's list of eligible activities to include resource-conserving crop rotations, protection of drinking water resources, soil health, and drought resilience.
- Include a requirement that at least 10 percent of all conservation program funding is used to promote water quality and quantity practices that protect drinking water.

Title IV: Nutrition

NLC urges Congress to ensure that all people have access to food that is healthy, affordable and, where practicable, locally grown. NLC supports at a minimum maintaining current funding levels for the following key programs:

- Supplemental Nutrition Assistance Program provides benefits to supplement the food budget of in-need families so they can purchase healthy food and move towards self-sufficiency.
- The Emergency Food Assistance Program helping supplement the diets of low-income individuals by providing them emergency food assistance at no cost.
- Commodity Supplemental Food Program improves the health of low-income individuals at least 60 years of age by supplementing their diets with nutritious USDA foods.
- Gus Schumacher Nutrition Incentive Program, which provides low-income consumers with cash incentives that increase their purchasing power at farmers markets.
- Healthy Food Financing Initiative to meet the growing demand of healthy food access in underserved urban and rural communities.
- Senior Farmers' Market Nutrition program to provide low-income seniors with access to locally grown fruits, vegetables, honey and herbs.
- Urban Agriculture and Innovative Production grants to support planning and implementation of urban agriculture and innovative production projects.

Additional priorities:

- Continue to provide flexibility for SNAP, including the ability to streamline administration and application processes with other social service programs and waiving work requirements to meet the individual needs of residents and ensuring local flexibility to provide access to all residents, including returning citizens.
- Provide additional funding to the SNAP Employment and Training (E&T) program, and further integrate E&T with existing workforce programs at the federal, state, regional, and local levels, including workforce development boards.
- Streamline the Disaster Supplemental Nutrition Assistance Program (D-SNAP) operations to increase the ability of individuals to pre-register for benefits as soon as possible after a disaster strikes, support the streamlining of easy-to-administer SNAP waivers that would allow for automatic replacement of benefits for SNAP households, and expand funding to ensure application assistance for individuals to receive D-SNAP quickly.
- Increase access to SNAP for college students by removing SNAP work requirements for people attending post-secondary education at least half-time.

Title VI: Rural Development

Rural infrastructure funding to maintain and improve rural broadband, water, and energy networks is vital to ensure that rural economies can survive and thrive into the future. NLC supports reinstating mandatory funding for programs within the Rural Development Title and at minimum maintaining current funding levels for the following key programs:

Broadband

- ReConnect Program to provide flexible grants and loans for the development of residential and business broadband service in rural areas.
- Community Connect Program for grants to rural broadband providers to provide broadband service in economically-challenged communities.
- Distance Learning and Telemedicine grants for rural health care providers to ensure that hardware, broadband access, and technical skills limitations don't prevent rural residents from accessing needed healthcare.

Water and Environmental Programs

- Circuit Rider Program for technical assistance to rural water systems that are experiencing day-to-day operational, financial or managerial issues.
- Emergency Community Waster Assistance Grants help communities prepare for or recover from an emergency that threatens the availability of safe, reliable drinking water.
- Water and Waste Disposal grant, loan and loan guarantee programs support access to clean and reliable drinking water systems and to improve sanitary sewer and stormwater drainage systems. These programs also support communities with predevelopment planning and design for water and waste disposal projects.
- Rural Utilities Service Technical Assistance and Training Program to enhance the ability of small communities to invest in water infrastructure projects.
- Solid Waste Management Grants provide funding for organizations that provide technical assistance or training to improve the planning and management of solid waste sites.

Energy

- Rural Energy Pilot Program grant offers financial assistance to rural communities to develop and deploy renewable energy.
- Rural Energy for America Program offers grants and loan guarantees to improve energy efficiency and promote renewable energy.

Business

- Rural Innovation Stronger Economy grant program assists rural communities in creating and augmenting high-wage jobs, accelerating the formation of new businesses, supporting industry clusters and maximizing the use of local productive assets in eligible low-income rural areas.
- Community Facilities grant, loans and loan guarantee programs help rural communities develop or improve essential public services and facilities such as for health care, education, public safety and public services.

Additional priorities:

- Preserve the mandatory 20 percent set aside for all Distance Learning and Telemedicine fundings to go towards opioids and substance use programs.
- Increase speed requirements for eligible broadband services and make “middle mile” broadband infrastructure eligible for subsidies. Provide localities that are the recipient of a USDA Rural Development grant, loan, or loan guarantee the flexibility to use up to 10 percent of the grant towards broadband facilities, services, and rural infrastructure. Allow broadband-related funds to be used for digital literacy, broadband adoption, and skills training activities, which improve the economic viability of funded broadband infrastructure.
- Create additional flexibility under the Solid Waste Management Grant program by removing caps on funding.
- Set aside no less than 10 percent of funding under the Water and Waste Disposal Technical Assistance and Training Grant program for expanded technical assistance and capacity building. Provide additional matching flexibility under the Water and Waste Disposal Predevelopment Planning Grant Program to include in-kind waivers in cases of extreme need.
- Provide additional program eligibility and flexibility under the Rural Decentralized Water Systems Grant Program by raising the income eligibility requirements from 60 percent of statewide median household income up to 100 percent in cases of extreme need.
- Set aside no less than 10 percent of funding under the Community Facilities Technical Assistance and Training Program for expanded technical assistance and capacity building and create additional flexibility by removing caps on funding.

Title X: Horticulture

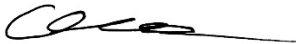
- Maintain current funding levels for the Local Agriculture Market Program, which includes the Farmers Market Promotion Program, Local Food Promotion Program, Regional Food System Partnerships Program, and Value-Added Producer Grants program. These programs strengthen communities with farm-to-table investments, bolster regional food system planning and development, and increase access to healthy local food.
- Adopt clear federal policies and regulations that allow states and local governments the flexibility to implement programs to protect public health and the environment.
- Reject any provisions that would prevent states and local governments from implementing pesticide permit programs.

Additional Considerations

Like many sectors across the country, labor shortages exist in the agricultural jobs that are supported through the Farm Bill. To ensure the strength of our nation's food and agricultural supply chain, ensuring a stable workforce is essential. As such, NLC supports provisions in line with the Farm Workforce Modernization Act, which would reform the H-2A program, or the Farm Labor Stabilization and Protection Pilot Grant program operated by the U.S. Department of Agriculture.

Thank you for your continued leadership in ensuring the next Farm Bill will support and strength local communities. If you have any questions, please do not hesitate to contact NLC staff: Carolyn Berndt, Legislative Director, Sustainability at berndt@nlc.org; Stephanie Martinez-Ruckman, Legislative Director, Human Development at martinez-ruckman@nlc.org; and Angelina Panettieri, Legislative Director, Information Technology and Communications at panettieri@nlc.org. NLC is prepared to uplift local leaders with invested interest in Farm Bill programs and policies and to support you throughout the reauthorization process.

Sincerely,



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

cc: Members of the Senate Committee on Agriculture, Nutrition, & Forestry
Members of the House Agriculture Committee



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