Energy, Environment, & Natural Resources

2023 Summer Board and Leadership Meeting
Tacoma, WA
Greater Tacoma Convention Center
Thursday, July 20, 2023, 3:30-5:00 p.m.
Friday, July 21, 2023, 9:30-11:30 a.m.
Agenda: Energy, Environment and Natural Resources Federal Advocacy Committee

Wednesday, July 19, 2023

5:00 p.m. – JOINT WELCOME RECEPTION
6:15 p.m. Marriott Tacoma Downtown – Chambers Bay Ballroom III, 3rd Floor

6:15 p.m. – MEMBER AND PARTNER MEET & GREET RECEPTION
7:15 p.m. Greater Tacoma Convention Center – Ballroom Pre-function, 3rd Floor

Thursday, July 20, 2023

9:00 a.m. – MOBILE WORKSHOPS
11:30 a.m. Buses will load at the Marriott/Greater Tacoma Convention Center exit on Commerce Street starting at 8:30 a.m. Light breakfast will be available at the NLC registration area at the Convention Center, 3rd Floor.

Tour 1) How Tacoma is Moving Safety, Mobility and Sustainability Forward

Tour 2) Emergency Shelter

To register, please click here.

12:00 p.m. – JOINT LUNCH AND FIRESIDE CHAT
1:00 p.m. Marriott Tacoma Downtown – Chambers Bay Ballroom III, 3rd Floor

The Honorable Victoria Woodards, President, National League of Cities
Mayor, City of Tacoma, Washington

Broderick Johnson
Executive Vice President Public Policy and Executive Vice President, Digital Equity, Comcast

1:00 p.m. – PRESS CONFERENCE
1:15 p.m. Marriott Tacoma Downtown – Chambers Bay Ballroom pre-function area

1:30 p.m. – MOBILE WORKSHOPS
3:15 p.m. Buses will load at the Marriott/Greater Tacoma Convention Center exit on Commerce Street starting at 1:00 p.m.
Tour 1) Boys and Girls Club of South Puget Sound Enhanced Lift Zone

Tour 2) Hilltop Neighborhood Housing and Transit

To register, please click [here](#).

3:15 p.m.  –  3:30 p.m.  
**ICE CREAM BREAK AND BRINC DRONE DEMONSTRATION**  
Greater Tacoma Convention Center – NLC registration area, 3rd Floor

Esmael Ansari  
Vice President, Government Relations, BRINC

3:30 p.m.  –  5:00 p.m.  
**ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMITTEE MEETING**  
Greater Tacoma Convention Center – Room 318

3:30 p.m.  –  3:50 p.m.  
**WELCOME, INTRODUCTIONS AND MEETING OVERVIEW**

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

Councilmember Dyballa will welcome committee members and provide an overview of the agenda.

3:50 p.m.  –  4:00 p.m.  
**FEDERAL ADVOCACY UPDATE**

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

Committee members will hear the latest on federal funding opportunities and key updates on Congressional legislation and regulatory rulemaking proposals.

4:00 p.m.  –  4:50 p.m.  
**CLIMATE RESILIENCE AND CAPITAL BUDGET PLANNING**

Dr. Jan Whittington, Ph.D.  
Associate Professor, Urban Design and Planning Department, University of Washington

Dr. Adrienne Greve, Ph.D.  
Associate Professor, City and Regional Planning Department, California Polytechnic State University, San Luis Obispo

Committee members will learn about a tool for incorporating climate action into local capital budgets and how to build climate smart capital investment plans that support long-term infrastructure planning through a low carbon lens.
4:50 p.m. – NLC PRESIDENT GREETING
The Honorable Victoria Woodards, President, National League of Cities
Mayor, City of Tacoma, Washington

4:55 p.m. – WRAP UP
The Honorable Cindy Dyballa, Chair
Councilmember, City of Takoma Park, Maryland

6:30 p.m. – PRESIDENTIAL RECEPTION – HOSTED BY THE ASSOCIATION OF WASHINGTON CITIES
Museum of Glass, 1801 Dock Street, Tacoma, WA 98402

The venue is walkable from the Marriott and directions are available at registration. For those guests who would like to ride to the venue, bus loading at the Marriott/Greater Tacoma Convention Center exit on Commerce Street will begin at 6:15 p.m. Buses will be running on a loop throughout the evening to take attendees to and from the venue.

Friday, July 21, 2023

8:30 a.m. – STATE OF THE CITIES REPORT RELEASE
Marriott Tacoma Downtown – Commencement I and II, 2nd Floor
Breakfast available at the Pre-function area on the 2nd Floor of the Marriott

9:30 a.m. – ENERGY, ENVIRONMENT AND NATURAL RESOURCES COMMITTEE MEETING
Greater Tacoma Convention Center – Room 318

9:30 a.m. – DISCUSSION: PERMIT STREAMLINING FOR CLEAN ENERGY PROJECTS

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

Alexis Sulentic
Senior Manager, External Affairs, Edison Electric Institute

As federal funding for clean energy projects rolls out from the Inflation Reduction Act, there is growing discussion about permitting reform to ensure projects come online in a timely manner. Committee members will review and discuss pending permitting reform legislation and available federal resources to help state and local governments streamline their permitting processes.
10:30 a.m. – EENR POLICY AND RESOLUTIONS DISCUSSION
11:00 a.m.

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

Committee members will review recommendations for the EENR Committee Resolutions.

11:00 a.m. – SUSTAINABILITY PROGRAM DISCUSSION
11:30 a.m.

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

Committee members will engage in a facilitated discussion on sustainability challenges and priorities to inform future tools, resources and research to support local leaders.

11:30 a.m. CLOSING AND ADJOURN

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

7:00 p.m. – SUNSET RECEPTION WITH MAYOR WOODARDS
10:00 p.m.

Join Mayor Victoria Woodards for a sunset reception at an estate overlooking the Tacoma Narrows (Puget Sound). Transportation to and from the venue will be provided – a bus will load at the Marriott/Greater Tacoma Convention Center exit on Commerce Street at 6:30 p.m. and will depart by 6:45 p.m. Space is limited, so please be sure to arrive early to get a seat on the bus.

Enclosures:
• NLC Policy Development and Advocacy Process
• EENR Proposed Policy Amendments and Resolutions
• Energy and Environment Legal Update
• Permitting Reform State of Play
• Sabin Center Blog: Report Finds 228 Local Restrictions Against Siting Wind, Solar, and Other Renewables, as Well as 293 Contested Projects
• Austin EV Fast Chargers Resolution
• Speaker Bios
• 2023 Energy, Environment and Natural Resources Committee Roster
Upcoming EENR Committee Meetings and Other Events of Interest:

**July 27, 2:00-3:00 p.m. eastern** – Optional feedback session with White House Council on Environmental Quality – Plastic and Reuse Systems in Cities

**August 2, 3:00-4:00 p.m. eastern** – NLC University Communities Council: EPA Climate Change Adaptation Resource Center

**August 4, 2:00-3:00 p.m. eastern** – NLC Sustainability Office Hours

**Week of August 7** – EPA Investing in America: Climate Action Funding Fair

**September 12, 3:30-4:30 p.m. eastern** – EENR Conference Call for Resolutions Review

**September 27, 2:00-3:00 p.m. eastern** – EENR Conference Call for Resolutions Review

**November 15, 3-5 p.m. eastern** – City Summit, Atlanta, GA, November 15-18
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 are appointed by the NLC President and serve for one calendar year.

**Federal Advocacy Committees**

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

Federal Advocacy Committees are comprised of local elected and appointed 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 also serve on NLC’s Board of Directors during their leadership year.

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

**Advocacy**

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

Only sections of the *NLC National Municipal Policy (NMP)* where modifications are proposed are reproduced in this report. The complete text of the current *NMP*, divided into seven policy chapters, can be found at [nlc.org/national-municipal-policy](http://nlc.org/national-municipal-policy)

Please note:
- Proposed new language is underlined;
- Proposed language for deletion is struck out; and
- Existing, unchanged language is shown as plain text.

**Policy:**

- Section 2.05 Water Quality and Supply

1. **C. Local Control**

   NLC supports local control of drinking water and wastewater systems and the ability of local governments to make water infrastructure decisions based on engineering and design, not solely based on cost. NLC opposes federal and state policies that mandate, or in any way promote, material preferences or otherwise undermine local autonomy for local water and wastewater infrastructure systems.
**Proposed EENR Resolutions**

NLC resolutions are annual statements of position that sunset at the end of the calendar year unless action is taken. The committee must review each of the 2023 resolutions that originated in the EENR Committee to determine recommendations for 2024. The committee has the following options:

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

The EENR resolutions that were approved for 2023 at the City Summit with recommendations for 2024 are:

<table>
<thead>
<tr>
<th>Resolution</th>
<th>NLC Staff Recommendation</th>
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<tbody>
<tr>
<td>NLC RESOLUTION #8: Supporting Local PACE Programs</td>
<td>Renew with edits</td>
</tr>
<tr>
<td>NLC RESOLUTION #9: Supporting and Advancing Resilient Communities to Prepare for Changing Climate and Extreme Weather Events</td>
<td>Renew with edits</td>
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<tr>
<td>NLC RESOLUTION #10: Supporting Urgent Action to Reduce Carbon Emissions and Mitigate the Effects of Climate Change</td>
<td>Renew with edits</td>
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<td>NLC RESOLUTION #11: Addressing Lead Contamination and Calling for Nationwide Federal Support for Water Infrastructure</td>
<td>Renew with edits</td>
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<tr>
<td>NLC RESOLUTION #12: Increase Federal Investment in Water Infrastructure</td>
<td>Renew with edits</td>
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<tr>
<td>NLC RESOLUTION #13: Support for Integrated Planning and New Affordability Consideration for Water</td>
<td>Renew with edits</td>
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<tr>
<td>NLC RESOLUTION #14: Calling on the Federal Government to Take Action to Address PFAS Contamination</td>
<td>Renew with edits</td>
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<tr>
<td>NLC RESOLUTION #15: Improve the Benefit-Cost Analysis for Federally Funded Flood Control Projects and Supporting Beneficial Reuse of Dredged Material</td>
<td>Renew with edits (additional edits forthcoming)</td>
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<tr>
<td>NLC RESOLUTION #16: Increase Funding for Border Water Infrastructure Projects</td>
<td>Expire – Incorporate into Resolution 12</td>
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<tr>
<td><strong>NLC RESOLUTION #17:</strong> Supporting Local Control of Water Infrastructure Projects</td>
<td>Expire – Incorporate into Policy (create new Section under 2.05 Water Quality and Supply; C. Local Control)</td>
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<tr>
<td><strong>DRAFT RESOLUTION:</strong> Supporting Efficient Siting and Permitting to Support Electric Grid Reliability for a Clean Energy Future</td>
<td>For Committee Discussion</td>
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NLC RESOLUTION 2023-8

SUPPORTING LOCAL PACE PROGRAMS

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, utility bills represent a major part of operating costs for home and business owners; and

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

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

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

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

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

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

WHEREAS, 38 states plus the District of Columbia have passed laws enabling local governments to develop PACE programs; and

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

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

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

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

WHEREAS, in communities that have enabled PACE, investments have had significant effects on local job creation and economic activity, energy savings and carbon abatement. Over the lifetime of the measures installed to date, estimates show that those PACE projects will result in $192.16 billion in economic impact, 7052,000 job-years created, 11 million metric tons CO2 emissions avoided and 36 billion kWh energy saved; and

WHEREAS, despite PACE’s great promise, in July 2010 the Federal Housing Finance Agency (FHFA), as conservator of the government-sponsored enterprises (GSEs) following the 2008 financial crisis, issued guidance that directed the GSEs not to purchase mortgages with a PACE assessment, which immediately slowed the advancement of PACE residential programs across the country; and

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

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

WHEREAS, in July 2016, the U.S. Department of Housing and Urban Development released guidance allowing the Federal Housing Administration to insure mortgages on properties that include PACE assessments,4 which has since been withdrawn; and

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

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

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

BE IT FURTHER RESOLVED that the National League of Cities (NLC) urges FHFA to reconsider the 2010 guidance that prohibits government-sponsored entities from purchasing mortgages with a PACE assessment and to work with local governments seeking to establish PACE programs that benefit from the same senior lien status of all other projects that are funded through municipal assessments that improve private property and meet public policy objectives; and

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

NLC RESOLUTION 2023-9

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

[NLC STAFF RECOMMENDATION: Renew with edits]

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

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

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

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

WHEREAS, the effects of a changing climate are a national security issue with potential impacts to the U.S. Department of Defense (DoD) missions, operations plans and installations and the DoD must be able to adapt to current and future operations to address the impacts of a variety of threats and conditions, including those from weather and natural events;² and

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

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

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

WHEREAS, as local governments continue to recover from the coronavirus pandemic, hurricanes, wildfires, drought, floods and other disasters continue to threaten communities across the U.S. and present new challenges for communities in protecting residents, particularly those that are most affected and least able to prepare, respond or recover; and

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

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

WHEREAS, the United States has seen 323–360 separate billion-dollar-plus weather and climate disasters since 1980, including 22 in 2020 and 20 in 2021 and 18 in 2022, with a cumulative cost exceeding $2.195–570 trillion (CPI-adjusted) and a total death toll of 15,985,347,4 and

WHEREAS, 2020 set a new annual record with 22 billion-dollar-plus weather or climate events, shattering the previous record of 16 events in 2011 and 2017,5 and

WHEREAS, in 2005 Hurricane Katrina led to 1,833 deaths and more than $167.5 billion (CPI-adjusted) in losses, and a subsequent $120 billion in supplemental disaster assistance and in 2012 Hurricane Sandy led to 159 deaths and more than $73.5 billion in damages (CPI-adjusted), and a subsequent $60.4 billion in supplemental disaster assistance;6 and

WHEREAS, in 2017 three Category 4 hurricanes—Harvey, Irma and Maria—made landfall in Texas, Florida and Puerto Rico, respectively totaling more than $275 billion (CPI-adjusted) in damages and a death toll of 3,167, including 2,981 in Puerto Rico from Hurricane Maria;7 and

WHEREAS, in 2022 historic flooding brought devastating damage to eastern Kentucky and eastern Missouri homes, businesses and infrastructure; hit the Midwest and southern plains; significantly affecting agriculture, roads, bridges, levees, dams and other infrastructure, assets

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and industries, resulting in 4212 deaths and $1,520.3 billion (CPI-adjusted) in economic costs; and

WHEREAS, 2020 set a new annual record of 22 billion-dollar-plus weather or climate events—shattering the previous annual record of 16 events that occurred in 2011 and 2017, and was the sixth consecutive year (2015-2020) in which 10 or more billion-dollar weather and climate disaster events have impacted the United States; and

WHEREAS, rising temperatures are lengthening the wildfire season and increasing drought risks, causing more radical fire behavior and increasing wildfire risks throughout the Western United States due to earlier snow melts and forests that are drier longer, the costs of putting out wildfires has increased dramatically, from $612 million in 1985 to nearly $4.4 billion in 2021 (2021 dollars), and the economic losses associated with wildfire continues to grow, with the 2018 western wildfires costing over $24.5 billion (CPI-adjusted) and the 2020 western wildfires, the most active fire season on record, costing over $16.6 billion (CPI-adjusted); and

WHEREAS, Congress approved over $69 billion in disaster relief in FY21; and

WHEREAS, 2022 was the sixth warmest year on record, behind 2016 (warmest), 2020 (second warmest), 2017 (third warmest), 2019 (fourth warmest), and 2018 (fifth warmest) and 2021 (sixth warmest); and

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

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8 National Climate Data Center, National Oceanic and Atmospheric Administration, available at: https://www.ncdc.noaa.gov/access/billions/events/US/2020-2023?disasters[]=flooding
11 Federal Firefighting Costs (Suppression Only), National Interagency Fire Center, available at: https://www.nifc.gov/fire-information/statistics/suppression-costs
16 National Oceanic and Atmospheric Administration (Jan. 12, 2023), available at: https://www.noaa.gov/news/2022-was-worlds-6th-warmest-year-on-record
WHEREAS, a preparedness response fund would provide financial assistance to accelerate the
development of adaptive success models and provide a far-reaching damage prevention initiative
that would help reduce the ultimate financial pressure on the federal government; and

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

WHEREAS, firefighters and other local essential personnel, who risk their lives responding to
natural disasters and extreme weather events, are put at even greater risk of contracting
coronavirus as they respond to emergency situations; and

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

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

WHEREAS, the bipartisan Infrastructure Investment and Jobs Act of 2021 makes significant
progress toward strengthening infrastructure and communities against extreme weather events by
investing in pre-disaster mitigation and flood, wildfire and drought mitigation and the Inflation
Reduction Act provides additional funding and incentives for climate and clean energy goals, but
additional federal policies and local government support is needed.

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

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

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to
recognize the unique risks and opportunities communities face and to offer customized tools and
incentives to local governments to encourage communities to plan for and rapidly respond to the
effects of climate change and extreme weather; and

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

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

BE IT FURTHER RESOLVED that returning to the status quo is not sufficient in meeting the
challenges of climate change and inequities in our society; and

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

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

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

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

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

BE IT FURTHER RESOLVED that federal investments in communities must prioritize those
communities that have been left behind and BIPOC communities, which have been
disproportionately impacted by the effects of climate change and COVID-19.
SUPPORTING URGENT ACTION TO REDUCE CARBON EMISSIONS AND MITIGATE THE EFFECTS OF CLIMATE CHANGE

[NLC STAFF RECOMMENDATION: Renew with edits]

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

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

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

WHEREAS, extreme heat will have more serious health consequences on people living in low-income communities, communities of color, and tribal communities, and people in these communities have been disproportionately impacted by coronavirus and high rates of underlying health conditions, both of which can be exacerbated by extreme heat; and

WHEREAS, these same vulnerable populations also face dramatically higher energy burdens—spending a greater portion of their income on energy bills—than the average household;³ and

WHEREAS, according to the American Lung Association’s 2023 State of the Air report, more than 40 nearly 36 percent or 19.6 million people live in communities with unhealthy levels of ozone and particle pollution, which is especially concerning as research shows that people with long-term exposure to air pollution are more likely to die from COVID-19;⁴ and

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

WHEREAS, in order to meet the carbon emissions reductions goals necessary to help mitigate the effects of climate change on communities, improving energy efficiency, increasing energy

⁴ “State of the Air,” American Lung Association (2023), available at: https://www.lung.org/research/sota/key-findings
conservation and deploying renewable energy systems will be essential at the local, state and federal levels; and

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

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

WHEREAS, the transportation sector generates the largest share of greenhouse gas emissions, 28\% of 2021 greenhouse gas emissions, in the United States;\(^5\) and

WHEREAS, buildings account for nearly 40 percent of the nation’s energy consumption\(^6\) and more than 70 percent of its electricity use,\(^7\) and electricity production represents the second largest share of greenhouse gas emissions, 24\% of 2021 greenhouse gas emissions, in the United States;\(^8\) and

WHEREAS, indoor and outdoor lighting account for 5 percent of electricity consumed in the nation,\(^9\) and rapid conversion to efficient lighting would result in significant greenhouse gas reductions as well as a decrease in base load energy needs; and

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

\(^7\) Environmental and Energy Study Institute, Buildings and Climate Change, available at: http://www.eesi.org/files/climate.pdf
WHEREAS, the Energy Efficiency and Conservation Block Grant (EECBG) helped local governments undertake projects to reduce energy use, diversify energy supplies and improve air quality and the environment; and

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

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

WHEREAS, the bipartisan Infrastructure Investment and Jobs Act of 2021 makes significant progress toward reducing greenhouse gas emissions throughout the transportation sector and investing in clean energy and energy efficiency and conservation and the Inflation Reduction Act provides additional funding and incentives for climate and clean energy goals, but additional federal policies, funding and resources are needed to support local governments.

NOW, THEREFORE, BE IT RESOLVED that NLC calls on Congress and the Administration to partner with local governments, to support local action on climate change mitigation, and to provide essential tools, research, technology development, data, and funding, as well as workforce development, job training and community assistance, to help local governments achieve their greenhouse gas reduction targets and transition to a clean energy economy; and

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

BE IT FURTHER RESOLVED that NLC supports the U.S.’s engagement in the Paris Climate Agreement and calls on Congress to position the U.S. as a climate leader and adopt nationwide greenhouse gas emission goals and policies that exceed the IPCC 1.5°C targets of 45% emissions reduction from 2010 levels by 2030 and net zero by 2050; and

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

BE IT FURTHER RESOLVED that NLC calls on Congress to pass energy efficiency and conservation legislation to incentivize energy efficiency improvements in residential and commercial buildings, schools and federal buildings located in communities; and
BE IT FURTHER RESOLVED that NLC calls on Congress to pass a national renewable portfolio standard that increases the use of carbon neutral energy and promotes energy efficiency, with the goal of at least 50 percent carbon neutral energy by 2030 and 100 percent by 2050 or sooner; and

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

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

BE IT FURTHER RESOLVED that federal investments in communities must prioritize those communities that have been left behind and Black, Indigenous and People of Color (BIPOC) who have been disproportionately impacted by the effects of climate change and COVID-19.
NLC RESOLUTION 2023-11

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

[NLC STAFF RECOMMENDATION: Renew with edits]

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

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

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

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

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

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

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

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

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

WHEREAS, recent analysis by the National Resources Defense Council found that over 5,300 water systems nationwide have elevated levels of lead, the U.S. Environmental Protection Agency
WHEREAS, there is a need to invest in our aging water infrastructure nationwide and a failure to do so can have negative public health consequences; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) estimates the nation’s water infrastructure capital needs over the next 20 years to be approximately $743 billion in total;\(^1\) the American Society for Civil Engineers estimates that over the next 20 years, the cumulative water and wastewater capital investment need will soar to $3.27 trillion and the cumulative capital investment gap will total $2.2 trillion;\(^2\) and other estimates put the cost at more than $4 trillion to maintain and build a 21st century water system; and

WHEREAS, the bipartisan Infrastructure Investment and Jobs Act of 2021 provided federal funding for lead service line replacement projects, but additional federal funding is needed to fully replace all lead service lines in the country.

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

BE IT FURTHER RESOLVED that the National League of Cities (NLC) calls on Congress to provide direct assistance to the City of Flint, Michigan, and for EPA and the federal government

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to work directly with local officials, for as long as necessary, to resolve the drinking water crisis through the provision of safe drinking water and to support economic recovery; and

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

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

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

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support grants to local governments, as well as school systems and daycare centers, for the replacement of lead service lines, testing, inventories, planning, corrosion control, and public education campaigns, and to assist small and disadvantaged communities in complying with the Safe Drinking Water Act.
NLC RESOLUTION 2023-12

INCREASE FEDERAL INVESTMENT IN WATER INFRASTRUCTURE

[NLC STAFF RECOMMENDATION: Renew with edits]

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

WHEREAS, with much of our nation’s physical water infrastructure built in the post-World War II period – and some of it more than 100 years old – there are an estimated 250,000 to 300,000 water main breaks each year;¹ and

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

WHEREAS, local governments are responsible for the vast majority of investment in water and sewer infrastructure, investing over $2.38 trillion between 1993-2019 (not adjusted for inflation) and over $142 billion in 2020 alone;³ and

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

WHEREAS, an economic analysis by the American Society of Civil Engineers shows a water-related infrastructure investment gap of $434 billion over 10 years for drinking water, wastewater, and stormwater combined;⁴ and

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

¹ 2021 Infrastructure Report Card, American Society of Civil Engineers, available at: https://www.infrastructurereportcard.org/cat-item/drinking-water/
³ 2020 Annual Surveys of State and Local Government Finances, U.S. Census Bureau (October, 2022), available at: https://www.census.gov/programs-surveys/gov-finances.html
⁴ 2021 Infrastructure Report Card, American Society of Civil Engineers, available at: https://infrastructurereportcard.org/cat-item/stormwater/
WHEREAS, the bipartisan Infrastructure Investment and Jobs Act of 2021 (IIJA) provided a significant boost in federal funding for drinking water and wastewater infrastructure, but not enough to close the needs gap; and

WHEREAS, aside from the IIJA, annual appropriations for federal loan and grant assistance to cities and local governments to assist in maintaining and upgrading water infrastructure systems has continued to decline in real dollars over the past decades; and

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

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

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

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

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

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

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

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

BE IT FURTHER RESOLVED that Congress should provide full appropriation to the Water Infrastructure Finance and Innovation Act (WIFIA) for loans and loan guarantees for water infrastructure projects; and

BE IT FURTHER RESOLVED that Congress should provide funding to local governments through grant programs such as for sewer overflow and stormwater management, lead pipe replacement, water infrastructure resilience/sustainability to protect and reduce risk to extreme weather events, new/emerging technologies for cybersecurity improvements and water efficiency, workforce development in the water sector, and other programs; and

BE IT FURTHER RESOLVED that Congress should continue to fund the Border Water Infrastructure Program, and recommit to working bi-nationally to develop and implement long-term solutions to address serious water quality and contamination issues, such as discharges of untreated sewage and polluted sediment and trash-laden transboundary flows originating from Mexico, that result in significant health, environmental, and safety concerns of affected communities; and

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

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

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

BE IT FURTHER RESOLVED that Congress and the Administration should enact new legislation which provides adequate and reliable long-term funding for municipal water infrastructure needs to help close the funding gap.
NLC RESOLUTION 2023-13

SUPPORT FOR INTEGRATED PLANNING AND NEW AFFORDABILITY CONSIDERATION FOR WATER

[NLC STAFF RECOMMENDATION: Renew with edits]

WHEREAS, in 2012 the U.S. Environmental Protection Agency (EPA) issued its Integrated Municipal Stormwater and Wastewater Planning Approach Framework ("Integrated Planning Framework"), which was intended to help local governments seek more efficient and affordable solutions to stormwater and wastewater issues and meet the requirements of the Clean Water Act (CWA) in a more flexible, affordable, and cost-effective manner; and

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

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

WHEREAS, taking a One Water approach to water resource management means that “all water has value and should be managed in a sustainable, inclusive, integrated way” and requires balancing water equity, water access and water affordability;¹ and

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

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

WHEREAS, the current reliance on two percent of median household income for wastewater and combined sewer overflows controls is a misleading indicator of a community’s ability to pay,

and often places a particularly high burden on residents at the lower end of the economic scale; and

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

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

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

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

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

BE IT FURTHER RESOLVED that NLC calls on EPA to work with local governments to revise the February 2023 Financial Capability Assessment Guidance “Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development” (Feb. 1997) to eliminate reliance on median household income as the critical metric for determining investment level and to allow for the consideration of additional information, such as socio-economic factors, consistent with the Agency’s 2014 Financial Capability Framework; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to explore options for providing ratepayer assistance, such as through a consumer assistance program modeled on the Low Income Home Energy Assistance Program.
NLC RESOLUTION 2023-14
CALLING ON THE FEDERAL GOVERNMENT TO TAKE ACTION TO ADDRESS PFAS CONTAMINATION

[NLC STAFF RECOMMENDATION: Renew with edits]

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

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

WHEREAS, PFAS chemicals have been known to cause adverse health outcomes in humans including effects on prenatal development, low infant birth weights, early onset of puberty, negative effect on the immune system, cancer, liver damage, and thyroid disruption;¹ and

WHEREAS, while science predicts that the entire class of PFAS chemical may be associated with adverse health effects and many such chemicals are in industrial and commercial use, only a small fraction of these chemicals have been investigated sufficiently to establish quantitative measures of toxicity; and

WHEREAS, in 2022 the U.S. Environmental Protection Agency (EPA) lowered the lifetime exposure health advisory level for PFOA and PFOS from 70 parts per trillion to near zero and established new health advisories for GenX and PFBS for the combined concentration in drinking water;² and

WHEREAS, in 2021 EPA announced a PFAS Strategic Roadmap that outlines a comprehensive nationwide action plan for addressing PFAS, including identifying both short-term solutions for addressing these chemicals and long-term strategies that will help states, tribes and local communities provide clean and safe drinking water to residents and address PFAS at the source – before it gets into the water;³ and

WHEREAS, EPA is currently undergoing a rulemaking process to propose a National Drinking Water Regulation and set a Maximum Contaminant Level for PFOA and PFOS under the Safe Drinking Water Act; and

¹ Fact Sheet: PFOA & PFOS Drinking Water Health Advisories, U.S. Environmental Protection Agency (Nov. 2016); available at: https://www.epa.gov/sites/default/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf
² Drinking Water Health Advisories, U.S. Environmental Protection Agency (June 2022); available at: https://www.epa.gov/sdwa/drinking-water-health-advisories-has
WHEREAS, there are significant technical challenges in detecting, measuring and removing PFAS in water and other environmental media at the levels where health effects can occur, and analytical methodologies are still under development or are not yet generally available; and

WHEREAS, the Environmental Working Group maintains an interactive map of known contamination of communities from PFAS, which as of June 2022 shows 2,858 locations in 50 states and two territories with known contamination; and

WHEREAS, in February 2019-July 2023, EPA and United States Geological Survey scientists published results on analysis for 47-32 PFAS compounds in water samples from 25-716 public drinking water supplies in 24 states (locations confidential) across every state that detected PFAS in every sample tested at least 45 percent of tap water samples, suggesting that PFAS is ubiquitous in our water; and

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

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

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

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

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

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

WHEREAS, local governments are owners and operators of airports and landfills and employ firefighters, some of whom may have been exposed to PFAS chemicals on the job through

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4 PFAS Contamination in the U.S., Environmental Working Group, available at: https://www.ewg.org/interactive-maps/pfas_contamination/


WHEREAS, contamination poses health risks, but also economic impacts on communities, including in the agriculture and fishing industries by contamination of food sources; and

WHEREAS, a number of states have adopted PFAS policies pertaining to prohibiting use, monitoring, notification and reporting, cleanup, health studies, testing, liability provisions, and contamination limits; and

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

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

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

BE IT FURTHER RESOLVED that the federal government should incentivize and support research and development for extended producer responsibility programs to prevent pollution of waterways, drinking water and soil contamination and to address the life cycle environmental impacts of PFAS chemicals; and

BE IT FURTHER RESOLVED that local governments, including municipal airports and fire departments, were required by federal law to use firefighting foam containing PFAS chemicals, and therefore should not be held liable for PFAS contamination or cleanup costs; and

BE IT FURTHER RESOLVED that local governments, including drinking water and wastewater utilities and municipal landfills, serve as receivers of PFAS chemicals and did not cause or contribute to contamination, and therefore should not be held liable for PFAS contamination or cleanup costs; and
BE IT FURTHER RESOLVED that NLC calls on the federal government to accelerate research and technology development to advance the science needed to understand the health consequences of exposure to PFAS chemicals, detect and measure PFAS chemicals in water and other environmental media, treat water supplies to remove these substances, and find safe substitutes for PFAS chemicals; and

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

BE IT FURTHER RESOLVED that NLC calls for the federal government to avoid passing costs onto local ratepayers and to provide financial and technical assistance to communities for testing, monitoring, mapping, public education, water supply treatment, and pursuit of alternative water supplies if necessary; and

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

BE IT FURTHER RESOLVED that the federal government should thoroughly study and test alternative PFAS and other long-chain chemicals before they are put into circulation to make sure they are safe; and

BE IT FURTHER RESOLVED that NLC should update the “Assessing the State Firefighter Cancer Presumption Laws and Current Cancer Firefighter Cancer Research” that it conducted in 2009 to determine what linkages there are between firefighting and an elevated incidence of cancer.
NLC RESOLUTION 2023-15

IMPROVE THE BENEFIT-COST ANALYSIS FOR FEDERALLY FUNDED FLOOD CONTROL PROJECTS AND SUPPORTING BENEFICIAL REUSE OF DREDGED MATERIAL

[NLC STAFF RECOMMENDATION: Renew with edits (additional edits forthcoming)]

WHEREAS, the U.S. Army Corps of Engineers (Army Corps) at the U.S. Department of Defense has responsibilities for development and maintenance of waterways and harbors and for other water resource projects across the nation, and is the primary federal agency associated with the design and construction of flood risk reduction projects across the country; and

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

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

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

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

WHEREAS, the current system used by the Army Corps for determining benefit-cost ratios is narrowly focused on traditional economic and financial costs and benefits, largely overlooking environmental costs and benefits, social equity and potential for secondary benefits of interest to local communities; and

WHEREAS, the current system used by the Army Corps for determining benefit-cost ratios does not effectively reflect the potential value of projects for low-income communities, including the benefits of replacement of structures that protect low-income, low-cost of living communities; and

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

WHEREAS, dredged materials produced from Army Corps waterway and harbor maintenance activities may be suitable for beneficial reuse, but often are disposed as waste; and

WHEREAS, there is a lack of sediment available for the habitat restoration and flood protection needed along our coasts and waterways.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on the U.S. Army Corps of Engineers and the White House Office of Management and Budget to revise the benefit-cost analysis system used for projects to reflect the values of the nation to protect communities from flooding in ways that are environmentally protective and foster social equity; and

BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a quantitative indexed value to life and safety to determine the benefit of federal investments in flood control projects; and

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

BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a quantitative indexed value to protection of low-income communities and environmental benefits to determine the benefit of federal investments in water resources projects, including projects for flood control; and

BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a quantitative indexed value to potential benefits of projects on federal properties, as well as benefits to military readiness when developing coastal storm protection-risk reduction projects in the adjacent community; and

BE IT FURTHER RESOLVED that NLC calls on the Army Corps to increase the quantity of dredged materials put to environmentally beneficial uses, especially related to marsh restoration and sea level rise protection, by allowing a national beneficial reuse policy that considers dredged materials to be a potential resource (instead of a waste product) and establishes a realistic economic value of environmentally-suitable dredged material that takes into account its use for storm or flood risk reduction and habitat restoration; and

BE IT FURTHER RESOLVED that the cost of offshore disposal of dredged materials should
include the full future economic value of that sediment that would be lost if it is deposited offshore.
NLC RESOLUTION 2023-16

INCREASE FUNDING FOR BORDER WATER INFRASTRUCTURE PROJECTS

[NLC STAFF RECOMMENDATION: Expire – Incorporate into Resolution 12]

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

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

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

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

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

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

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

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

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

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

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

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

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

**WHEREAS**, the widespread threat to public health and safety, damage to fish and wildlife resources and degradation to the environment caused by transboundary pollution in the border states requires urgent action by the federal and state governments; and

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

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

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

**WHEREAS**, the BWIP program was initially funded at $100 million per year, but, over the last 20 years, the program has been significantly reduced to $30 million in FY21 and $32 million in FY22; and
WHEREAS, officials from EPA Region 6 and 9 identified a multitude of BWIP-eligible projects along the southern border totaling over $300 million; and

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

WHEREAS, without federal partnership through the BWIP and state support to address pollution, cities that are impacted by transboundary sewage and toxic waste flows are left with limited resources to address a critical pollution and public health issue and limited legal remedies to address the problem; and

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

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

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities urges the Federal government to continue to fund the Border Water Infrastructure Program, and to recommit to working bi-nationally to develop and implement long-term solutions to address serious water quality and contamination issues, such as discharges of untreated sewage and polluted sediment and trash-laden transboundary flows originating from Mexico, that result in significant health, environmental, and safety concerns of affected communities.
SUPPORTING LOCAL CONTROL OF WATER INFRASTRUCTURE PROJECTS

[NLC STAFF RECOMMENDATION: Expire – Incorporate into policy]

WHEREAS, local leaders have a strong commitment to ensuring that their residents have access to clean and reliable drinking water and wastewater systems; and

WHEREAS, local leaders have an obligation to protect public health, to use limited public resources in the most efficient manner possible, and to promote economic development; and

WHEREAS, local public and private engineers and water professionals also have an obligation to protect public health, to use limited public resources in the most efficient manner possible, and to promote economic development; and

WHEREAS, there are efforts at the federal level and in various states that would undermine these goals, supersede engineering judgment and impose new mandates on local communities; and

WHEREAS, the design of drinking water and wastewater systems is an inherently local process and local communities are in the best position to select infrastructure materials, as each community’s needs are unique; and

WHEREAS, infrastructure materials all have different service lives, durability, reliability, economic, health and safety characteristics and engineers and communities need to retain local control to select infrastructure materials based on factors important to the local community; and

WHEREAS, communities should remain free to adopt system-wide best management practices and uniform design specifications in the development and maintenance of their water systems to maximize efficiency and control costs; and

WHEREAS, restricting local control increases costs, interferes with sound engineering judgment, limits the ability of communities to manage their systems as efficiently as possible and delays projects.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) supports local control of drinking water and wastewater systems and the ability of local governments to make water infrastructure decisions based on engineering and design, not solely based on cost; and
BE IT FURTHER RESOLVED that NLC opposes federal and state policies that mandate, or in any way promote, material preferences or otherwise undermine local autonomy for local water and wastewater infrastructure systems.
DRAFT RESOLUTION – For EENR Committee Discussion Only

SUPPORTING EFFICIENT SITING AND PERMITTING TO SUPPORT ELECTRIC GRID RELIABILITY FOR A CLEAN ENERGY FUTURE

WHEREAS, the mix of resources used to generate electricity in the United States has changed dramatically over the last decade and are increasingly cleaner; and

WHEREAS, approximately 40 percent of America’s electricity came from clean carbon-free resources in 2021, including nuclear energy, hydropower, solar, and wind; and

WHEREAS, by 2025, the Energy Information Administration projects approximately 125 GW of renewables capacity will be online, and further, that in the United States the share of renewables in the electricity generation mix will more than double by 2050; and

WHEREAS, electric power infrastructure is the backbone of our nation’s energy grid and plays an important role in facilitating a pathway to our clean energy future; and

WHEREAS, electric power infrastructure enables the delivery of lower cost and clean energy to customers and maintains reliability and resiliency; and

WHEREAS, energy infrastructure investment is needed to maintain the reliability and resilience of the grid against extreme weather conditions and increasing security threats, and to meet the demands of customers and facilitate the continued transformation to a clean energy economy; and

WHEREAS, the National League of Cities (NLC) supports federal incentives for all generators and transmission grid owners to develop and maintain new infrastructure so the nation’s national transmission grid remains reliable and resilient; and

WHEREAS, the NLC recognizes the crucial role played by electric power companies in investing and developing the cost-effective electric power infrastructure needed to meet local, state, and federal clean energy goals, while continuing to provide affordable and reliable electricity for consumers.

THEREFORE BE IT RESOLVED, that NLC encourages the federal government policymakers to develop policies that facilitate an efficient permitting process for the deployment of electric infrastructure; and

BE IT FURTHER RESOLVED, that the NLC recognizes the need for an effective network of energy infrastructure and urges the federal government to partner and consult with local governments to encourage policies that address barriers to electric infrastructure development and support an efficient process for infrastructure siting and permitting to help the nation achieve a clean energy future.

Submitted by:
Cindy Dyballa, Councilmember, Takoma Park, MD and EENR Chair
Brian Jones, Councilmember, Union City, GA and EENR Vice Chair
Leslie Pool, Councilmember, Austin, TX and EENR Vice Chair
ENERGY AND ENVIRONMENT LEGAL UPDATE

NOTE: At issue in cases 1-10 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 18 similar cases being litigated at various stages, of which NLC is/was participating in 11. (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.

Before moving forward on the merits, litigation from 2019-2023 focused on which court has the authority to hear the cases. In Spring 2023, the U.S. Supreme Court denied cert petitions for several cases, sending them back to the lower courts to be heard on their merits. This is a win for the local government position.

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 Congressional City Conference: In April, the U.S. Supreme Court denied the Defendants’ cert petition and will not take up the case. The case will now move back to the Fourth Circuit to be heard on its merits.

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. Defendants subsequently filed a cert petition with the U.S. Supreme Court, which was denied in April 2023.

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

Update since Congressional City Conference: 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. While there has been no action to date from the Ninth Circuit, with the U.S. Supreme Court’s recent slate of denials for cert petitions, the Ninth Circuit is likely to move forward with these cases.

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 Congressional City Conference: *In April, the U.S. Supreme Court denied the Defendants’ cert petition and will not take up the case. The case will now move back to the Ninth Circuit to be heard on its merits.*

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. Defendants subsequently filed a cert petition with the U.S. Supreme Court, which was denied in April 2023.

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

Update since Congressional City Conference: *In April, the U.S. Supreme Court denied the Defendants’ cert petition and will not take up the case. The case will now move back to the Tenth Circuit to be heard on its merits.*

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 Congressional City Conference: In April, the U.S. Supreme Court denied the Defendants’ cert petition and will not take up the case. The case will now move back to the First Circuit to be heard on its merits.

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. Defendants subsequently filed a cert petition with the U.S. Supreme Court in December 2022, which was denied in April 2023.


Update since Congressional City Conference: None – In August 2021, NLC filed an amicus brief in this case. The Eighth Circuit heard oral argument on March 15, 2022. In May, the Eighth Circuit denied the motion to stay the mandate pending the filing and disposition of a cert petition. The Defendants are likely to now file a motion for a stay with the U.S. Supreme Court, which would be directed to Justice Kavanaugh as the justice assigned to the Eighth Circuit.

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 Congressional City Conference:** In April, the U.S. Supreme Court denied the Defendants’ cert petition and will not take up the case. The case will now move back to the Ninth Circuit to be heard on its merits.

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. Defendants subsequently filed a cert petition with the U.S. Supreme Court in December 2022, which was denied in April 2023.

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

**Update since Congressional City Conference:** In April, the U.S. Supreme Court denied the Defendants’ cert petition and will not take up the case. The case will now move back to the Third Circuit to be heard on its merits.

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. Defendants file a cert petition in this case with the U.S. Supreme Court in December 2022, which was denied in April 2023.

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

**Update since Congressional City Conference:** In April, the U.S. Supreme Court denied the Defendants’ cert petition and will not take up the case. The case will now move back to the Third Circuit to be heard on its merits.

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.
Defendants file a cert petition in this case with the U.S. Supreme Court in December 2022, which was denied in April 2023.

10. **District of Columbia v. Exxon Mobil – DC Circuit**

**NEW:** In April, NLC filed an amicus brief in this case supporting DC’s position to remand the case to state court.

In this case, the City of Washington, DC filed a lawsuit against oil and gas companies for allegedly violating the Consumer Protection Procedures Act by misleading consumers about “the central role their products play in causing climate change.” In this case, the DC Circuit is reviewing a remand order.

**NOTE:** Cases 11-13 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.

11. **California v. Chao et al. – DC District Court – Preemption**

**Update since Congressional City Conference:** 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.”

49
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.”


**Update since Congressional City Conference:** *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 NHSTSA 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.

Update since Congressional City Conference: 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.


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.

15. **California Restaurant Association v. Berkeley – Ninth Circuit**

**Update since Congressional City Conference:** In April, the Ninth Circuit [invalidated](#) Berkeley’s prohibition on natural gas infrastructure in new buildings. In May, the City of Berkeley filed a petition to have the case reviewed en banc. NLC filed an [amicus brief](#) in support of the petition in June.
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. NLC filed an amicus brief in this case in February 2022. Oral argument was heard in May 2022.


**Update since Congressional City Conference:** In June, the U.S. Supreme Court reversed a Ninth Circuit decision and disregarded Justice Kennedy’s “significant nexus” test established under the 2006 Rapanos case. Read more here.

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 heard oral argument in October 2022.

**Facts:** The Sacketts 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 that 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.*
17. Texas v. EPA – Fifth Circuit

Update since Congressional City Conference: None—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.


PERMITTING REFORM STATE OF PLAY

Part 1 – Existing NLC Policy

Section 2.02 Energy; C. Federal Policies; 3. Infrastructure Siting

The nation’s cities recognize the need for an effective network of energy infrastructure. NLC urges the federal government to partner and consult with local governments to determine the area for infrastructure siting that would best meet the needs of the community. NLC strongly opposes any legislation that preempts local decision-making authority on the siting and permitting of oil refineries, pipelines, electric transmission lines, and nuclear and other energy-related facilities. This type of action would threaten to dismantle longstanding environmental laws that protect the health and welfare of the public, and constrain the ability of local residents to participate through their locally elected officials to tailor policies to meet their needs.

Section 2.02 Energy; F. Electricity; 1. Infrastructure

NLC supports federal incentives for all generators and transmission grid owners to create new infrastructure, consistent with current environmental regulations and laws. To ensure that the nation has an adequate and reliable national transmission grid, the federal government should coordinate with state and local governments. NLC opposes any attempts to preempt local authority in siting energy producing facilities or transmission grids.

Part 2 – Congressional Legislation

- Building Integrated Grids With Inter-Regional Energy Supply (BIG WIRES Act) – sponsored by Sen. John Hickenlooper (D-CO) and Rep. Scott Peters (D-CA) – Directs the Federal Energy Regulatory Commission (FERC) to undergo a rulemaking process to better coordinate construction of an interregional transmission system to minimize haphazard and patchwork upgrades to the grid. Requires regions to submit plans to FERC outlining how they will meet a new 30% minimum peak demand transfer requirement between each other. If regions fail to submit plans that satisfy the requirement, FERC is empowered to act as a backstop and do so in their stead. (See press release and one pager; text not yet available.)

- Facilitating America’s Siting of Transmission and Electric Reliability (FASTER) Act, S. 1804 – sponsored by Sen. Martin Heinrich (D-NM) – Establishes FERC as the lead agency to coordinate state, local and federal for National Interest Electric Transmission Facilities, giving them authority to site and permit certain high-voltage lines (while maintaining state-led permitting in current law that provides states with one year to issue or deny a permit before FERC can issue a permit). Incentivizes communities and project sponsors to negotiate an enforceable Community Benefits Agreement by streamlining the grant application process for DOE’s Transmission Siting and Economic Development Grant program. (See press release with links to text, fact sheet and section-by-section summary.)
• Interregional Transmission Planning Improvement Act, S. 1748 - sponsored by Sen. Martin Heinrich (D-NM) – Directs FERC to create an interregional transmission planning process and ensure that cost allocation methodologies consider economic, reliability and operational benefits. (See press release with link to text.)


• SolSmart (funded project) – NLC provides direct technical assistance to municipalities to help prepare communities for the solar energy transition, designating 20 new cities per year. A team of national experts works with communities to identify local priorities and strategies to help make solar energy more affordable and accessible for residents and businesses. Successful communities are awarded a SolSmart designation of Bronze, Silver, Gold or Platinum.

• Wind (proposed project) – The DOE Wind Energy Technology Office opportunity would “help improve permitting processes to make distributed wind more accessible to communities where distributed wind can be cost-effectively and equitably deployed. Distributed wind energy—wind that provides power for nearby homes, farms, schools, and businesses—can help communities transition to low-carbon energy. However, established zoning and permitting processes for distributed wind are not present in all municipalities, and others have burdensome requirements that discourage development.” If awarded this contract, NLC would provide hands on technical assistance for local leaders to “reduce costs and accelerate the equitable deployment of community-based clean energy” and “support innovative zoning and permitting approaches for distributed wind projects” that build on approaches currently being implemented with support from NLC through the SolSmart program in communities across the U.S.

• EV Smart (proposed project) – The primary project goal of our proposed approach is to distill and diffuse leading local government policies and practices for public and private EV infrastructure that will advance the growing marketplace for EVs while also ensuring that the historic benefits from the generational investment in clean energy benefit all stakeholders especially traditionally underrepresented communities. Through a comprehensive national outreach, training, technical assistance, action research, and prize program, NLC would work to catalyze the reduction of soft costs for public and private EV infrastructure and to enable widespread deployment.
Report Finds 228 Local Restrictions Against Siting Wind, Solar, and Other Renewables, as Well as 293 Contested Projects

by Matthew Eisenson | Published May 31, 2023
Sabin Center Blog

Renewable energy projects have encountered significant opposition in at least 45 states. In addition, at least 228 local laws, ordinances and policies have been enacted in 35 states to restrict renewable energy projects, according to a report, *Opposition to Renewable Energy Facilities in the United States*, issued on May 31 by Columbia Law School’s Sabin Center for Climate Change Law.

This report updates and considerably expands two previous Sabin Center reports, published in September 2021 and March 2022. The report’s state-by-state catalog describes local and state restrictions against the siting of renewable energy projects (primarily wind and solar), as well as instances of organized opposition against individual projects from 1995 through May 2023. As the report describes, in many instances, local opposition has led to cancellations, delays, or reductions in the size of projects. The report also describes, where applicable, state laws that preempt or curtail local restrictions.

The 228 local restrictions described in this report include 59 new restrictions (adopted post-March 2022) and 58 previously overlooked restrictions (adopted pre-March 2022). The 9 state-level restrictions in this report include 1 newly adopted restriction (post-March 2022) and 3 previously overlooked restrictions (pre-March 2022). The 293 contested projects in this report include 82 new controversies (post-March 2022) and 24 previously overlooked controversies (pre-March 2022). These top-line figures, however, are only indicative. While the report includes all of the restrictions and controversies that we have determined meet our criteria, it does not purport to be exhaustive.

Highlights from the report include:

- Until October 2022, the Ohio Power Siting Board had never rejected an application for a solar energy project. Since October 2022, however, the Board has rejected at least three such applications (*Birch Solar*, *Cepheus Solar*, and *Kingwood Solar*). In addition, between April 2022 and March 2023, at least 11 counties in Ohio adopted binding resolutions to prohibit large renewable energy projects in all of their unincorporated territories or very large swaths of those territories. There are now at least 13 counties in Ohio that have adopted such resolutions since October 2021, when a state law allowing counties to establish restricted areas went into effect (these include *Allen, Auglaize, Butler, Crawford, Columbiana, Hancock, Knox, Logan, Marion, Medina, Ottawa, Seneca*, and *Union*). See, for example, a map of restricted areas in Allen County, Ohio below. [omitted for space.]
- In March 2023, Buffalo County, Nebraska, adopted an exceptionally restrictive wind ordinance, which requires that turbines be set back 3 miles from the nearest property lines and 5 miles from any village or city. At the time of publication, at least 8 other Nebraska counties also require that wind turbines be set back by at least 1 mile from either property lines or dwellings, including *Wheeler* (5 miles from dwellings), *Thomas* (3 miles from property lines), *Hamilton* (2 miles from property lines), *Dakota* (2 miles from dwellings), *Brown* (1 mile from property lines), *Gage* (1 mile from property lines), *Otoe* (1 mile from property lines), and *Jefferson* (1 mile from dwellings). Meanwhile, *Stanton County* has effectively banned commercial wind projects altogether.
In Virginia, at least 7 counties adopted restrictive solar ordinances or moratoria between June 2022 and May 2023 (these include Charlotte, Culpeper, Franklin, Halifax, Page, Pittsylvania, and Shenandoah). Some of these are exceptionally burdensome. For example, Pittsylvania County now prohibits the construction of any solar farm within 5 miles of any other solar farm and limits utility-scale solar projects to 2% of the total acreage of any zoning district. Franklin County has imposed a countywide cap of 1,500 acres for all ground-mounted solar projects.

Across the Midwest, there has been a growing movement to prohibit solar energy systems from farmland. Since September 2022, at least two Michigan townships (LaSalle and Milan) have adopted ordinances limiting utility-scale solar energy projects to industrial districts and prohibiting such projects on land zoned for agricultural use. In neighboring Wisconsin, four towns in Dane County (Deerfield, Dunn, Springfield, and Westport), have policies to restrict solar from agricultural land.

These and other instances of local opposition to renewable energy facilities across the United States present a serious obstacle to meeting state and federal climate targets and reducing greenhouse gas emissions.

The report – *Opposition to Renewable Energy Facilities in the United States* – was prepared as part of the work of the Sabin Center’s Renewable Energy Legal Defense Initiative (RELDI). RELDI conducts independent research on issues related to siting renewable energy infrastructure and provides pro bono legal representation to community groups and local residents who support renewable energy developments in their communities. More information about RELDI can be found [here](#).
Austin EV Fast Chargers Resolution

WHEREAS, the City of Austin has long been at the forefront of combating climate crisis by creating policies that reduce carbon emissions, and improve the environment and quality of life for residents; and

WHEREAS, the mission of Austin Energy is to safely deliver clean, affordable, reliable electricity and excellent customer service; and

WHEREAS, the vision of Austin Energy is to drive customer value in energy services with innovative technology and environmental leadership; and

WHEREAS, the City, as a leader in innovation, routinely identifies and tests solutions to complex challenges facing the City; and

WHEREAS, the Austin Climate Equity Plan includes goals of equitably reaching net-zero community-wide greenhouse gas emissions by 2040 with a strong emphasis on cutting emissions by 2030, and furthermore getting to net-zero means the Austin community would reduce our use of fossil fuels to nearly zero; and

WHEREAS, in 2019, Council approved Resolution No. 20190509-020 which, among other things, directed an analysis of transportation electrification and action planning to be included in the subsequent iteration of the City of Austin Community Climate Plan, including grid integration that may include demand response capabilities and managed charging; and

WHEREAS, the Austin Climate Equity Plan includes a goal that the City have a “compelling and equitably distributed mix of level 1, 2, and DC fast-charging stations to accommodate 40% of total vehicle miles traveled in the city”; and

WHEREAS, the time to a full charge for an electric vehicle at the different levels of chargers depends on the type and can take as little as 30 minutes or up to several hours; and

WHEREAS, the majority of chargers available to the public are Type 2 chargers, which can take multiple hours to supply a full charge; and
WHEREAS, the number of “fast chargers” within the city is limited to a handful of charging stations located primarily in the center of town; and

WHEREAS, Austin Energy continues to work with multi-family developments to install charging stations that are accessible to their residents, but these chargers are currently limited to Type 2 and may not provide enough access given the growing number of electric vehicles; and

WHEREAS, Tesla charging stations, available throughout the city, offer fast charging but can be used only by Tesla vehicles at this time; and

WHEREAS, although Tesla vehicles make up 70% of the electric vehicles today, other car manufacturers are rapidly releasing their electric vehicle models and the need for fast charging stations will continue to grow; and

WHEREAS, the number of electric vehicles in Austin continues to accelerate, growing by nearly 40% over the past year; and

WHEREAS, recent federal action provides significant funding opportunities for the City now and in the near future for charging stations, including $20M of National Electric Vehicle Infrastructure (NEVI) Formula funding to CAMPO, $2.5B in NEVI Clean Fuel Infrastructure Discretionary grants that is open to the City, and credits up to $100,000 per charging station; and

WHEREAS, while reliability of public charging stations is key to achieving the Climate Equity Plan goal, a recent national survey found that 21% of charging attempts failed in the third quarter of 2022; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Manager is directed to:

• Develop a vision plan for equitable distribution of public charging stations throughout the City, including both DC fast chargers and Level 2 chargers, that:

  o achieves the goals of the Climate Equity Plan,
  
  o provides a robust charging station network that reflects equity, sustainability, resilience, housing, and innovation, by including the Equity Officer, Sustainability Officer, and Resilience Officer in the discussion,
o considers using publicly accessible City-owned property to host charging stations including charging infrastructure currently used by City Fleet,
o incorporates an analysis of multi-family charging access and develops a plan to provide Level 2 charging stations within ¼ mile of multi-family housing.

- Establish priorities for an initial 3-year implementation phase of the vision, with actionable funding options that include Federal incentives and grant opportunities.

**BE IT FURTHER RESOLVED:**

The City Manager is directed to coordinate with local and regional partners to develop a shared charging resource model for their fleets. Those partners should include but not be limited to Travis County, Capital Metro, Austin Independent School District, and all other school districts having territory within city boundaries.

**BE IT FURTHER RESOLVED:**

The City Manager is directed to prepare a report on the uptime and reliability achieved with the equipment in the Plug-In Everywhere network over the past year, as well as time-to-repair data and ongoing levels of effort and budget for preventative maintenance of the system.

**BE IT FURTHER RESOLVED:**

The City Manager is directed to present a plan to achieve this direction along with timelines at a meeting of the Austin Energy Utility Oversight Committee on or before September 19, 2023.

ADOPTED: ____________, 2023      ATTEST: ____________________________
Myrna Rios
City Clerk
SPEAKER BIOS

Dr. Adrienne Greve is an Associate Professor in the City & Regional Planning Department at California Polytechnic State University (Cal Poly) in San Luis Obispo, CA. Her research focuses on climate change and the planning response to it from greenhouse gas reduction to climate adaptation and climate-exacerbated hazards planning. She served as a Visiting Research Professor at the Research Center for Disaster Reduction Systems at Kyoto University in 2013 & 2014. Prior to her time in Japan, Adrienne served as co-principle investigator and project manager for development of a California Climate Adaptation Planning Guide for the California Office of Emergency Services and authored a book titled *Local Climate Action Planning* (2012) in collaboration with two co-authors.

Adrienne has also been awarded contracts to develop climate action plans (CAPs) as part of the two-quarter studio sequence: Benicia, CA; San Luis Obispo, CA; and Cal Poly. She has worked and conducted research domestically, as well as in Japan (Tohoku Coast) and sub-Saharan Africa.

She holds a PhD in Urban Design and Planning from the University of Washington, a master's degree in Bioresource Engineering from Colorado State University, and a bachelor's degree in Agricultural and Biological Engineering from Cornell University.

Alexis Sulentic is Senior Manager, External Affairs for the Edison Electric Institute (EEI). EEI is the association that supports regulated energy companies across all 50 states and the District of Columbia. She currently focuses on local affairs and works with city and county commissioners, mayors, and city councilmembers to support the industry’s broader goal of getting our energy as clean as we can, as fast as we can, without compromising the resiliency and reliability of the system.

Prior to her current role, Alexis held positions within EEI in the Office of the General Council and the Regulatory Affairs departments supporting EEI’s engagement on economic regulatory issues with state public utility commissions.

Alexis holds dual bachelors Degrees in International Affairs and Sociology from Florida State University, a Juris Master from Florida State University College of Law, and is pursuing (and nearly finished with!) a Masters in Business Administration with a focus in Corporate Responsibility from George Washington University School of Business.
Dr. Jan Whittington is an Associate Professor of the Department of Urban Design and Planning, the founding Director of the Urban Infrastructure Lab, Associate Faculty at the Tech Policy Lab, at the University of Washington, Seattle, and a former scientist and strategic planner for the international infrastructure giant, Bechtel Corporation. She is also a Senior Non-Resident Fellow at the Brookings Institution, in Washington D.C., in their Metropolitan Policy program.

Dr. Whittington is a global expert in infrastructure planning and economics, smart cities, climate-smart capital planning, and city climate finance. For more than a decade, her research has been supported by the UNFCCC Global Environment Facility, the World Bank, United Nations, C40, Rockefeller Foundation, and a wide variety of regional banks. For the World Bank’s City Creditworthiness Initiative, she has worked with municipalities in 30 countries at the intersection of climate change and capital planning, reaching more than 700 chief financial and planning officers in 300 cities across the global south. She is a member of the Association of the Collegiate Schools of Planning Presidential Task Force on Climate Justice, and most recently invited by the U.S. Environmental Protection Agency to join a task force on climate resilience and finance for water utilities. In 2021, on behalf of the World Bank and the City Climate Finance Leadership Alliance, she co-authored the State of City Climate Finance Report, featuring methods she developed for mainstreaming climate action within city planning, budgeting, and finance.

Her professorship at the University of Washington began in 2005. Over the years she has taught courses in city planning, infrastructure planning and economics, public finance, water systems planning and economics, environmental science and policymaking, smart city technology, infrastructure megaproject development, energy system development, and urban climate solutions. Her PhD (2008) is in City and Regional Planning from the University of California, Berkeley. She holds Bachelor’s degrees in Biology and Environmental Studies from the University of California, Santa Cruz (1987) and a Masters from California State Polytechnic University, San Luis Obispo (1993).
2023 Energy, Environment & Natural Resources (EENR) Committee Roster

Leadership
- Chair Cindy Dyballa, Councilmember, City of Takoma Park, MD
- Vice Chair Brian Jones, Councilmember, City of Union City, GA
- Vice Chair Leslie Pool, Council Member, City of Austin, TX

Members
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- Mila Besich, Mayor, Town of Superior, AZ
- Bridget Brooks, Councilor, City of Tualatin, OR
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- Deborah Calvert, Council Member, City of Minnetonka, MN
- TJ Cawley, Mayor, Town of Morrisville, NC
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- Rick Elumbaugh, Mayor, City of Batesville, AR
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- Mina Layba, Legislative Affairs Manager, City of Thousand Oaks, CA
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- Billy Pearson, Council Member, City of Lincoln, AL
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