

**Environmental Law and Policy Annual Review Top 20 Article Selections
2019 – 2020 Academic Year***

Author	Title	Citation and URL	Topic	The Big Idea
Burger, Michael et al.	<i>The Law and Science of Climate Change Attribution</i>	45 COLUM. J. ENVTL. L. 57 https://journals.library.columbia.edu/index.php/cjel/article/view/4730/2118	Climate Change	Based on a multidisciplinary team’s thorough assessment of the state of climate attribution science, which links climate change and its impacts to anthropogenic sources of greenhouse gas emissions, policymakers and litigants should: 1) communicate climate research to a broader audience; 2) link individual studies to fully establish causal chains; 3) engage stakeholders in research efforts; 4) pursue further research to reduce uncertainties associated with key findings; and 5) use attribution research in litigation to establish standing and justifiability, demonstrate causation, and prove obligations and redressability.
Condon, Madison	<i>Externalities and the Common Owner</i>	95 WASH. L. REV. 1 https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=5103&context=wlr	Governance/Climate Change	A growing number of institutional investors, by virtue of holding a very large percentage of the shares in multiple industry competitors, have incentives to engage in firm-level climate change activism that reflects portfolio-level motivations to maximize profit by reducing the negative externalities (e.g., carbon emissions) of the firms in their portfolios rather than conforming to traditional expectations of profit-maximizing shareholders, and corporate law should acknowledge and engage with this implication of common ownership.
Gosman, Sara	<i>Planning For Failure: Pipelines, Risk, and the Energy Revolution</i>	81 OHIO ST. L.J. 349 https://kb.osu.edu/bitstream/handle/1811/91856/1/OSLJ_V81N3_0349.pdf	Energy	Pipeline safety and siting frameworks should be consolidated into one risk governance system administered by the Pipeline and Hazardous Materials Safety Administration to improve overall economic efficiency and to reduce the number of accidents and emergency response measures, as well as the risk management burden on communities and landowners.
Grannis, Jessica	<i>Community-Driven Climate Solutions: How Public-Private Partnerships with Land Trusts Can Advance Climate Action</i>	44 WM. & MARY ENVTL. L. & POL’Y REV. 701 https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1763&context=wmelpr	Land Use/Climate Change	State and local governments can bolster community and conservation land trusts, which are designed to protect and preserve community resources for the benefit of the environment and future generations, through greater public-private partnerships that provide: 1) use or low-cost sale of public lands; 2) start-up funding and financing; and 3) training and technical support.

<p>Kakade, Seema</p>	<p><i>Remedial Payments in Agency Enforcement</i></p>	<p>44 HARV. ENVTL. L. REV. 117 https://harvardelr.com/wp-content/uploads/sites/12/2020/04/44.1-Kakade.pdf</p>	<p>Governance</p>	<p>To foster the use of beneficial environmental projects as part of enforcement actions, Congress should specifically authorize agencies to spend penalty monies received rather than require deposit into the U.S. Treasury; alternatively, federal agencies should strengthen the non-punitive, remedial purpose of projects by: 1) identifying the harms caused by violations more clearly through upfront investment in experts, research, and modeling; 2) explaining in settlement documents the connection between identified harms and proposed projects; and 3) establishing an inter-agency workgroup to discuss best practices.</p>
<p>Klass, Alexandra B.</p>	<p><i>Eminent Domain Law as Climate Policy</i></p>	<p>2020 WIS. L. REV. 49 http://repository.law.wisc.edu/s/uwlaw/media/303591</p>	<p>Climate Change</p>	<p>States that adopt aggressive clean energy laws should simultaneously reform their eminent domain laws—by reducing or eliminating eminent domain rights for fossil fuel projects and expanding eminent domain rights for clean energy projects—to disincentivize fossil fuel energy projects and promote clean energy projects.</p>
<p>Kousky, Carolyn, and Sarah Light</p>	<p><i>Insuring Nature</i></p>	<p>69 DUKE L.J. 323 https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3996&context=dlj</p>	<p>Governance/Climate Change</p>	<p>Insurance can be a valuable instrument to promote ecosystem restoration and conservation in situations in which: (1) a party has an insurable interest, (2) parties are willing to pay the premium associated with insurance, (3) the ecosystem is threatened by random severe peril, (4) the ecosystem can be restored by action funded by an immediate infusion of post-disaster cash, and (5) insurance is cost-effective compared to other mechanisms.</p>
<p>Lee, Charles</p>	<p><i>A Game Changer in The Making? Lessons From States Advancing Environmental Justice Through Mapping and Cumulative Impact Strategies</i></p>	<p>50 ENVTL. L. REP. 10203 (2020) https://heinonline.org/hol/landingpage?handle=hein.journals/elrna50&div=29&id=&page=</p>	<p>Governance</p>	<p>CalEPA and EPA’s successful environmental justice mapping tools, which use quantitative data sets to identify and characterize vulnerable communities disproportionately burdened by multiple pollution sources, provide an easily replicable roadmap for states and localities looking to incorporate environmental justice concerns into public policy by systematically devoting resources of scale to overburdened and vulnerable communities, an imperative now being championed by the new Biden Administration, and addressing land use planning, facility siting and permitting issues.</p>

Leonard III, Louis G.	<i>Under The Radar: A Coherent System of Climate Governance, Driven by Business</i>	50 ENVTL. L. REP. 10546 (2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3598219	Governance/Climate Change	Private efforts to address climate change constitute an effective governance system that can circumvent political polarization, while delivering results aligned with science-based emissions trajectories, if stakeholders: a) advance a collective research agenda aligned with high-level and sector-based roadmaps; b) explore how to ensure accountability; c) foster sustainable funding and business models; and d) design federal policies that accelerate private actions.
Macey, Joshua C.	<i>Zombie Energy Laws</i>	73 VAND. L. REV. 1077 (2020) https://bit.ly/3kM81XI	Energy/Climate Change	Rules designed to protect consumers in the public utility era are being used to protect incumbents and hamstring decarbonization efforts in restructured energy markets and, therefore, regulators should prohibit vertically integrated utilities from using state ratemaking proceedings to recover losses their generators incur in wholesale electricity markets, ease restrictive certificate of public convenience and necessity laws to support additional energy infrastructure, and abandon the filed rate doctrine.
Miller, D.L., and Ryke Longest	<i>Reconciling Environmental Justice with Climate Change Mitigation: A Case Study of NC Swine CAFOs</i>	21 VT. J. ENVTL. L. 523 http://vjel.vermontlaw.edu/files/2020/05/Miller_Final.pdf	Governance/Climate Change	North Carolina should use permitting, enforcement agreements, and/or legislation to require corporate CAFO operators—which have long resisted efforts to address harmful farming practices that disproportionately impact the health of neighboring communities of color—to use profits from new swine waste biogas production to install long-promised clean waste treatment technologies.
Pidot, Justin R.	<i>Contingent Delisting</i>	91 U. COLO. L. REV. 649 http://lawreview.colorado.edu/wp-content/uploads/2020/02/Pidot_Final.pdf	Wildlife	To address both wildlife conservation and economic interests, the Fish and Wildlife Service should implement an Endangered Species Act contingent delisting option that would render certain listings dormant, return jurisdiction to the states, but allow federal intervention if species' conditions deteriorate.
Ruple, John C., and Kayla M. Race	<i>Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases</i>	50 ENVTL. L. 479 https://law.lclark.edu/life/files/30163-50-2-ruple	Governance	Based on a quantitative study of 1,499 federal cases finding that the NEPA litigation burden is overstated, improvements to the NEPA process (1) should include standardized and more robust NEPA document collection across all agencies; and (2) should not include deadlines and page limits for EISs, as expedited analyses more frequently result in litigation and raise questions of whether the agency took a sufficiently “hard look.”

<p>Schanzenbach, Max M., and Robert H. Sitkoff</p>	<p><i>Reconciling Fiduciary Duty And Social Conscience: The Law and Economics of ESG Investing by a Trustee</i></p>	<p>72 STAN. L. REV. 381 https://stanford.io/3mNj7vQ</p>	<p>Governance</p>	<p>Under American trust fiduciary law, a trustee may engage in ESG investing if: (1) the trustee reasonably concludes that ESG investing will benefit the beneficiary by improving risk-adjusted returns and the trustee’s exclusive motive for such investing is to obtain this direct benefit; or (2) for purposes other than improving risk-adjusted returns but only to a limited extent and if such purposes are authorized by the terms of the trust or by the beneficiaries.</p>
<p>Slobodian, Lydia</p>	<p><i>Defending the Future: Intergenerational Equity in Climate Litigation</i></p>	<p>32 GEO. ENVTL. L. REV. 569 https://bit.ly/2JbEpF1</p>	<p>Climate Change</p>	<p>Incorporating the concept of “intergenerational equity” into established legal doctrine about fundamental rights and the public trust can serve as a meaningful tool for rhetorically framing climate change litigation brought on behalf of current and future generations, thereby shifting international legal paradigms regarding obligations and remedies.</p>
<p>Sourgens, Frédéric G.</p>	<p><i>Geo-Markets</i></p>	<p>38 VA. ENVTL. L.J. 58 http://www.velj.org/uploads/1/2/7/0/12706894/38.1_sourgens_final_formatted.pdf</p>	<p>Climate Change</p>	<p>Geomarkets, in which government issuers pay a guaranteed price per ton of GHG “produced” and holders of freely transferable licenses agree to a GHG removal quota, would 1) address the total accumulation of atmospheric GHGs; 2) provide capital with which governments can finance additional market mitigation efforts, and 3) redistribute how the costs of net reductions in GHG emissions are borne to buyout and overcome reliance on fossil fuel infrastructures—these markets should also be integrated with a solar radiation management market as a stop gap measure against worst-case climate change scenarios.</p>
<p>Van Loo, Rory</p>	<p><i>The New Gatekeepers: Private Firms as Public Enforcers</i></p>	<p>106 VA. L. REV. 467 https://www.virginialawreview.org/sites/virginialawreview.org/files/VanLoo_Book.pdf</p>	<p>Governance</p>	<p>The regulatory state has increasingly conscripted large companies to become “enforcer-firms” to fill regulatory gaps left by resource-limited regulatory agencies with less sophisticated industry knowledge, but the role of enforcer-firms should be carefully designed—whether firms are drafted into a rulemaking or enforcement role—to ensure that the enforcer-firms are accountable to the public and provide adequate transparency.</p>

<p>Webb, Romany M.</p>	<p><i>Climate Change, FERC, and Natural Gas Pipelines: The Legal Basis For Considering Greenhouse Gas Emissions Under Section 7 of the Natural Gas Act</i></p>	<p>28 N.Y.U. ENVTL. L.J. 179 https://bit.ly/34PE6IE</p>	<p>Energy/Climate Change</p>	<p>In evaluating whether new pipelines serve public convenience and necessity, the Federal Energy Regulatory Commission (FERC) reports that it considers both environmental and economic factors; however, data analysis of approvals between 2014-2018 shows that FERC frequently justifies certification decisions solely on economic grounds, which is a violation of section 7 of the Natural Gas Act—going forward, FERC must be satisfied that the economic benefits outweigh potential climate change and other environmental impacts in approving new pipelines.</p>
<p>Welton, Shelley</p>	<p><i>Decarbonization in Democracy</i></p>	<p>67 UCLA L. REV. 56 https://www.uclalawreview.org/wp-content/uploads/secure-pdfs/2020/07/Welton-67-1.pdf</p>	<p>Energy/Climate Change</p>	<p>Scholars and policymakers have underestimated the ways in which more citizen engagement might strengthen, not weaken, climate change policies, through measures including: (1) requiring utilities to report on citizen preferences in their integrated resource plans, and (2) putting more control over energy sourcing decisions in the hands of local communities.</p>
<p>Wyman, Katrina M., and Danielle Spiegel-Feld</p>	<p><i>The Urban Environmental Renaissance</i></p>	<p>108 CALIF. L. REV. 305 https://bit.ly/35LQUyM</p>	<p>Governance</p>	<p>Cities have emerged as leaders in the development of environmental policies, but face obstacles to achieving their goals, such as the pervasive threat of preemption and limits upon their taxation powers, that could be reduced if 1) cities frame environmental pricing regulations as fees, not taxes; 2) state constitutional amendments and legislation allocate greater taxation powers to local jurisdictions; and 3) federal courts take a more discerning approach to interpreting the preemptive force of federal environmental statute.</p>

* Reviewed articles include those posted on Westlaw for the period August 1, 2019 to July 31, 2020. The Environmental Law and Policy Annual Review methodology provides additional details: on the journals included, handling of embargoed articles and the dates key word searches were performed: https://www.eli.org/sites/default/files/docs/elpar/elpar_methodology_2020-2021.pdf