

**Environmental Law and Policy Annual Review Top 20 Article Selections
2020 – 2021 Academic Year***

Author(s)	Title	Citation and URL	Topic	The Big Idea
Adelman, David, E., and Jori Reilly-Diakun	<i>Environmental Citizen Suits and the Inequities of Races to the Top</i>	92 U. COLO. L. REV. 377 https://lawreview.colorado.edu/printed/environmental-citizen-suits-and-the-inequities-of-races-to-the-top/	Governance (enforcement and compliance)	New empirical research demonstrates that citizen suits are filed in a small number of states with strong public support for environmental policies and robust state programs—not in states where policies and enforcement lag; several policies are proposed, both within and outside of the federal government, to mitigate the inequitable distribution of citizen suits and the resource limits that so often limit access to them.
Arnold, Craig, A.	<i>Resilience Justice and Community-Based Green and Blue Infrastructure</i>	45 WM. & MARY ENVTL. L. & POL'Y REV. 665 https://bit.ly/3GRo5CN	Governance (infrastructure/environmental justice)	To ensure more equitable and community-based green and blue infrastructure, co-governance systems of shared decision-making authority between government and low-income communities of color should be established and characterized by “resilience justice”—which focuses on community adaptive capacities and vulnerabilities to shocks and changes—and should be effectuated by a set of newly-developed design and implementation principles that are based on over 300 studies of community resilience.
Camacho, Alejandro, E., and Nicholas Marantz	<i>Beyond Preemption, Toward Metropolitan Governance</i>	39 STAN. ENVTL. L.J. 125 https://www-cdn.law.stanford.edu/wp-content/uploads/2020/11/Metropolitan-Governance-As-Sent-to-Printer.pdf	Governance (states)/Climate Change/Water	Policymakers can promote more effective metropolitan governance on a range of intractable social problems by: 1) distinguishing the extent authority is centralized from the levels of overlap and coordination; and 2) leveraging targeted reallocations of authority to destabilize existing municipal incentives, simultaneously promoting regional goals while preserving many benefits of local democracy.
Christiansen, Matthew, R., and Joshua Macey	<i>Long Live the Federal Power Act's Bright Line</i>	134 HARV. L. REV. 1360 https://harvardlawreview.org/wp-content/uploads/2021/02/134-Harv.-L.-Rev.-1360.pdf	Energy/Governance (courts)	Although many have suggested that the Federal Power Act's (FPA) bright line division between federal and state jurisdiction is eroding, a trio of recent Supreme Court cases reaffirms that the bright line construct remains alive and well, providing an organizing principle for resolving jurisdictional disputes under the FPA in a way that accommodates the ongoing transition to the electricity grid of the future.

<p>Flatt, Victor, B.</p>	<p><i>Holding Polluters Accountable in Times of Climate and COVID Risk: The Problems with “Emergency” Enforcement Waivers</i></p>	<p>12 SAN DIEGO J. CLIMATE & ENERGY L. 1 https://digital.sandiego.edu/jcel/vol12/iss1/2/</p>	<p>Governance (enforcement and compliance)</p>	<p>To combat the misuse of emergency enforcement waivers by the Environmental Protection Agency and state governments, which can result in substantial environmental harms, particularly to vulnerable communities, policymakers should: 1) restrict discretion and promulgate rules and/or guidance requiring regulated entities to prepare for disasters; and 2) initiate federal limitations on states’ emergency suspension of federal laws.</p>
<p>Griffith, Janice, C.</p>	<p><i>Evolution of Metropolitan Planning Organizations (MPOs) into Multi-Functional Regional Roles</i></p>	<p>106 IOWA L. REV. 2241 https://ilr.law.uiowa.edu/print/volume-106-issue-5/evolution-of-metropolitan-planning-organizations-mpos-into-multi-functional-regional-roles/</p>	<p>Governance (states, infrastructure)/ Climate Change/Land Use</p>	<p>Metropolitan planning organizations could play a vital role in addressing infrastructure and climate change challenges, provided they are: 1) authorized to engage in and implement multipurpose planning (rather than single-function transportation planning); 2) given an independent funding source; 3) granted some land use powers; and 4) reconstituted to reflect proportional representation and include metropolitan geographic area representatives on their boards.</p>
<p>Hutchins, Todd, E.</p>	<p><i>Crafting an International Legal Framework for Renewable Energy on the High Seas</i></p>	<p>51 ENVTL. L. 485 https://law.lclark.edu/live/files/32009-51-2-hutchinsfinalpdf</p>	<p>Governance (international)/ Energy</p>	<p>To realize the clean energy potential of ocean renewable energy (ORE) technologies such as floating wind turbines, wave energy devices, and biomass farms, the United Nations should adopt an internationally binding agreement to govern future ORE development by extending coastal state exclusive economic zones for OREs above the extended continental shelf and creating unitary global authority to manage resources about the deep seabed beyond national jurisdiction.</p>
<p>Jacobs, Sharon, B.</p>	<p><i>Agency Genesis and the Energy Transition</i></p>	<p>121 COLUM. L. REV. 835 https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=2441&context=articles</p>	<p>Energy/Governance (administrative law, states)</p>	<p>Although creation of new agencies (or “agency genesis”) is often embraced by policymakers and politicians, as it signals attention to perceived government failures and typically triggers administrative vitality, the most efficient way to address the transition to decarbonized energy may be to reform existing agencies rather than to create new administrative bodies.</p>
<p>Klass, Alexandra, B., and Shantal Pai</p>	<p><i>The Law of Energy Exports</i></p>	<p>109 CALIF. L. REV. 733 https://www.californiaalawreview.org/print/the-law-of-energy-exports/</p>	<p>Energy/Governance (courts, states)</p>	<p>An analysis of the newly-identified and evolving “law of energy exports” indicates that states and local governments can prevail in their efforts to reject proposed fossil fuel export facilities under existing dormant Commerce Clause doctrine, provided they: 1) do not favor in-state economic interests and; 2) do point to particular environmental and public health justifications.</p>

Lee, Jaime, A.	<i>Turning Participation Into Power: A Water Justice Case Study</i>	28 GEO. MASON L. REV. 1003 https://scholarworks.law.ubalt.edu/all_fac/1116/	Governance (environmental justice)/Water	A revamped model of participatory governance—the Constituent Empowerment Model—could yield more just water policy by affirmatively shifting power to the voices of marginalized constituents through operationalized (feasibly realized) participation, constituent primacy, and structural accountability, as indicated by a case study of Baltimore’s “Advocate” dispute resolution process.
Mills, Monte, and Martin Nie	<i>Bridges to a New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands</i>	44 PUB. LAND & RESOURCES L. REV. 49 https://scholarworks.umd.edu/cgi/viewcontent.cgi?article=1741&context=plrlr	Land Use/Governance (tribes)	The U.S. can meaningfully connect public land law to the federal government’s long-standing trust-based and treaty-based responsibility to promote the sovereign and cultural interests of Native Nations through a “strategic playbook” that includes numerous executive authorities, such as protocols for tribal involvement in monument designations under the Antiquities Act, as well as potential Congressional actions, such as place-based legislation, in order to enhance and engage in a new era of tribal co-management across the federal public land system.
Owen, Dave	<i>Law, Land Use, and Groundwater Recharge</i>	73 STAN. L. REV. 1163 https://review.law.stanford.edu/wp-content/uploads/sites/3/2021/05/Owen-73-Stan.-L.-Rev.-1163.pdf	Land Use/Water	While regulatory systems for groundwater appropriately focus on pumping water out of the ground, they also should address the many ways in which human land use decisions influence—positively and negatively—groundwater recharge processes.
Oyewunmi, Tade	<i>An Instrumental Perspective on Power-to-Gas, Hydrogen, and a Spotlight on New York’s Emerging Climate and Energy Policy</i>	38 PACE ENVTL. L. REV. 221 https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1848&context=peir	Energy	Incentivizing power-to-gas systems and hydrogen-compatible networks within New York’s existing regulatory framework—by amending the definition of a Tier 1 renewable energy credit and by broadening requirements surrounding participation in wholesale capacity and ancillary service markets—would facilitate integration of clean energy into the grid and help New York solve the “energy trilemma” that includes curtailment and energy waste, stranded utility assets, low reliability, and high cost.

<p>Pappas, Michael, and Victor Flatt</p>	<p><i>Climate Changes Property: Disasters, Decommmodification, and Retreat</i></p>	<p>82 OHIO ST. L.J. 331 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=354432_0</p>	<p>Natural Resources/ Governance (insurance)/Climate Change</p>	<p>To address costly, repetitive losses from natural disasters, the concept of adjustment failure costs—costs that arise from difficulties in markets reaching efficiency—should inform federal disaster response policies and, accordingly, the federal government should modify the National Flood Insurance Program to address the moral hazard that perpetuates risky investments, reform the Hazard Mitigation Grant Program to reduce delays, and, along with localities, increase funding and eligibility for buyout programs, tie buyout compensation to pre-flooding property values, and block commodification of properties by, for example, removing parcels from the real estate market.</p>
<p>Peskoe, Ari</p>	<p><i>Is the Utility Transmission Syndicate Forever?</i></p>	<p>42 ENERGY L.J. 1 https://www.ebanet.org/assets/1/6/5_5bPeskoe%5d%5b1-66%5d.pdf</p>	<p>Energy</p>	<p>The Federal Energy Regulatory Commission should revive its efforts to wrest control of the nation’s high-voltage electric transmission lines from investor-owned utilities, who are impeding development of large-scale transmission needed to facilitate the clean energy transition.</p>
<p>Righetti, Tara, Jesse Richardson, Kris Koski, and Sam Taylor</p>	<p><i>The Carbon Storage Future of Public Lands</i></p>	<p>38 PACE ENVTL. L. REV. 181 https://bit.ly/3GMT_Ahg</p>	<p>Land Use/Climate Change</p>	<p>Vast federal public lands can provide the carbon-storage space needed to meet Paris commitments if the government: 1) clarifies processes, rules, and regulations regarding federal pore space utilization; 2) creates categorical National Environmental Policy Act exclusions to reduce permitting requirements; 3) settles pore space ownership of split estates; and 4) incorporates geologic storage in resource planning.</p>
<p>Strine, Jr., Leo, E., Kirby Smith, and Reilly Steel</p>	<p><i>Caremark and ESG, Perfect Together: A Practical Approach to Implementing an Integrated, Efficient, and Effective Caremark and EESG</i></p>	<p>106 IOWA L. REV. 1885 https://ilr.law.uiowa.edu/assets/Uploads/E2_Strine-Smith-Steel.pdf</p>	<p>Governance (private governance)</p>	<p>Employee, environmental, social, and governance factors (EESG) should be considered an extension of a corporate board’s compliance duties under <i>Caremark</i>, and by integrating compliance and EESG, including delegating compliance and EESG oversight to the same board committee and managers, corporations can capitalize on their existing structures and resources to meet the demand for improved corporate citizenship in a cost-effective manner that does not add undue burdens to employees or directors.</p>

Welton, Shelley	<i>Rethinking Grid Governance for the Climate Change Era</i>	109 CALIF. L. REV. 209 https://www.californiaalawreview.org/print/rethinking-grid-governance/	Energy/Climate Change	To prevent fossil fuel companies from obstructing the clean energy transition through Regional Transmission Organizations (RTOs), the Federal Energy Regulatory Commission or Congress should consider: 1) reducing RTOs' responsibilities; 2) increasing avenues for state and federal oversight; 3) monitoring corporate agglomeration; and 4) exploring public ownership or control over the grid.
Wiseman, Hannah, J.	<i>Taxing Local Energy Externalities</i>	96 NOTRE DAME L. REV. 563 https://scholarship.law.nd.edu/ndlr/vol96/iss2/3/	Energy/Governance (states)	A state-administered, adjustable tax on energy development redistributed largely to municipalities, in combination with incentives such as streamlined regulatory review for strong environmental performers, would fill a governance gap and address negative environmental externalities currently imposed on localities—particularly by energy industries with disproportionately harmful local effects.
Wyeth, George	<i>A Framework for Community-Based Action on Air Quality</i>	50 ENVTL. L. REP. 10808 https://drive.google.com/file/d/19tgtedy0w1IEy86gnMm6pr3s87NOnsZd/view	Air/Governance (environmental justice)	To address unusually high air pollution areas, or hotspots, typically in urban areas affected by multiple pollution sources, a new statutory framework should be adopted that identifies these areas and creates a process in which communities and agencies work jointly to develop emissions reduction plans that use all available tools and address many different sources, in a coordinated strategy that has strong community support.

* Reviewed articles include those posted on Westlaw for the period August 1, 2020 to July 31, 2021. 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/files-general/ELPAR%20Methodology%202021-22.pdf> Í