

The Long View

Cities Lead at United Nations' Climate Change Conference in Paris

By Charlie Hales, Portland City Mayor

The world is watching C40 cities like Portland lead on climate action



Pope Francis, leaning on a counter in front of more than 60 world mayors at the Vatican's historic summit on climate change, said, "You world leaders." San Francisco Mayor Ed Lee and I looked around the room; we looked at each other; and we both took a moment to realize the Pope was talking directly to us as "World Leaders." Mayors understand that change and progress is made through their communities. But it was a magical, life-changing moment to hear Pope Francis reaffirm the importance of our local communities' actions as part of a global imperative for humanity.

The world has increased its focus on climate change, and cities have come into the spotlight. Portland is facing this global challenge — embracing the famous adage to "think globally, act locally." We are making significant progress on our climate action goals to reduce carbon emissions. But we can't just be green, we must be green and equitable at the same time. Ensuring access to the tools that make Portland a worldwide leader in sustainability will not only reduce carbon emissions, it will also help us build a Portland that is affordable, livable and equitable — a City of Opportunity.

Cities are vitally important to the success of any global strategy to confront rising temperatures; policy decisions and agreements made at the national level are implemented by local leaders. In December 2015, cities from around the world, including Portland, demonstrated this pivotal role at the United Nations' Climate Change Conference in Paris.

I was honored to join hundreds of world leaders in Paris, including 464 mayors from 115 countries at the Climate Summit for Local Leaders, who were there to affirm their com-

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mitment to address climate disruption; celebrate successful projects and plans; and establish opportunities for action over the next five years and beyond. I was invited as part of the Compact of Mayors, a key initiative launched at the UN Climate Summit in September 2014, it is the world's largest collective effort to date by cities to tackle climate change; proactively prepare for its impacts; and regularly track and report progress. Paris was the largest global convening to date of mayors, governors and local leaders focused on climate change. Portland is among the many cities that have committed to becoming more resilient to climate change.

In Paris I discussed how cities can, and are, guiding these efforts, and how Portland is leading the nation, and world, on climate action. I spoke on a "Financing City Action" panel held at Paris City Hall, hosted by C40 Cities Climate Leadership Group (C40), a network of the world's megacities committed to addressing climate change. I was also pleased to represent Portland at the C40 Awards, where Portland was a finalist for Carbon Measurement and Planning — along with Seoul, South Korea, and Vancouver, British Columbia, which took home the top award.

December's conference came on the heels of the momentum from Pope Francis' charge on climate change that calls attention to the threats it poses to all humanity and the planet; President Obama's landmark Clean Power Plan announcement; and was built on the work of C40 cities like Johannesburg, South Africa, which hosted C40 cities in 2014.

Portland has been at the forefront of climate action for decades. We were the first U.S. city to replace a waterfront highway with a park; to bring back the modern streetcar; to adopt the Kyoto climate protocols; to enact a green building policy. Portland has the highest bike ridership in the country. Just last November, Portland was the first city in the nation to block the expansion of fossil-fuel pipelines, tanks and terminals within city limits. We need to keep most carbon in the ground to avoid the catastrophic effects of climate change, so we don't need to expand the infrastructure for its movement. And we're in the process of implementing energy performance benchmarking, which requires large commercial buildings — 20,000 square feet and larger — to track energy performance, calculate energy use and report to the city. The goal is to reduce energy costs for building owners and carbon emissions for the city.

Portland adopted a Climate Action Plan in 1993, a decade before most cities had even begun to grapple with those issues. Through the 1993 plan, Portland and Multnomah County are on track to achieve a 40

percent reduction in carbon emissions by 2030, and an 80 percent reduction by 2050, compared to 1990 levels. Although both population and jobs have increased in Portland, carbon emissions in the city have decreased dramatically since 1993. A long history of community organizing, sustainable urban planning, and a commitment to climate action have helped Portland achieve a 35 percent reduction in carbon emissions, per person.

The Portland City Council last June updated its Climate Action Plan to incorporate new research on consumption choices; adopt ambitious new goals; and reflect our commitment to advancing equity, re-emphasizing serving low-income households and communities of color in order to advance equity through climate action efforts. These recent policies continue to help us push towards our 2050 goal.

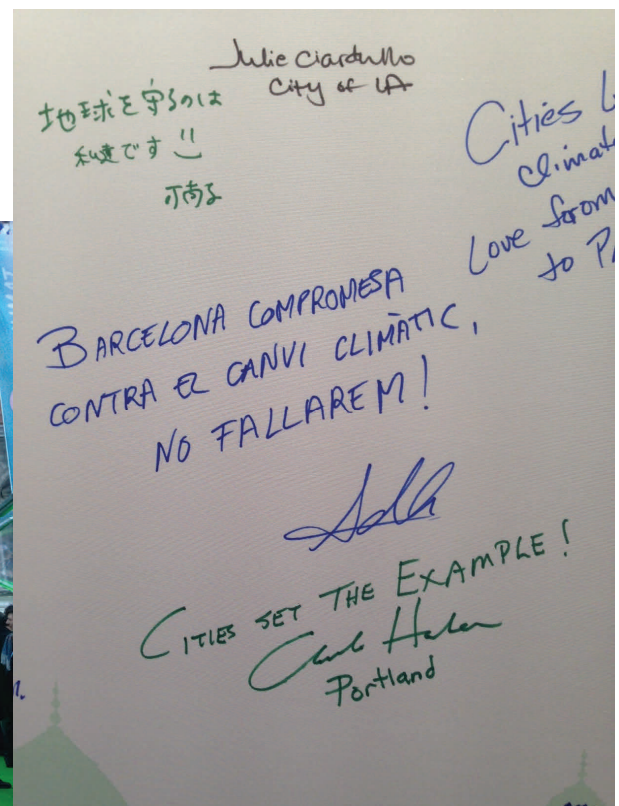
With these efforts Portland is proud to join local communities across the world that are stepping up to take action, as part of a global imperative to stave off climate change. This work started long before last year's Paris conference, and doesn't end there: We must continue to build momentum and

take bold action here at home.

Following Paris in 2016, I have an ambitious list of priorities and climate agenda goals that include:

Home Energy Performance Disclosure. Similar to the miles-per-gallon stickers on new cars, an Energy Performance Score on a home shows how much power a new house would require. This is an exten-

"Portland has been at the forefront of climate action for decades * * * We must continue to build momentum and take bold action * * *."



sion of our energy performance benchmarking policy for commercial buildings. We hope to see every home for sale or rent to include either the Energy Performance Score or the Home Energy Score developed by the U.S. Department of Energy.

Community Solar. Portlanders want renewable energy that reduces carbon pollution, protects our clean air, and creates more clean energy jobs. We also expect at least a portion of that renewable energy to be developed in our own backyards, in our own communities. A good number of Portland homeowners can't add solar panels because of the orientation of their roofs, the upfront expenses, or other barriers. Also many apartment tenants and renters don't have the option of installing solar panels. Community solar would allow those homeowners, and renters, to buy into large solar installations and get a share of the power produced. There's little the city can do to encourage community solar until the Oregon Legislature changes state law. We are pleased with recent actions by the Oregon State Legislature, which will allow local communities to adopt community solar and ensure opportunities for low-income customers. We will continue to lobby in Salem for tools to expand solar use.

Clean Diesel Contracting. The City of Portland's entire fleet already uses clean diesel — no longer are we using the old, dirty diesel engines of the past. This improves air quality and safeguards health by reducing exposure to carcinogenic diesel fumes. Now we are focusing on making clean diesel engine conversions more accessible to minority, women-owned and emerging small businesses, which face the largest hurdles to these new investments. We have also been in discussions with Multnomah County and the Port of Portland on requiring contractors to use clean diesel construction equipment, or outfit older equipment with diesel filters.

Green Bonds. The City Council in June 2015 passed a resolution to establish the City's interest in exploring "green bonds," a responsible and efficient tool that connects environmentally focused investors with green infrastructure investment opportunities and projects with positive environmental outcomes — better air quality, cleaner water and lower carbon emissions. The first green bond issuance in 2016 will further provide funding to convert our streetlight system to entirely high-efficiency LED lights. The City of Portland has already converted more than 20,000 street lights to LED, saving about \$100,000 per month and nearly \$1.5 million per year. The goal is to transition all 55,000 of Portland's streetlights by the end of 2016.

Electric Vehicles. The City plans to add 40 electric vehicles to our fleet, making 20 percent of the City's sedans electric by 2020. Not only is this good for sustainability, it's very good for the City's bottom-line: It's cheaper to buy, operate and maintain an EV vehicle than it is a gas-powered vehicle.

Require LEED for Large, New Buildings in Central City. Ninety percent of new Portland central city buildings are already earning Leadership in Energy and Environmental Design (LEED) certification. Now, we need to lock in what is already being done to further encourage high-performance, green buildings.

Solar at City Buildings. Currently the City of Portland generates 540,000 kilowatt hours from solar panels at 10 sites. Our goal is to generate 2.36 million kilowatt hours with solar panels across City facilities.

Fossil Fuel Disinvestment. The City Council in September 2015 approved a policy that placed the top 200 fossil fuel companies on the City of Portland's "do-not-buy list" for direct investment of City funds. The City will be fully divested from those companies by March 2018. With that action, Portland joined 500 institutions, with a combined resources of \$2.7 trillion, to send a message that fossil fuels are not our future. The City of Portland's goal is to ensure our investments aren't working against us; we can't invest in the problem and solution at the same time.

Fossil Fuel Export Policy. I proposed one of the most aggressive fossil fuel infrastructure resolutions in the nation, and it was approved by City Council in November. The resolution opposes the expansion of infrastructure whose primary purpose is transporting or storing fossil fuels in or through Portland or the city's adjacent waterways. In March, we began the code writing process to fully implement the policy.

Recent research shows that if every local government in the world took action in accordance with the Compact of Mayors — particularly by targeting their building energy, transportation, and waste sectors — they could reduce global greenhouse gas emissions by the equivalent of cutting the world's annual coal use by more than half. Nations and states move slowly, but Portland has shown that innovation is happening at the local level. If enough cities do the right thing, we will have a global impact.

As the world faces the reality of climate change, Portland must continue to be a trailblazer. But it takes the whole community — here in our own city and in the world community — to curb the harmful effects of climate change. You, as individuals, can help your cities make a difference and join our global network of cities, proving we all can be world leaders.

■ *Charlie Hales is the mayor of Portland; he took office Jan. 1, 2013. In the second half of his term, he's focusing on affordability, livability and equity — ensuring he leaves a City of Opportunity for all Portlanders. He previously served on the Portland City Council from 1993 to 2002, where he led on planning, parks and transportation investments that helped create the Portland we love today.*

Drought in the American West: Creating Opportunities for Increased Sustainability Through Reformation of Water Allocation Systems

By Jill Randolph

While debate rages on whether recent extreme weather patterns are the new normal or a quirk in the large scheme of things, one thing remains certain: our existing water allocation system is not equipped to deal with these extremes.

A recent symposium sought to address drought-related questions raised by changes in our weather systems and continuing water scarcity.

On September 25, 2015, the University of Oregon School of Law was home to Drought in the American West: A Symposium on Law, Policy, & Science. Co-sponsored by the Environment and Natural Resources Law Center, the Journal of Environmental Law and Litigation, and the Oregon Review of International Law, the symposium covered many aspects of the continuing extremes in water scarcity that have been seen across the United States and the world. If you are unfamiliar with the subject of water law or would like a refresher on the basics of water law, Professor Adell Amos started the day with a brief overview entitled Drought Law 101, which can be accessed along with the rest of the day's program at <https://law.uoregon.edu/explore/jell-symposium-media>.

Overall, while disagreement remains regarding whether these weather patterns are here to stay or merely a bump in the road, all symposium participants agreed on one thing: the timing and amount of water that are going into the water system is changing. The Western states are hit particularly hard by this change in precipitation; water rights west of the Mississippi are based on capture rule rights, demonstrating just how valuable water in the area is—even living next to a stream doesn't guarantee you a right to use its contents.

Throughout the symposium, speakers showed numerous graphs demonstrating that rainfall and high flows are coming earlier and earlier in the year, the effects of which are most easily demonstrated in California. California relies on snow-pack to feed mountain streams through mid-summer. If California receives water into its system via snow, the water can slowly feed into the system as the snow melts. In contrast, Oregon has a greater quantity of groundwater in aquifers, allowing for the falling rain to sink deep underground

(decreasing rains means these aquifers are not recharging at historic speeds, however, throwing future withdrawals into jeopardy). California's population continues to grow, and people are moving to the area hardest hit by decreasing rainfall: Southern California.

While the weather systems have thrown us some curve balls, the true villain of this story is the current system of water allocation. The current water allocation systems in the West simply are not built to be flexible. Water right holders have a right to a set amount of water in perpetuity, with no mechanism for corrections if drought hits. Thus, it is possible for a river to run dry before it reaches its mouth due to completely legal rights, as explored by the symposium's breakout session on "Ecosystem Protections and Drought."

This past summer, California experienced a perfect storm of conditions for tensions over water use to reach an all-time high. The water right allocation system was unable to adapt to changing river flows. Continuing debate over whether the right to water is a private right (thereby implicating Fifth Amendment Takings Clause claims if the government encroaches on the right), or a public right, made governmental officials hesitant to implement far-reaching policies that could have had dramatic effect. Demand for human necessities such as water and electricity increased as population increased. All of these factors led to high tensions over water in California—tensions set to continue unless conditions change or the government takes action.

"As drought and water scarcity become buzz words in the American political systems, opportunities to change the status quo will increase for lawyers across all sectors."

As drought and water scarcity become buzz words in the American political system, opportunities to change the status quo will increase for lawyers across all sectors. Already we are seeing stakeholders begin to experiment with alternatives to the established principles of water law. Native American tribes are working together across Nations in the Columbia River Basin to protect rivers of sacred importance to all native people. The energy sector is beginning to look at ways it can decrease stress on the water system, and the recent push for renewables is already lessening the burden by moving away from water-intensive coal and natural gas burning. Stakeholders in Florida have worked on implementing the *Model Water Code*, which permits water rights for periods of duration rather than in perpetuity. All of these actions working together will have major impacts on water allocation.

More can be done, however, and more opportunities will arise to increase the sustainability of the water right system. If regular, persistent, and anticipated storage is to be the new normal, then changes must be made to the water allocation system. Dr.

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New Partners in Sustainability



The Sustainable Future Section would like to recognize the following new Partners in the Oregon State Bar Partners in Sustainability Program. These Oregon law offices have shown commitment to operating sustainably and provide valuable leadership to others as law offices throughout the State move toward office practices that conserve resources and reduce waste.

Law offices ready to become Partners can find information on the Program at: www.osbsustainablefuturesection.org.

Any questions regarding the Program may be directed to osbsustainablefuture@gmail.com.

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2016 Partners in Sustainability Application Now Available!

The Sustainable Future Section (SFS) is pleased to announce that the application for the OSB Partners in Sustainability Program, which includes revised criteria for 2016, is now available.

The Section first launched the Program in early 2012 in response to the Report of the Oregon State Bar Task Force on Sustainability, which recommended the development of an OSB Partners in Sustainability Program to recognize law offices, including in-house legal departments, that adopt sustainable practices.

Criteria for the program prescribe specific practices in the areas of paper management, energy and water reduction, waste and toxics reduction, office education, sustainable purchasing, and transportation energy reduction. In some categories, the criteria differs based upon whether the office is small (1-5 attorneys), medium (6-24 attorneys), or large (25 or more attorneys). To be eligible to become a Partner in Sustainability, a law office or in-house legal department must adopt a sustainability policy containing specified elements, appoint a sustainability coordinator, and implement an education program focused on sustainability matters.

Currently, 17 Oregon law offices and an in-house counsel are Partners, each having submitted an application that includes self-certification of compliance with the Program criteria. Partner certification is valid for the calendar year in which the Section accepts an application and the following calendar year. Therefore, all Partners that were certified in 2014 will need to re-certify in 2016 in order to continue to be recognized as a Partner. Some have begun this recertification process.

In its report, the OSB Task Force on Sustainability noted that to remain current with advancing practices in sustainability, the Partners Program criteria should be updated on an ongoing basis. Previously certified Partners and new applicants should carefully review their office policies and practices to ensure compliance with the revised criteria. Law firms and in-house legal departments are also welcome to contact members of the SFS Executive Committee with questions related to meeting the Partners in Sustainability criteria. Section members benefit from the experience of other law firms or in-house legal departments seeking or meeting Partners in Sustainability criteria. The SFS Executive Committee members and other SFS volunteers are available to meet and/or provide information regarding specific office sustainability related issues.

An office that self-certifies compliance with the criteria will be recognized as an Oregon State Bar Partner in Sustainability on the Section's website and will be granted a license to display the Partners Program logo on the office's website and in its communications and promotional materials for so long as the office remains a Partner. In addition, offices whose applications meet the criteria and are received by **June 30, 2016** will be identified as Partners in Sustainability in a Section advertisement during the latter half of 2016 and in other Section communications in 2016.

The criteria to qualify as a Partner in Sustainability and application form are located [here](#). Please direct any questions about the OSB Partners in Sustainability Program to osbsustainablefuture@gmail.com.

Drought in the American West...

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Holly Doremus, in her closing remarks at the Drought in the American West Symposium, spoke of how necessity is the mother of invention, and described a laundry list of solutions that may come out of this new era in water regulation. These included a continuation of the physical solution of dams, technical solutions, and information solutions via planning.

All of these ideas Dr. Doremus was able to synthesize from a small number of discussions. More discussions need to take place like those that occurred at the Drought in the American West Symposium—just think of the resulting solutions and

the advancements to be made in creating a more sustainable future.

Jill Randolph is a 3L at the University of Oregon School of Law and is completing her final year as part of the inaugural class of the Portland Program through the U of O. Throughout law school, Jill has focused on environmental regulation and compliance, with a special interest in water law. Jill has served as a fellow in the Environment and Natural Resources Law Center's Oceans, Coasts, and Watersheds Project for all three years of law school.

Putting Sustainability Policy into Practice at the Oregon State Bar

By Rod Wegener

When the Sustainable Future Section was created and a related bylaw established in late 2009, that became a jumping off point for operations and the staff at the Oregon State Bar to seriously evaluate the sustainable practices at the bar center. The first step was selecting a committee of staff volunteers willing to examine certain bar practices and identify and implement more sustainable practices. Although the committee no longer formally meets, the outcomes from that committee's work remain the common practice and attitude at the bar center.

The bar instituted some common sustainable and recycling practices that continue today, including:

- Disposable plates, cups, and silverware were replaced by reusable flat and plate ware. This meant installing another dishwasher but eliminated the disposing of paper products into the garbage every day.
- Containers for numerous recycled products, e.g. glass, cans, paper, and plastic bags, are placed in the lunch room. Also containers for most recycled products are in all meeting rooms.
- Dead batteries from small electrical units are dropped off in various locations. Used coffee grounds are picked up by a staff person who puts them back into the environment.
- All copiers are programmed to go into sleep mode and recycled paper containers are next to each copier.
- Double-side printing is the standard on all PCs.
- The monthly *Center for Earth Leadership* Eco Tips are placed on the bar's Intranet for staff to consider the sustainable practices those tips provide.

When the new bar center opened in 2008, numerous energy saving features, such as controls over on/off HVAC and lighting settings, were installed.

Sustainability and the intent not to use so many natural resources was behind the decision by the bar's Board of Governors to dis-

continue printing the annual Membership Directory and convert all legal publications created by the bar to electronic format in the now popular online BarBooks™. Those decisions alone saved an estimated 915 boxes of paper (or said another way, over 4.5 million sheets of paper). Although not popular with some members, the sustainable practices far outweigh complaints about not getting information from the bar on paper. This change in delivery and other internal changes have an impact on the bar's finances, specifically its postage cost. From 2009 to 2016, the bar's postage costs have declined from \$326,000 to \$127,000 – an almost \$200,000 reduction and an average decline of 12% every year.

In an attempt to expand the sustainable practices message, in February 2012, the chair of the committee and three others presented "Green With Envy? Your Bar Should Be," a one hour session at the National Association of Bar Executives Mid-Year Meeting. It was an opportunity to share with other bar associations what the Oregon State Bar has done and what practices they should be considering for their own bars.

The bar continues to consider other opportunities for sustainability and in 2015 replaced the existing parking lot lights with energy-saving LED lights. In addition to saving energy, this project reduces the bar's electricity bill and maintenance costs and provides a safer, better illuminated lot. And the owner of the building adjacent to the bar center also agreed to perform the same replacement as the bar.

So what's next? The bar is open to other ideas; two under consideration are installing electric car charging stations in the bar's parking lot – a project that will be explored in 2016, and adding solar panels to the building's roof. This latter project is much more comprehensive and won't get consideration until 2017. Technology has played an obvious and vital role in the practices and processes the bar has implemented over the years. The bar further expects that the new database system scheduled to go live in late summer/early fall 2016 will, in addition to making bar services more efficient, continue to play a role in more sustainable practices, primarily through the elimination of sending paper reports among the bar and its members.

Rod Wegener is the Oregon State Bar's Chief Financial Officer, staff liaison to the Sustainable Future Section, and every day recycler.

Interview

Guardians for Future Generations— Safeguarding Opportunity for the Future

Interview of Steve Higgs on the Sustainability Future Section Guardian Study Group

By Ann McQuesten

Ann McQuesten (Sustainable Future Section Executive Committee Chair and *Long View* Editor):

In our representative democracy, many are concerned that short-term election cycles and the pressing demands of today result in policies that meet our needs, but compromise the ability of future generations to meet their own. All around the world, governments are concerned about the impact of their policies on the future, and some have created Guardians for Future Generations to represent the interests of the future in today's policymaking.

Since 2012, a study group of the Sustainable Future Section (SFS) has explored the role of these Guardians to represent the "voice" of future generations in our democracy. The study group has interviewed Guardians overseas including Peter Davies (Sustainable Futures Commissioner in Wales) and Sandor Fülöp (Parliamentary Commissioner for Future Generations in Hungary). The group has also developed principles of intergenerational justice that a Guardian could apply when evaluating contemporary policy decisions, and evaluated different structures for how a private or public Guardian for Future Generations might operate in Oregon.

Recently, I asked a member of the study group, Steve Higgs, to field questions about what the group has learned and next steps in their process. Steve is also the Executive Director of Senior Advocates for Generational Equity, a Portland-based nonprofit that inspires people over fifty to give forward with their time, money and voice to enable younger and future generations to thrive. Steve's organization is helping SFS explore whether and how a Guardian might operate in Oregon.

Ann: Why are you interested in the Guardian?

Steve: Some of your readers might recall the Dr. Seuss classic, *The Lorax*. It's a story of a fuzzy creature that pops out of a tree stump to stop the shortsighted "Once-ler" from chopping down all the trees in a pristine forest. Seuss captures *The Lorax* spirit with this line: "I speak for the trees for the trees have no tongues."

The Guardian does not speak for the trees, but for the interests of

future generations in our policy process. For some, the idea of a Guardian resonates because, like trees, the future has no voice in our decision-making. If it did, we would make more investments that help the future such as in education, infrastructure, and conservation. For others, the Guardian is of interest because the future has too many voices. Politicians routinely justify decisions because they are "good for the future," and with all the competing arguments, it's hard to sort out what the future really needs.

Personally, I share both points of view. I also think that sustainable development – meeting the needs of today without compromising the ability of future generations to meet their own – is, at base, a process of decision-making. As a species, we're making decisions that can impact the lives of future generations for hundreds of years, and we need to find ways to elevate the interests of the future in our decisions. We can learn lessons from Guardians in other countries to determine what works, what doesn't work, and whether this concept is a good fit for Oregon.

Ann: What is the framework in which the Guardian would participate in policy decisions?

Steve: We envision the Guardian as a non-profit corporation composed of a panel of three advocates and managed by a board of trustees. The Guardian would be funded by a private endowment, and the board would oversee the three advocates and the endowment.

Under this private model, the Guardian would have funds to commission reports from economists, scientists, engineers and others to analyze policy decisions from the point of view of the future. For instance, if the Guardian is investigating the rate of groundwater withdrawals, scientists could provide information on recharge rates, economists could forecast food prices, and engineers could evaluate costs and feasibility to source water from other watersheds.

Initially, the Guardian could influence executive and legislative decisions. For the executive branch, the Guardian could comment on draft rules and in advisory groups, particularly in cases where decisions are based on long-term cost-benefit analyses. For the legislative branch, the Guardian could testify on legislation on the impacts of a policy course. As the Guardian gains credibility over time, its participation or independent judgment might be sought in other policy-making venues.

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Interview

Guardians of Future Generations...

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Ann: What issues would the Guardian consider?

Steve: The Guardian has no crystal ball to foresee what the future wants from a policy decision. Rather, the Guardian would need to exercise independent judgment and advocate for those decisions that affect options for the future to meet their own needs.

There are at least three types of decisions that a Guardian might investigate:

“Time bombs” – Policies that do not threaten current generations, but significantly impact later generations. For example, some may view decisions that cause us to incur public debt to pay for today’s services as a “time bomb” because the debt will need to be paid by the future.

“Course corrections” – Policies where there is an early indication of harm, but we continue down the same path. For instance, a Guardian might advocate for a course correction where a community extracts groundwater faster than recharge rates.

“Tug of war” – Policies where the slower we respond to a problem, the more costly it will be for the future. For many, reducing emissions of greenhouse gases is a tug of war because there are short-term costs in doing so, but larger long-term consequences in not doing so.

Ann: Why is it hard to focus on the future?

Steve: One reason is what Harvard economics professor Sendhil Mullainathan calls “scarcity of attention.” For example, we have a hard time saving money because the here and now always takes precedence. That’s why we have automatic savings plans to look out for our future self. By analogy, the Guardian can act as an antidote to our “scarcity of attention” and cause us to prioritize policies that also benefit future generations.

It is also hard to prioritize the future because our government is accountable to today’s voters, and today’s voters have immediate needs and interests. The Guardian can serve as a focal point to help us more fully consider the impacts of today’s decisions (or indecisions) on the future.

Ann: How would the Guardian advocate for policy decisions?

Steve: For any policy decision, the Guardian needs to identify who it represents (the ward). For instance, a Guardian might represent a majority of people born 25 to 100 years from today living in Oregon or a particular geographic area in the state.

Second, when evaluating a policy decision, the Guardian would issue a report or opinion based on its judgment of what course is in the best interest of the future, relying on principles of inter-generational justice. We have a set of working principles that we developed based on the assumption of what future generations would expect from today’s decision-makers. Examples of these principles include the precautionary principle, basing decisions on credible evidence, prioritizing the expansion of options for the future, and preserving the diversity of existing ecosystems and their capacity for self-renewal and self-maintenance.

Ann: What’s the next step in the process?

Steve: Earlier this year, we hosted our first continuing legal education (CLE) program on the Guardian and illustrated how the principles could be applied to a contemporary policy decision – groundwater withdrawals. We’re interested in hearing from lawyers who could help by:

Writing a policy impact report. We’d like a lawyer or team of lawyers to select a contemporary policy issue and then apply the principles we’ve developed to make a recommendation on whether the future would support a policy course.

Hosting a discussion so that we can hear more perspectives on the pros and cons of the Guardian, and further develop the principles.

Steve and the SFS wish to thank the numerous organizations and individuals who have participated in the study group or have served as advisors on the project. Contact Steve for a list of resources.

To learn more about helping on the Guardian project, or to schedule a CLE discussion, call Steve Higgs at 971-717-6570 or email info@wearesage.org.

What the Paris Agreement Accomplished (And What Still Needs To Be Done)

By Ira Feldman and John C. Dernbach

On December 12, 2015, after two weeks of negotiations, the 195 participating countries at the Paris conference of the parties to the U.N. Framework Convention on Climate Change, reached the [Paris Agreement](#). This article provides an overview of that agreement and some of its challenges.

Goals

The headline from the Paris conference is the long-sought articulation of a global goal for climate action. In the Paris Agreement, the Parties agreed to hold “the increase in the global average temperature to well below 2 °C (or 3.6 ° Fahrenheit) above pre-industrial levels.” They also agreed “to pursue efforts to limit the temperature increase to 1.5 °C (or 2.7 ° Fahrenheit) above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.”

Parties also agreed that global greenhouse gas emissions should peak “as soon as possible.” They also agreed “to undertake rapid reductions thereafter.” Rapid reduction is to be accomplished “so as to achieve a balance between anthropogenic [human caused] emissions by sources and removals by sinks of greenhouse gases in the second half of this century.” This goal – zero net greenhouse gas emissions – implies that, absent advances in carbon sequestration or air capture technology, the use of fossil fuels would virtually cease.

Mitigation Commitments by All Countries

This is the first time since the Framework Convention on Climate Change was opened for signature in 1992 that all 196 Parties (195 countries plus the European Union) have agreed to take actions to reduce their greenhouse gas emissions. The only prior agreement even remotely comparable – the Kyoto Protocol – limited only developed country emissions.

What action did they agree to take? In the run-up to the Paris conference, countries picked their own greenhouse gas (GHG) reduction targets in the form of “Intended Nationally Determined Contributions” (INDCs). Almost all countries submitted these pledges, reflecting the level of emissions reduction that each country intends to achieve. These INDCs, now called NDCs, are key building blocks to the international effort to address climate change. For example:

China agreed to increase its share of renewable energy to 20 percent and achieve peaking of carbon dioxide emissions by around 2030, while making best efforts to peak early.

The European Union agreed to a binding target to reduce domestic emissions by at least 40 percent below 1990 levels by 2030.

The United States agreed to reduce emissions by 26-28 percent below 2005 levels by 2025.

Processes for Ratcheting Up Commitments

It was clear long before Paris that the INDCs, taken together, fall way short of what is needed to keep the global temperature increase below 2 °C. In the summer of 2015, the Organization for Economic Cooperation and Development issued a report on the INDCs submitted up to that point, and concluded that “a significant acceleration in annual emission reduction rates” was needed to avoid exceeding that limit.

The Paris Agreement, therefore, contains mechanisms for ratcheting up ambition over time. Beginning in 2020, and every five years afterwards, each country is to “prepare, communicate and maintain successive nationally determined contributions that it intends to achieve.” Each “successive nationally determined contribution” is to “represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition.” The Agreement also provides for an interim review in 2018 assessing the Parties’ progress in meeting this objective (a “global stocktake”) and then every five years starting in 2023. The outcome of the global stocktake is to “inform Parties in updating and enhancing, in a nationally determined manner, their actions,” including enhanced “international cooperation for climate action.”

Adaptation and “Loss and Damage”

Although most attention has been focused on the greenhouse gas mitigation-oriented provisions of the Paris Agreement, it also strengthened international support to help countries adapt and cope with the adverse effects of climate change. The Paris Agreement established a global goal of enhancing the capacity of countries to adapt to climate change – strengthening resilience and reducing vulnerability. Parties are required to plan and implement adaptation efforts and are encouraged to report their adaptation efforts and needs.

Moreover, the Agreement requires developed nations to provide financial support to adaptation efforts in developing nations, and commits to parity in allocation of re-

(Continued on page 10)

What the Paris Agreement Accomplished *(continued)*

sources between mitigation and adaptation support. Developed countries will mobilize at least \$100 billion per year starting in 2020 (and a larger as yet unspecified number starting in 2025) to assist developing countries in their climate mitigation and adaptation measures.

Thus, if it was not clear previously, the Paris Agreement leaves no doubt that mitigation and adaptation are to be treated as co-equal components of climate action. The importance and interconnectedness of both is made explicit in the text, which recognizes that “the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.”

It is also important to note the emergence of “loss and damage” as a separate category. Until Paris, “loss and damage” – constituting those components of climate impact that are irreplaceable – was considered a subset of adaptation. As the impacts of climate change become more obvious and intensify, it is becoming increasingly clear that simply enabling adaptation is not enough. Many countries are experiencing real losses for which adaptation is simply not possible. In the Paris Agreement, the Parties agreed to continue and strengthen the Warsaw International Mechanism (WIM) for Loss and Damage associated with the impacts of climate change. In the accompanying decision, however, the text provides that the WIM “does not involve or provide a basis for any liability or compensation.”

Success or Failure?

There are two contrasting story lines about the Paris Agreement. One is critical: the INDCs do not go far enough; the Agreement contains no substantive agreements to reduce greenhouse gas emissions by a specified amount; countries are not required to implement their INDCs/NDCs; the goal is aspirational, not mandatory.

The other is hopeful, and focuses on both the goal and the processes. These processes should encourage or prod governments to be more ambitious over time, without being prescriptive about what they should do. They will provide information to governments and others about what other governments are actually doing, as well as information about the effectiveness and impacts of particular laws and policies. This information will be public, which means that governments are more likely to honestly and openly share what they are doing.

The United States provides an example of the challenges. When the U.S. submitted its INDC, it stated that its “target is consistent with a straight line emission reduction pathway from 2020 to deep, economy-wide emission reductions of 80% or more by 2050.” The U.S. INDC was

based in part on the U.S. Environmental Protection Agency’s Clean Power Plan, adopted in August 2015, which would reduce greenhouse gases from electric generating facilities by 32% from 2005 levels by 2030. That plan, of course, has been stayed by the U.S. Supreme Court pending the outcome of litigation. Moreover, it appears that the November 2016 presidential election will have a major impact on the direction that the country takes in addressing climate change – and on the country’s continued commitment under the Paris Agreement.

The truth is that success or failure of the Paris Agreement cannot be determined now. It will depend on continuing and strengthening commitments and cooperation by and between all countries, and (of at least equal importance) by civil society. Because of the great scope of activities needed to effectively address climate change under the Paris Agreement, many clients will be affected. Lawyers can play a constructive and helpful role by advising their clients about the Paris Agreement, and about the challenges and opportunities it presents.

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Stahancyk, Kent & Hook P.C. Receives 2015 Sustainable Law Office Leadership Award

Congratulations to Stahancyk, Kent & Hook P.C.: Recipient of the 2015 Sustainable Law Office Leadership Award

The Executive Committee of the Sustainable Future Section is pleased to announce that it has awarded the 2015 Sustainable Law Office Leadership Award to Stahancyk, Kent & Hook P.C. Each year the section recognizes a law office that has demonstrated leadership in law office sustainability, this year focusing on the office that has made the most meaningful efforts to implement food scrap composting.

Describing the efforts that have gone into the firm's composting initiatives and the challenges it faced along the way, we hope that members of the Sustainable Future Section will benefit from Stahancyk, Kent & Hook P.C.'s award application in implementing their own composting programs:

"Although composting is just one part of creating a sustainable future for our planet, it's one Stahancyk, Kent & Hook P.C. has been practicing for nearly 10 years. Sharing meals, where we get our food, and feeding our staff has been part of our identity since our founding in 1986, and positioned us to be early leaders in sustainability. For over 20 years, SK&H has maintained an in-house kitchen and chef in its Portland office that feeds a staff of over 40 people, and any clients and experts who happen to be onsite. We soon recognized the impact of food waste—the Portland office currently generates an estimated 45-65 pounds of compost per week—and took on the responsibility of leading our attorneys and staff in implementing a sustainable disposal system. That is to say, we were talking about compost long before *Portlandia*.

SK&H President and Shareholder Jody L. Stahancyk was raised on a Central Oregon ranch, where she learned early on that food scraps did not go in the garbage. They went to feed the animals, or were composted and put back into the earth. That upbringing is reflected in the composting system SK&H has implemented across five offices in Bend, Astoria, Prineville, Portland, and Vancouver, Washington. Each office is equipped with bins clearly labeled for compost, recycling, and trash, as well as biodegradable compost bags. The City of Portland picks up these scraps from our Portland office to be used as fertilizer. Additionally, our offices avoid disposable eating utensils, plates, and pop cans, and instead use glasses, real silverware, bowls, and plates.

Most of the beef, all pork and all lamb for the kitchen is purchased from Future Farmers of America (FFA) students who are interested in agriculture and leadership. Staff at our Portland office started a firm garden that uses no chemical fertilizers and only minimal pesticides (only slug bait on one type of vegetable), which supplies some produce to the kitchen. Our

Vancouver office is home to chickens and a vegetable garden, which provide the firm with eggs and fresh produce.

But implementing a composting program did not come without challenges. At first, attorneys and staff didn't know what was compostable and would simply throw all of their waste in either the trash or the compost. To remedy the problem, we placed clear labels with pictures indicating what is and is not compostable, and what should go in recycling and waste bins. Each time our firm hires a new employee, she or he is trained on why we compost and how to separate compost from landfill items during the on-boarding process. Posters and diagrams near the compost, recycling and landfill bins serve as a friendly reminder to our attorneys and staff.

Outside of composting, SK&H minimizes waste by being a paperless law firm. This helps us reduce paper waste and saves resources. The steps we take

to ensure our offices, attorneys and staff use sustainable waste management practices are a testament to our leadership in environmental responsibility. Our efforts have made a difference and continue to do so as our firm grows, and our attorneys and staff become more active in their duty as stewards of the earth."

Congratulations to Stahancyk, Kent & Hook P.C. for its leadership in food scrap composting!



Section Members help Friends of Trees

2016 Sustainable Law Office Leadership Award: Transportation Challenge

For its Law Office Leadership Award in 2016, the Sustainable Future Section will recognize the Oregon law office that has the greatest increase in employees' alternative methods of transportation for their commutes relative to office size.

For example, a net increase of 200 trips for 100 employees ($100 \times 30 \times 2 = 6000$ possible one-way trips in a month) would be a 3% increase ($200/6000$).

In the past, the Award has highlighted offices that have adopted broad-based sustainability initiatives, as well as offices that have implemented innovative practices to increase sustainability. Recognizing that the use of conventional transportation can be one of the largest contributors to an office's overall carbon footprint, and that transportation is the second greatest source of greenhouse gas emissions after electricity generation, the 2016 award will encourage law office employees to use alternative methods of transportation.

The winner of the Award will be the law office that has the greatest increase in employees' use of alternative methods of transportation in the month of September 2016, as compared to the baseline month of June 2016.

What you need to do now to qualify for the 2016 Award

During the baseline month, participating offices should keep track of at least 75% of their employees' transportation commute method every weekday starting Wednesday, June 1, 2016 through Thursday, June 30, 2016. Each day, employees should record whether they drove alone to work, carpooled with at least one other person, used public transpor-

tation, used a park and ride, bicycled, walked, or telecommuted. For purposes of the Award, employees should only track their transportation use between their homes and primary office; additional trips during the day will not be considered. Each one-way trip by any alternative method should be calculated at a value of 1. Trips that are outside of employees' regular commute should not be tracked. A suggested tracking form can be found [here](#).

Total the number of times all participating employees commute using each method during the baseline month on the baseline submission form found [here](#) and email to OSBSustainableFuture@gmail.com by July 29, 2016.

The 2016 award will encourage law office employees to use alternative methods of transportation

After the baseline month, encourage employees who drive alone to work to carpool, use public transportation, park and ride, bicycle, walk, or telecommute. Participating offices may wish to consider providing educational programs and resources to employees regarding the impacts of transportation choices/methods or providing incentives to employees who use alternative methods of transportation.

Prior to September 2016, participating firms will receive another announcement reminding them to track employees' commutes again during that month.

The Award will go to the office where there is the greatest percentage increase in using alternative transportation methods between June 2016 and September 2016.

Direct questions to OSBSustainableFuture@gmail.com.

Sustainability Law as Delivered by the Postal Service (And What Oregon Lawyers Could Deliver, too)

By Matt Raeburn

By now, lawyers increasingly understand the idea of sustainability and that it might have implications in the practice of law. And so some Pacific Northwest firms promote vaguely defined sustainability practice areas on their websites. Since moving to Portland in 2014, I have asked some of those firms' partners to explain what their sustainability law practices do. Their descriptions are mostly duplicative of existing environmental and energy law practices. In my career with two Washington, D.C., firms, I would likewise have been challenged to define "sustainability law." But after I left firm practice to go in-house at the U.S. Postal Service (USPS), I learned what sustainability law is and, more importantly, the benefits it provides clients.

Serving as Environmental Counsel for USPS was a transformative experience. I learned that sustainability law is a distinct practice area. What makes sustainability law different from traditional environmental and energy law is not so much the kinds of individual matters—it's the broad scope approach to them. Sustainability law necessitates a hybrid approach that integrates traditional legal practice with risk management planning and policymaking, project management, executive education, and personnel training.

For background: USPS is not a federal agency. It has a rare amount of independence within the Executive Branch but remains subject to Congress's legislative mandates and most environmental laws, including at state and local levels. USPS receives no taxpayer funding. Instead, it is structured like a corporation that generates its own revenue and aims to be self-sufficient. If it were a private sector company, USPS would rank 43rd on the Fortune 500.

Sustainability law is, in part, about cost-effective solutions to environmental and energy-related challenges. USPS—with its multinational operations and logistics handled by 30,000 facilities, a fleet of 200,000 vehicles, and a half-million employees—has many such challenges. USPS did not embrace sustainability to follow a trend. At USPS, sustainability is an economic necessity. The Postal Service was and remains a business struggling under the weight of unfunded billions in obligations imposed by Congress. The largest is a law requiring USPS to pre-pay decades worth of retiree benefits. But for that unfunded mandate, USPS would be in the black.

Because of USPS's financial challenges, the Chief Sustainability Officer (CSO) led multi-department coalitions in finding cost savings and revenue sources that could add up to billions. With my colleagues in the Sustainability group and representatives of the Facilities, Operations, and Supply Management divisions, I developed and implemented sustainability programs. For example, only two-thirds of post offices were recycling paper when I joined USPS. Compliance with e-waste recycling was no better. So we developed: (i) a National Recycling Operation for all USPS facilities; and (ii) the "BlueEarth" electronics recycling-by-mail program for feder-

al agencies and employees (additional information on these programs can be found at <https://www.youtube.com/watch?v=5iSx9UKogv0> and <http://blueearth.usps.gov/>).

The National Recycling Operation has improved compliance, which should spare USPS the civil penalties resulting from enforcement. But the program is, most importantly, a revenue generator. Recyclable paper is a commodity with value, especially when offered for sale in bulk. The National Recycling Operation uses the reverse logistics of otherwise empty mail trucks returning from their regular deliveries to post offices. On their return trips to mail processing plants, the mail trucks carry back recyclables. Recyclers can then go to those regional distribution hubs to pick up much larger quantities of recyclables, which USPS can sell. The result of those sales is almost 100% net profit, as no new fuel costs are incurred and only negligible overhead is required. In short, the Postal Service's National Recycling Operation promotes sustainability through cost savings and revenue generation.

Likewise, Blue Earth allows participating agencies—including the U.S. military, Department of Homeland Security, and NASA—and their employees to easily mail in recyclable electronics and ink cartridges. By law, USPS is restricted from offering the same direct service to business and individual customers. But postal reform from Congress could change that. Imagine USPS serving as a door-to-door recycling take-back service, with customers, mail carriers, and sponsoring businesses working together to keep lithium ion batteries out of landfills and unused prescription drugs out of sewer systems. USPS could even provide opportunities to streamline recycling of less obvious items like clothing. Not only would these programs be sustainable in the societal sense, they would also help sustain the Postal Service's business.

Sustainability law at the Postal Service is also about continuity of operations and mitigating the expense of climate-related disasters. I worked on USPS's Climate Change Adaptation Plan (available at <http://www.raeburnside.com/s/USPSClimateChangePlan2014.pdf>). The Plan recognized vulnerabilities in USPS's continuity of operations, facility siting, and networks of employees and vehicles. All of those aspects had been affected by Hurricane Sandy's impacts to New York, New Jersey, and other states in the fall of 2012.

Due to the high number and concentration of customers in those states, Sandy disrupted postal operations more than Hurricane Katrina had. Coastal post offices were destroyed. Facilities, including mail processing plants and vehicle maintenance facilities, were severely flooded. Fuel-dependent emergency generators were deployed. Mobile refueling tanks dramatically raised the Postal Service's already high vehicle fuel costs, which are caused by inherently inefficient stop-and-start delivery activity. But those mobile tanks were needed to keep the area's fleet going until flooding subsided and repairs were made.

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Although the Climate Change Adaptation Plan had been in the works before Sandy, that superstorm made the Plan's importance indisputable. Climate change has increased the risk of storms like Sandy and Katrina devastating populated urban and suburban areas. Drought, wildfires, and extreme snowfall each affect mail delivery. Climate change has also drastically increased the annual number of extreme heat events, which threaten mail carriers' safety and ability to complete deliveries. The Postal Service's unofficial motto dismissing snow, rain, and heat cannot be followed if it puts postal employees' safety at unacceptable risk. But the Plan's identification of USPS's climate challenges—and risk management and mitigation strategies that can be implemented over feasible timeframes—has placed one of the country's oldest federal entities on the cutting edge of having sustainable operations in times of crisis.

The sustainability projects I participated in at USPS may not seem like they depend heavily on legal analysis. But they do, which is why I was so involved as legal counsel. For example, the National Recycling Operation and Blue Earth program must be compliant with the Resource Conservation and Recovery Act (RCRA) and the bulk of municipal recycling ordinances to be successful. The Climate Change Adaptation Plan implicates land use law, wetlands regulation, siting considerations, the Clean Air Act and employee health and safety rules. Because sustainability law has that strong continuity of operations aspect, multi-year programs to upgrade USPS's aging vehicle fleet in light of EPA and DOE fuel efficiency rules, to implement energy efficiency measures in buildings, and to replace underground storage tanks at vehicle maintenance facilities all became partial responsibilities of mine as Environmental Counsel.

Sustainability does indeed have broad and deep implications in the practice of law. Clients, lawyers, and other service providers each have roles in making sustainability work to keep operations running, costs dropping, revenue increasing, and environmental benefits accruing. While law firms' sustainability practices tend to overlap to a large extent with traditional energy and environmental law, consulting firms have had

some success in developing and offering sustainability client services, but with no ability to provide legal advice. Having learned from my experience with the U.S. Postal Service that clients' sustainability-related needs frequently encompass both legal and non-legal issues, I formed RaeburnSide LLC, a consulting firm aimed at addressing these diverse needs. Similarly, lawyers seeking to develop a sustainability law practice would be well-advised to take the holistic view of sustainability adopted by the USPS in determining what they can offer that sustainability consultants cannot, thereby distinguishing their sustainability law services.

The U.S. Postal Service has been a sustainability leader. I hope other businesses and service industries will follow.

Matt Raeburn is a sustainability consultant and founder of RaeburnSide LLC (<http://www.raeburnside.com/>) in Portland. Matt is the former Environmental Counsel of the U.S. Postal Service and was an environmental lawyer at Paul Hastings and Bingham McCutchen, where he worked on renewable energy projects and in unprecedented litigation after the Deepwater Horizon disaster.

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The Long View

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