

The Long View

Sustainable Future Section Adopts Climate Change Task Force Report

Editor's Note: In 2015, the Sustainable Future Section formed a Task Force on Climate Change in order to consider how the legal profession might elevate its role in mitigating the projected impact of climate change. Since its formation, the Task Force volunteers have spent more than 1,000 collective hours meeting, researching, and drafting the findings and recommendations in the Oregon State Bar Sustainable Future Section Climate Change Task Force Report.

As noted in the report, the Task Force is rooted in the Report of the Oregon State Bar Task Force on Sustainability (2009), which recommended creation of the Sustainable Future Section and adding Oregon State Bar Bylaw Article 26. Article 26 incorporates consideration of future generations and environmental and social effects within the OSB organization itself, and encouragement by the Bar of education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

The following is an excerpt of the report. The full report can be accessed at https://sustainablefuture.osbar.org/files/2017/03/SFS_ClimateChangeTFreport.pdf. In adopting the report, it is the hope of the Executive Committee of the Sustainable Future Section that the report will generate useful dialogue and provide a valuable resource to Section members, particularly as we seek to increase the role of lawyers in mitigating climate change through implementation of the report's recommendations.

Overview of the Task Force and the Report

The Sustainable Future Section (SFS) of the Oregon State Bar is the first state bar association section devoted to the relationship between sustainability and law. SFS formed the Task Force on Climate Change to consider how the American legal profession could play a leadership role to reduce greenhouse gases and reverse climate change. To structure their analysis, Task Force members addressed two interrelated questions:

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- How has the legal profession responded to climate change, beyond providing paid legal services?
- Based on our current understanding of climate change, how should the legal profession respond?

To address the first question, Task Force members identified several activities that characterize how the legal profession has responded to climate change. Next, each member studied one or more activities, and wrote a summary of their analysis, which summaries are included as appendices to the report.

For the second question, the Task Force narrowed its focus to explore how SFS should respond to climate change in light of the American legal profession's response, and taking into account actions that would most likely reduce greenhouse gas emissions. The results of our analysis are presented in five recommendations that should be implemented by SFS. These recommendations are presented below under the heading Task Force Recommendations.

Assumptions of Task Force Members

Before making recommendations, the Task Force discussed the science of climate change and how the legal profession has responded to this issue.

As a context for decision-making, Task Force members relied on the data gathered by the National Aeronautics and Space Administration (NASA), the National Oceanic and Atmospheric Administration (NOAA), the global constituency of COP21, the Paris United Nations Summit on Climate Change, and international bodies such as the Intergovernmental Panel on Climate Change.

Collectively, these government bodies publish data that show that the Earth is warming because of greenhouse gas emissions from human beings, and that this warming has already caused damage to life on Earth. Task Force members are concerned that the damage from climate change will vastly increase unless immediate steps are taken to curb greenhouse gas emissions. Further, with worldwide population exceeding 7.3 billion, members are concerned that climate change will exacerbate other global impacts from human development.

In addition to reviewing scientific information, the Task Force also found that many attorneys, bar associations, academic institutions, and related organizations have advanced significant efforts to mitigate greenhouse gas emissions. However, much more could be done to present a unified and organized response to this global challenge. On a related point, the July 2014 ABA Sustainability Task Force Report concluded that the legal community has been "noticeably absent" from meaningful participation in implementing sustainable development matters around the world.

Task Force Recommendations

Based on these assumptions, the Task Force focused its report on climate change mitigation and issued the following five recommendations that SFS could potentially implement to reduce greenhouse gas emissions.

Underlying these recommendations is a general view that all members of the Bar share responsibility for the emissions that are warming the planet, and that the failure to act by one member does not void our own duty of care. Task Force members also believe that the legal profession is in a unique position to assist in the mitigation of climate change given the profession's expertise in understanding, interpreting, and reviewing the law, and its ability to lead by example as citizens who play an integral part in the structure of society.

Recommendation 1. Issue a Climate Change Policy Statement

SFS should issue a policy statement supporting legislation and regulations that will collectively reduce Oregon's greenhouse gas emissions consistent with established state and international

goals.

Recommendation 2. Provide Legal Support for Climate Change Legislation

SFS should form a subcommittee charged with creating and maintaining an "on call" list of attorneys interested in providing their skills free of charge to support the drafting and research of legislation and regulations to reduce greenhouse gas emissions.

Recommendation 3. Encourage Attorneys to Reduce Emissions, Practice Sustainability

SFS should create an individual certification program for attorneys like the Oregon State Bar Partners in Sustainability Program to encourage attorneys to minimize their individual carbon footprint.

Recommendation 4. Amend the Oregon Constitution

In light of potential standing issues for citizens harmed by climate change, SFS should support an amendment to the Oregon Constitution to include a specific reference to the State's duty to hold all natural resources in trust for future generations.

"the legal profession is in a unique position to assist in the mitigation of climate change given the profession's expertise in understanding, interpreting, and reviewing the law, and its ability to lead by example as citizens who play an integral part in the structure of society"

Recommendation 5. Align Oregon State Bar investments with ESG values

SFS should recommend to the Oregon State Bar that the Board of Governors adopt revised investment guidelines to be consistent with OSB Bylaw Article 26 (supporting the goal of sustainability) to specifically authorize the Budget and Finance and Investment Committees to consider environmental, social and governance (ESG) issues in making investment and divestment decisions.

Areas for Future Exploration

In their evaluation of the problems of climate change and the range of possible solutions, members of the Task Force considered two additional actions that SFS (or another institution) could take to reduce greenhouse gas emissions. More time and research is needed to explore the impact of these actions.

The Professional Rules of Conduct Could be Modified

The Oregon Professional Rules of Conduct could be modified to define actions that are sustainable and protect the climate as “ethical” actions.

A New Continuing Legal Education Requirement Could be Added

SFS could work with the Oregon State Bar to secure access to justice credits for environmental justice programmatic offerings, and work to increase the number of environmental justice CLEs offered.

Conclusion

The Climate Change Task Force submits the foregoing recommendations and areas of future exploration to the Sustainable Future Section. The Task Force respectfully notes that time is of the essence in the implementation of all efforts to combat climate change and requests that any recommendations that are ripe for implementation be so implemented, individually or together, as permits the Sustainable Future Section, the Oregon State Bar, or other governing bodies.

■ *The Section thanks the members of the Task Force for their work on the report: Susan Jane Brown, Sara Butcher, Chris B. Fryefield, Stephen Higgs, Laura Kosloff, Peter Sergienko, Michelle Slater, and Alex Wall, along with the many other volunteers who contributed valuable time and ideas to the report.*

Upcoming Section Events

MERCHANTS OF DOUBT

A program jointly sponsored by the Sustainable Future Section, Senior Advocates for Generational Equity (SAGE) and Center For Earth Leadership

Thursday, April 13, 2017, 4:45 to 7:00pm

Please join us for a viewing of the acclaimed documentary *Merchants of Doubt* followed by a moderated discussion. *Merchants of Doubt* examines how misinformation about climate science has been disseminated through public relations strategies and cultivated scientists to generate doubt about scientific consensus, distort policy discussions, and delay timely governmental responses to emerging ecological damage and human suffering.

When: Thursday, April 13, 2017 from 4:45 to 7:00pm
Where: Tonkon Torp LLP, 888 SW Taylor Street (16th Floor)
Cost: Free
CLE: An application for CLE credit will be submitted
RSVP: Roselene Chand at roselenechand@dwt.com

COME PLANT TREES WITH OSB! and the Sustainable Future Section

Attorney Volunteer Day with Friends of Trees

Saturday, April 15, 2017, 8:45am to 1:00pm

Enjoy a beautiful spring day of community building with Friends of Trees while helping to increase Portland's urban tree canopy. All ages are welcome and encouraged!

When: Saturday, April 15, 2017, 8:45am to 1:00pm
Where: Mt Scott Learning Center, 6148 SE Holgate Blvd, 97206, look for the Friends of Trees signs as you arrive

We're planting in the neighborhoods of Creston-Kenilworth, Foster-Powell, Mt. Scott-Arleta, and Reed

What: Please arrive by 8:45am to register and be assigned to a crew. Be sure to dress appropriately for weather: wear sturdy close-toed shoes/boots, rain-proof layers are always great, and be prepared to get a little dirty. We provide gloves, tools, and guidance, as well as breakfast snacks and hot coffee/tea to get everyone fueled up. There will also be a warm potluck lunch for all volunteers when the planting is complete provided by the hosting neighborhood groups—we hope you can stay for it!

RSVP: Sara Butcher at sara@butchersmithlaw.com

Lessons from SFS Co-Sponsored Event Featuring Paul Hawken of “Project Drawdown”

By Stephen Higgs and Diane Henkels

Many members of the Sustainable Future Section (SFS) advance solutions to climate change. To elevate these solutions, SFS co-sponsored a major event featuring world-renowned environmentalist and entrepreneur, Paul Hawken, and his work with Project Drawdown. This initiative describes when and how humanity can reach climate drawdown, the point at which greenhouse gas concentrations in the atmosphere begin to decline on a year-to-year basis.

Hawken spoke as the 2016 Visiting SAGE, an event hosted by the Portland nonprofit, Senior Advocates for Generational Equity (SAGE). Presenting to nearly 450 guests, Hawken shared insights about 100 existing, substantive solutions to reverse climate change. These “state-of-the-shelf” solutions are widely practiced, commonly available, economically viable, and scientifically valid. When implemented globally and at scale over the next thirty years, these solutions will forge a pathway to solve the climate crisis and result in more security, more prosperity, more jobs and better health.

Big solutions, local action

Of the 100 top solutions featured, at least 21 relate to land use. It is exciting to see a major organization suggest so many land use solutions as a way to roll back climate change. Top land use solutions run the gamut from composting to silvopasture to carbon farming. These solutions can be implemented at the local level, which demonstrates the important role that cities and counties play in the fight against climate change.

There are also several technical solutions that you might expect like solar farms and green roofs, and many that might surprise you. For example, Drawdown highlights behavioral solutions like educating girls across the world as yet another

strategy to reduce emissions. Hawken also spoke about “coming attractions”—cutting edge solutions to roll back climate change including powering cars with graphene batteries, nuclear fusion and other advances.

Drawdown is mapping and modeling how these 100 existing solutions can continue to scale over the next three decades. The group plans to communicate its findings through a book, an open-source database, and an interactive digital platform that describes how these solutions can reverse global warming when scaled globally. More information on Project Drawdown is available at: www.drawdown.org.

Key takeaways

Many who are concerned about climate change are also overwhelmed by the magnitude of the problem. Hawken reminded us that the fight against climate change has tremendous potential to unleash creativity, improve business practices and solve other pressing social problems at the same time. Most of all, he inspired us to recognize that solving the climate crisis is possible. We have the tools to reverse climate change. We need to trust in ourselves, scale these solutions and celebrate success.

More about Paul Hawken

Paul Hawken is one of the environmental movement’s leading voices, and a pioneering architect of corporate reform with respect to ecological practices. His work includes founding successful, ecologically conscious businesses, writing about the impacts of commerce on living systems, and consulting with heads of state and CEOs on sustainability. He has written seven books including four national bestsellers: *The Next Economy*, *Growing a Business*, *The Ecology of Commerce* and *Blessed Unrest*.

Stephen Higgs is the Executive Director of Senior Advocates for Generational Equity (SAGE), where he leads SAGE’s efforts to engage people over fifty in causes and initiatives that are vital to the needs of children, youth, and future generations. Diane Henkels is an attorney with Henkels Law, where she practices tribal and Indian law, electric utility regulation, general business law, and energy project development and problem solving. Diane is also the Chair-Elect of the Sustainable Future Section.

“The fight against climate change has tremendous potential to unleash creativity, improve business practices and solve other pressing social problems at the same time across all sectors.”

Invitation to Learn About Task Force on Climate Solutions

Inspired by the SFS co-sponsored event featuring [Drawdown](#), an initiative led by Paul Hawken to describe the 100 most substantive solutions to climate change, Steve Higgs, in partnership with SFS, invites you to attend an informational meeting to form a new Task Force of lawyers dedicated to accelerating these and other solutions to climate change.

The purpose of the Task Force on Climate Solutions would be to: (1) clarify the legal tasks that would accelerate the adoption of some of the solutions featured in Drawdown, and (2) identify a partner to serve as a clearinghouse to feature these legal tasks online, and to recruit pro bono legal teams to work on these tasks in one or more regions.

For example, if one of the chosen solutions is net zero buildings, the legal tasks could be: (1) negotiations and contracting for property; (2) securing permits, and (3) working on regulatory updates to building codes. If possible, the

team would also identify publicly available reference tools that lawyers can access online to perform these tasks. Depending on capacity, the group could also determine whether the solutions and related tasks would apply in other regions.

The Task Force would likely meet once a month for 12 months to accomplish the first milestone—clarifying the legal tasks for three solutions to climate change and identifying a partner to help organize and promote these tasks online. Once the first milestone is reached, the Task Force or others might apply the same approach to accelerate other climate solutions. Ultimately, the information developed through this initiative might be presented on a website curated by lawyers with expertise in various tasks necessary for the implementation of climate solutions.

The informational meeting will take place on May 11 from 7:00pm to 8:30pm at a home in Portland. To learn more and to register, email Steve Higgs at higgs.steve@gmail.com. If you are outside of Portland, you can join the meeting via conference call. Please note that this is an informational meeting. Participants are encouraged, but not required, to join the Task Force.

Congratulations to Tonkon Torp, Winner of the 2016 Sustainable Law Office Leadership Award!

In December 2016, the Sustainable Future Section presented its annual Sustainable Law Office Leadership Award to Tonkon Torp LLP. Each year the section recognizes a law office that has demonstrated leadership in sustainability, focusing in 2016 on the office that has made the most meaningful efforts to increase the use of alternative methods of transportation by its lawyers and staff.

Tonkon Torp has long been a leader among Oregon law firms in increasing awareness of and participation in sustainability initiatives. The firm's efforts to reduce its carbon footprint by reducing single-occupancy vehicle use and encouraging the use of mass transit, bicycling, carpooling, and car sharing include:

- Subsidizing the purchase of monthly Trimet passes.
- Providing bike parking within the firm's offices.
- Sponsorship by the firm's Sustainability Committee of The Street Trust's Bike More Challenge.
- Hosting workshops on bike commuting and basic bike repair.
- Investing in video conferencing equipment and encouraging its use as a means of reducing travel.
- Reimbursing emergency taxi rides home for lawyers and staff.
- Regularly using bike-based messenger and catering services.
- Not paying for automobile parking for any of the firm's lawyers or staff.

Thank you and congratulations to Tonkon Torp for its exceptional leadership in law office sustainability!

Portland Becomes First Salmon-Safe City

Mayor & Council Issue Salmon-Safe Challenge to Other West Coast Cities

By Dan Kent

Reprinted with permission from <http://www.salmonsafe.org/blog/portland>

On October 26, 2016, Mayor Charlie Hales announced that the City of Portland has taken action across city operations to earn Salmon-Safe certification, making it the first city in the world to achieve the third-party designation for its systematic approach to improving water quality and restoring salmon habitat.

Portland City Council formally adopted the findings of Salmon-Safe's assessment, three years in the making.

"We are now a Salmon-Safe city. I am proud of our City bureaus for rising to the occasion and fulfilling the pledge I made in 2013 that Portland would become the first city to be certified Salmon-Safe, advancing our environmental leadership in watershed health and salmon recovery," Mayor Charlie Hales said. "Portland is a city of rivers, and our economic wellbeing and quality of life rise with the health of the Willamette and Columbia, our many creeks and our native endangered salmon. I am proud to leave a Salmon-Safe legacy that is now embedded in city operations."

The City of Portland's designation means that city operations have conditionally passed the organization's comprehensive science-based evaluation of land and water management practices. Where improvement is needed, facility managers are committing to additional actions to limit water pollution, conserve water use and restore habitat over the next five years, at which time Salmon-Safe will re-inspect City operations for recertification.

But that's not enough, said Hales: "I also call on our fellow West Coast cities to join us and become Salmon-Safe cities. As the salmon teach us, we are all connected. As our indigenous people and tribes remind us, water is life. Salmon-Safe's third party audit and actions are especially relevant in the age of climate change when it is imperative to conserve water and strengthen the resilience of our natural systems."

"Salmon-Safe's third-party audit shows that the City of Portland is on the cutting edge of West Coast cities in taking a holistic approach to its watershed," said Dan Kent, Salmon-Safe executive director. "Taken together, the city's actions represent an integrated approach and meaningful commitment to the health of the Willamette River and our urban watershed."

Salmon-Safe certification affects day-to-day city operations that potentially impact downstream water quality as well as the construction and maintenance of City-managed properties, including City-owned buildings and the City's fleet of vehicles and bureau maintenance yards.

In practice it means systems are being implemented to further conserve water, reduce pesticide use, improve erosion control and increase installation of rain gardens and other "green infrastruc-

ture" to ensure storm water runoff is clean as it filters into wetlands, groundwater, nearby tributaries and the Willamette and Columbia rivers.

The current Citywide Salmon-Safe effort builds on Portland Parks & Recreation's decade-plus experience implementing its standards. PP&R first achieved certification in 2003 and was recertified in 2012. On World Environment Day in June 2013, Mayor Hales challenged other bureaus to adopt Salmon-Safe standards and apply for certification. That effort began in 2014 with the City's three largest infrastructure bureaus: Environmental Services (BES), Transportation (PBOT) and Water (PWB).

Participation expanded in 2015 to include Portland Fire and Rescue facilities and the Office of Management and Finance, which manages the City's buildings. The Bureau of Planning and Sustainability (BPS) has served as project manager and coordinator.

Spirit Mountain Community Fund provided the initial support for the City's Salmon-Safe evaluation. Implementation will be woven into bureau operations and capital improvements, and require no separate funding. Instead, future actions, such as the installation of rain gardens and habitat restoration practices, will be addressed through ongoing bureau funding and individual bureau capital improvement project requests.



Salmon-Safe independent Science team in the field evaluating Portland Water Bureau construction practices. Salmon-Safe © 2016

Dan Kent is Salmon-Safe's co-founder and executive director. Dan led the development of Salmon-Safe since its inception at Pacific Rivers Council and has more than twenty years of experience in market-based conservation, program management, and development of consumer and public service marketing campaigns.

Free Webinar for Oregon Attorneys

First National Conference of Lawyers Committed to Addressing the Climate Emergency

Friday, April 28, 2017, 9:30am to 2:30pm PDT

Sponsored by the OSB Sustainable Future Section

On April 28, 2017, a group of leading lawyers and academics will convene from locations across the United States and at the American University Washington College of Law in Washington, D.C., to consider potential solutions to address the challenge of climate change and the role of lawyers and law associations in advancing those solutions. The program will be open to all at no charge, but there will be a charge for attendees wishing to receive CLE credits (public interest lawyers and others may apply for hardship waivers of the CLE charge). The program will be simulcast over the internet for those unable to attend in person. The goals of the program include not only to educate lawyers on the issue but also to mobilize lawyers in pursuing common sense solutions to climate change. Sessions will include:

- The Role of Lawyers in Addressing Climate Change: Past, Present, and Future
- The Bi-partisan Response to Climate Change
- Climate Change Litigation in the U.S. and Lessons from Abroad
- Ethical, Moral and Justice Implications of Climate Change
- An Interactive Discussion on Individual and Legal Community Next Steps to Action

Speakers to include: Karen Florini, US State Dept.; Steve Harvey, President, Lawyers for Common Sense on Climate Change; Diane Henkels, Executive Committee, Oregon State Bar Sustainable Future Section; and Professor Mary Wood, University of Oregon School of Law.

***For a complete list of Speakers and the full Conference Agenda go to <https://www.wcl.american.edu/secle/registration>**

Cost: Free to all Oregon attorneys

CLE Credit: 4.5 hours of CLE credit pending

To Join Go To: <https://www.wcl.american.edu/secle/registration>

Click on the link and below Event Registration click on the drop-down arrow next to right. Select the Event and select the April 28 event First National Conference of Lawyers Committed to Address the Climate Emergency

Oregon State Bar
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The Long View

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