CARBON QUARTERLY

ISSUE HIGHLIGHTS

CARBON SPOTLIGHT
All Carbon Markets Publicity Is Good Publicity, Except When It Is Fraud
- page 2

CARBON POLICY
Bipartisan Interest Grows for Carbon Tariffs
- page 5

CARBON TRADING AND INVESTMENT
SBTi Finds Offsetting With Carbon Credits Poses "Clear Risks"
- page 9

Carbon credits could inflate environmental benefits and serve as a license to pollute.

- page 9

VOLUME 10 | JANUARY 2025

What's Inside

No matter your views on climate change policy, there is no avoiding an increasing focus on carbon regulation, resiliency planning, and energy efficiency at nearly every level of government and business. Changes in carbon—and, more broadly, greenhouse gas—policies have the potential to broadly impact our lives and livelihoods.

Covering developments in carbon policy, law, and innovation, *Carbon Quarterly* is produced by our Carbon Solutions group—a collaboration of our lawyers in the Asset Management and Investment Funds; Corporate; Energy, Infrastructure, and Resources; Real Estate; and Policy and Regulatory practices.

Carbon Spotlight 2

All Carbon Markets Publicity Is Good Publicity, Except When It Is Fraud 2

Carbon Policy 4

Incoming Trump Administration Likely to Roll Back Climate Policy 4

US Federal Government Continues to Invest in Clean Energy Projects 4

Bureau of Land Management Releases Updated Western Solar Plan, Identifies 31 Million Acres for Solar Development in 11 Western States 5

Bipartisan Interest Grows for Carbon Tariffs 5

Illinois Enacts Landmark Carbon Capture Bill 6

Carbon Litigation 7

Ramifications of *Loper Bright* Still Unfolding for Carbon Markets 7

Can Investor-State Dispute Settlement Align With Climate Obligations? 7

Carbon Trading and Investment 8

TotalEnergies Invests in Forestry-Based Carbon Credits 8

ESG Roundup—The United States Ebbs and Europe Sees Inflows 8

SBTi Finds Offsetting With Carbon Credits Poses "Clear Risks" 9

Direct Air Capture Competes With Data Centers for Clean Energy 9

Zillow Introduces Climate Risk Data on For-Sale Listings Across the United States 9

Authors 12

Endnotes 13

Carbon Spotlight

All Carbon Markets Publicity Is Good Publicity, Except When It Is Fraud

The second half of 2024 has been a tumultuous time for carbon markets, and that volatility is expected to continue following the recent US presidential election. President-elect Donald Trump has signaled that he will roll back environmental protections and clean energy investments, possibly including the Inflation Reduction Act (IRA), and pull the United States out of the Paris Climate Accord once again. President-elect Trump's recent appointees to various federal agencies, while not yet confirmed, and the incoming Republican control of both chambers of Congress, provides a strong coalition to administer these sweeping reforms. While the United States prepares to test the resiliency of the carbon markets through the president-elect's deregulatory agenda and barrage of proposed government agency appointees, the rest of the world met at the 29th Conference of the Parties (COP29) in Baku, Azerbaijan, to continue global climate discussions. Significantly, the countries at COP29 endorsed carbon credit quality standards that are critical to launching a United Nations-backed global carbon market, which would allow US companies to continue their participation in global efforts to reduce and further prevent the impacts of climate change, even if the United States again pulls out of the Paris Agreement.[1] It remains to be seen how the carbon credit quality standards agreed upon at COP29 will alleviate the integrity concerns in the carbon markets. A deep dive of the impacts of the US presidential election and of the stories out of COP29 will be discussed in the next edition of the *Carbon Quarterly*.

Recent events have demonstrated that a lack of transparency and standardization remain key concerns of the carbon markets. On 20 September 2024, the US Commodity Futures Trading Commission's (CFTC) released final guidance regarding the listing of voluntary carbon credit (VCC) derivative contracts on CFTC-registered exchanges as an attempt to mitigate some of the inherent problems in proper verification and accreditation of carbon offset projects.[2]

VCCs are the tradable, intangible instruments issued by a carbon crediting program—like Isometric (discussed below)—and generally represent the equivalent of one metric ton of carbon dioxide (CO_2) avoided or removed from the atmosphere.[3] As with other commodities, the CFTC does not have regulatory authority over VCCs but can promulgate guidance and regulations related to derivatives on VCCs.[4] The quality and integrity of VCCs—and the derivative instruments used to purchase them—has been an industry focus due

to the absence of a single standardized methodology to quantify emissions reduction and removal levels.[5] While the CFTC is not capable of implementing such a methodology, given its lack of authority to directly regulate environmental contracts, the final guidance creates a potential trickle-down effect by outlining factors for derivatives exchanges to consider when designing and listing physically or cash-settled VCC derivative contracts.[6]

Specifically, the guidance states that derivatives exchanges should:

- Consider VCC quality standards, including transparency, additionality, permanence, and risk of reversal.
- Examine the governance frameworks and tracking mechanisms of VCC crediting programs and specify relevant inspection and certification procedures.
- Monitor the underlying VCC markets, including the supply of VCCs and conformity with the latest certification standards.[7]

Although the CFTC's final guidance is nonbinding and does not carry the weight of a rulemaking, it is likely that it will be largely adhered to by derivatives exchanges.[8]

Following the heels of the CFTC's final guidance on VCC derivative contracts, on 2 October 2024, the CFTC, Securities and Exchange Commission (SEC), and the US Attorney's Office for the Southern District of New York announced parallel orders for fraudulent conduct in the VCC market.[9] The CFTC filed a complaint in federal court against the former CEO of C-Quest Capital, a carbon credit project developer, and simultaneously settled charges against its affiliate, CQC Impact Investors LLC (CQC), and its former COO, all related to a deceptive carbon offset project scheme.[10] The projects at issue involved the installation of energy-efficient cookstoves throughout communities in Africa, Asia, and Central America, which purportedly would lead to a reduction in CO_2 emissions released into the atmosphere.[11] The CFTC's settlement orders state that CQC fraudulently reported false, misleading, and inaccurate information to the carbon credit registry and validation bodies in connection with the projects, which resulted in the issuance of millions more carbon offset credits than CQC was entitled to receive.[12] The CFTC fined CQC US$1 million and required the cancellation or retirement of VCCs sufficient to address the violative conduct.[13] The actions against CQC's former executives allege intentional participation in CQC's provision of false and misleading project information.[14] The COO admitted the findings and entered into a formal cooperation agreement with the CFTC.[15]

The CEO, however, did not admit any wrongdoing, and thus the CFTC filed suit in federal court seeking civil monetary penalties, disgorgement of ill-gotten gains, restitution, and permanent trading and registration bans.[16]

The SEC also announced settled charges against CQC for fraudulently altering data concerning its business and making material misrepresentations in the offering of equity to institutional investors in the United States.[17] The SEC's order found that the project developer violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.[18] As part of its offering, CQC disseminated misleading offering materials—including "teasers," offering memoranda, financial projections, and due diligence questionnaires—that reflected manipulated data.[19] Accordingly, the SEC order alleges that CQC deceived investors with respect to its past and future ability to profitably and sustainably originate carbon credits.[20] The offering ultimately culminated in a private equity fund manager purchasing a US$250 million stake in CQC's equity on behalf of two of its private funds.[21]

The US Attorney's Office for the Southern District of New York announced related criminal charges against Kenneth Newcombe and Tridip Goswami, CQC's former CEO and the head of the Carbon & Sustainability Accounting Team, respectively, for allegations similar to those detailed in the CFTC and SEC orders.[22] This is one of the first major fraud cases involving carbon markets, and it serves as a wary reminder of the risks facing this emerging class of financial instruments resulting from the inconsistency between various carbon credit verification and validation schemes.

But help may be on the way, as nongovernmental actors are also working to alleviate integrity concerns in the carbon markets. Earlier in the quarter, the Carbon Removal Standards Initiative (CRSI)—a new player in the CO_2 removal (CDR) industry—officially launched, and Isometric—a carbon certification platform—issued its first verified CDR credits from a bio-oil project developed by Charm Industrial.[23] The credits originated from a bio-oil storage process that involved "gathering waste biomass and converting it into a stable, carbon-rich liquid that is pumped deep underground."[24] The CDR credits were certified based on actual activity rather than forecasts, according to Isometric's Bio-oil Geological Storage Protocol, and were purchased by companies including Shopify and Stripe, among others.[25] CRSI and Isometric are not affiliated but are both independent organizations seeking to ensure integrity in the production and purchasing of carbon credits. CRSI is a nonprofit project run by Anu Khan, the former deputy director of science and innovation at Carbon180, aimed at providing technical assistance to nongovernmental organizations and policymakers to "develop and implement CDR policies, with a unique focus on quantification standards."[26] CRSI is currently working on building its Quantification Resources Database—a central depository for CDR resources, standards, academic papers, etc. CRSI is also developing a framework for jurisdiction-level monitoring of enhanced weathering, a geoengineering technique to speed up the natural process of rocks weathering to remove CO_2 from the atmosphere and store it in solid minerals.[27]

Carbon Policy

Incoming Trump Administration Likely to Roll Back Climate Policy

In President-elect Trump's second term, his administration's impact on carbon emissions policy is expected to be significant. Trump has pledged to withdraw from the Paris Climate Accord; he called the Inflation Reduction Act the "Socialist Green New Deal" and has pledged to dismantle it; he said he will reverse the Biden Administration Power Plant Rule; and we expect he will roll back various other environmental rules, including fuel efficiency standards for cars and trucks, which he weakened during his first presidential term.

Many tools will be available to President-elect Trump to implement these changes, particularly since the House and Senate will also be in Republican control for the 119th Congress, beginning 3 January 2025. In the first 30 to 60 days, we expect Congress and President-elect Trump to pass a large signature bill using a legislative vehicle called the Budget Reconciliation Act. Budget reconciliation bills are not subject to the filibuster, allowing the Senate to pass them with only a simple majority of senators supporting, not the 60 votes needed to overcome a filibuster. Other tools available to the President include Executive Orders, directives written and signed by the President related to operation of the federal government. President-elect Trump has said he will issue 100 Executive Orders on the first day of his presidency, and we assume some of those will be related to federal spending on clean energy and emissions reduction programs. As in previous years, we assume President-elect Trump will simply slow down processing of funding for programs he does not like. Furthermore, he has said he will restore presidential impoundment authority, allowing him to hold funding that has been appropriated.

We will provide updates in future editions of *Carbon Quarterly* as the Trump administration begins to implement its priorities.

US Federal Government Continues to Invest in Clean Energy Projects

Under the Biden-Harris administration's Investing in America agenda, the US federal government continues to pledge significant investments for clean energy projects and developments. This article discusses a selection of some notable updates regarding the administration's various clean energy investment initiatives.

On 5 September 2024, the Biden-Harris administration announced a US$7.3 billion investment for clean, affordable, reliable electricity for rural America.[28] This investment is the first award for the US Department of Agriculture's Empowering Rural America (New ERA) program, which is intended to help rural electric cooperatives transition to clean, affordable, and reliable energy. The goal is to lower energy costs for millions of users while also reducing greenhouse gas emissions and creating new jobs and economic opportunities in rural America.[29]

The investment, which is touted as the largest investment in rural electrification since the New Deal, is being made to support 16 rural electric cooperatives serving farms, small businesses, and rural communities.[30] The selected cooperatives provide services in the following 23 states: Alaska, Arizona, California, Colorado, Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Wisconsin, and Wyoming.[31] Dairyland Power Cooperative (Dairyland), located in Wisconsin, is receiving nearly US$573 million, the first New ERA award funded by this investment, which they plan to leverage for a total project investment of US$2.1 billion to support the procurement of 1,080 megawatts of renewable energy through eight wind and solar power purchase agreements, four solar installations, and four wind power installations across rural portions of Illinois, Iowa, Minnesota, and Wisconsin.[32] With the support of this investment, Dairyland estimates that electric rates for their members will be 42% lower over 10 years.[33]

On 20 September 2024, the US Department of Energy (DOE) Office of Clean Energy Demonstrations (OCED) issued a Notice of Intent to fund up to US$1.8 billion for the design, construction, and operation of mid- and large-scale commercial direct air capture (DAC) facilities and infrastructure scaling platforms.[34] DAC is an emerging field that utilizes various processes to extract CO_2 directly from the air and then either permanently store it deep underground or convert it into useful carbon-containing products that prevent its release back into the atmosphere (e.g., concrete).[35] This funding is in addition to the previous US$3.5 billion in funding for the four Regional DAC Hubs announced in December 2022.[36] This new funding will support the further commercialization and deployment of DAC technologies.[37] Specifically, OCED anticipates that the funding will be offered in the following three areas:

1. Funding one to three infrastructure scaling platforms, or host sites, to provide DAC developers with a place to build and operate facilities with access to clean energy and shared CO_2 post-capture processing. Maximum of US$250 million for a single project.
2. Funding four to eight mid-scale commercial DAC facilities with a capture capacity between 2,000 and 25,000 tons of CO_2 per year. Maximum of US$50 million for a single project.
3. Funding two to six large-scale commercial DAC facilities with a minimum capture capacity of 25,000 tons of CO_2 per year. Maximum of US$600 million for a single project.[38]

All projects must be supported by a minimum nonfederal cost share. OCED began accepting applications for funding on 19 December 2024. More information regarding upcoming engagement opportunities related to this funding is available at **https://www.energy.gov/oced/dac-hubs-local-engagement-opportunities**.[39]

On 3 October 2024, in further support of the Investing in America agenda, the DOE also announced an investment of US$1.5 billion in four transmission projects intended to "improve critical interregional grid connections, bring diverse clean energy resources to customers, bolster resilience to extreme weather, and deliver hundreds of millions of dollars in direct and indirect community benefits."[40] Specifically, the funding is intended to

enable nearly 1,000 miles of new transmission development and 7,100 megawatts of new capacity throughout Louisiana, Maine, Mississippi, New Mexico, Oklahoma, and Texas.[41] The DOE's Grid Deployment Office will facilitate the funding through the Transmission Facilitation Program, a revolving fund designed to help overcome the financial hurdles facing transmission development.[42]

In addition to the funding identified above, in September 2024, the US Department of Treasury (Treasury) highlighted the impact of the IRA's Low-Income Communities Bonus Credit Program (the Program) on solar installations.[43] The Program was established under the Internal Revenue Code to promote cost-saving clean energy investments.[44] In 2023, the first year for the Program, the Internal Revenue Service awarded more than 49,000 bonus credits under the Program, equaling approximately US$3.5 billion in investments for solar installations.[45] The bonus credits were awarded approximately as follows: (i) 48,000 to behind-the-meter residential energy facilities; (ii) 100 to new energy facilities to be developed on Native American lands; (iii) 800 to energy facilities to be installed on affordable housing developments; and (iv) 300 to facilities that provide at least 50% of the financial benefits of the energy they produce to low-income households. Awards from the Program were primarily targeted for areas experiencing high energy costs or persistent poverty.[46] It is estimated that the bonus credits will fund the generation of close to 2 billion kilowatt hours of clean energy, roughly the equivalent to the annual electricity use of 200,000 average-sized US households.[47]

Furthermore, the Treasury also highlighted the fact that more than 3.4 million American families claimed more than US$8 billion in residential clean energy and home energy efficiency credits against their 2023 federal income taxes, the first year that the full adjustments from the IRA were in effect.[48] Of the 3.4 million families, 1.2 million claimed over US$6 billion in credits for residential clean energy investments, which includes solar electricity generation and solar water heating and battery storage, among other technologies.[49] The total reported investment for qualified solar electric costs in 2023 was more than US$20.5 billion, as reported by more than 750,000 families.[50]

Additionally, 2.3 million families claimed more than US$2 billion in credits for energy-efficient home improvements, including heat pumps, efficient air conditioners, insulation, windows, and doors.[51] The Treasury noted that these numbers only reflect the information on 2023 tax returns filed and processed through 23 May 2024, and the reported numbers are expected to grow as returns continue to be filed and processed.

Bureau of Land Management Releases Updated Western Solar Plan, Identifies 31 Million Acres for Solar Development in 11 Western States

On 29 August 2024, the Bureau of Land Management (BLM) released its Final Utility-Scale Energy Programmatic Environmental Impact Statement and Proposed Resource Management Plan Amendments, more commonly known as the proposed updated Western Solar Plan.[52] The updated Western Solar Plan is designed to expand and better facilitate the development of large-scale, solar-energy-generating developments on public lands across 11 western states.[53] The original 2012 plan included Arizona, California, Colorado, Nevada, New Mexico, and Utah, while the updated plan now also includes Idaho, Montana, Oregon, Washington, and Wyoming.[54] The updated Western Solar Plan is intended to further President Biden's Investing in America goal of achieving a 100% clean electricity grid by 2035.[55]

The Western Solar Plan identifies approximately 31 million acres of public lands in the 11 states as available for solar applications.[56] The plan allows solar applications within 15 miles of existing or proposed transmission lines, as well as in previously disturbed lands.[57] The plan specifically excludes approximately 131 million acres of public lands from solar applications, which were excluded based on a high likelihood of resource conflict, including conflict with sensitive wildlife or cultural resources.[58] The plan applies only to solar projects that are five megawatts or larger and that will be connected to the grid. No solar projects are specifically authorized through the Western Solar Plan, and all proposed projects must still undergo site-specific environmental review and public comment.[59]

The updated Western Solar Plan will apply to all future applications for solar projects on BLM-managed public lands within the 11 identified western states.[60] Some or all elements of the plan may also apply to in-progress project applications depending on how far along the application is in the BLM review process.[61]

Bipartisan Interest Grows for Carbon Tariffs

There has been a subtle shift in 2024 in how Republican lawmakers talk about climate policy, in particular as a way to advance US trade policy. Republicans are increasingly seeing the lower carbon footprint of American manufacturing as the "US Carbon Advantage" in its trade relationships.[62] The PROVE IT Act (the Act), a bipartisan bill with five Republican cosponsors in the Senate and 22 Republican cosponsors in the House, would direct the DOE to conduct a study of the emission intensity of heavily traded products.[63] The study would determine the average emissions intensity in metric tons of CO_2 equivalent (CO_2e) for covered products produced in the United States and in specified other countries.[64] The Act defines covered products to include aluminum, cement, iron and steel, plastic, fertilizer, glass, hydrogen, lithium-ion batteries, petrochemicals, natural gas, paper, solar cells, and wind turbines, among others.[65]

If passed, its proponents believe the study would emphasize the smaller carbon footprint of US products.[66] It is likely not a coincidence that this bill was introduced just months before the European Union began implementing the world's first carbon tariff, known as the Carbon Border Adjustment Mechanism (CBAM).[67] Beginning in October 2023, CBAM required importers of iron and steel, cement, fertilizers, aluminum, electricity generation, and hydrogen to register their emissions.[68] Then, in January 2025, these importers will be required to pay an "adjustment" fee to account for emission disparities between the importers' and EU products.[69] CBAM allows reductions in the adjustment fee for any carbon prices already paid abroad.[70]

Despite growing enthusiasm, some Republican lawmakers and conservative energy groups are pushing back on the PROVE IT Act out of concern it will lead to a US carbon tariff or domestic carbon tax.[71] Opponents argue the lack of data on domestic manufacturing emissions is the biggest obstacle to implementing a carbon tax in the United States.[72]

Despite these fears, other Republicans are already pushing for a US carbon tariff—although without a domestic carbon tax. On 9 September 2024, Senator Bill Cassidy (R-LA) released a video of him talking to Americans outside the Capitol about the Foreign Pollution Fee Act, a bill he is sponsoring that would implement a carbon tariff for products based on the average CO_2e intensity in the country of origin as compared to the baseline CO_2e intensity of the same product produced in the United States.[73] Senator Cassidy emphasized to these voters that he hoped the bill would achieve three goals:

1. Protect US manufacturing;
2. Incentivize China and other economic competitors to reduce their pollution; and
3. Stop funding Chinese military expansion.[74]

Republican lawmakers are not the only ones with a plan for carbon trading. In the last legislative session, Senator Sheldon Whitehouse (D-RI) reintroduced for a second time the Clean Competition Act, which would set a carbon border adjustment based on the carbon intensity of the source country as it compares to the US baseline.[75] The Clean Competition Act differs from the Foreign Pollution Act in that US manufacturers that exceed the US baseline would also be required to pay the carbon fee.[76] Seventy-five percent of revenues raised would be invested in the new technologies that would help covered industries decarbonize.[77] The remaining 25% would be deposited in a fund administered by the US State Department to help low-income countries decarbonize.[78]

Alternatively, Congressman Paul Tonko (D-NY)—the top Democrat on the Energy and Commerce Subcommittee on Environment, Manufacturing, and Critical Materials—introduced the Climate Pollution Standard and Community Investment Act of 2024, which would establish an economy-wide cap on carbon emissions that aggressively phases down emissions by 2060.[79] To avoid a loss of American competitiveness, the bill authorizes the Environmental Protection Agency and US Customs and Border Protection to develop an international allowance program for importers in energy-intensive, trade-exposed industries.[80]

Illinois Enacts Landmark Carbon Capture Bill

On 18 July 2024, Illinois Governor JB Pritzker signed into law the Safety and Aid for the Environment in Carbon Capture and Sequestration (Safe CCS Act), causing Illinois to join just a handful of states that have carbon capture and sequestration (CCS) laws on its books.[81] Specifically, the Safe CCS Act regulates carbon capture and sequestration via geological storage (as opposed to other sequestration methods, e.g., biological sequestration), which is a process by which CO_2 emissions are captured, transported through pipelines, and permanently stored in deposits deep underground.[82] The Safe CCS Act is intended to serve as a comprehensive regulatory framework for carbon capture and sequestration projects, with the goal of attracting and establishing high-quality carbon sequestration projects by providing a set of concrete regulations and requirements. The Safe CCS Act includes a state permitting requirement (which is in addition to the Class VI permitting requirements of the US Environmental Protection Agency) and establishes rules and regulations for monitoring (during and after sequestration), insurance, financial assurances, emergency management, and closure plans.[83]

The specific regulations and requirements set forth in the Safe CCS Act include, but are not limited to:

- Codifies that ownership of the pore space into which the carbon may be sequestered must be vested in the owner of the surface estate that lies over the pore space in question. Ownership in the pore space may not be severed from ownership of the surface estate, provided, however, that easements and leases for use of the pore space shall not be deemed a severance prohibited by the act. An easement or lease to use the pore space shall not confer any surface rights unless expressly stated otherwise in the applicable agreement.[84]
- Requires CCS projects to obtain the express authorization from owners of at least 75% of the surface area above the proposed sequestration facility.[85]
- Requires CCS projects to monitor the water, air, and soil to ensure no leaks occur and must establish detailed emergency response plans.[86]
- Requires CCS projects to demonstrate financial assurances at least equal to the estimated cost of all air monitoring, soil gas monitoring, emergency response, remedial action, and closure activities required by the Safe CCS Act.[87]
- Establishes a state trust fund, funded by CCS operators, to cover costs related to remedial actions, monitoring, and compensation to persons damaged by CCS operators, to the extent not covered by the CCS operator in question.[88]
- Requires CCS operators to demonstrate that there will be no net increase in the criteria pollutant emissions in connection with the CCS project.[89]

As more states enact and implement CCS laws and regulations, the potential for conflict between such state laws and federal laws and regulations increases, particularly in connection with any state law that may be viewed as a constraint on interstate trade. For example, state laws regulating pipelines carrying CO_2 to storage sites may potentially conflict or be preempted by the rules and regulations of the Pipeline and Hazardous Materials and Safety Administration (PHMSA) of the US Department of Transportation. Notably, the Safe CCS Act addresses this directly by specifically providing that no CO_2 pipelines will be approved until PHMSA has adopted its final pipeline safety rules intended to enhance the safe transportation of CO_2 and has otherwise provided its approval to the proposed CO_2 pipeline.[90]

Unrelated to the Safe CCS Act, on 2 October 2024, Archer-Daniels-Midland (ADM) paused its injection activities at its Illinois CCS site after discovering a potential leak deep underground.[91] The ADM project, which was put into place prior to the state-specific permitting requirements of the Safe CCS Act, is one of the first major CCS projects in the United States.[92] The goal is for the framework and guardrails imposed by the Safe CCS Act to proactively address potential CCS issues and more clearly define responsibility for adverse issues should they arise.

Carbon Litigation

Ramifications of *Loper Bright* Still Unfolding for Carbon Markets

On 28 June 2024, *in Loper Bright Enterprises v. Raimondo*, the US Supreme Court overruled the longstanding Chevron doctrine in a 6-3 opinion. [93]The *Chevron* doctrine was a core tenet of administrative law for over 40 years and required US federal courts to defer to federal agencies' interpretations of ambiguous statutes so long as the interpretations were "reasonable."[94] As a result of the *Loper Bright* decision, federal courts will no longer be required to defer to an agency's reasonable interpretation of an ambiguous statute and will instead be the arbiters of what is the "best" interpretation of a law.[95] Agency interpretations will still be given some amount of "respectful consideration" under *Skidmore v. Swift & Co.*, a pre-*Chevron* case prescribing a lower mode of deference.[96] The ramifications of *Loper Bright* are likely to be significant, with ripple effects felt across every industry that is regulated by a US federal agency. The decision may spur an influx of litigation given that regulated entities will, at the very least, have heightened leverage in challenging agency actions in federal court.[97]

As an illustrative example, on 2 July 2024, the US Supreme Court ordered the US Court of Appeals for the D.C. Circuit to reconsider its prior approval of a Federal Energy Regulatory Commission (FERC) decision granting certain market benefits for a small-scale solar energy project in Montana.[98] The D.C. Circuit case, *Solar Energy Industries Association v. FERC*, involved a challenge to FERC's determination that a solar-storage project qualified as a small-scale power producer project entitled to preferential treatment under the Public Utility Regulatory Policies Act based on its net output rather than gross power-generating capacity.[99] The FERC case was one of several decisions vacated and remanded to lower courts by the Supreme Court in light of the *Loper Bright* decision.[100]

The *Loper Bright* ruling follows a series of blows to the power of federal agencies, many of which have involved rulemakings related to climate change and the carbon markets, including the bolstering of the "major questions doctrine" in *West Virginia v. EPA*.[101] Members of Congress have seized on the momentum of the courts against federal agency power, with the SEC often finding itself in the crosshairs of challenges to its authority.[102] Following the March 2024 open legal challenges to the SEC's Climate-Related Risk Disclosure Rule and the 5 June 2024 vacatur of the Private Funds Adviser Rules, the House Financial Services Committee (HFSC) held a hearing on 24 September 2024 entitled "Oversight of the Securities and Exchange Commission."[103] Key issues of discussion included: (i) the volume and breadth of rules promulgated by the SEC during the Biden administration; (ii) digital assets; (iii) the politicization of the SEC and financial regulations; and (iv) the implications of the *Loper Bright* decision on the SEC.[104] In a rare occurrence, all five SEC commissioners gave testimony during the HFSC hearing.[105] The ramifications of *Loper Bright* are still in their early stages, and it will remain to be seen how agencies go about crafting new rules in such an uncertain regulatory landscape.

Can Investor-State Dispute Settlement Align With Climate Obligations?

In a keynote speech on 25 April 2024 at the Azerbaijan Arbitration Days conference, Alexis Mourre, former chairman of the Court of Arbitration of the International Chamber of Commerce, discussed how investor-state dispute settlement (ISDS)—the process by which sovereign nations can be sued by foreign investors who fund or directly own projects in host countries—can be made to align with climate change goals.[106] In Baku, Azerbaijan, where COP29 took place in November 2024, Mourre made arguments in favor of an ISDS system that aligns with states' emissions-reduction commitments under the United Nations Framework Convention on Climate Change (UNFCCC), the Paris Climate Accord, and the European Green Deal.[107]

The alignment proposed by Mourre could come via "narrower and more precise drafting" of investment treaties to better incorporate climate change goals when interpreting ambiguous concepts, such as "legitimate expectations and fair and equitable treatment."[108]

As an example of this alignment, Mourre referenced the recent European Court of Human Rights decision in *Verein KlimaSeniorinnen v. Switzerland* in April 2024, where the court held that, under the UNFCCC and the Paris Agreement, states had a "positive obligation" to implement measures to prevent an increase in carbon emissions and a rise in global average temperatures.[109] Mourre suggested that this case emphasized the importance of international court decisions in giving binding force to states' climate change goals.[110]

Mourre also discussed the Energy Charter Treaty (ECT) award made in August 2022 in *Rockhopper v. Italy*, which involved interpretive questions as to whether the right to obtain an oil permit was a protected investment and whether the denial of the permit amounted to an expropriation.[111] Although the deciding tribunal ruled that this was an illegal expropriation under the ECT, a "separate opinion" was filed by one of the arbitrators, noting the "very serious" ecological concerns with drilling so close to the Italian coast.[112] Mourre counseled that the ECT could have been interpreted differently in light of "relevant rules of international law," which could include states' climate-change commitments under international agreements.[113] Mourre pointed to the application of such an alignment between the ISDS and environmental law in the growing number of solar power cases, which have come about due to governments' long-term plans to meet environmental goals by incentivizing clean and renewable energy investments through feed-in tariffs, green certificates, and other subsidies.[114]

On 30 September 2024, ExxonMobil (Exxon) filed an ECT claim against the Netherlands after the Dutch government phased out gas extraction following a series of extraction-linked earthquakes in Europe's biggest gas field.[115] Exxon requested arbitration at the Washington-based International Centre for Settlement of Investment Disputes for its claim that the Netherlands has reneged on its obligations under the ECT—a claim that could be worth billions of dollars.[116] The case comes just months after the European Union approved a plan to exit the ECT due to incompatibility with the bloc's climate-change goals.[117] The case presents an opportunity to test Mourre's suggested alignment between ISDS and climate obligations.

Carbon Trading and Investment

TotalEnergies Invests in Forestry-Based Carbon Credits

In the third quarter of 2024, TotalEnergies signed a US$100 million agreement with Anew Climate (Anew) and Aurora Sustainable Lands (Aurora) to purchase carbon offset credits as part of its goal to reduce its direct greenhouse gas emissions (Scope 1 and 2) by 40% by 2030 and achieve carbon neutrality by 2050.[118] The credits are generated through improved forest-management practices that manage timber forests to maximize their carbon sequestration potential by reducing harvests and increasing the time between harvests, among other practices.[119] The agreement includes 20 separate projects over 300,000 hectares across 10 states.[120]

TotalEnergies, the French oil and gas giant, is pursuing its carbon neutrality goals for direct emissions through carbon offsets only as a supplement to its primary goal of avoiding and reducing its emissions.[121] This includes a US$1 billion investment over two years to increase the energy efficiency of its operations.[122] It also includes investments in carbon capture and storage and the gradual elimination of routine flaring of methane, a greenhouse gas 28 times more potent than CO_2.[123]

Additionally, TotalEnergies has also set the goal of reducing the carbon intensity of its energy products by 25% by 2030 as compared to 2015 levels.[124] It hopes to achieve this through the growth of lower carbon fuels—such as natural gas, biofuels, biogas, hydrogen, and e-fuels—as a greater portion of the sales in its energy mix as well as by offering carbon capture and storage as a service to its industrial clients.[125]

TotalEnergies' deal with Anew and Aurora comes at a time when the voluntary carbon market is rebuilding its reputation after allegations of fraud and overstated environmental benefits caused the market to contract in 2023.[126] In September 2024, the CFTC finalized guidance that aims to encourage standardization in the voluntary carbon market and restore consumer confidence.[127] Key values identified in the guidance to encourage the development of quality carbon credits are transparency, additionality, permanence, and robust quantification.[128]

Permanence is a particularly difficult component for forestry-based carbon credits. For example, the 2023 record-setting forest fires in Canada released enormous amounts of stored carbon. If those forest fires were a country, they would have ranked fourth for greenhouse gas emissions that year behind China, the United States, and India.[129] To ensure forestry-based carbon credits account for losses, most carbon credit registries require projects to include a buffer pool, meaning the project will generate less carbon credits than carbon that the project will actually store under the assumption that some of that carbon will be inadvertently released during natural occurrences such as forest fires. American Carbon Registry (ACR), the registry used by Anew to register the credits in the projects for TotalEnergies, requires the use of a buffer pool.[130] The number of credits stored in the buffer pool is developed based on an analysis of the risk in each project area.[131]

ESG Roundup—The United States Ebbs and Europe Sees Inflows

Environmental, social, and governance (ESG) remained a highly politicized issue over the past quarter, and while anti-ESG rhetoric remains heightened in the United States, data shows continuing growth in global inflows into ESG investments.[132]

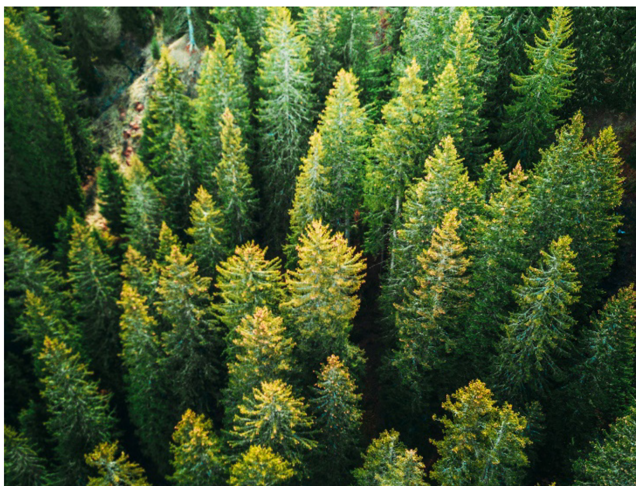
In the United States, in September 2024, the SEC quietly dissolved the Climate and ESG Enforcement Task Force that was created in March 2021 with the goal of "developing initiatives to proactively identify ESG-related misconduct."[133] The SEC has also left ESG off its 2025 Examination Priorities list released on 21 October 2024 and had previously left ESG off its 2024 Examination Priorities list released in October 2023.[134] These shifts in focus by the SEC are likely due in part to the increased scrutiny the commission has received following the Supreme Court's decisions in *Loper Bright* and *West Virginia*, as discussed above, and from the US Congress.[135] On 30 July 2024, the House Judiciary Committee sent pointed letters to over 100 organizations involved in Climate Action 100+, the "world's largest investor-led engagement initiative on climate change," which includes some of the world's largest asset managers and public companies totaling over US$10 trillion in market capitalization.[136] The letters suggest "collusive activity" among members of Climate Action 100+ related to advancing ESG-related goals and pressuring companies on reducing greenhouse gas emissions.[137] Relatedly, on 1 August 2024, the House Financial Services Committee released its final staff report titled "*The Failure of ESG: An Examination of Environmental, Social, and Governance Factors in the American Boardroom and Needed Reforms*."[138] The report specifically states that the SEC has "overstepped its statutory authority by finalizing a climate disclosure rule" and highlights a number of key priorities, including: (i) reforming the proxy voting system; (ii) increasing transparency and oversight of large asset managers; (iii) improving ESG rating agency accountability; (iv) strengthening oversight of federal agencies and demanding adherence to statutory limits; and (v) "protecting" US companies from EU regulations.[139] In a similar vein, Senate Committee on Banking, Housing, and Urban Affairs Ranking Member Tim Scott (R-SC) and Senators Bill Hagerty (R-TN) and Representative Andy Barr (R-KY) sent a letter to Treasury Secretary Janet Yellen and other senior Biden administration officials requesting a delay in the implementation of the EU Corporate Sustainability Due Diligence Directive (CSDDD) and the repeal or substantial modification of the directive.[140] Earlier in September, House Republicans held an "anti-woke" week and passed several anti-ESG bills.[141]

While the United States continues to spar internally around the role of ESG, the third quarter of 2024 notched a notable uptick in global inflows to ESG open-end and exchange-traded funds, amounting to US$10.4 billion in new money.[142] The increased global inflows were buoyed by a deceleration in outflows in Canada, Japan, and the United States.[143] The European continent saw the bulk of the gains, with new money flowing into Article 6, 8, and 9 funds, referring to the different levels of

sustainability under the Sustainable Finance Disclosure Regulation (SFDR).[144] Article 8 funds promote ESG characteristics and Article 9 funds have a sustainable-investment objective, whereas Article 6 funds include all those within the scope of the SFDR that are neither Article 8 nor Article 9.[145] Also in the third quarter of 2024, the Net Zero Asset Managers initiative—an international group of asset managers committed, consistent with their fiduciary duty, to supporting the goal of net zero greenhouse gas emissions by 2050 or sooner—released its newest Target Disclosures Report.[146] The report states that more than 30 asset managers have joined the initiative since the last report, raising the total signatories to over 325 asset managers representing over US$57.5 trillion in assets under management.[147] The 325 signatories are headquartered in over 35 countries, and 264 had set individual initial targets to guide their net-zero investment practices as of the date of the report.[148] The data suggests that investor appetite for sustainable investments remains steady even in the face of turbulent political headwinds.

SBTi Finds Offsetting With Carbon Credits Poses "Clear Risks"

In July 2024, the Science Based Targets initiative (SBTi) released a report summarizing research on the effectiveness of carbon credits.[149] The report found that the use of carbon credits to offset corporate emissions posed "clear risks" and that "treating carbon credits as fungible with other sources, sinks, or reductions of emissions is inadvisable, illogical, or damaging to global mitigation goals."[150] The report suggested carbon credits could inflate environmental benefits and serve as a license to pollute, and their use could confuse consumers, thereby increasing the risk of litigation liability for greenwashing claims.[151]



The report suggests there is still a role for carbon credits to play in global efforts to mitigate climate change.[152] In particular, the report found favorable results for the use of carbon credits in "contribution claims" or claims that the corporation is contributing to global or country-specific efforts to reduce or avoid emissions that are not tied to the corporation's value chains.[153] Additionally, the report promoted the use of carbon "insetting" as opposed to carbon offsetting, which relies on corporate carbon financing that generates and retires carbon credits entirely within the corporate value chain (i.e., Scope 3 emission reduction efforts).[154]

The report—itself a synthesis of reports, commentaries, literature review, news coverage, and other sources—included findings that cut in favor of carbon offsetting.[155] Some sources emphasized the benefit of directing climate financing to mitigation measures that are most cost effective.[156] It also could serve as a way to internalize the cost of carbon and drive action to reduce direct emissions.[157]

SBTi will continue to analyze the results of this report, along with public comment on the report, as it develops version 2.0 of its Corporate Net-Zero Standard, expected to be released in 2025.[158]

Direct Air Capture Competes With Data Centers for Clean Energy

On 30 August 2024, CarbonCapture Inc. (CarbonCapture) announced it would be pausing the deployment of its commercial-scale DAC project in Wyoming due to a lack of available low-carbon energy sources required to power the project.[159] The project, called "Project Bison," ran into intense competition for clean energy from the rapid deployment of data centers.[160] Data centers used to run artificial intelligence require immense amounts of electricity to power. Recent research by Morgan Stanley predicts that data centers globally will produce the equivalent of 40% of US annual emissions.[161]

In May, Project Bison was one of 24 projects to win federal grants issued by the DOE to developers pursuing CO_2 removal projects.[162] These grants are part of the larger DOE initiative, "Carbon Negative Shot," which aims to reduce the cost of removing carbon to US$100 per ton of CO_2e by 2032.[163] Project Bison would remove carbon through advanced structured sorbents in modular containers the size of shipping containers.[164] Each container is designed to remove 500 tons of CO_2 per year.[165] The containers are modular, meaning components can easily be replaced as the technology improves, and they can be strung together to make large arrays for industrial-scale DAC projects.[166]

CarbonCapture's grant is to develop a Wyoming DAC regional hub.[167] CarbonCapture is working with the DOE to determine if it can transfer its application to another state.[168]

Zillow Introduces Climate Risk Data on For-Sale Listings Across the United States

On 26 September 2024, Zillow announced that climate risk data would be incorporated into its for-sale property listings across the United States.[169] Specifically, users will be provided insights into flood, wildfire, wind, heat, and air quality, including risk scores and insurance requirements, directly from the listing pages.[170] This partnership highlights a growing concern among homebuyers regarding potential hazards and plans for the future with respect to climate change.[171] Zillow's chief economist, Skylar Olsen, noted that "climate risks are now a critical factor in home-buyer decisions. . . this tool also helps agents inform their clients in discussing climate risk, insurance and long-term affordability."[172] The climate risk data will be sourced from First Street, a provider of climate risk financial modeling.[173]

Authors

ANKUR K. TOHAN
Partner
Seattle
+1.206.370.7658
ankur.tohan@klgates.com

JOHN C. CROSSLEY
Lead Practice Area Leader – Energy, Infrastructure, and Resources
Kansas City
+1.816.627.3002
john.crossley@klgates.com

MARISA N. BOCCI
Partner
Seattle
+1.206.370.7638
marisa.bocci@klgates.com

JOHN W. CARLSON
Partner
Seattle
+1.206.370.5750
john.carlson@klgates.com

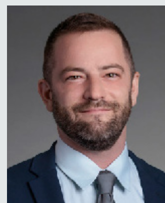
SHIAU YEN CHIN-DENNIS
Managing Partner, Portland Office
Portland
+1.503.226.5765
shiauyen.chin-dennis@klgates.com

DANIEL F.C. CROWLEY
Partner
Washington, D.C.
+1.202.778.9447
dan.crowley@klgates.com

ERIC E. FREEDMAN
Partner
Seattle
+1.206.370.7627
eric.freedman@klgates.com

NATHAN C. HOWE
Partner
Newark
+1.973.848.4133
nathan.howe@klgates.com

CHERYL L. ISAAC
Partner
Washington, D.C.
+1.202.778.9089
cheryl.isaac@klgates.com



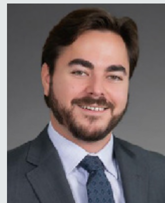
DEREK B. KALBFLEISCH
Associate
Seattle
+1.206.370.7644
derek.kalbfleisch@klgates.com

CLARE KEMPKENS
Partner
London
+44.20.7360.8211
clare.kempkens@klgates.com

BENJAMIN A. MAYER
Partner
Seattle
+1.206.370.8074
ben.mayer@klgates.com

BRENDAN GUTIERREZ MCDONNELL
Partner
Portland
+1.503.226.5710
brendan.mcdonnell@klgates.com

LAURIE B. PURPURO
Government Affairs Counselor
Washington, D.C.
+1.202.778.9206
laurie.purpuro@klgates.com



BENJAMIN C. SKILLIN
Associate
Boston
+1.617.951.9090
ben.skillin@klgates.com

Learn more about our lawyers and our practices at klgates.com.

Endnotes

[1] Virginia Furness & Kate Abnett, *COP29 countries endorse global carbon market framework*, REUTERS (Nov. 11, 2024), https://www.reuters.com/markets/commodities/cop29-countries-endorse-global-carbon-market-framework-2024-11-11/.

[2] Commission Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts, Final Guidance, 89 Fed. Reg. 83378 (Oct. 15, 2024) (to be codified at 17 C.F.R. pt. 38), https://www.cftc.gov/sites/default/files/2024/10/2024-23105a.pdf.

[3] *Id*. at 83380.

[4] *Id*. at 83378 –406.

[5] *Id*. at 83380 –82.

[6] *Id*. at 83378 –406.

[7] *Id*. at 83383 –405.

[8] *Id*. at 83407.

[9] See Press Release, Commodity Futures Trading Comm'n, CFTC Charges Former CEO of Carbon Credit Project Developer with Fraud Involving Voluntary Carbon Credits (Oct. 2, 2024), https://www.cftc.gov/PressRoom/PressReleases/8994-24; Administrative Proceeding Summary, U.S. Sec. & Exch. Comm'n, C-Quest Admits to $250 Million Offering Fraud (Oct. 2. 2024), https://www.sec.gov/enforcement-litigation/administrative-proceedings/33-11315-s; Press Release, U.S. Att'y's Off. S. Dist. of N.Y., U.S. Attorney Announces Criminal Charges In Multi-Year Fraud Scheme In the Market for Carbon Credits (Oct. 2, 2024), https://www.justice.gov/usao-sdny/pr/us-attorney-announces-criminal-charges-multi-year-fraud-scheme-market-carbon-credits.

[10] Commodity Futures Trading Comm'n, *supra* note ix.

[11] *See* Order Instituting Cease-and-Desist Proceedings, U.S. Sec. & Exch. Comm'n, In the Matter of CQC Impact Investors LLC (Oct. 2, 2024), https://www.sec.gov/files/litigation/admin/2024/33-11315.pdf.

[12] *See* Order Instituting Proceedings and Imposing Remedial Sanctions, Commodity Futures Trading Comm'n, In the Matter of CQC Impact Investors LLC (Sept. 30, 2024), https://www.cftc.gov/media/11386/enfcqcimpactinvestorsllcorder093024/download; Order Instituting Proceedings and Imposing Remedial Sanctions, Commodity Futures Trading Comm'n, In the Matter of Jason Steele (Sept. 30, 2024), https://www.cftc.gov/media/11381/enfjasonsteeleorder093024/download.

[13] Commodity Futures Trading Comm'n, *supra* note ix.

[14] *Id*.

[15] *Id*.

[16] *See* Complaint, Commodity Futures Trading Comm'n v. Kenneth Newcombe, No. 24-cv-7477 (Oct. 2, 2024), https://www.cftc.gov/media/11421/enfkennethnewcombecomplaint100224/download.

[17] U.S. Sec. & Exch. Comm'n, *supra* note ix.

[18] U.S. Sec. & Exch. Comm'n, *supra* note xi.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *See* U.S. Att'y's Off. S. Dist. of N.Y., *supra* note ix.

[23] Violet George, *New Carbon Removal Standards Initiative Launched To Help Regulate CDR*, CARBON HERALD (Aug. 6, 2024), https://carbonherald.com/new-carbon-removal-standards-initiative-launched-to-help-regulate-cdr/; *see* About Us, Isometric, https://isometric.com/about-us (describing the mission of Isometric's carbon credit certification platform); Eamon Jubbawy, *First verified credits for Charm Industrial*, ISOMETRIC (Aug. 22, 2024), https://isometric.com/writing-articles/first-verified-credits-for-charm-industrial (discussing the Charm Industrial bio-oil project).

[24] *See* About Us, Isometric, *supra* note xxiii (describing the mission of Isometric's carbon credit certification platform); Jubbawy, supra note xxiii.

[25] *See* Jubbawy, *supra* note xxiii; Bio-oil Geological Storage, Isometric, https://registry.isometric.com/protocol/bio-oil-geological-storage.

[26] *See* About, Carbon Removal Standards Initiative, https://www.carbonremovalstandards.org/about.

[27] *Id*.

[28] Press Release, White House, FACT SHEET: President Biden Visits Westby, Wisconsin, Announces $7.3 Billion for Clean, Affordable, Reliable Electricity for Rural America; The Largest Investment in Rural Electrification Since the New Deal, (Sept. 5, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/09/05/fact-sheet-president-biden-visits-westby-wisconsin-announces-7-3-billion-for-clean-affordable-reliable-electricity-for-rural-america-the-largest-investment-in-rural-electrification-since-the-ne/.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] Press Release, U.S. Dep't of Energy, OCED Issues Notice of Intent for up to $1.8 Billion to Fund Transformational Direct Air Capture Technologies and Remove Legacy Carbon Dioxide (Sept. 20, 2024), https://www.energy.gov/oced/articles/oced-issues-notice-intent-18-billion-fund-transformational-direct-air-capture.

[35] *Id.*

[36] Regional Direct Air Capture Hubs, Off. of Clean Energy Demonstrations (last visited Oct. 28, 2024), https://www.energy.gov/oced/DACHubs.

[37] Off. of Clean Energy Demonstrations, *supra* note xxxviii.

[38] *Id.*

[39] *Id.*

[40] Press Release, Dep't of Energy, Biden-Harris Administration Invests $1.5 Billion to Bolster the Nation's Electricity Grid and Deliver Affordable Electricity to Meet New Demands (Oct. 3, 2024), https://www.energy.gov/articles/biden-harris-administration-invests-15-billion-bolster-nations-electricity-grid-and-0.

[41] *Id.*

[42] *Id.*

[43] Press Release, U.S. Dep't of the Treasury, U.S. Department of Treasury Releases New Report Highlighting $3.5 Billion in Clean Energy Investments in Low-Income Communities (Sept. 3, 2024), https://home.treasury.gov/news/press-releases/jy2557.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *Id.*

[48] Press Release, U.S. Dep't of the Treasury, The Inflation Reduction Act: Saving American Households Money While Reducing Climate Change and Air Pollution (Aug. 7, 2024), https://home.treasury.gov/news/featured-stories/the-inflation-reduction-act-saving-american-households-money-while-reducing-climate-change-and-air-pollution.

[49] *Id.*

[50] *Id.*

[51]*Id.*

[52] Press Release, U.S. Dep't of the Interior, Bureau of Land Mgmt., Bureau of Land Management releases proposed Western Solar Plan (Aug. 29, 2024), https://www.blm.gov/press-release/bureau-land-management-releases-proposed-western-solar-plan.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] Notice of Availability of the Final Programmatic Environmental Impact Statement for Utility-Scale Solar Energy Development and Proposed Resource Management Plan Amendments, 89 Fed. Reg. 70660 (Aug. 30, 2024), https://www.federalregister.gov/documents/2024/08/30/2024-19478/notice-of-availability-of-the-final-programmatic-environmental-impact-statement-for-utility-scale.

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] Proposed Updated Western Solar Plan, Frequently Asked Questions, U.S. Dep't of the Interior, Bureau of Land Mgmt. (last visited Oct. 28, 2024), https://eplanning.blm.gov/public_projects/2022371/200538533/20118409/251018389/BLM-FAQ-Proposed-Updated-Western-Solar-Plan_08-29-2024.pdf.

[61] *Id.*

[62] Emma Dumain, *Could White House action imperil a bipartisan carbon bill?*, POLITICO PRO (Sept. 27, 2024), https://subscriber.politicopro.com/article/2024/09/could-white-house-action-imperil-a-bipartisan-carbon-bill-00181322.

[63] *Id.*

[64] S. 1863, 118th Cong. 2d Sess., § 2(b) (2024), https://www.congress.gov/bill/118th-congress/senate-bill/1863/text.

[65] *Id.* § 2(a)(4).

[66] Dumain, *supra* note lxiv.

[67] Philip Blenkinsop & Kate Abnett, *EU launches first phase of world's first carbon border tariff*, REUTERS (Oct. 2, 2023), https://www.reuters.com/business/environment/eu-launches-first-phase-worlds-first-carbon-border-tariff-2023-09-30/.

[68] *Id.*; Ioannis Siskos & Anuj Saush, *Navigating Europe's Carbon Tariff*, CONF. BD. (2023), https://www.conference-board.org/pdfdownload.cfm?masterProductID=49081.

[69] Siskos, *supra* note lxx.

[70] Blenkinsop, *supra* note lxix.

[71] Kelsey Brugger, *Pro-fossil fuel group launches ads against GOP climate leaders*, E&E NEWS (June 18, 2024), https://subscriber.politicopro.com/article/eenews/2024/06/18/pro-fossil-fuel-group-launches-ads-against-gop-climate-leaders-00163799.

[72] Letter from Daren Bakst et al., Dir., Ctr. for Energy & Env't, Competitive Enter. Inst., to Congressional Representative (June 3, 2024), https://cei.org/wp-content/uploads/2024/05/CEI-House-PROVE-IT-Act-Coalition-Letter-FINAL-V3.pdf.

[73] Sen. Bill Cassidy, *Bill On the Hill – Holding Communist China Accountable*, YOUTUBE (Sept. 9, 2024), https://www.youtube.com/watch?v=9fyGNKy4ogM; S. 3198, 118th Cong. 2d Sess. §§ 4691, 4693 (2024), https://www.congress.gov/bill/118th-congress/senate-bill/3198/text.

[74] Cassidy, *supra* note lxxv.

[75] Press Release, Sen. Sheldon Whitehouse, Whitehouse and DelBene Reintroduce Carbon Border Adjustment Bill to Boost Domestic Manufacturers and Tackle Climate Change (Dec. 6, 2023), https://www.whitehouse.senate.gov/news/release/whitehouse-and-delbene-reintroduce-carbon-border-adjustment-bill-to-boost-domestic-manufacturers-and-tackle-climate-change/.

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] Rep. Paul Tonko, Summary of the Climate Pollution Standard & Community Investment Act of 2024, https://tonko.house.gov/uploadedfiles/cpscia_summary_2024.pdf (last visited Oct. 22, 2024).

[80] *Id.*

[81] Press Release, State of Ill. Newsroom, Gov. Pritzker Signs Landmark Carbon Capture Bill (July 18, 2024), https://gov-pritzker-newsroom.prezly.com/gov-pritzker-signs-landmark-carbon-capture-bill.

[82] *Id.*

[83] *Id.*

[84] SB 1289, 103rd Gen. Assemb., § 10 (Ill. 2024), https://www.ilga.gov/legislation/103/SB/10300SB1289enr.htm (last visited Oct. 28, 2024).

[85] *Id.* §§ 15(b); 59.5.

[86] *Id.* § 59.5.

[87] *Id.* § 59.10.

[88] *Id.* § 59.13.

[89] *Id.* § 59.1.

[90] *Id.* § 20(g).

[91] Leah Douglas, *ADM pauses CO2 injection at carbon capture storage site after finding potential leak*, REUTERS (Oct. 2, 2024), https://www.reuters.com/sustainability/climate-energy/adm-pauses-co2-injection-carbon-capture-storage-site-after-finding-potential-2024-10-02/.

[92] *Id.*

[93] Loper Bright Enters. v. Raimondo, 603 U.S. __ (2024).

[94] *See* Chevron USA, Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842–43 (1984) (creating judicial deference for agency interpretation of statutes the agency implements).

[95] *See Loper Bright Enters.*, 603 U.S. __.

[96] *See id.*; Skidmore v. Swift & Co., 323 U.S. 134 (1944).

[97] See Transcript of Oral Argument at 20, Loper Bright Enters., 603 U.S. __, https://www.supremecourt.gov/oral_arguments/audio/2023/22-451 (noting that the Solicitor General "talked about how litigants will be lining up for cases that were decided under step two [of Chevron] to seek to reopen challenges to the agency's interpretation").

[98] See U.S. Supreme Court Order, Edison Elec. Inst. v. FERC, 603 U.S. __ (2024), https://www.supremecourt.gov/orders/courtorders/070224zor_2co3.pdf (granting a writ of certiorari; vacating the judgment and remanding the case back to the US Court of Appeals for the District of Columbia Circuit for further consideration); Solar Energy Indus. Ass'n v. FERC, No. 21-1126 (D.C. Cir. 2023).

[99] *See Solar Energy Indus. Ass'n*, No. 21-1126 (ruling that FERC correctly determined that a facility's "power production capacity" is best measured by its net output of usable energy to the power grid).

[100] See U.S. Supreme Court Order, *Edison Elec. Inst.*, 603 U.S. __, https://www.supremecourt.gov/orders/courtorders/070224zor_2co3.pdf (vacating and remanding nine cases to the lower courts for reconsideration).

[101] See West Virginia v. EPA, 142 S. Ct. 2587, 2610–16 (2022) (labeling the EPA's plan to regulate powerplants as a "major question" and requiring "clear congressional authorization" to implement it (quoting Util. Air Regul. Grp. v. EPA, 573 U.S. 302, 324 (2014))).

[102] Memorandum from Members of the Committee on Financial Services to the Committee on Financial Services Staff (Sept. 19, 2024), https://docs.house.gov/meetings/BA/BA00/20240924/117682/HHRG-118-BA00-20240924-SD002.pdf.

[103] Order Issuing Stay, U.S. Sec. & Exch. Comm'n, In the Matter of the Enhancement and Standardization of Climate-Related Disclosures for Investors, File no. S7-10-22 (Apr. 4, 2024), https://www.sec.gov/files/rules/other/2024/33-11280.pdf; Nat'l Ass'n of Priv. Fund Managers v. U.S. Sec. & Exch. Comm'n, No. 23-60471 (5th Cir. 2024); Testimony of the Securities and Exchange Commission Before the United States House of Representatives Committee on Financial Services (Sept. 24, 2024), https://docs.house.gov/meetings/BA/BA00/20240924/117682/HHRG-118-BA00-20240924-SD003.pdf.

[104] Testimony, *supra* note cv.

[105] *Id.*

[106] Alison Ross, *Align ISDS with climate change goals, says Mourre*, GLOB. ARB. REV. (Aug. 13, 2024), https://globalarbitrationreview.com/article/align-isds-climate-change-goals-says-mourre.

[107] *Id.*

[108] *Id.*

[109] *Id.* Summary of the Judgment of the Grand Chamber of the European Court of Human Rights of 9 April 2024, Verein KlimaSeniorinnen Schweiz and others v. Switzerland (Apr. 9, 2024), https://en.klimaseniorinnen.ch/wp-content/uploads/2024/07/240726_Zusammenfassung_Entschei-d_KlimaSeniorinnen_Baehr_engl.pdf.

[110] *Id.*

[111] Ross, *supra* note cviii; Final Award, Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v. Italian Republic, ICSID Case No. ARB/17/14 (Aug. 23, 2022), https://jusmundi.com/en/document/decision/en-rockhopper-exploration-plc-rockhopper-italia-s-p-a-and-rockhopper-mediterranean-ltd-v-italian-republic-final-award-wednesday-24th-august-2022.

[112] *Id.*

[113] Ross, *supra* note cviii.

[114] *Id.*

[115] ExxonMobil Benelux, LINKEDIN (Sept. 30, 2024), https://www.linkedin.com/posts/exxonmobilbenelux_exxonmobil-bezorgd-om-het-investeringsklimaat-activity-7249803086272040961-saNY/; Robert Hodgson, *ExxonMobil sues Dutch government over gas field closure*, EURONEWS (Oct. 10, 2024), https://www.euronews.com/my-europe/2024/10/10/exxonmobil-sues-dutch-government-over-gas-field-closure.

[116] Hodgson, *supra* note cxvii.

[117] Kate Abnett, *EU Parliament approves plan to quit energy charter treaty*, REUTERS (Apr. 24, 2024), https://www.reuters.com/sustainability/climate-energy/eu-parliament-approves-plan-quit-energy-charter-treaty-2024-04-24/.

[118] Press Release, TotalEnergies, TotalEnergies Invests in Sustainable Forestry Operations to Preserve Sustainable Carbon Sinks (Aug. 30, 2024), https://totalenergies.com/system/files/documents/totalenergies_Etats-Unis-TotalEnergies-investit-dans-gestion-durable-d-exploitations-forestieres_en_pdf.pdf; *Acting on Our Direct Emissions*, TOTALENERGIES, https://totalenergies.com/sustainability/climate-and-sustainability-energy/reducing-our-scope-1-and-2-emissions (last visited Oct. 26, 2024).

[119] TotalEnergies Press Release, *supra* note cxx.

[120] *Id*.

[121] *Id*.

[122] *Acting on Our Direct Emissions*, *supra* note cxx.

[123] *Id*.

[124] *Improving our Products and Supporting our Customers*, TotalEnergies, https://totalenergies.com/sustainability/climate-and-sustainability-energy/reducing-scope-3-emissions (last visited Oct. 26, 2024).

[125] *Id*.

[126] Ryan Dezember, *An Oil Giant Is Spending $100 Million to Preserve U.S. Forests*, Wall St. J. (Aug. 30, 2024), https://www.wsj.com/finance/commodities-futures/an-oil-giant-is-spending-100-million-to-preserve-u-s-forests-24b4f4b8; Verena Manolis, *New Report: The Voluntary Carbon Market Contracted in 2023, Driven by Drop-off in Transactions for REDD+ and Renewable Energy*, Ecosystem Marketplace (May 30, 2024), https://www.ecosystemmarketplace.com/articles/report-the-voluntary-carbon-market-contracted-in-2023-driven-by-drop-off-in-transactions-for-redd-and-renewable-energy/.

[127] Press Release, Commodity Futures Trading Comm'n, CFTC Approves Final Guidance Regarding the Listing of Voluntary Carbon Credit Derivative Contracts (Sept. 20, 2024), https://www.cftc.gov/PressRoom/PressReleases/8969-24.

[128] 89 Fed. Reg. at 83378.

[129] Manuela Andreoni, *Canada's Wildfires Were a Top Global Emitter Last Year, Study Says*, N.Y. Times (Aug. 28, 2024), https://www.nytimes.com/2024/08/28/climate/canada-wildfires-emissions-carbon.html?campaign_id=60&emc=edit_na_20240828&instance_id=0&nl=breaking-news&ref=headline®i_id=79477396&segment_id=176299&user_id=6a07ffde1840762c7ccc66b5099b9902.

[130] *Methodology For the Quantification, Monitoring, Reporting and Verification of Greenhouse Gas Emission Reductions and Removals from Active Conservation and Sustainable Management on US Forestlands*, Version 1.0, ACR, 24 (Nov. 2023).

[131] *Id*.

[132] *See* Andrew Ramonas, *SEC Abandons ESG Enforcement Group Amid Broader Backlash*, Bloomberg (Sept. 12, 2024), https://news.bloomberglaw.com/esg/sec-quietly-dissolves-climate-and-esg-enforcement-task-force; Press Release, House Fin. Servs. Comm., Republican ESG Working Group Releases Final Staff Report (Aug. 1, 2024), https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409339; Hortense Bioy & Boya Wang, *Global ESG Funds Attract $10.4 Billion in Q3 2024*, Morningstar (Oct. 31, 2024), https://www.morningstar.com/sustainable-investing/global-esg-funds-attract-104-billion-q3-2024.

[133] *See* Ramonas, *supra* note cxxxiv; Press Release, U.S. Sec. & Exch. Comm'n, SEC Announces Enforcement Task Force Focused on Climate and ESG Issues (Mar. 4, 2021), https://www.sec.gov/newsroom/press-releases/2021-42.

[134] *See* Fiscal Year 2025 Examination Priorities, U.S. Sec. & Exch. Comm'n (Oct. 21, 2024), https://www.sec.gov/files/2025-exam-priorities.pdf; 2024 Examination Priorities, U.S. Sec. & Exch. Comm'n (Oct. 16, 2023), https://www.sec.gov/files/2024-exam-priorities.pdf.

[135] *See* supra notes xcv–xcvii and accompanying text (discussing the implications of the Loper Bright decision and the US Supreme Court's related administrative law decision in West Virginia); Press Release, *supra* note 134; Letter from U.S. House Judiciary Comm. to Kelly Young, Chief Exec. Officer, Acadian Asset Mgmt. Ltd. (Jul. 30, 2024), https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-07-30-JDJ-THM-to-CA100_combined.pdf.

[136] *See* Letter, *supra* note cxxxvii; Climate Action 100+ Announces Its Second Phase, Climate Action 100+ (Jun. 8. 2023), https://www.climateaction100.org/news/climate-action-100-announces-its-second-phase/; Who's Involved, Climate Action 100+, https://www.climateaction100.org/whos-involved/.

[137] *See* Letter, *supra* note cxxxvii.

[138] Press Release, *supra* note cxxxiv; Staff Report, The Failure of ESG: An Examination of Environmental, Social, and Governance Factors in the American Boardroom and Needed Reforms, House Comm. on Fin. Servs. (Aug. 1, 2024), https://financialservices.house.gov/uploadedfiles/hfsc_esg_working_group_staff_report.pdf.

[139] Staff Report, *supra* note cxl.

[140] *See* Press Release, U.S. Senate Comm. on Banking, Hous., & Urb. Affs., Scott Joins Hagerty, Barr, Colleagues in Sounding Alarm on Europe's Regulatory Encroachment (Sept. 27, 2024), https://www.banking.senate.gov/newsroom/minority/scott-joins-hagerty-barr-colleagues-in-sounding-alarm-on-europes-regulatory-encroachment (emphasizing the extraterritorial scope of CSDDD and calling the directive's social and climate policies "draconian").

[141] *See* Maeve Sheehey, *'Woke Week' Dominates House Floor Despite Swing-District Apathy*, Bloomberg (Sept. 18, 2024), https://news.bloomberglaw.com/bloomberg-government-news/woke-week-dominates-house-floor-despite-swing-district-apathy.

[142] *See* Bioy & Wang, supra note cxxxiv.

[143] *Id*.

[144] *Id*.

[145] *Id*.

[146] *See Net Zero Asset Managers initiative publishes report on signatories' target disclosures as the initiative grows to over 325 signatories*, Net Zero Asset Managers Initiative (Jul. 23, 2024), https://www.netzeroassetmanagers.org/net-zero-asset-managers-initiative-publishes-report-on-signatories-target-disclosures-as-the-initiative-grows-to-over-325-signatories/.

[147] *Id*.

[148] *Id*.

[149] Evidence Synthesis Report Part 1: Carbon Credits, Version 1.0, SBTi (July 2024), https://sciencebasedtargets.org/resources/files/Evidence-Synthesis-Report-Part-1-Carbon-Credits.pdf.

[150] *Id*. at 67.

[151] *Id*. at 59–60.

[152] *Id*.

[153] *Id*.

[154] *Id*. at 45.

[155] *Id*. at 50.

[156] *Id*.

[157] *Id*. at 51.

[158] *Id*. at 68.

[159] Press Release, CarbonCapture, Deployment Update from CEO Adrian Corless (Aug. 30, 2024), https://www.carboncapture.com/newsroom/deployment-update?utm_campaign=heatmap_am&utm_medium=email&_hsenc=p2ANqtz-9ur2vJ1yybLlva62UGnuXns1jYqZPp2s-8Zdp74YbicsTjgXhUtjQGJG19EDhyiyyWuI3qszZOU84i5pqRprvaKqO3zQ&_hsmi=323075216&utm_content=323075216&utm_source=hs_email.

[160] Jessica Hullinger, *Phoenix Just Hit Another Grim Heat Record*, HEATMAP (Sept. 4, 2024), https://heatmap.news/climate/phoenix-heat-100-degrees-record#.

[161] Reuters, *Global data center industry to emit 2.5 billion tons of CO2 through 2030, Morgan Stanley says*, REUTERS (Sep. 3, 2024), https://www.reuters.com/markets/carbon/global-data-center-industry-emit-25-billion-tons-co2-through-2030-morgan-stanley-2024-09-03/?utm_campaign=heatmap_am&utm_source=hs_email&utm_medium=email&_hsenc=p2ANqtz--LT4mgpp6jOm0RNDSzLtL3L6WfZiSkexUIB-qi7OKglqXB_8_BzmkS3GGg8e8YrmOQi1af.

[162] Press Release, Glob. Newswire, CarbonCapture wins initial award as part of DOE's Carbon Dioxide Removal Purchase Pilot Prize program (May 29, 2024), https://www.globenewswire.com/news-release/2024/05/29/2890072/0/en/CarbonCapture-wins-initial-award-as-part-of-DOE-s-Carbon-Dioxide-Removal-Purchase-Pilot-Prize-program.html.

[163] Carbon Negative Shot, U.S. Dep't of Energy, https://www.energy.gov/fecm/carbon-negative-shot.

[164] Press Release, CarbonCapture, CarbonCapture Inc. unveils first U.S. direct air capture system designed for mass production; modular units to be manufactured at new high-volume facility in Mesa, Arizona (June 21, 2024), https://www.prnewswire.com/news-releases/carboncapture-inc-unveils-first-us-direct-air-capture-system-designed-for-mass-production-modular-units-to-be-manufactured-at-new-high-volume-facility-in-mesa-arizona-302179051.html.

[165] *Id*.

[166] *Id*.

[167] Hullinger, *supra* note clxii.

[168] *Id*.

[169] Press Release, First Street, Zillow introduces First Street's comprehensive climate risk data on for-sale listings across the US (Sept. 26, 2024), https://firststreet.org/press/zillow-introduces-first-streets-comprehensive-climate-risk-data-on-for-sale-listings-across-the-us.

[170] *Id*.

[171] *Id*.

[172] *Id*.

[173] *Id*.

K&L Gates is a fully integrated global law firm with lawyers and policy professionals located across five continents. For more information about K&L Gates or its locations, practices, and registrations, visit klgates.com.

This publication is for informational purposes only and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2025 K&L Gates LLP. All Rights Reserved.

REQ6391