

## Women in Energy and Environment Webinar Series

### Looking Ahead to 2021: Implications of a Change in Administration on Environmental Policy in the US

Tuesday, January 19



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### Looking Ahead to 2021: Implications of a Change in Administration on Environmental Policy in the US

#### Welcome, Introduction and Moderator

- [Karen Winters](#), Environmental, Safety & Health Practice Group Leader, Columbus

#### The Biden Administration's Environmental Policy Agenda

##### Speakers

- [Patricia Doersch](#), Partner, Squire Patton Boggs, Washington DC
- [Karen Winters](#), Partner, Squire Patton Boggs, Columbus
- [Kendra Sherman](#), Partner, Squire Patton Boggs, Columbus
- [Jessica Francisco](#), Head of Sustainability in North America, Arcadis, San Francisco

# 117<sup>th</sup> Congress: Congress' Agenda is **Biden's** Agenda

- Presidential election: record-high vote tallies for **both Biden and Trump**: Red America became redder and Blue America became bluer.
- By **narrow** margins, Congressional Democrats will control both chambers of Congress and are committed to advancing Biden's agenda and drawing stark contrasts between Biden and Trump.
  - **Senate**: Control will flip to the Democrats once three new Senators and VP Harris are sworn in.
    - Upon 50/50 split: Senator Schumer becomes Majority Leader. Some precedent for governance from 2001 power-sharing agreement between Lott and Daschle.
  - **House**: Majority rule institution.
- **Biden's Agenda: Conquering COVID** is Job One – a prerequisite to all Biden hopes to accomplish under his **climate change, equity, and economic recovery** priorities.
  - **First 10 days**: Making good on pledges he made and can accomplish himself, without legislation. Includes rejoining Paris climate agreement and possibly revoking Keystone Pipeline permit – undoing Trump actions.
  - **First 100 days**: Looking to Congress to advance his priorities via legislation.
- **Wildcard: Trump's impeachment trial** in the Senate.

# Biden's First 100 Days: Legislative Agenda for Rescue and Recovery

Biden can accomplish much himself through **executive agencies** and **his own authority** as President.

## **Biden needs Congressional support for his legislation to pass. Thus his plan is:**

- **Foretold:** Several benefits provided in the just-enacted COVID relief bill **end in March**; Congressional Democrats viewed that bill as a bridge to Biden's long-expected proposal.
- **Phased:** Biden will address the pandemic and its impacts in two stages:
  - **First**, immediate rescue plan, for which Biden seeks **bipartisan** support.
  - **Next**, economic recovery and stimulus plan, which Congressional Democrats may advance through **budget reconciliation** requiring just 51 votes (not 60) in the Senate.
- Biden announced a \$1.9 trillion "**American Rescue Plan**" last week.
  - Direct COVID countermeasures: vaccination plan; funding for schools, state and local governments; \$1,400 in direct payments to individuals.
- Biden will unveil a "**Build Back Better Recovery Plan**" before a joint session of Congress next month.
  - Longer-term investments in infrastructure, manufacturing, and clean energy – to address climate change and racial/social equity, and stimulate economic recovery.

# Build Back Better Plan: What to Expect on Climate Change and Equity Priorities

## Opportunity for green investment:

### ■ Transportation and infrastructure:

- The transportation sector is the largest source – 37 percent – of all energy-related carbon dioxide emissions in the US, mostly from automobiles.
- Equity impacts: Emissions effects on children in lower-income urban areas. Lessons learned from Flint, Michigan, drinking water crisis.
- Biden cannot meet his climate change goals or his equity goals without addressing transportation and infrastructure. Expect **grants, tax incentives, low-interest loans, or direct Federal spending.**
  - “Amtrak Joe” will favor transit / rail over highways.
  - **May** use legislation to roll back Trump’s changes to CAFE standards (outside CRA time window) to help make gasoline-powered vehicles cleaner.
- **Projects:** Focus on “**shovel worthy**” projects, since “shovel ready” proved in 2009 stimulus bill to produce neither good stimulus nor good infrastructure.
- **NEPA:** No wholesale repeal of Trump’s changes, but expect Biden to reassert the role of the NEPA process in ensuring local communities have a voice.

# Build Back Better Plan: Mitigating climate change to advance economic recovery

**Biden: “Our environment and our economy are completely and totally connected.”**

Biden views climate change countermeasures as:

- **Good for US businesses:** He intends to **expand jobs** in heavily-unionized sectors like automotive manufacturing and to support other US jobs that cannot be exported in energy, transportation, and infrastructure operations.
  - E.g., for electric vehicles and electric batteries:
    - Provide funding and tax incentives for domestic manufacturing / retooling, R&D, 500,000 charging stations.
    - Increase consumer demand for low / no emissions vehicles via incentive programs like “cash for clunkers” to trade in older, more polluting vehicles.
- **Even a factor in our national security:** Biden sees America’s chronic underinvestment in infrastructure and clean energy as a national security concern – putting US at a disadvantage against global competitors whose priorities may not align with ours.
  - Seeks investment to counter China’s highly successful global infrastructure development strategy and help grow domestic industries.
    - Impose stricter and broader **domestic content (Buy America) requirements.**
    - Retain Trump / 116<sup>th</sup> Congress **restrictions on procurements with Federal grants** from companies with ties to the Chinese government.

# Biden's First 100 Days: What can he actually accomplish?

## Headwinds and tailwinds affecting Biden's legislative agenda:

### Headwinds:

- **Impeachment trial in the Senate:** Trial will limit the time available early in the session to advance legislation, and could increase animosity among those Senate Republicans who oppose taking any vote on second impeachment.
- **Hyper-partisanship:** Republicans are already positioning themselves to take back one or both chambers in 2022. Casting Biden's plan as the "Green New Deal" and opposing it could play well with Republican base.
- **Costs of legislation:** Biden's proposals are seen as eye-popping level of deficit spending by some Congressional Republicans, many of whom were already pushed to their limits by Trump with 2020 relief spending.
- **Narrowest of majorities:** Democrats cannot afford to lose a single Senator, and have only a 5-seat majority in the House.
- **Déjà vu:** Expect Republicans to have many of the same objections they had to Obama's stimulus bill in 2009: supplanting private sector, wasteful / inefficient.

# What can Biden actually accomplish?

## Tailwinds:

- **Democrats are united:** Biden faces little/no opposition to his plans from Congressional Democrats – yet.
- **Biden is a dealmaker:** Known centrist and pragmatist with a well-established history of making deals with Republicans while a Senator and VP. If Congressional Democrats bring back **earmarks**, dealmaking becomes easier.
- **Few competing legislative / political priorities:** Not an election year, and nothing more important than economic recovery.
- **Viable “Plan B”** to accomplish **some parts** of agenda without Congress: Biden believes in the power of the Federal government to help Americans. He has chosen battle-tested, experienced officials for key positions and is expected empower his team to act. Options they can pursue:
  - Restore California’s Clean Air Act waiver.
  - DOE clean energy loan program.
  - DOT and EPA loan programs for water, rail, transit and highway projects.
  - Direct federal spending, discretionary grant criteria (Buy America).
  - But **no** meaningful grant funding possible without Congressional action.



# Another tool for Congressional Democrats: the Congressional Review Act

- **Unique circumstances where the CRA can be helpful:** Presidency flips and both chambers of Congress controlled by the same political party as the new President.
- **What the CRA requires:**
  - **“Substantially the same”** restriction: By simple majority vote in both chambers, Congress can nullify agency rules, but no agency can then adopt new rules of substantially the same form without a later Congressional authorization.
    - Thus, Democrats would likely only use the CRA to eliminate rules governing subjects they do not want to see regulated at all.
  - **“60 legislative days”** window: Congress can claw back rules issued as far back as 60 legislative days. For Trump’s regulations, that period dates back to late August.
- **Will Democrats want to use it?**
  - Some Democrats oppose the CRA in principle – view the law as biased toward deregulation so do not want to legitimize it.
- Several Trump environmental rules within the CRA’s reach are ones Congressional Democrats likely oppose, but may **not** be good candidates for CRA repeal – Democrats likely **do** want to see regulations in these areas, just different ones.
- **Potentially better approach for Democrats:** Notice-and-comment rulemaking by Biden EPA, which could advance faster if Congress mandates a rule change.

# Biden Plan for a Clean Energy Revolution

- Full use of executive authority to reduce greenhouse gas emissions, including:
  - Requiring aggressive methane emissions for new and existing oil and gas operations
  - Reducing greenhouse gas emissions from the transportation sector
- Using the federal government procurement system to drive toward 100% clean energy and zero-emissions vehicles
- Ensuring that all US government installations, buildings and facilities are more efficient and climate ready
- Requiring that any federal permitting decisions consider the effects of greenhouse gas emission and climate change
- Requiring that public companies disclose climate risks in their operations and supply chain
- Establishing the Advanced Research Projects Agency to promote technology and innovation on climate change, including incentivizing the creation of new, sustainable fuels for aircraft and the development and deployment of carbon capture sequestration technology.
- Incentivizing the deployment of clean technology throughout the economy, including improving the energy efficiency of buildings and building a new resilient infrastructure economy

# Biden Plan for a Clean Energy Revolution

- Working with Congress to enact legislation to establish an “enforcement mechanism” to achieve economy-wide net-zero emissions by no later than 2050 and to invest US\$400,000 billion over 10 years in energy and climate research and innovation
- Reengaging with the global community on climate change
  - Rejoining the Paris Agreement, an agreement within the United Nations Framework Convention on Climate Change (UNFCCC) to which 189 of the 193 UNFCCC members have become parties, the long term temperature goal of which is to keep the increase in global average temperature to well below 2 degrees C (3.6 degrees F) above pre-industrial levels
  - Convening, within the first 100 days, a climate world summit of the leaders of the major greenhouse gas emitting nations of the world “to persuade them to join the United States in making more ambitious national pledges”.

- **John Kerry**, US Special Presidential Envoy for Climate
- **Gina McCarthy**, National Climate Advisor
- **Michael Regan**, US EPA Administrator
- **Janet McCabe**, US EPA Deputy Administrator
- **Eric Lander**, Director of the Office of Science and Technology Policy and Chief Science Advisor

## Climate 21 Project

A committee comprised of largely Obama-era government climate experts released a 300 page report providing "actionable advice for a rapid-start, administrative-wide response coordinated by the White House and accountable to the President in order to achieve his climate policy agenda."

# Environmental Enforcement in a Biden EPA

- What will happen to the principles of “Cooperative Federalism”?
- Civil Monetary Penalty Inflation Adjustment (Dec. 23, 2020)
- Supplemental Environmental Projects
- Potential Changes to Several EPA Policies
- New Environmental and Climate Justice Division within the US Department of Justice

- New US EPA Administrator Michael Regan and the NC DEQ Environmental Justice and Equity Board
- ***The Biden Plan to Secure Environmental Justice and Equitable Economic Opportunity***
  - More detailed monitoring and mapping of environmental conditions in frontline and fence line communities
  - Creating environmental justice boards to coordinate and implement policies and agendas
  - Targeting resources and significant investments to disadvantaged communities
  - Instructions to the Attorney General on several initiatives
  - Reestablishing groups such as the White House Environmental Justice Advisory Council and the White House Environmental Justice Interagency Council
  - Overhaul the EPA External Civil Rights Compliance Office
  - Create a community notification program and Interagency Climate Equity Task Force
  - Target resources in competitive grant programs and a goal of delivering benefits from investments in clean energy to disadvantaged communities
- Increased public access to data tools and environmental justice activism at state and local levels and by private parties

# Environmental Justice at the State Level

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- New Jersey
- Oregon
- Illinois
- Massachusetts
- Virginia
- Connecticut
- Michigan

## What is sustainability?

Sustainability is meeting the needs of the present without compromising the ability of future generations to meet their own needs.

*United Nations Brundtland Commission*



# Three Pillars of Sustainability

## Environmental

- Climate change
- Greenhouse gas emissions
- Energy
- Resource scarcity
- Biodiversity
- Water
- Waste
- Pollution
- Environmental compliance



## Social

- Employee relations
- Health and safety
- Training and education
- Diversity, equity, and inclusion
- Non-discrimination
- Human rights
- Privacy and security
- Union relations
- Community impacts



## Governance

- Board diversity and structure
- Executive compensation
- Bribery and corruption
- Political lobbying and donations
- Procurement practice
- Risk management



# Why do organizations focus on sustainability?

Investors

Regulators

WRI

WBCSD

Competitors

Customers

Natural Resources  
Defense Council

World Wildlife Fund

Employees

Peers

Ceres

CDP

Leaders

# Investors increasingly influence sustainability actions for organizations



Initiative involving over **500 global investors** with over **\$47 trillion** in assets

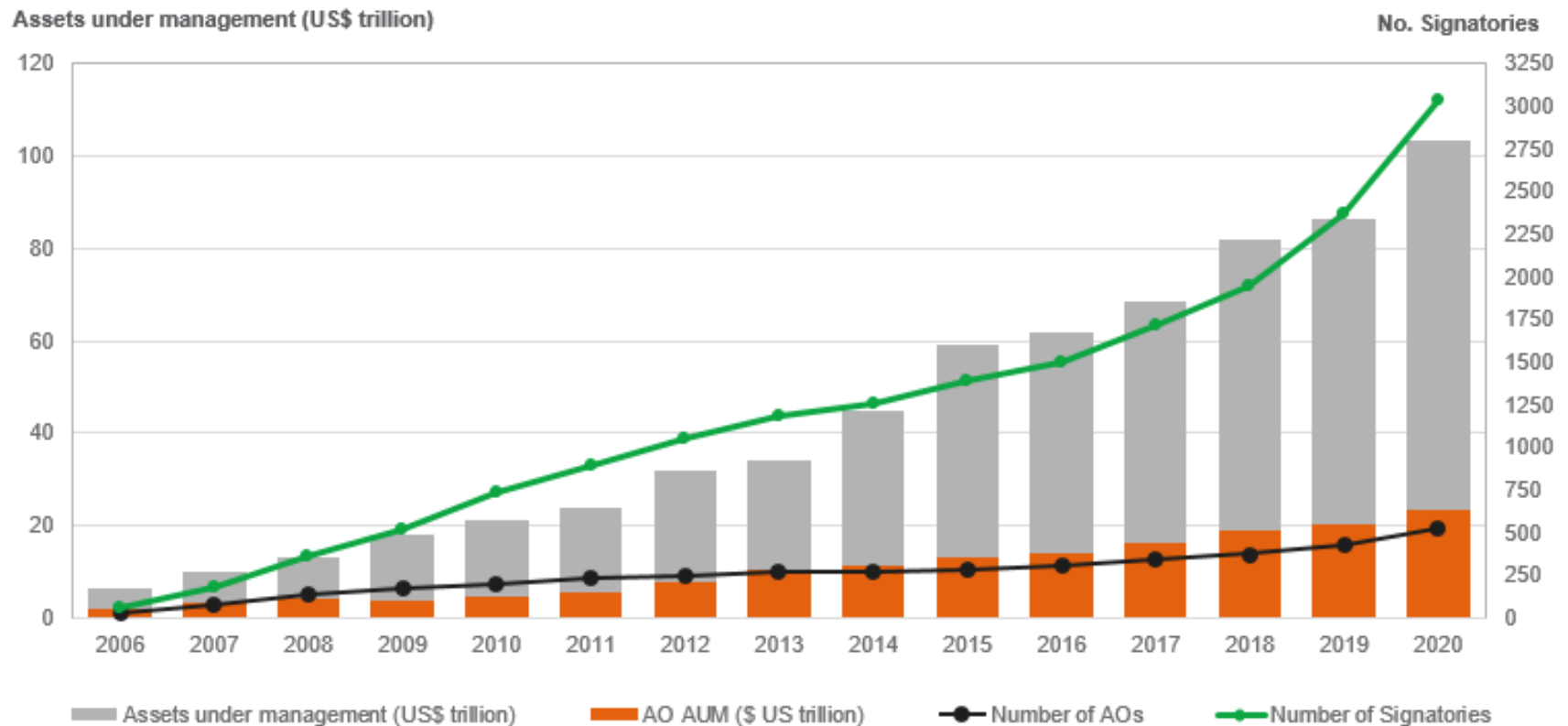
- Sent letters to CEOs & chair of the board at 161 global companies and calls on firms to commit to net-zero business strategies.
- Informed CEOs that companies will be assessed on progress made in becoming net-zero businesses.
- Assess company progress in line with net-zero transition against 30 indicators.

“The evidence on climate risk is compelling investors to reassess core assumptions about modern finance. **Every government, company, and shareholder must confront climate change.**”

Given the groundwork we have already laid engaging on disclosure, and the growing investment risks surrounding sustainability, we will be increasingly disposed to vote against management and board directors when companies are not making sufficient progress on sustainability-related disclosures and the business practices and plans underlying them.”

– Larry Fink, CEO BlackRock  
Letter to CEOs

# Investors are driving companies to disclose their ESG risks



Source: Principles for Responsible Investment (PRI)

# Initiatives are underway to develop global ESG reporting frameworks and standards

There are currently multiple initiatives underway to develop global ESG reporting frameworks and standards including:



In September 2020, IIRC, GRI, CDP, CDSB, and SASB released a document announcing their joint effort to develop a comprehensive, globally accepted, corporate ESG reporting system.



In September 2020, the World Economic Forum (WEF) with Bank of America, the Big Four (Deloitte, EY, KPMG, and PWC), and the International Business Council (IBC) released a set of universal ESG metrics and disclosures.



The International Financial Reporting Standards (IFRS) will create a new Sustainability Standards Board (SSB) under the governance structure of the IFRS Foundation to develop global sustainability standards.



International Organization of Securities Commissions (IOSCO) established a Task Force on Sustainable Finance to improve ESG disclosures and enhance coordination of regulatory and supervisory approaches.

## Key trends in the industry

- 1 Investors and shareholders are driving more and more companies to voluntarily report their ESG performance.
- 2 New regulatory reporting requirements will continue to emerge globally.
- 3 With the increased pressure from stakeholders, many organizations are demonstrating their commitment to sustainable business practices by publicly disclosing ambitious ESG targets.
- 4 To support their sustainability programs, companies are seeking information on ESG performance from their partners throughout their supply chain.
- 5 To support efforts to track, monitor, and report ESG performance, companies are investing in ESG digital solutions.

# Questions?



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# Next...

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## Women in Energy and Environment Webinar Series

### **Key Regulatory Issues in the US in Energy and Environment: 2021 and Beyond**

Tuesday, January 26

11 a.m. - noon ET

#### **Speakers**

- [Carolyn McIntosh](#), Partner, Denver
- [Emily Huggins Jones](#), Partner, Cleveland
- [Lianne Mantione](#), Principal, Cleveland