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ARTICLES

- Greenbacks For Building Green: Does a Lender For
Sustainable Construction Projects Need To
Make Adjustments to its Current Practices? 415
Darren A. Prum

In the development of real property, the availability of money to secure construction resources is an important factor for success. The construction loan plays a central role in providing funds to erect a building on real property, but a lender faces numerous exposures that might result in a loss. In evaluating a project to determine its viability and to uncover any exposure it might present, a lender will conduct an extensive underwriting review process. It will then use mitigation techniques through the construction loan agreement and disbursement requirements to reduce the perceived risks to an acceptable business level, for those developments deemed worthy. With the recent transition into more sustainable construction practices, many lenders will fail to recognize that the construction of a green building differs from that of a traditional one. The meaningful distinctions between these different methods merit an evaluation of their own to properly assess and manage the risk associated with a construction loan for a green building. Accordingly, this article seeks to address the unique issues associated with a construction loan for a green building and provide solutions that can mitigate the exposures presented to acceptable levels.

- Scattered and Dissonant: The Clean Air Act, Greenhouse Gases, and
Implications for the Oil and Gas Industry 461
Alex Ritchie

In the midst of a domestic oil and gas production revolution, the Environmental Protection Agency (EPA) has constructed a web of findings and regulations to control greenhouse gas (GHG) emissions from stationary sources under the auspices

of the Clean Air Act. This Article explores the theoretical and practical implications for the oil and gas industry of EPA's Clean Air Act GHG regulatory regime that, in light of congressional paralysis, will continue to expand beyond major new and modified oil and gas facilities such as refineries and natural gas processing plants. Future rulemakings directly aimed at the oil and gas industry will likely include lower regulatory thresholds for permitting and control technology requirements, performance based GHG emissions standards for refineries, and amendments to recently-adopted air emissions performance standards for oil and gas production to address GHG. Indirectly, contemplated rules for new and existing power plants may effectively eliminate coal as a substitute for natural gas in the generation of electricity, causing the domestic price of natural gas and electricity to increase amid inevitable liquefied natural gas exports to foreign nations. And if a federal market-based program is ever adopted, GHG reporting requirements indicate that oil and gas companies could be assessed and forced to pass on to consumers the cost of GHG automobile emissions. All of these regulatory programs will eventually sweep in smaller independent oil and gas producers and increase the cost to produce, process, and refine oil and gas.

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<i>Mark Williams & Sharmila Murthy</i>	

Carbon credits are being used to fund a multitude of development projects. Recently, they have been approved by the Gold Standard and the Clean Development Mechanism, two carbon credit approval bodies, to fund clean water Household Water Treatment and Safe Storage (HWTS) projects under a theory known as suppressed demand, in which credits are largely based on assumed carbon emissions rather than actual carbon emissions. These projects seek to promote alternative methods of purifying drinking water rather than boiling, which contributes to greenhouse gas emissions through the burning of wood or other biomass. Proponents argue that suppressed demand creates greater equity in carbon markets because countries that have contributed the least to greenhouse gas emissions would not otherwise be able to advantage of carbon funding designed to promote sustainable development. . Critics counter that because suppressed demand is not based on actual carbon emissions, the funded projects that do not reduce greenhouse gases.

This paper analyzes the theories underpinning suppressed demand and considers its relationship to the human right to water. The “good practices” criteria outlined by the United Nations Special Rapporteur for the Human Right to Safe Drinking Water and Sanitation provide an analytical tool for

assessing the effectiveness projects funded via suppressed demand. The primary conclusion is that while suppressed demand funded water projects are consistent with the human right to water, they do not guarantee that all essential criteria of the human right to water are fulfilled; at best, they address concerns about water quality and affordability while not focusing on questions of availability, accessibility and acceptability. While the suppressed demand approaches used by Gold Standard and CDM attempt to address some aspects of the “cross-cutting” human rights criteria, i.e. non-discrimination, participation, accountability, impact and sustainability, significant room for improvement exists. If suppressed demand is to be used as a carbon credit funding mechanism for water purification projects, then potential drawbacks need to be considered and the methodologies revised accordingly. Only then, can carbon credit funded HWTS projects relying on the suppressed demand carbon credit approach be seen as an important ally in reducing carbon emissions and in aiding LDCs struggling to implement the human right to water.

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<p> Policymakers in the United States have asserted broad goals to reduce electricity rates by increasing market competition, increase the use of renewable sources of electricity, and upgrade the U.S. transmission system to accommodate intermittent renewable energy sources. When policy goals are not well integrated with local and national regulatory policies, periods of too little or too much electricity on the grid result. This article analyzes the restructuring of the California electricity market in the late 1990s and the 2012 periods of oversupply on the Bonneville Power Administration grid as case studies in regulatory failure, then looks to the current smart grid upgrades to the national transmission system to recommend more cooperative regulatory policy.</p>	
<p> Saving Preemption in the Clean Air Act: Climate Change, State Common Law, and Plaintiffs without a Remedy..... <i>JJ England</i></p> <p> Certain parties suffering severe property damage from climate change have recently turned to the tort system as their only</p>	701

source of relief. Whether the Clean Air Act preempts these state common law actions is a question that has been recently highlighted—yet left unanswered—by both the Supreme Court and the Ninth Circuit. The answer to this question has important implications, not only for aggrieved plaintiffs that otherwise have no remedy, but for the co-existence of the Clean Air Act with centuries of air pollution common law precedent. This Chapter explores the intersection of preemption jurisprudence and the Clean Air Act to answer this question. In the process, it critically examines the four most recent federal cases addressing Clean Air Act preemption, concluding that these cases have largely broken with Congress’s intent that the Clean Air Act preserve plaintiffs’ common law rights.

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