

A close-up photograph of three cicadas perched on a green stem. The cicadas have dark bodies, bright red eyes, and transparent wings with a distinct network of veins. The background is a soft, out-of-focus green.

**CIBO  
Litigation Update  
Virtual E&E Meeting**

**June 8-9, 2021  
Lisa M. Jaeger  
Bracewell LLP**

# OLD BUSINESS / NEW BUSINESS

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- PENDING ENVIRONMENTAL / ENERGY REGULATORY CASES
- KIDS CLIMATE (SHOW)CASE *Juliana v. US* (9th Circuit)
- CLIMATE CASES: Federal court or State court? *BP v. Baltimore* (US Supreme Court)
- CORPORATE CLIMATE RISK DISCLOSURE *ExxonMobil v. Healey* (NY State court)

# ENVIRONMENTAL / ENERGY REGULATORY CASES PENDING

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## **Cooling Water Intake FOIA case** *US Fish & Wildlife Svce & NMFS v. Sierra Club* (19-547)

ISSUE: whether FOIA deliberative process exemption covers draft opinions from the  
ESA consultation process

US SCT Held: ESA draft biological opinions reflect deliberative process, not subject to FOIA

## **NAAQS PM2.5 standard and Ozone 2020 standard**

- Final rules did not tighten PM2.5 or ozone standard
- DC Circuit challenges
- Petitions for administrative reconsideration
- Cases in abeyance, motions to govern August 2021

# ENVIRONMENTAL / ENERGY REGULATORY CASES PENDING

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## 2020 NEPA Revisions

- 4 cases in US District Court (ND CA, WD VA, SDNY)
- WD VA: summary judgment? remand?

## WOTUS Rule and How to Define US Jurisdiction

- 4.21.20 (effective 6.22.20) / multiple cases pending
- US District Court SC *SC Coastal Conservation League v. EPA*
- 10<sup>th</sup> Circuit *CO v. EPA*
- 9<sup>th</sup> Circuit *US v. Lucero*
- 9<sup>th</sup> Circuit *Sackett v. EPA*

# ENVIRONMENTAL JUSTICE CASES

## Memphis TN: Byhalia Connection crude oil pipeline

- routes pipeline (OK to Gulf Coast) around Memphis, several miles through SW Memphis
- Memphis City Council opposed; Army Corps wetlands permit issued
- Public opposition; City Council decision on hold
- ARG: “pollution localized, benefits dispersed”
- ARG: no legal authority to consider EJ



# ENVIRONMENTAL JUSTICE CASES

## Archer FL: Origis FL Solar 6-Sand Bluff project

- 600 acres, 50 MW solar array, 12 MW battery storage
- Gainesville commitment: 100% renewable
- FL legislature: local govt cannot ban rural solar arrays



# CLIMATE CASES

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## KIDS CLIMATE (SHOW)CASE

*Juliana v. US* (9th Circuit)

## CLIMATE CASES: Federal court or State court?

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## CORPORATE CLIMATE RISK DISCLOSURE

*ExxonMobil v. Healey* (NY State Court)

- #ExxonKnew battle
- Inside Climate News/LA Times: Exxon scientists discovered in 1977 that man-made emissions damaging the climate & Exxon covered it up
- ENVS: exposes the pattern of deceptive behavior, hypocrisy of fossil fuel companies

**THATS A NICE NAP YOURE HAVING**



**IT'D BE A SHAME IF SOMEBODY**



**RRREEEEERRRRREEEEERRRRREEEEEEE**

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