

# Panel 1: Effects of the Energy Transition on Rural Legal Work

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*Speakers: Mary Cromer,\*\*\*\*\* Tanmay Shukla,\*\*\*\*\* & Samantha Ruscavage-Barz,\*\*\*\*\**

## INTRODUCTION

**Katalina Hadfield:** Hello, everyone. Thank you for coming.

**Christina Libre:** Good morning. Thank you for joining *Ecology Law Quarterly*. I'm Christina Libre.

**Katalina:** I'm Katalina Hadfield. This is a cherished, time-honored tradition at *ELQ* hosting an annual symposium focusing on some kind of environmental theme. Today, we have wonderful panelists speaking all day about rural environmental issues. Now I'd like to introduce our dedicated symposium director who has almost single-handedly pulled together this incredible program. Everyone, give it up for Anna Goldberg.

**Anna Goldberg:** Hi, everyone. Thank you so much for being here. I really appreciate it. Thank you to all of our wonderful panelists for coming today, traveling far and wide. It's been really great, and I hope the program is great and you all enjoy it today. Thank you.

**Sabrina Ashjian:** All right. Hi, everyone. Good morning. My name is Sabrina Ashjian. For those of you who don't know me, I am one of the supervising attorneys in the Environmental Law Clinic and I teach a couple of the environmental justice courses that take place in the fall: Environmental Justice and Legislative Advocacy, and Environmental Justice and Health Equity.

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I am really excited to be here today. I'm so happy that Anna asked me to participate because I lived and worked for a decade in the Central Valley, starting out as a public defender and then working in environmental crimes prosecution. I know just how great the need is in these environmentally burdened communities, and how great the work is and how fulfilling it is. I'm thrilled to be here with this morning's panelists.

I'm going to be moderating the first two panels, and so we will go ahead and get started. I'd like to introduce our panelists. We have Mary Cromer, welcome. Tanmay Shukla, welcome, and Samantha Ruscavage-Barz. Hopefully I said that properly. I'm going to have each of you introduce yourselves and tell us a little bit about your organization, how you got started there, the work that you're doing there. Then we'll go into some questions. Who should we start with? How about Mary, go ahead.

**Mary Cromer:** Sure. Hi, everyone. My name is Mary Cromer. I am the Deputy Director of the Appalachian Citizen's Law Center. We're a small non-profit law and policy organization located in a small town very close to the Virginia-Kentucky border. I'm actually from Virginia and I still live on my family's farm right on the border. This is the coal mining region of Central Appalachia.

Our organization represents miners and their families in Federal Black Lung Benefits litigation. We also represent miners in Whistleblower Protection Act cases. Then we also do environmental justice work related to coal mining. I'm going to give a longer presentation about our work that I hope some of you might be able to see later today. I won't say everything that's in my presentation.

We've been around for twenty years, and for a long time, we were just three attorneys and no administrative staff, and just trying to make do with a pretty small grant, trying to piece together enough capacity to meet some of the demand in the area for the kind of work we do. Over time, we've been fortunate to get a little more funding and grow a little bit. As we have continued to see more and more systemic problems that are not really addressable through particular pieces of litigation, we've developed more of a policy arm.

I think about five years ago, we hired a policy fellow and really focused in on policies around transitioning Appalachia as coal was declining. That work has continued to grow. That really has been the biggest growth in our work. In addition to the litigation on Black Lung and miner safety and environmental justice cases, we do policy work in those areas. A lot of that work is at the federal level, joined together with coalfield groups across the country. That's the short story of what we do. I'll give a longer presentation later.

**Sabrina:** Thank you. Tanmay, I'll turn it over to you.

**Tanmay Shukla:** Hi, everyone. I'm Tanmay. I am an Associate Attorney at the Environmental Law and Policy Center of the Midwest. Our center is based primarily in Chicago, and we have offices in six to seven Midwest states, which have relatively few attorneys and policy people. Just to give you a rough sense of our organization, we have, let's say, about ten to twenty attorneys and policy specialists in the Chicago office, along with support staff. And in most of our satellite offices, we have about two to three people. That makes it an organization of about fifty on the whole.

The Environmental Law and Policy Center works on a variety of issues. We do a lot of Great Lakes work and conservation work around the Midwest region. We are increasingly also looking to do equity, diversity, and inclusion work, especially in the energy policy space. That is the bulk of my work.

I work out of Chicago, so I am not one of the people who is interacting with rural communities on a daily basis. Rather, what we are trying to do is that over the last thirty years, what we've realized is that there's a disconnect between a lot of important decisions that are made in energy policy spaces at the federal level, mostly in D.C., and the actual expertise of people who are working in rural communities.

I'm willing to talk a little bit more about this, but as any student who has worked or taken a class in energy policy or worked in the space, I think you'll quickly realize that this is no ordinary corner of law and policy. Every state has about three different agencies or commissions that are hectically involved in energy policy work, and there's about five or six federal agencies. Then, in the middle, there are all these weird organizations that, if you didn't know about, you wouldn't believe existed. There are these cooperatives of private utility companies, essentially, that run regional grids. It's a strange thing in our system.

Then there's all these different bodies, like the National Association of Utility Commissioners. There are national bodies and state bodies and so on. One of the distinctive characteristics also of this space is that if you just wanted to write down the acronyms that come into play, you would probably need a small booklet. The question is, in this kind of space, how do you make sure that anyone who is not an energy policy expert can meaningfully contribute?

Apart from being able to say the right things, where do they even go? Which forum . . . which listserv should they be on to know when something important happens? Again, I'll talk a little bit more about the details of my work, but that is the essential problem that we are trying to solve. Over to you.

**Samantha Ruscavage-Barz:** My name is Samantha Ruscavage-Barz. I'm the Legal Director for WildEarth Guardians. WildEarth Guardians is not a law firm. We are a conservation organization. Our mission is to protect and conserve wild rivers, wild places, wildlife, and the health of the American West. We do that through legal advocacy, and we do that through policy advocacy.

We have upwards of forty people in the organization. Our legal team, which does all of the litigation on behalf of the organization and other groups, has five attorneys in it. Then, the remainder of our conservation program staff work on policy issues and some legislation. We don't really do much lobbying, but Guardians has been around since 1989. We're well-established in the Intermountain West and the Pacific Northwest in dealing with all of those issues there.

Probably the primary area where we are really working with frontline communities is in our climate and energy program, and the litigation that we bring on behalf of WildEarth Guardians and the climate and energy issue. We work and partner a lot with native organizations in the Northwest part of New Mexico and also with frontline groups like Green Latinos in the Denver, Colorado area. We are really trying to integrate those on-the-ground impacts and concerns that these groups have, particularly around oil and gas development in these areas.

That's a bit of an overview, and I'm sure I'll have more of an opportunity in answering the questions to talk about the specific work that we do with frontline communities.

**Sabrina:** Thank you all. Let me just say, I'm going to start by asking a couple of questions for everybody, and then do a few questions for each of you. I would encourage all of you also to ask some questions. We will open that up shortly for everybody to participate, so start thinking of questions.

#### THE ENERGY TRANSITION AND RURAL LEGAL WORK

**Sabrina:** For everybody, how does your approach differ from individuals who are working in more urban areas? How do you think that the work that you are doing in your communities differs in terms of what attorneys would be doing on a daily basis there?

**Samantha:** Should I start?

**Tanmay:** Go for it.

**Samantha:** The focus of WildEarth Guardians' work, particularly our challenges to fossil fuel development, is focused on federal public lands. Rather than going on like a facility-by-facility approach in terms of a coal-fired power plant or an oil and gas processing and refining facility that's having those impacts, one of the main areas we focus on is supply side. We challenge oil and gas leasing decisions and coal leasing decisions on BLM (Bureau of Land Management) lands in the West.

There's a lot of federal public land in the West. There are also a lot of communities that live on those lands. People tend to look, oh, well, there's nothing out there. In Northwest New Mexico, for example, that is part of the Navajo reservation. There are three specific Navajo chapters that are living right in the middle of major commercial-level oil and gas development. They're being impacted by all of that development.

Because it's federal public lands and the federal government is involved, it's different than what you think of like a traditional suit. For example, a Clean Air Act lawsuit where you make a claim against a polluting facility and it's really specific to that facility and its localized impacts. This is really about trying to stop new oil and gas leasing, which ultimately, if it goes forward, locks in twenty to fifty additional years of air pollution, conventional pollution, greenhouse gas pollution, and all of that.

Because it's a federal agency, they have to do NEPA. They have to follow the National Environmental Policy Act, which has some provisions for public involvement. It's usually just a box-checking exercise for the BLM rather than an opportunity to gather meaningful information about impacts to the community and for the agency to actually do anything about it. There are some avenues through which these impacted communities can participate. Ultimately, it usually leads to litigation because BLM is just unwilling or unable to say no to oil and gas development on their lands, particularly in that area of New Mexico.

You see that on BLM lands all over the Intermountain West, there's very much this driver to keep approving this development. The communities that have to live with that are looking for any avenues that they have to try to make the agencies aware of exactly how their communities are being impacted and trying

to drive change. The only way to really drive agency change that we found is through winning at litigation.

**Tanmay:** In my case, I guess there's two ways I could answer this question. One is me personally, and the other is my colleagues. I think there's a meaningful difference because I'm a junior attorney, so to some extent I do the work that I'm told to do.

In terms of our strategy, the cases that I've worked on, I think an important one that comes to mind is our work in Iowa, where we are trying to get one of the major utilities in Iowa to do integrated resource planning, which essentially means it's reminiscent, I guess, of the same idea as the Clean Power Plan to some extent, which is that when you plan your entire portfolio, you will realize that some polluting coal plants, for example, it's actually cost-effective to shut them down. Quite apart from the environmental concerns, just pure economics drives some of these facilities out.

Work of that kind, I think that from a legal standpoint, there are two important things. One is that you need to be immersed in state law issues, as well as state politics. That's going to be very important because I think that, as most people can probably intuit, utility commissions are intensely political bodies. They have very broad mandates. They just have to ensure that the rates that utilities charge are "fair and just" and "reasonable and equitable"—some permutation of that kind of language in almost every state.

Because of that, I think it's extremely important to have a reputation, to have a presence, to be a big player, and to communicate that you are someone who's willing to work with state commissions and utilities, but at the same time, you want to be taken seriously. It's a very interesting balance.

In the two or three proceedings in Iowa that I've been a part of, we have found allies in Facebook and Google who intervene in these proceedings as consumers of clean energy. We found allies in the consumer advocacy agency within the state. Also, I was a little bit surprised to find out that sometimes people within the utility companies, they're allies. That might be something peculiar to Iowa because Iowa is, after all, a leading wind state. Clean energy is not necessarily a polarizing issue there. I found that very interesting. Please stop me if I—I could just go on.

One of the interesting things about the Midwest is that I think if you take it on the whole, there's no single salience to the region politically, and even within states, things flip around a lot. Right now, in Michigan, my understanding is that there's what they call a democratic trifecta. Things are moving around along very smoothly, we are seeing a lot of successes, and sadly, I'm not part of any of it. That sucks, but ELPC is doing well.

Then, in Illinois, we had Governor Pritzker and one of the great things that he achieved is that he put in place something called the Renewable Energy Access Plan, which is essentially going to make sure that clean energy and environmental justice are at the forefront of grid planning in Illinois. I think that hopefully gives you some kind of an idea of the need to have your ears to the ground and know when these opportunities arise so that you can really grab them.

**Sabrina:** Thank you.

**Mary:** In thinking about this, I want to talk a little bit about the evolution of my work because I think it is very different than the kind of work that is done

in urban areas. When I started at Appalachian Citizens Law Center, it was in the middle of a lot of national green groups' campaigns against mountaintop removal. Because of that, there was a lot of capacity for organizing, a lot of capacity for bringing large-scale impact litigation cases to trial. That really dropped off completely as far as the capacity side of it goes. That was the time that coal production really plummeted in Appalachia.

Over the past ten years, I've seen a pretty dramatic change in what the work looks like. In the world of coal mining, the part of my work that is around directly addressing the environmental impacts of coal mining, my clients are pretty much exclusively now individual landowners, whereas I used to represent groups like Sierra Club or Kentuckians for the Commonwealth. Those groups aren't organizing around mining in our part of Appalachian anymore.

I'm representing individuals. That doesn't necessarily mean that you can't do impact litigation on behalf of a single-family if you have the right set of facts. It also doesn't mean that I'm not using the federal environmental statutes. In fact, mostly, I'm using the federal SMCRA law, which is the Surface Mining Control and Reclamation Act. My work has evolved in that, initially, I was doing permit challenge stuff for challenging 404 permits, stuff like that, working with larger groups, working in a team of attorneys.

In the past ten years, I am more often working solo, sometimes with one or two attorneys helping out or as part of the team. That work has evolved to work that is centered on the Surface Mining Act, but then also will involve a lot of common law arguments. We'll bring in common law arguments, bring in a lot of common law property rights arguments. A lot of what we see is cases where the coal company's right to that coal or that land is challenged. We're bringing in a lot of those arguments.

If we win some of those, and we haven't had a lot of success, I have to be really realistic here. It is a hard road ahead. If we win some of those, it does have a precedential impact. It doesn't mean that when you think of impact litigation, or I feel like bringing the big 404 Clean Water Act suit, that's going to change everything. It doesn't have to be that. It can be a state law case that changes precedent in one state, and that can be very important.

I think the other piece of it is, and this is along the same lines, another component of my work is that I've been representing a community with a failing water system for about five years now. I first got involved in that case or in that community and was looking at it entirely from the Safe Drinking Water Act. These are Safe Drinking Water Act violations. We can sue to get this cleaned up. We can fix this because the environmental laws are being violated.

It didn't take long before I realized that bringing that kind of litigation against that publicly owned water system at that time would have crippled that county and would've been devastating for that area. It wasn't the right tactic. Instead, we've gotten involved in the utility that public service commission cases to push back against the rate increases that keep coming because the water system is failing. We've gotten involved in trying to advocate for more funding.

I feel like you have to really see environmental law as just one tool in the toolkit. Sometimes it's appropriate, and sometimes it's not. I think that's a difference for urban and rural practice in a way.

**Sabrina:** Following on that, can you speak to some of the inequities that exist in these rural communities and some of the ways that you advocate and combat them? I know you just spoke a little bit about this in terms of using all of the different tools in the toolbox, and you spoke about using political and legal tactics, but maybe if each of you could go into a little more depth. Let's start with Tanmay.

**Tanmay:** Sure. Can you just—

**Sabrina:** Sure. What are some of the inequities that you see in your area and some of the different tools that you use to address those?

**Tanmay:** Sure. There are two points to make here. The first is that, to a huge extent, ELPC works on equity issues within, let's say, the city of Chicago, as well as out in the rural areas. One of the things that's coming up more and more often in our internal meetings when all the staff gets together on Zoom, is that there is a messaging problem that the environmental community has on the whole.

What we are seeing from the ground up, especially my colleagues in Iowa or Minnesota, for example, is that there is a regional injustice issue that's very quickly emerging. I don't know if you've been following the latest developments since the Biden administration came in. There's a lot of transmission development, I could talk of that, accelerating it. My sense so far is that when we talk to partners in rural communities, they are quite ambivalent about it. One of the reasons is that in a lot of states, there are no benefits.

There's a straight transmission line that just goes right through. It connects places like Oklahoma and Iowa to consumption centers and big cities. That's one question. The second, which I think that I'm sure Mary could speak to with a lot more expertise, is the fact that just transition is a big issue. There are so many states in our country which were coal dependent. I think that to a huge extent, the environmental movement has rightly been focused on shutting down coal plants, but with maybe a secondary focus on figuring out what this large working class is going to do next.

That is something else that also I think plays a lot on our mind. When I talk to local activists and also people who are plugged in, I think that one thing that, I'd love to hear if my co-panelists have something to say about that, one thing that comes up a lot is thinking about to what extent we want this transition to be big business-oriented, as opposed to community ownership-oriented.

Roads are publicly owned; there's no reason transmission lines cannot be community owned. Yet that's just one example of something that's not necessarily on anybody's radar at the national policy conversation level. Those are the kinds of things that I think are extremely important, especially because of how politically charged conversations about the environment tend to be, and increasingly so especially in law, it's important to notice that the people that we represent are not necessarily progressives. Even if they are progressives, their interests might diverge quite a lot from what we imagine them to be.

**Sabrina:** Go ahead.

**Samantha:** Some of the inequalities that we see, for example, just sticking with this theme of BLM's approval of oil and gas leasing and coal leasing out on these public lands on the Navajo Nation, is that NEPA has a public process requirement. Agencies will hold public meetings or opportunities to receive

public comment. The Navajo Nation, not even all of the homes out there are electrified.

What BLM shifted during the pandemic to, we're still going to continue to have these public comment periods, but we're going to do it on Zoom, one of the biggest things was that, well, these homes don't have internet access. That's actually a problem the state of New Mexico is dealing with to try to get internet access to rural communities. Organizations like Guardians were saying, "BLM, you shouldn't be trying to push through these various projects and saying, 'We're giving access to the public. We can do this on the internet. We don't have to meet in person.'"

The Navajo Nation was experiencing much higher rates of COVID in 2020 when this was first coming about. They were really struggling for the survival of their community. They had that. They are a community that is not highly resourced. They didn't necessarily have access to Zoom to be able to just sit. This particular BLM project I'm thinking about was a resource management plan. It was a draft RMP and a draft EIS. These are big things to have to sit down and try to review these documents that come up with concepts while you're fighting for the survival of your community during COVID.

. . . BLM opened up a thirty-day comment period, and this was right in the middle of COVID. WildEarth Guardians said, "You either need to extend that to a three-to-six-month comment period, or you need to put a hold on pushing through this resource." Understanding that the community, the BLM Farmington field office, it was their resource management plan, and that is right in the middle of Navajo Country. You need to just stop, and they didn't. The agency didn't. I think they extended the comment period for something like fifteen days.

Even just thinking at a very baseline level of, even if you think about a tribal agency, a tribal natural resources agency where maybe there are staff whose job it would be to comment on these things, they just don't have the resources. It seems like these federal agencies can sometimes not take that into account, and it makes it really easy for them to check the public involvement box because they say, "Well, we held these comment periods, and we didn't get many comments, or we didn't get very much attendance."

It is within a federal process, a Western process, it's asking tribal groups to be part of this process and not recognizing that there could and should be other ways that agencies interact with tribes. The reason that any kind of frontline community has to participate in the process is: if you get to a point where you can't get anywhere and you need to sue, then under statutes like NEPA, you have to have participated in that administrative process to really have standing to be able to sue.

These groups that are under resourced are forced to have to participate, and that's where groups like Guardians, we partner with Diné Citizens Against Ruining Our Environment, they're called Diné CARE. They are a Navajo environmental advocacy group. We can work with them to try to support them and try to make sure that they are able to at least participate in these opportunities even if minimally.

On the other aspect that federal agencies have a hard time with, is that there's the National Historic Preservation Act angle that says that agencies have to take traditional cultural properties into account and have to look out for and

work with the tribes to make sure that what they're proposing doesn't impact traditional cultural sites. Usually, what that means to a federal agent is, "Tell us where your important places are so we can put those on a map, and we can avoid them or whatever."

That knowledge is protected knowledge within the tribe, like even within certain Pueblo communities, for example, there is only a subsection of that community that knows that knowledge. The knowledge itself is protected even from other members of that Pueblo.

To be coming in with this Western notion of "Let's put points on a map" is not something that Pueblo groups and Navajo groups are comfortable with. Even going just with agency folks, not even saying that any of the environmental groups are involved in that. Guardians never tries to be part of those sorts of things, but even just giving that knowledge of where an important place is and what it's used for is not something that Pueblo and tribal communities feel like they should be doing.

With the agencies being locked into this, well, this is our process, this is what you need to do, and then if you don't do it, the agencies will be in court defending their actions saying, well, "We gave them an opportunity to come and tell us where these places were and they didn't, and therefore, we've discharged our legal obligation." That's really the tension that's around there about the inequities associated with these dispersed tribal groups and then some of the other frontline communities as well, just not having the resources to participate in this process the way that it's laid out in statute and regulation, they need to participate.

**Mary:** There are a lot of inequities. I completely agree with what Samantha and Tanmay just said. I think one of the things that we see a lot is a lack of capacity in organizing in the region. There's a pretty fraught history with organizing in Appalachia. In particular, the presence of organizers from Big Greens has been good and bad over the years and has left a lot of questions and has really, I don't know, it's still a problematic area.

What we find is that when we're dealing with communities, communities that are in distress will reach out to us and they don't have the support of Big Green or even a regional grassroots organization. It's just a couple of people who are really concerned about—in one case it was radioactive waste being dumped in their landfill. In other cases, the failing water system might be a mine in the community, but they don't have that group behind them.

We have some amazing activists. I don't want anyone to get the wrong idea. There's a long history of activism in Appalachia and there's some really strong, amazing people, but they tend to be doing that work solo. It's hard and they get burnt out. I think that lack of ongoing capacity on the organizing side is something that really will continue to be a problem.

Funding is also a piece of it. I think we are seeing a lot more funding from foundations for just transition, but most of that funding goes toward innovation and economic development. What we're seeing is that people on the ground saying, "We know what we need. It's not innovative. We just need our water system fixed, or we need that law enforced." A lot of the funding is not really going to address the problems that we're seeing directly.

Then to Tanmay's question about, "Do you want the transition to be big business-oriented or community-oriented?" Absolutely, we want it to be community-oriented, but what does it take to make that happen? I think, as Samantha was talking about, there are so many problems with community engagement models. They just don't work in a lot of places. We are seeing that now, especially as we're recovering or trying to recover from this massive flood that happened in July, there's so much potential for federal funding.

We are an energy justice community. We are a coal community. We are an environmental justice community. Whatever box it is, check it. Central Appalachia, we fit, but we just don't have the capacity to go after those opportunities. It's not just small organizations like mine; it's local governments that do not have the capacity to even understand what funding is available. Until you can start addressing that basic level of need, all of these conversations about community engagement really are pretty meaningless.

**Sabrina:** That's a great point. This idea of shovel-ready versus shovel-worthy projects. All of these areas that are so worthy and in need of this federal funding just can't access it because they don't have the capacity in place to build it. Following on that, Mary, can you speak a little bit about . . . the transition in your community and the environmental benefits versus jobs? You are at the crux of that by dealing with individuals in the community.

**Mary:** Tell me a little more about what—

**Sabrina:** This idea of, as we transition away from something like coal, it is harming the economics of the community, but obviously much better for the environment. Is that a messaging issue? Is it a jobs training issue? What are the different ways that groups can assist in that?

**Mary:** It's all of the above. I'll just say: we don't talk about climate change in Appalachia. You just don't mention that because that gets associated with clubs like Beyond Coal and we are decarbonizing, which is we are taking away your entire economy. That is the way it is perceived. A lot of recent statistics bear that out. That is what is happening. What is absolutely needed is a lot of job retraining. You can't just put miners in front of a computer and teach them to code. That stuff is ridiculous.

You need to have policies in place that are dependent and respective of the place that you're in and are looking at what the needs of the community are. What is so frustrating is, like for the people I work with every day, we have so many needs. There are so many jobs that need to be done to rebuild most of the water infrastructure in Central Appalachia. It's horrible. We need to build sewage infrastructure. It just doesn't exist.

There are things that need to be done and provide jobs. That's where the conversation needs to be, not, are we going to put solar panels up on this mine site that are going to help people? That's great. Put the solar panels up there, but don't sell it as a jobs transition thing.

**Sabrina:** That's a great point. Thank you. Samantha, can you speak a little bit to the partnerships that you were talking about with other community groups on the ground to do this work?

**Samantha:** Sure. Our primary group that we have worked a lot with is the Diné CARE group. WildEarth Guardians does have an organizer. She was doing a lot of the helping with the power building, the things like making sure that

people got to, when there were in-person meetings, that the folks that needed to be there from the different—there's three Navajo Chapters in this area of Northwest New Mexico where all this commercial scale development is happening, and making sure that people got there and helping empower and support those people because there are leaders in those Navajo Chapters that have even been to D.C. and addressed Congress.

We've done a lot of behind-the-scenes support of that to make sure that that could happen, and that Congress could hear directly from the people that were being impacted by this development. We have also, in Colorado, partnered with Green Latinos, and that's less of a rural thing and more of an urban thing because right around the edges of the cities, there's a lot of refining that goes on.

Of course, there are communities in places like Commerce City that are environmental justice communities and are being impacted by all of the air pollution that comes from oil and gas refining facilities that are put in those areas because there's not the political power to keep those kinds of polluting facilities out of those neighborhoods. A lot of it is, we have the organizing component that really helps support and elevate those voices and make sure that the right decision-making bodies are hearing directly from these people that are impacted because, like Mary said about the green groups and especially the nationals, there's this sense of, well, you don't live here. You're addressing an issue like climate change that can seem really theoretical, even though I think we all know it's not. It's like, "What about the people that are really being impacted on the ground?"

Very much a component of our work that is dealing with those kinds of issues around is "How can we support?" We have the staff at Guardians to do things, like track federal register notices, so we know when BLM is proposing to do an EIS, or proposing whatever it is that they are proposing to do. That's one of those obscure places. How would a community person know to look at the federal register to figure out what a federal agency is proposing in those neighborhoods?

There are those sorts of issues that we are working on. I think another piece that goes back to a little bit of the inequity is that often, when agencies are holding public meetings, they're doing it during the workday. They're doing it in the middle of the afternoon when people are working, or even if they're doing it in the evening, there's no accountability for things. Somebody works all day and then there's childcare and family responsibilities that they have in the evening.

That really goes to this system of checking the boxes and what we should be doing to it. That's where Guardians can help in that respect too: helping coordinate that so that the voices are heard. We have worked with who the Navajo tribe chapters have identified as their spokespeople that they want to go and speak to the decisionmakers. We're really trying to work in partnership, but elevate those voices, rather than always having it be the voice of the organization and what WildEarth Guardians is doing. It's really like, "Where's the need? Where are we aligned with these different communities? How can we help support them?"

**Sabrina:** That coordination is incredibly helpful, so thank you for doing that. Tanmay, I'm going to turn your question back to you, which is, how do we envision this transition and what do we want it to be?

**Tanmay:** I think that's a great question . . . What I meant is it's a very difficult question. The first thing I want to say is that, especially since we have so many law students here, this is an emerging issue in environmental law. That's something that's very important to note as you come in. I think we've heard a little bit about the disconnect between Big Greens and local communities to some extent.

It's something that I think that all national organizations are really trying to fix, but there's a conceptual barrier here. Nobody really knows how to do this, in part, because of the fact that it's such a complex space. With that said, there are definitely some ideas that appeal to me personally from my vantage point. I've been attending conferences, some organized by, let's say, the Union of Concerned Scientists, for example, is one that I attended, in which they got community members from everywhere in the MISO footprint.

Now, MISO is one of the regional transmission operators that extends from Louisiana all the way to Illinois. They got communities from everywhere and they just got people talking about what solutions would work for them. Some of the things that I've been telling you is things I picked up from them. One example from that experience is there's someone ELPC actually represents, his name is Timothy. He runs an organization called Cooperative Energy Futures in Minnesota. Minnesota, by the way, is also part of the MISO footprint, so I shouldn't have stopped at Illinois. Just keeps going up. One of the things that he's trying to do is come up with distributed energy business models that include your solar panels, but also things like energy storage, as that becomes cheaper and cheaper. The idea there is that you have these local entrepreneurs in states where this idea makes sense and where it has buy-in.

Then, the job of environmental lawyers is to make sure that the regulatory apparatus, especially at the state level, also at the federal level, actually allows them to compete on equal footing. Ultimately, I think maybe the biggest problem in the energy space especially is that we are still transitioning 100 years later from an absolute monopoly model to a perfect competition model. Every time new types of technologies come in, that fight has to be fought again. Again, from my point of view, I think that's one way to try to bridge this gap.

**Sabrina:** Thank you.

#### AUDIENCE Q&A

**Sabrina:** I'm going to open it up to all of you if you have questions. I know that there is a federal lands class here, so if you have any federal lands related questions for our speakers, please go ahead and raise your hand. I see a hand.

**Audience Member:** I'm interested in the big business versus community-led model of change. I'm curious how you all think about large-scale renewable energy projects on public land, or things that, from a client perspective, are positive developments, but seem in tension with, on one hand, conservation interests, and on the other hand local community empowerment, and how in fact they go about those tradeoffs, and maybe people who are out there.

**Sabrina:** That's a great question. Who would like to take it?

**Tanmay:** I can say something to that. There's this case that ELPC has been involved in for several years. Actually, I don't remember the case caption, but it deals with the Cardinal-Hickory Creek transmission line. This is a transmission line that's going from, essentially, Iowa to the Great Lakes, to Chicago. You see, I told you earlier that we are in Iowa trying to get them to make more wind. In a sense, a transmission line like that would make perfect sense for us.

We have been opposing that line for seven years and the reason is that it cut straight through a wildlife refuge. It raises all kinds of federal public lands issues, conservation issues. I think that might have been an important piece of how our work, to some extent, pivoted to rural communities because in that action, we found a lot of land use and property owners who were on our side.

That's one example of how, when we start with a big business-led model, there's going to be a very strong impulse to short-circuit processes in order to make sure that, essentially, these corporations get a good rate of return quickly, because that's what the shareholders really want. In some sense, these organizations might be startups and they really need to keep their share prices up in order to, essentially, not go bust.

When you see an issue like this, two possible solutions come to mind. The first is, we have to ask, our grid right now is deteriorating, it's aging. Again . . . it needs to be done, but to what extent do we actually need new infrastructure as opposed to upgrading infrastructure? Thinking about whether we can meet congestion needs through energy storage, demand response, and the other distributed energy solutions that I mentioned.

That might be one place where, when you start talking about that, you realize that big business versus communities really comes into sharp relief because utilities don't want that. They get a set rate of return every time they make a new line. They have absolutely no incentive to try and let these small-time competitors come in and eat into their profits by, essentially, arguing that "We don't need this new infrastructure." That's a partial answer, hopefully, something to think about.

**Sabrina:** Samantha or Mary?

**Mary:** I'm just going to add, I'm not going to answer the question, but I want to just add a complexity that exists in Appalachia. One of the foundational issues with injustice in Appalachia is land ownership, and it's both mineral ownership and surface ownership. We have counties where 80 percent of the surface land is owned by coal companies. I think there was a time probably ten years ago when we were seeing the sharp decline in coal and thinking, "At least, maybe some of that land will be made of it." What we're seeing now are a lot of proposals. A lot of that land is being used for carbon offsets. Some of it is being used for solar. These are all good things, but the land ownership is still remaining with those coal companies. The underground mineral assets are the water that is in the mining voids that are now being used to cool data centers. Coal companies are talking about starting to bottle that water and sell it. We've just reached this point where we're like, "Oh, darn. We thought we would get some relief on that one piece of injustice."

It's not looking like it's happening. We're trying to figure out if there are . . . ways that we can at least require some community benefit agreements for the

project. Can we require some community benefit agreements for some of the carbon offset projects? Can we get some ways in which the community actually has some benefit from this land rather than it being continually maintained in corporate control? That's not an answer to your question, but I just wanted to add that little wrinkle from Appalachia.

**Sabrina:** That's helpful.

**Samantha:** I don't have anything to add.

**Sabrina:** Okay. Other question? Becky?

**Becky:** I'm wondering for any or all of you. I'm curious about the interactions between each of your organizations. Obviously, they're all different sizes than Big Green Groups. My question is: has there ever been a time in your organization, when working with a Big Green Group, that there was a disagreement about objective or strategy? And how have you navigated that dynamic overall as lawyers?

**Sabrina:** That's a great question.

**Samantha:** I can start.

**Sabrina:** Yes.

**Samantha:** Yes, because this was when I was first a lawyer as well. WildEarth Guardians and a number of other groups are part of the Keep It In The Ground Movement. That's basically like no new coal leasing, no new oil and gas leasing on federal public lands because you need some context for that. There's something like sixty million acres of federal public lands that are already leased for oil and gas development, and eleven million acres are in development because there's just not enough drill rigs to be doing all that development at once. We learned that in one of our cases from the industry attorney that got up and said that. We already have like thirty years of that pollution locked in. It's not just Guardians. There are a number of groups that consider themselves Keep It In The Ground groups. When I first started doing this work in the coal context, I saw, and then there was a broader coalition of groups that coal mining and really getting the agency to look at the impacts of that.

One of those groups I saw in a press release said something like, "We're not trying to stop coal mining. We just want it to be done in a more responsible manner, and maybe mining should be allowed in some areas and not in others." I was just really surprised because I'm like, "Well, we're part of that group too." That was when I really learned that in terms of some of these broader issues, there are groups that would consider themselves advocates for still having some strong environmental controls on mining, but not necessarily in the Keep It In The Ground camp.

We are able to work together because there's still a lot of shared goals around less mining and more control over it with the federal agency requiring emission controls on certain mining: if it's oil and gas activities, then certain of those activities to cut down on air emissions, or to put some controls on these mining permits to cut down on discharges of pollutants into waterways.

There's a lot of common ground that the various organizations can have while at the same time on some of the edges, like Guardians is never going to say something like, "We're okay with a certain amount of mining as long as there are pollution controls on it." Because, at bottom, we work on the supply side and we feel like there's already enough federal public lands that are leased for coal

mining and are leased for oil and gas that in that twenty to thirty-year period, by the time all of the existing leases are being mined, that we should be thinking the just transition and the shift to renewables.

I'm sure there are cases where groups can be working on the same issue and be in direct conflict, but there's also, we work in the areas of overlap and where do we have the shared goals? Then when it comes to where there are some different goals, the groups can pursue their own advocacy around their own specific organizational goals.

**Sabrina:** Thank you.

**Mary:** If I could just speak to that for just a second, too. It hasn't been completely smooth, but we've done pretty well in that regard. I think it really comes to having agreements in place as soon as the litigation begins around communications and around settlement. Settlement is where, really, the rubber hits the road, and things can go off the rails as far as bad analogies.

Anyway, as far as the tensions between the national and the local groups, in most of the mountaintop removal impact litigation stuff we were involved in, we were involved as local counsel working most closely with the groups on the ground. Then also working with Sierra Club or Earthjustice, or whatever the larger greens were. I think the larger greens, in my experience, were very good about . . . making sure we all had the conversations prior to starting the litigation.

They have communications teams. We don't have communications teams to have a communications person. We would have that conversation about what is communications going to sound like. The local people who are most affected by this, how are they signing off to make statements?

We did have some shaky conversations and some difficult times around settlement, but I think in the end, especially since our issues usually involved one particular mine, they would always agree with whatever the local community wanted. They were not going to stand up and say, "No, we have to have five more. That's not going to- or penalties, they're not going to do that. I think it's just making sure that you have those conversations at the outset.

**Sabrina:** Thank you.

**Tanmay:** I don't really have that much to add. Both of you have a lot more experience on this than me. The only thing I would say is that abstracting a little bit, one thing that I've learned is that movement lawyering is a lot about internal persuasion as well. It isn't so much that there are some irreconcilable differences between the big greens and so on. It's just that just because of how money flows within the environmental world, smaller organizations have to actively persuade. Yes, that's maybe an important piece of what we do as lawyers that I didn't understand before.

**Sabrina:** All right. We have about two or three minutes left, so I wanted to ask each of the panelists, since we are in front of law students, if you could share a little bit of advice for students who want to go into this work.

**Samantha:** I would say: you want to be able to demonstrate once you're looking out of law school that you have had this interest. Think about your interning, externing, those kinds of opportunities. I think sometimes law students think, well, it's coursework, and I've taken environmental law courses, and I've taken a public lands course, but I think what really shows, especially when you want to do like the public interest type of work to really show that you had that

interest in law school, because a big thing that potential employers in the public interest look for is your commitment to the work. It's not just about being a lawyer and knowing how to do lawyer things because nobody knows that. Right out of law school anyway, you're learning, but it's more like, "Are you aligned with the mission and vision of this or either organization you want to work for, or if it's an actual legal organization, Earthjustice, or the Western Environmental Law Center? Are you aligned around that kind of mission?"

You're going to hear a lot of things. You're going to hear a lot of, even some of the comments that I make, a lot of characterizations of federal agencies, for example, and, of course, the oil and gas industry. If that's going to make you uncomfortable, then you don't want to work for somebody like WildEarth Guardians or the Sierra Club. You can really show that "I'm really committed to doing this kind of work, and here are the experiences that I had in law school, here's where I interned, here's the kind of work I did," to really show that you are aligned with the mission and vision of that organization or entity that you're applying to work for.

**Sabrina:** Perfect.

**Tanmay:** Yes, I think that as someone who was in law school, not . . . too long ago, one thing that I would suggest is, it can be overwhelming because it's such a vast space. Literally, it covers the entire world economy at this point. Take one little area and understand it well. Just one little area. It could be just surface runoffs and just understand it well, how things play out at the local level, at the federal level. Try to get some experience in that.

You want to have complete autonomy over what that would be. It would depend on something that's thrown at you, and you want to be able to do that and be able to demonstrate to employers that you really know what you're talking about around that little space, and that you're excited about it. If you can do that, I think everybody will be confident that when you come in, you will learn quickly, and you'll be able to find your feet quickly.

**Sabrina:** That's great, Tanmay. Thank you. Mary?

**Mary:** Yes, those are both great. I guess I would just add to that. For those of you who are interested, it's exhausting, and you lose more than you win. That, over time, really takes its toll. If you are drawn to that, my advice would be to think about what in that work is important to you. Why are you centered in that work and have some intellectual understanding of what it means to you more than just being, I guess, driven by your heart all the time. Because I think in order to have any longevity in that kind of work, you really need to think about it, separate yourself, your heart from it a little bit and think about it in an intellectual way.

**Sabrina:** Thank you. Well, a huge thank you to the panelists. We really appreciate your time. We are going to take a 10-minute break, so from 11:18, we'll come back around 11:28. Start at 11:30. If you have any questions, we will be up here. Thank you all.

**Samantha:** Thank you.

**Mary:** Thank you.