

# **Ours to Embrace: Climate Federalism**

## **The Implications for Rhode Island of Biden Executive Orders and Actions, A Presidential Memorandum and two Fact Sheets of January 2021.**

*“We are facing a period when society must make decisions on a planetary scale.... Never before have the governing bodies of the world been faced with decisions so far reaching in their immediate consequences and so potentially disastrous and momentous in their long term consequences.... we have a totally new situation.... The atmosphere is the ultimate international commons.” Margaret Mead, 1975*

### **Climate Federalism**

We are in that period. Experiencing the reality of climate change, a protracted crisis, geologically a very short time, economically a long slog, a multi-generational effort. By the early 1980s basic scientific understanding of human-induced global warming had been realized. Two decades later, there was scientific consensus on the matter. The scientific question was no longer whether human-induced global warming was real, the open questions were how much change would occur and how fast would it take place. In the second half of the decade, 2011-2020, it was recognized that the world we know is in climate crisis. Action is necessary to cut greenhouse gas emissions. Business as usual no longer works. We need to make a transition, the challenges we face are multiple, both ecological and economic; and community is the life blood of resilience.

Our U.S. Constitution was written and ratified when the States were confronted by problems larger than they could manage alone or through a confederation that could be a vehicle for joint action but was not a means of central government. Federalism, as established by the ratification of the U.S. Constitution, maintained the sovereignty of States and added a central government with adequate but defined powers. Thus we in the U.S. have a well-developed system, which we almost take for granted, of centralized and decentralized governmental capacities. Climate issues present us with challenges greater in key respects than what we have faced before. Federalism, with its capacities of both thinking nationally and rationally and acting locally in a differentiated manner responsive to distinctive conditions among and within States, enables us to proceed effectively.

American federalism has had two broad eras, an initial one of dual federalism with the central government and State and local government having distinct functions and a following era of cooperative federalism with shared responsibility domestic issues. These two eras of federalism are often described by an analogy to cakes, with dual federalism being a layer cake and cooperative federalism characterized as a marble cake of domestic responsibilities.

The dual federalism era had two periods, one before the Civil War, when the issue of slavery divided the country, and one following the Civil War when the adoption of the thirteenth, fourteenth, and fifteenth amendments defined citizenship nationally, and the U.S. became a transcontinental nation connected by railroads and telegraph. The era of dual federalism closed with the adoption of New Deal programs to address the challenges of the Great Depression. Until the New Deal, local government was the dominant level of government in terms of domestic spending, but it lacked the ability to solve economic problems that were national in character and interstate in their effects.

Cooperative federalism, to-date, has had two periods, one from the New Deal through the Great Society, and one which began inchoately with President Nixon's New Federalism and was more fully defined by President Reagan's effort to devolve national government powers and curtail the scope of federal government problem solving and regulation. The historian Sean Wilentz calls the thirty-two-years 1976-2008 the "Age of Reagan." The Obama and Trump administrations, in quite different ways, constituted movement away from key Reaganomic values. President Biden's climate change, science, and environmental justice directives are another set of post-Reaganomic moves. They signal an end to the devolution period in cooperative federalism. Devolution is not an effective way to address either a pandemic or global warming.

A suite of seven directives issued by President Biden on January 20 and 27, all bearing on climate, science, environmental justice and economic issues, go beyond saying simply how he wants the Federal government to act. They set a new direction for the nation and amount to a contemporary iteration of cooperative federalism--the idea that domestic government in this country is a system of shared responsibilities, with Federal, State, local and Tribal governments all having vital roles that need to be performed in concert with each other. Collectively the seven directives are a strong reaffirmation of the constructive importance of government. Government is a necessary means of addressing certain sorts of problems and helping people. The imperative of addressing climate change is shaping a new period of cooperative federalism.

Federalism is a complex adaptive system. It survives over time by changing. The nation of the founding fathers was superseded by the Civil War, and that nation by the Great Depression. The US is different now, yet the federalism provided for by the Constitution has continuing vitality. President Biden has moved more rapidly and forcefully on environmental issues than any recent U.S. president-- we should recognize that the agenda he has set and the values he has put in place will affect us in the governance of the places where we are. What has been set in motion is not just up-in-the-clouds Federal abstractions but down-on-the-ground community activity as well. Since many sub-Federal governmental entities, including the State of Rhode Island through the Department of Environmental Management, perform environmental functions on the basis of delegated Federal authority and receive Federal support for doing this work--heightened Federal expectations can have significant down-stream effects.

## **Biden Actions**

The **Executive Order 14008 Tackling the Climate Crisis at Home and Abroad** of Jan. 27, 2021 is the center piece and longest of the suite of seven directives. It sets up White House structures to address climate change and environment issues globally and domestically and establishes key policies. The executive order has three parts. Part I – Putting the climate crisis at the center of United States foreign policy and national security. Part II – Taking a government

wide approach to the climate crisis. Part III – General provisions, is a short of list of standard provisions regarding interpreting and applying the directives set forth in the executive order. Parts I and II will be further described.

**Part I** of the Executive Order elaborates on the policy set forth in section 101 that the “United States will work with other countries and partners, both bilaterally and multilaterally, to put the world on a sustainable climate pathway.”

Section 104 reinstates the Obama Presidential of Memorandum of September 21, 2016, Climate Change and National Security. Each of the two document’s, Obama’s September 21, 2016, Presidential Memorandum and Biden’s January 27, 2021, Executive Order, contains a statement of underlying condition. *Obama 2016*: “Climate change poses a significant and growing threat to national security, both at home and abroad. Climate change and its impacts affect economic prosperity, public health and safety, and international stability.” *Biden 2021*: “The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States leadership, aimed at significantly enhancing global action. Together, we must listen to the science and meet the moment.” Obama recognized a threat and developed a prudent response to it; Biden recognizes a crisis and undertakes actions to address it. The change in world conditions over the last five years and the advances in scientific understanding and certainty, have resulted in a different type of presidential directive, Obama’s course was prudence and preparation, Biden’s response is a call to action, which extends to all levels of government. In wanting to let the good times roll, we have burned through the time for business as usual. Responding to a crisis, unique in human history, requires rethinking how our government works.

**Part II** of the Executive Order contains twenty-three sections and, which all flow from the policy set forth in section 201:

“Even as our Nation emerges from profound public health and economic crises borne of a pandemic, we face a climate crisis that threatens our people and communities, public health and economy, and, starkly, our ability to live on planet Earth. Despite the peril that is already evident, there is promise in the solutions — opportunities to create well-paying union jobs to build a modern and sustainable infrastructure, deliver an equitable, clean energy future, and put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050. We must listen to science — and act.... It is the policy of my Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that... *delivers environmental justice and spurs well-paying union jobs and economic growth*, especially through innovation, commercialization and deployment of clean energy technology and infrastructure. Successfully meeting these challenges will require the Federal government to pursue a coordinated approach from planning to implementation, coupled with substantive engagement by stakeholders, including State, local, and Tribal governments.”

The emphases added to the above quote draws attention to two matters, justice and jobs, that have been often outside the primary mission of environmentalism yet are core purposes of the Biden actions. Here is what is contained in the sections of Part II.

- Sections 202 and 203 establish a White House Office of Domestic Climate Policy and a National Climate Task Force.

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- Sections 204 through 211 deal with the “use of Federal government buying powers and real property and asset management.”
- Sections 212 and 213 address “empowering workers through rebuilding infrastructure for a sustainable economy.”
- Sections 214 through 216 look to “empowering workers by advancing conservation, agriculture, and reforestation.

Section 2016 announces the goal of “conserving at least 30 percent of our lands and water by 2030.” Since the Muir – Pinchot contest in the early twentieth century – land use advocates have debated the relative primacy of the concepts of preservation and conservation, with preservation’s purpose keeping things in their natural state, and conservation’s purpose understood as providing for human use of natural resources in a manner that minimizes resource impairment and enables long-term viability and use. Thus, the use of the term “conserving” in the executive order can be seen as signaling an expectation of on-going human use of resources covered by the 30 by 30 goal. If this is the case, the concept of “sustainable yields”, which is used in forestry and fisheries, might be applicable to management plans for areas designated for “conservation.” Conservation is not the same as wilderness preservation, both are needed, and conservation allows for maintaining and regenerating ecosystem values close to home in the communities in which we live.

In this regard, significantly, the executive order also recognizes the need for maintenance of biodiversity-- and the way things are going now globally is resulting in high levels of species loss. The 2019 IPBES “Global Assessment Report on Biodiversity and Ecosystem Services, Summary for Policymakers” offers in key message A5, that “Human actions threaten more species with global extinction now than ever before.” The global rate of species extinctions “is already at least tens to hundreds of times higher than it has averaged over the last ten million years” (IPBES 2019, p. 12). In *Falter*, Bill McKibben writes “We have displaced most everything else: if you weigh the earth’s vertebrates, humans account for 30 percent of their total mass, and our farm animals for another 67 percent, meaning wild animals (all the moose and cheetahs and wombats combined) total just 3 percent.” (McKibben 2019, p. 12). Previously the eminent biologist E.O. Wilson submitted, “Unless humanity learns a great deal more about global biodiversity and moves quickly to protect it, we will soon lose most of the species composing life on Earth.... I am convinced that only by setting aside half the planet in reserve, or more, can we save the living part of the environment and achieve the stabilization required for our own survival.” (Wilson 2016, p. 3)

Sections 217 and 218 propose a program and project effort for “empowering workers through revitalizing energy communities” with “energy communities” being places where the fossil fuel extraction production, coal specifically, and infrastructure were predominant. This commitment to creating worker-skill relevant jobs where the impacted workers are, is a specific form of environmental justice: President Biden is acting to avoid new and ameliorate existing sacrifice zones where work disappears as industries move and close with economy transition. This is social absorption of a humanly-toxic “externality” cost.

Sections 219 through 224 address environmental justice more vigorously and comprehensively than has been done before. Section 219 begins “To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern.... Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other *cumulative impacts* on

disadvantaged communities, as well as the accompanying economic challenges of such impacts. It is therefore the policy of my Administration *to secure environmental justice and spur economic opportunity* for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.” (emphases added). Environmental justice and economic opportunity are connected. Julian Agyeman has submitted, In Introducing Just Sustainabilities (Agyeman 2013), that it is not practically possible to achieve sustainability without justice and that justice without sustainability does not have much long-term meaning.

The Biden Executive Order elevates, extends and strengthens Clinton Executive Order 12898, February 11, 1994, which was primarily EPA oriented. Biden’s Executive Order makes the function White House level and genuinely interagency. It specifies that the Attorney General “shall, within existing appropriations and consistent with applicable law... and *ensure comprehensive attention to environmental justice* throughout the Department of Justice, including by considering creating an Office of Environmental Justice within the Department to coordinate environmental justice activities among Department of Justice components *and United States Attorneys’ Offices nationwide.*” (emphases added)

Since Clinton’s Executive Order, the understanding of environmental justice has continued to develop. The concept of has four distinct but interrelated facets, which are described in David Schlosberg, Defining Environmental Justice, Theories, Movements and Nature (Schlosberg 2009, pp. 49-76). Key attributes are: **Distribution**, do communities of color bear the brunt of pollution and degraded environmental conditions? **Participation**, do communities of color have a fair and effective ability to participate in environmental decision making? **Recognition**, are communities of color fully enfranchised in matters pertaining to the economically, socially, and politically in matters pertaining to environmental justice? and **Capabilities**, do the environments in which people of color live, provide, adequately and fairly, broadly accessible opportunities to live a full and satisfying life? The capabilities approach is at the heart of the U.N. human development index (HDI); rankings are published annually. The U.S.’s global (HDI) ranking in 2020 was 17 and life expectancies in the U.S. were the lowest of top 20 countries. These rankings reflect of the absence environmental justice in the U.S.

The Presidential **Memorandum Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policy Making**, January 27, 2021, is “for the heads of executive departments and agencies” and begins:

“It is the policy of my Administration to make evidence-based decisions guided by the best available science and data. Scientific and technological information, data, and evidence are central to the development and iterative improvement of sound policies, and to the delivery of equitable programs, across every area of government. Scientific findings should never be distorted or influenced by political considerations. When scientific or technological information is considered in policy decisions, it should be subjected to well-established scientific processes, including peer review where feasible and appropriate, with appropriate protections for privacy. Improper political interference in the work of Federal scientists or other scientists who support the work of the Federal Government and in the communication of scientific facts undermines the welfare of the Nation, contributes to systemic inequities and injustices, and violates the trust that the public places in government to best serve its collective interests.”

The Presidential Memorandum updates and expands upon President Obama’s Presidential Memorandum of March 9, 2009 on “Scientific Integrity”. It also makes use of administrative and statutory provisions of the Foundations for the Evidence-Based Policymaking Act of 2018 (Public Law 15-435). It requires conformity by agency heads with the expectations established the Memorandum, which shall further “apply to all agency employees, regardless of the nature of their appointment, as well as contractors who perform scientific activities for agencies.”

Wrapping-up her thought-provoking book of 2019, Why Trust Science, Naomi Oreskes proposes, “we are not powerless to judge contemporary scientific claims. We can ask: Is there consensus? Is the community undertaking the studies, diverse both demographically and intellectually? Have they considered the issue from a variety of perspectives? Have they been open to diverse methodological approaches? And have they paid attention to all relevant evidence, not missing or discounting some substantial portion of it? Have they avoided becoming fetishistic about method?” (Oreskes 2019, p. 250)

Science, that passes the tests Oreskes proposes, can reasonably be considered the best available science. Since science is continually advancing, what was once the best available science may be superseded. This is the case with climate science, much more is now known about climate change than was known twenty years ago. Relying on old science increases the likelihood of having suboptimal policies and programs.

The **Executive Order 14007 President’s Council of Advisors on Science and Technology**, January 27, 2021 creates the Council (the PCAST) and charges it with advising “the President on matters involving policy affecting science, technology and innovation, as well as on matters involving scientific and technological information that is needed to inform public policy relating to the economy, worker empowerment, education, energy, the environment, public health, national and homeland security, racial equity, and other topics.”

The **Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis**, Jan. 20, 2021, states:

“Our Nation has an abiding commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory. Where the Federal Government has failed to meet that commitment in the past, it must advance environmental justice. In carrying out this charge, *the Federal Government must be guided by the best science* and be protected by processes that ensure the integrity of Federal decision-making. It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

To that end, this order directs all executive departments and agencies... to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.

The Executive Order's section 5, entitled "Accounting for the Benefits of Reducing Climate Pollution" holds "it is essential that agencies capture the full costs of greenhouse gas emissions as accurately as possible.... They are intended to include changes in net agricultural productivity, human health, property, damage from increased flood risk, and the *value of ecosystem services*." (emphasis added). By the way, September 23, 2020 Report by Swiss RE Institute had observed: "Over half (55%) of global GDP, equal to USD 41.7 trillion<sup>1</sup>, is dependent on high-functioning biodiversity and ecosystem services."

Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021.) is a list of agency actions between January 20, 2017 and January 20, 2021, that President Biden wants agencies to review consistent with the policies and directives set forth in Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, Jan. 20, 2021. A broad, science-based about-face has been called.

In sum, the Executive Order and Fact Sheet of January 20, 2021, together with the Presidential Memorandum of January 27, 2021, evince a strong standard for using best available science for policymaking and programmatic actions, including those related to climate change.

The **Presidential Action Accepting the Paris Agreement** (Jan. 20, 2021) is brief and clear:

“ACCEPTANCE ON BEHALF OF THE UNITED STATES OF AMERICA

I, Joseph R. Biden, Jr., President of the United States of America, having seen and considered the Paris Agreement, done at Paris on December 12, 2015, do hereby accept the said Agreement and every article and clause thereof on behalf of the United States of America.

Done at Washington this 20<sup>th</sup> day of January, 2021.

JOSEPH R. BIDEN JR.”

On its face, this is clear and simple, yet its effect is far reaching and complex. What the Paris Agreement is most known for is setting target global average temperature increases “to well below 2° C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5°C above preindustrial levels.

But there is much more to the Agreement than setting not-to-exceed targets for global average temperature increases. The Agreement begins with a list of recitations like the following:

*“The Parties to this agreement, ...*

*Emphasizing* the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty,

*Recognizing* the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerability of food production systems to the adverse impacts of climate change,

*Taking* into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities, ...

*Have agreed as follow”*

A fundamental purpose of the Agreement is to make possible “sustainable development” - controlling global average temperature increases is critical to this end. Sustainable development is referenced in the Agreement in Article 2, clause 1; Article 4, clause 1; Article 6, clauses 1, 4, and 7; Article 7, clauses 1 and 11; Article 8, clause; and Article 10, clause 5. “Sustainable development” is a U.N. defined term, developed by the World Commission on Environment and Development: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (World Commission on Environment and Development 1988, p. 43). Intergenerational environmental justice is a key attribute of sustainable development.

### **Best Available Science**

Beginning the 1980s a quiet revolution took place in environmental thought. Scientists engaged in research, communicated what they learned and joined in convenings to share their evolving understanding. Concepts such as sustainable development, biodiversity, environmental justice, and ecosystems developed during a two-decade period and were foundational in the U.N. call for millennium ecosystem assessment, which was published in 2005 as Ecosystems and Human Well-Being.

In short, “best available science” had changed significantly. Sustainable development was a core repositioning, for it addresses meeting the *needs* of both current and future generations. We now have available to us modes of thought, which were not available in the 1970s, and are critical to our thinking through and acting on issues of environmental justice, global warming, climate change and resiliency.

Certainly, the concept of “sustainable development” has been vigorously debated, yet it has endured and has remained fundamental. For an assessment of its on-going significance see Meadowcroft et al. 2019 What Next for Sustainable Development, Our Common Future at Thirty. About the concept of sustainable development, Amartya Sen has written “how indebted we all are to Gro Brundtland and the committee she led for the understanding they have generated that the value of the environment cannot be divorced from the lives of living creatures.... The environment is not only a matter of passive preservation, but also of active pursuit. Even though many human activities that accompany the process of development may have destructive consequences, it is also within human power to enhance and improve the environment in which we live.... Development is fundamentally an empowering process, and this power can be used to preserve and enrich the environment, and not only to decimate it.” (Sen 2009, 249)

The contemporary formulation of “best available science” warrants our moving in our environmental management practices from the existing steady-state resource management to resilience-based ecosystem stewardship, which is an advance in adaptive management. Table 1 shows the nature of this transition, which is made critical by our environment’s no longer being so stable.



**Table 1**  
**Contrasts between steady-state resource management and resilience-based ecosystem stewardship.**

<b>Steady-state resource management</b>	<b>Resilience-based ecosystem stewardship</b>
Reference state: historic conditions	Trajectory of change
Manage for a single resource or species	Manage for fundamental social-ecological properties
Single equilibrium state, whose properties can be sustained	Multiple potential states
Reduce variability	Foster variability and diversity
Prevent natural disturbances	Foster disturbances that sustain social-ecological properties
People use ecosystems	People have a responsibility to sustain future options
Managers define the primary use of managed systems	Multiple stakeholders work with managers to define goals
Maximize sustained yield and economic efficiency	Maximize flexibility of future options
Management structure protects current management goals	Management structure responds to and shapes human values

From Chapin et al. 2009, p. 5, Table 1.1.

Our major Federal environmental laws are a product of the 1970s and largely reflect principles of “steady-state resource management”. In August 2020, the Environmental Protection Network, an organization of former senior EPA personnel, in other words people with deep insider knowledge of the agency, issued sweeping recommendations for “Resetting the Course of EPA”. While the Biden suite of directives present public facing expectations for change; the Network’s recommendations offer an EPA internal logic for related improvements, and what happens at the Federal level commonly stimulates interest in the same topics at the State level. We should be thinking about this as it pertains to our State.

### **Rhode Island Realism**

Laws can lock the administration of environmental programs into the science of the time of their enactment. Unless explicitly authorized to do so, executive branch agencies do not have the power to change how the law works based on advances in scientific understanding. Thus how things work can become increasingly ossified over time. At the Federal level, many major programs are subject to periodic reauthorization. Without such requirements, State laws can easily become functionally archaic.

The RI Department of Environmental Management (DEM) was established in its present form in 1977. In 1990 a law was enacted, which updated and brought together the dispersed environmental functions in Rhode Island state government. But an economic downturn in the state, triggered by the collapse of State-chartered credit unions, resulted in postponing in implementation of this comprehensive legislation. The House leadership changed in 1993, postponements continued for a decade, and finally in 2002, the comprehensive act was repealed.

Thus Rhode Island retains an environmental agency with a foundation in 1970s operating principles, essentially those of “Steady State Resource Management”.

In 1986, the Rhode Island Constitution was given a comprehensive overhaul. One hundred-twenty years of amendments were incorporated into the body of the document, and in some key areas, archaic provisions were brought in line with current understanding. The 1843 Article I section 17, pertained to the people rights to the fishery and privileges of the shore, as conferred in the Charter of 1663, granted by King Charles II. Article I section 17.

The 1986 Constitutional overhaul continued the venerable marine-related privileges including the rights to swim the shore and gather seaweed and added that the people shall “be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral and other natural resources of the state, and to adopt all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state.” This general statement of rights squares well with principles of “resilience-based ecosystem stewardship” and with addressing climate issues. Bringing DEM’s powers and duties into a current context is a Constitutional duty of the General Assembly.

While States can as a matter of practice follow Clinton-era environmental justice guidance for participation in regulatory proceedings pertaining to the implementation of Federal delegated authority and actions regarding Federal programs and decision-making, this does not mean that States have full-fledged environmental justice standards. This is the situation in Rhode Island; expectations for environmental justice here are not established by State law or executive order.

An agreement of the New England Governors and Eastern Canadian Premiers of 2001 established goals for the region for greenhouse gas mitigation. A series of energy laws beginning in 2004 with the Renewable Energy Standard, followed in 2006 with an omnibus act which created the Office of Energy Resources and established the least-cost procurement energy efficiency program. Then in 2009 came the Long-term Contracting Standard Act, which made the development of the first off-shore wind in the US possible. The Distributed Generation program was put-place in 2011, and revised and extended as a feed tariff by the Renewable Energy Growth Program in 2014.

The Resilient Rhode Island Act of 2014, which is intended to coordinate greenhouse reduction mitigation and climate change adaptation activities among state agencies, uses targets for greenhouse emission reductions are based on those contained in a 2001 Climate Change Action Plan of the New England Governors and Eastern Canadian Premiers. With the Paris Agreement of 2015, these targets became outdated--clearly the targets were no longer based on best available science.

President Biden’s Paris Agreement Executive Order amplifies the significance Governor Raimondo’s Executive Order, 17-06, “ordering and directing [that] 1. The State of Rhode Island shall remain dedicated to the principle of the Paris Climate Agreement.” Accordingly, the time has come for us in this State to consider how sustainable development principles are to be put into effect.

Movement in this direction is underway regionally. The Massachusetts General Court passed S-9, which Governor Baker has signed into law. In Rhode Island, the General Assembly passed the 2021 Act on Climate, which up-dates the targets for greenhouse emissions reductions

that are consistent with the Paris Agreement and the Biden executive order goals and makes the targets mandatory and enforceable.

## **Ours to Embrace**

During the period of cooperative federalism's devolution, States and localities continued to undertake climate change responsive initiatives. Some of these such as the Regional Greenhouse Gas Initiative were multi-state. The result has been the development of hands-on local knowledge of things that can be done to address climate change. Yet State and local action are not sufficient; unless there are clear national expectations, there can be a strong temptation to cling to the status quo, the known condition, and continue business as usual. Environmentally, national inaction can reinforce a proclivity to engage in race to the bottom, which extols tax cutting and regulatory relief and acts as though negative externalities can be borne without ecosystem and societal costs.

Climate federalism moves out of this cynical realm. Substantively there is nothing terribly new or shocking in the Biden suite of January directives; they can be distilled to two broad requirements: use the best available science (including climate science) and achieve environmental justice, broadly defined: justice and science, under these headings, a lot can be comprehended.

Since the United States is a continent-spanning nation, with very different ecosystems, economies, and historical-political cultures from place to place, and region to region, how these two requirements are put into effect will vary based on differences in condition. Enabling implementation of Federally recognized purposes to be specific, State by State and locality by locality, is federalism's function. The U.S. system does not presume one size fits all.

But this does not mean that doing nothing is a viable option. Doing nothing puts us all on a trajectory to severely worsening conditions, which are portrayed degree Celsius by degree Celsius in Lynas 2020: three degrees or warming is much worse than two, and four degrees of warming results in deadly heat levels in many places. This is why the best available science has called our current situation a "climate crisis." The Paris Agreement goals need to be met.

Looking at the suite of Biden directives as a whole, we can see they consistently (1) require cross agency interaction, not siloes, (2) are given White House status, (3) expect action at all levels of government—the phrase "State, local and Tribal government" is used repeatedly - and (4) treat environmental justice and use of best available science as fundamental. - Change is treated as an on-going reality, rather than a sporadic event. The issue is not whether there will be change, but what will be its extent and will it be coped with constructively. Legacy ways of thinking may not work well in addressing the environmental challenges we are facing. Societies that do not achieve resilience collapse.

In sum, the Biden directives are fully consistent with cooperative federalism premises. They call for a whole government approach that involves Federal, State, local and Tribal government. In addition, as was recognized as essential as early as the late 1970s, by Margaret Mead, they are internationally aware and responsive.

Yet interestingly the Biden directives are not Arcadian or Utopian, they suggest neither returning to an idealized past nor moving on to an imaginary future in which the woes of the world are resolved. What they offer, in the present-tense terms of the here and the now of the next decade, is a bridge across the crises that now confront us. It is up to "The Sum of Us" (McGhee 2021) to act, for environmental justice is not a zero-sum game, society, as a whole, benefits As described in "All We Can Save" (Johnson and Wilkinson 2020), the opportunities for effective

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action are all around us, in our communities and metropolitan areas. What is required is a resolve to transition. Regarding this, we can accept President Biden’s seven directives as an invitation to optimism, and we can think of ourselves as having entered a period of “climate federalism.” It is ours to embrace and make of what we can to achieve the long-term viability of the places where we live.

Kenneth Frazier Payne, April 7, 2021  
President, Civic Alliance for a Cooler Rhode Island

Sources

Appendices

Executive Orders

Presidential Memorandum

Fact Sheets

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### SOURCES

Agyeman, Julian. 2013. Introducing Just Sustainabilities, Policy, Planning and Practice (New York: Zed Books).

Bianco, N., F. Litz, D. Sasha, T. Clevenbeger, and D. Lashof. 2020. "New Climate Federalism: Defining Federal, State and Local Roles in a U.S. Framework to Achieve Decarbonization" Working Paper. (Washington, DC: World Resources Institute Available on line at [www.wri.org/publications/new-climate-federalism](http://www.wri.org/publications/new-climate-federalism)).

Chakrabarty, Dipesh. 2018. The Crises of Civilizations, Exploring Global and Planetary Histories. (New Delhi, India: Oxford University Press).

Conlon, Timothy. 1998. From New Federalism to Devolution, Twenty-Five Years of Intergovernmental Reform. (Washington, DC: Brookings).

Conlon, Timothy, 1988. New Federalism, Intergovernmental Reform from Nixon to Reagan. (Washington, DC: Brookings).

Costanza, Robert, Lisa Gumlich and Will Stefen. 2007. Sustainability or Collapse? An Integrated History and Future of People on Earth. (Cambridge, MA: MIT Press).

Daily, Gretchen C. ed. Nature's Services, Societal Dependence on Natural Ecosystems. (Washington, DC.: Island Press).

Cronon, William. 1996. Uncommon Ground, Rethinking the Human Place in Nature (New York: W.W. Norton & Company).

Derthick, Martha. 1999. ed. Dilemmas of Scale in American Federalism. (New York: Cambridge University Press).

Environmental Protection Network. 2020. "Resetting the Course of EPA, Recommendation from the Environmental Protection Network." (<https://www.environmentalprotectionnetwork.org/wp-content/uploads/2020/08/Resetting-the-Course-of-EPA-Report.pdf>).

IPBES. 2019. "Summary for Policy Makers of the global assessment report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services". ([www.ipbes.net](http://www.ipbes.net)).

Johnson, Ayana Elizabeth and Katharine K. Wilkinson 202, ed. All We Can Save, Truth, Courage and Solutions for the Climate Crisis. (New York: One World).

Lynas, Mark. 2020. Our Final Warning, Six Degrees of Climate Emergency. (London: 4<sup>th</sup> Estate).

McGhee, Heather, 2021. What Racism Costs Everyone and How We Can Prosper Together. (New York: One World).

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McKibben, Bill. 2019. One World, Has the Human Game Begun to Play Itself Out. (New York: Henry Holy and Company).

Mead, Margaret. 1976. "Preface: Society and the Atmospheric Environment" in Kellogg, William W. and Margaret Mead, ed., 1976. The Atmosphere; Endangered and Endangering. (Washington, DC U.S. Government Printing Office, xix-xxiv).

Meadowbrook, James, David Banister, Erling Holden, Oluf Langhelle, Kristin Linnerud, and Geoffrey Gilpin, 2019, ed., What's Next for Sustainable Development. (North Hampton, MA: Edward Elgar Publishing).

Millennium Ecosystem Assessment. 2005. Ecosystems and Human Well-Being. (Washington, DC: Island Press).

Nussbaum Martha C. and Amartya Sen. 1993. Ed. The Quality of Life. (New York: Oxford University Press).

Oreskes, Naomi. 2019. Why Trust Science? (Princeton, NJ: Princeton University Press).

Oreskes, Naomi. 2014. "The Science Consensus on Climate Change: How Do We Know We're Not Wrong" in DiMento, Joseph, F.C. and Pamela Doughman. ed. Climate Change, What It Means for Us, Our Children, and Our Grandchildren. (Cambridge, MA: MIT Press, 105 -148).

Rich, Nathaniel. 2019. Losing Earth, A Recent History. (New York: Farrar, Straus and Giroux).

Schlosberg, David. 2017. Defining Environmental Justice. (New York: Oxford University Press).

Scott, James c. 1998. Seeing Like A State, How Certain Schemes to Improve the Human Condition Have Failed. (New Haven, CT: Yale University Press).

Sen, Amartya. 2009. The Idea of Justice. (Cambridge, MA: Harvard University Press).

SwissRE Institute. 2020. News release: "A fifth of countries worldwide at risk from ecosystem collapse as biodiversity declines, reveals pioneering Swiss Re index." ( <https://www.swissre.com/dam/jcr:4793a2c3-b50a-47c0-98df-ed6d5549fde8/nr-20200923-swiss-re-biodiversity-ecosystem-index-en.pdf>).

Walker, David B. 1995. The Rebirth of Federalism, Slouching toward Washington. (Chatham, NJ: Chatham House).

Wilentz, Sean. 2009. The Age of Reagan, A History 1974 -2008. (New York: Harper Perennial).

Wilson, Edward O. 2016. Half-Earth, Our Planet's Fight for Life. (New York: Liveright).

Wilson, Edward O. 1988. ed. Biodiversity. (Washington, D.C.: National Academy Press).

World Commission on Environment and Development. 1987. Our Common Future. (New York: Oxford University Press).