



INFRASTRUCTURE LEGISLATIVE UPDATE

Janice Schneider, Partner
Jim Cole, Partner

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LATHAM & WATKINS^{LLP}

SPEAKER BIO

Janice M. Schneider

Janice M. Schneider is a partner in the Washington, D.C. office of Latham & Watkins and Global Vice Chair of the Environment, Land & Resources Department. She has over 30 years' experience in environmental and natural resource issues.

Profile

Prior to rejoining Latham, Ms. Schneider served as Assistant Secretary for Land and Minerals Management for the US Department of the Interior where she oversaw four Interior Department agencies: the Bureau of Land Management (BLM), Bureau of Ocean Energy Management (BOEM), Bureau of Safety and Environmental Enforcement (BSEE), and the Office of Surface Mining Reclamation and Enforcement (OSMRE), including more than 12,000 employees and a combined budget of US\$1.5 billion. As Assistant Secretary, she oversaw the Department's management and use of federal lands, waters, and mineral and non-mineral resources on about 245 million acres of federal surface lands, 700 million acres of federal mineral interests, and the 1.7 billion acre Outer Continental Shelf, successfully completing an extensive array of agency rules and initiatives. She was confirmed by the US Senate in May 2014.

Prior to joining the US Department of the Interior, Ms. Schneider was a partner in Latham's Environment, Land & Resources Department, served as Chair of the department in Washington, D.C., and served as Global Co-Chair of

the firm's Project Siting & Approvals Practice where she handled a broad range of matters in federal court and before federal agencies, members of Congress, and its staff. Before that, she served as Counselor to the Deputy Secretary of Interior, as a trial attorney at the US Department of Justice in the Wildlife Section, and in the Interior's Office of the Solicitor in the Division of Indian Affairs and the Honors Program.

Her experience includes:

- National Environmental Policy Act (NEPA)
- Endangered Species Act (ESA) and other wildlife laws
- Federal Land Policy and Management Act and National Forest Management Act
- Mineral Leasing Act
- Mining laws
- Clean Water Act
- Tribal and cultural resource issues
- Outer Continental Shelf Lands Act (OCSLA)

Ms. Schneider has extensive experience guiding clients to successful outcomes in the energy development sector both onshore and offshore, including renewable solar and wind

energy, hydropower, oil and gas, coal, pipeline and transmission line development, licensing, operation, and compliance; the minerals and mining sector; and public land, national forest, American Indian land, national wildlife refuge, and national park use and management.

Ms. Schneider is a first-chair litigator and is well versed in federal policy development and legislative and regulatory activities, including working effectively with states and local government and industry, tribal, and non-governmental stakeholders; analysis and drafting of legislative language and testimony; preparing and commenting on rules; and other agency initiatives. She is a frequent public speaker and has testified before Congress numerous times.

Before entering the legal field, Ms. Schneider worked for six years as a biologist and consultant with the National Park Service, University of Miami, Florida Department of Transportation and a private firm.



Partner, Washington, D.C.

T +1.202.637.2306
E janice.schneider@lw.com

Education

JD, Lewis & Clark Law School, 1992

BS, University of Miami, 1983

Bar Qualifications

District of Columbia, Maryland

Recognition Highlights

Recognized by *Chambers USA* – District of Columbia 2020-2021 in the Environment category. According to clients, Janice Schneider offers "invaluable and impeccable strategic counseling with grounded and reasonable advocacy."

Recognized in 2018 by *The National Law Journal* in its fourth annual "Energy & Environmental Trailblazers" report, which features lawyers who have "shown a deep passion and perseverance in pursuit of their mission, having achieved remarkable successes along the way."

Recognized as a leading lawyer, both before and after her recent federal government service, in *The Legal 500 US* guides for Environment: Regulatory 2011-2013, 2018-2021 and cited as a recommended lawyer for Environment: Litigation category 2011-2012, 2018-2020 and Real Estate–Land Use/Zoning category 2018-2021

SPEAKER BIO



Jim Cole, a partner in the Houston office, practices transactional tax involving mergers, acquisitions, financings, restructurings, and capital markets transactions.

Profile

Mr. Cole regularly advises publicly traded partnerships, master limited partnerships (MLPs), corporations, developers, private equity firms, lenders, and investment banks on transactions across the energy industry, including the upstream, midstream, downstream, oil field services, and alternative energy sectors. His practice includes a focus on energy tax incentives for wind projects, solar projects, and the section 45Q federal income tax credit for carbon capture projects. Mr. Cole has been quoted in both *Bloomberg Tax* and *Tax Notes* with respect to the section 45Q federal income tax credit. Mr. Cole was named to *Turnarounds & Workouts*' 2020 and 2021 lists of Bankruptcy Tax Specialists in the Nation's Major Law Firms.

Mr. Cole currently sits on the board of the Renewable Energy Alliance of Houston.

Prior to law school, Mr. Cole practiced as a Certified Public Accountant in the tax practice of an international accounting firm.

Recent Speaking Engagements

- "Tax Equity and Flip Partnerships: Tax Executive Institute," Houston Tax School, October 2021
- Panelist, "45Q Tax Credits," Morgan Stanley CCUS Conference, September 27, 2021
- Panelist, "CCUS and Tax Equity," Barclays Energy & Power CEO Conference, September 10, 2021
- Panelist, "Capitalizing on Carbon Capture," 2021 EIC Investor Conference, Las Vegas, May 18, 2021
- Panelist, "[CCUS Investment Opportunities: Market Growth, Environmental and Tax Credits, and Permitting Considerations](#)," Latham E&I Webcast, May 5, 2021
- Panelist, "[The Winding Road to Net Zero: A Workshop on Legal Issues](#)

[Critical to Decarbonization](#)," North American Carbon World 2021 Virtual Conference, April 22, 2021

- "Financing Carbon Capture Projects with Tax Credits" — Texas Journal of Oil, Gas & Energy Law, 2021 Symposium
- "Update on Recent Tax Guidance for Carbon Capture Projects" Tax Executive Institute – Houston Chapter, September 2020



Partner, Houston

T +1.713.546.7435
E james.cole@lw.com

Education

J.D., University of Houston Law Center, 2011, *cum laude*

BBA, Texas A&M University, 2006

MS, Texas A&M University, 2006

Bar Qualifications

Texas

OVERVIEW OF BIDEN CLIMATE AGENDA



Significant Shift in Emphasis and Priorities

- EOs set goals of **carbon-free electricity sector by 2035** and **net-zero emissions economy-wide by 2050**
- Nationally Determined Contribution: **reduce emissions by 50-52% by 2030 compared to 2005 levels**

Government-Wide Approach to Climate & Energy

- Create National Climate Task Force, Office of Domestic Climate Policy
- Prioritize climate across agency decision-making
- Leverage government procurement power to accelerate clean energy transition, including enhanced electric infrastructure (e.g., EVs, batteries)
- Climate Finance Plan
- Engage State, local, Tribal, other communities
- Create **union jobs** in clean energy manufacturing
- Focus on **environmental justice** and needs of disadvantaged communities

SENATE INFRASTRUCTURE BILL



Infrastructure Investment and Jobs Act (HR 3684)

- Passed Senate on August 10, 2021, and returned to the House of Representatives
- Tied in the House to the Reconciliation Bill
- \$550 Billion in new investments

Chock full of energy and development related provisions:

- Project Delivery & Process Improvement
- Climate Change
- Grid Infrastructure and Resiliency
- Supply Chains for Clean Energy Technologies
- Fuels and Technology Infrastructure Investments
 - CCUS & Hydrogen
- Wind and Solar Integration with Pumped Hydro
- Solar/Clean Energy on Current and Former Mine Lands
- Methane Reduction/Orphan Well Site Plugging
- Electric Vehicles, Charging Stations, Buses and Ferries

BUDGET RECONCILIATION BILL



Biden announced \$1.85 Trillion framework

WH major push for a framework this week before the President leaves for COP26

Climate Change Programs – ~\$555B

Would be the largest climate investment in history

Largely through tax incentives

Clean Energy Standard and Clean Electricity Performance Program – both out

RECONCILIATION – HOUSE BILL



PTC Enhancements

- Extension through 2031 @ 100%
- Increase by 10% of credit amount for projects that use “domestic content”
- Imposition of labor requirements

ITC Enhancements

- Extension through 2031 @ 100%
- Increase by 10% of eligible basis for projects that use “domestic content” and meet labor requirements
- Increase by 2% of eligible basis for projects that use “domestic content” but are grandfathered from labor requirements
- Imposition of labor requirements

Transmission

- ITC for transmission lines that exceed 275 kv.

Storage

- Standalone ITC for Energy Storage Technology
- Current law requires co-location
- Agnostic to storage technology

Clean Hydrogen

- PTC like credit for hydrogen that is produced using a method that is “cleaner” than steam methane reforming.

RECONCILIATION – HOUSE BILL



Zero Emissions Property

- 30% ITC for emerging technologies that produce zero emission electricity
- 250,000,000 annual program cap.

45Q

- Extended through 2031
- Increased dollar values for DAC
- Imposition of labor requirements
- Lowering capture thresholds

Green MLPs

- Generally treats income from activities associated with these tax credits as “qualifying income” for purposes of determining PTP status
- Still significant hurdles in the form of passive investment rules

Direct Pay

- Permits (by election) a tax credit to instead be treated as a refundable payment of tax
- Contains technical fixes regarding tax exempt income and flow through considerations
- Opens the door for new capital sources

RECONCILIATION – SENATE BILL



- **Technology neutral credits – emissions based incentives for**
 - Clean Electricity
 - Clean Transmission
 - Energy efficiency
- **Removes EOR from “acceptable” 45Q uses**
- **Provides enhanced credit for 45Q for certain industries**

GENERAL TAX CHANGES



- **Increased Corporate Rate**
- **Potential minimum tax on financial income**
- **Excise Tax on stock buy backs**
- **Partnership Changes**
 - **Allocations in accordance with Partners' Interest in Partnership**