

## SCALING “LOCAL”: THE IMPLICATIONS OF GREENHOUSE GAS REGULATION IN SAN BERNARDINO COUNTY

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Over the past couple of years, San Bernardino County (“the County”) has been a focal point in conflicts over local climate regulation.<sup>1</sup> Parallel lawsuits brought by the California Attorney General and nongovernmental organizations under state environmental law forced San Bernardino County to begin incorporating greenhouse gas emissions reduction into its local planning.<sup>2</sup> In accordance with a settlement with

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1. I have analyzed in depth the debates over scale in this litigation and their consequences for transnational climate regulation in Hari M. Osofsky, *Is Climate Change “International”?: Litigation’s Diagonal Regulatory Role*, 49 VA. J. INT’L L. 585 (2009). This Essay builds upon that analysis, as well as that of Hari M. Osofsky & Janet Koven Levit, *The Scale of Networks: Local Climate Change Coalitions*, 8 CHICAGO J. INT’L L. 409 (2008), but has a different focus. Namely, this Essay examines the implications of the San Bernardino County dispute and subsequent regulatory efforts on how we should conceptualize the scale of “local.”

2. See Petition for Writ of Mandate at 12, *Ctr. for Biological Diversity v. County of San Bernardino*, No. 07 Civ. 293 (Cal. Super. Ct., County of San Bernardino Sept. 11, 2007), available at [http://www.communityrights.org/PDFs/Petition\\_\(00011023\).PDF](http://www.communityrights.org/PDFs/Petition_(00011023).PDF) (last visited June 13, 2009); Order Regarding Settlement, *People v. County of San Bernardino*, No. 07 Civ. 329 (Cal. Super. Ct., County of San Bernardino Aug. 28, 2007), available at [http://ag.ca.gov/cms\\_pdfs/press/2007-08-21\\_San\\_Bernardino\\_settlement\\_agreement.pdf](http://ag.ca.gov/cms_pdfs/press/2007-08-21_San_Bernardino_settlement_agreement.pdf) (last visited June 13, 2009); Petition for Writ of Mandate at 2, *People v. County of San Bernardino*, No. 07 Civ. 329 (Cal. Super. Ct., County of San Bernardino Apr. 13, 2007), available at [http://ag.ca.gov/globalwarming/pdf/SanBernardino\\_complaint.pdf](http://ag.ca.gov/globalwarming/pdf/SanBernardino_complaint.pdf) (last visited June 13, 2009).

the state, the County hired a consultant to develop an emissions reduction plan that aims to bring emissions down to 1990 levels.<sup>3</sup>

On the surface, this dispute and its resolution provide an uncomplicated local governance story. San Bernardino County, like other cities and counties, is an administrative subunit of California.<sup>4</sup> In initially choosing not to regulate greenhouse gas emissions and in defending that choice in the lawsuit, the County claimed that climate change was too large-scale a problem for it to tackle—often citing scientific uncertainty.<sup>5</sup> The State used its power over the County, through the California Environmental Quality Act and the San Bernardino County Superior Court, to push that local governmental unit to take action, despite its protestations.<sup>6</sup>

This “local governance” narrative becomes more complicated, however, through a closer examination of the territory of San Bernardino County. The County covers just over 20,000 square miles, an area almost twice the size of Israel and larger than many U.S. states.<sup>7</sup> Although “local” often carries connotation of “urban,” this locality contains both some of the fastest growing urban areas in the United States<sup>8</sup> and major wilderness areas.<sup>9</sup> San Bernardino County is certainly “local” from a

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3. Imran Ghori, *Lawsuit Against San Bernardino County General Plan Dropped*, THE PRESS ENTERPRISE, Dec. 17, 2007, [http://www.pe.com/localnews/inland/stories/PE\\_News\\_Local\\_H\\_settle18.31d902e.html](http://www.pe.com/localnews/inland/stories/PE_News_Local_H_settle18.31d902e.html) (last visited June 6, 2009); Email from Jonathan Evans, Staff Attorney, Center for Biological Diversity, to Hari M. Osofsky, Associate Professor, Washington and Lee University School of Law (Dec. 15, 2008, 16:43:00 EST) (on file with author).

4. See Gerald L. Neuman, *Territorial Discrimination, Equal Protection, and Self-Determination*, 135 U. PA. L. REV. 261, 303–05 (1987).

5. See County of San Bernardino, Categorical Discussion 3: Greenhouse Gases and California Global Warming Solutions Act (Assembly Bill 32), in 2006 GENERAL PLAN PROGRAM: FINAL ENVIRONMENTAL IMPACT REPORT AND APPENDICES [hereinafter 2006 GENERAL PLAN PROGRAM] app. L, sec. C, (2007), available at <http://www.co.san-bernardino.ca.us/landuseservices/General%20Plan%20Update/Environmental%20Review/FEIR.pdf>. See also *Lead Agency Response to Comment Letter O.5 (October 23, 2006)* in 2006 GENERAL PLAN PROGRAM (2007) (responding to sections O.5-55 to O.5-60 of Comment Letter O.5).

6. See Petition for Writ of Mandate at 2, *People v. County of San Bernardino*, No. 07 Civ. 329 at 2 (Cal. Super. Ct., County of San Bernardino Apr. 11, 2007).

7. U.S. Census Bureau, State & County QuickFacts: San Bernardino County, California (2008), <http://quickfacts.census.gov/qfd/states/06/06071.html>; Petition for Writ of Mandate, *People v. County of San Bernardino*, No. 07 Civ. 329 at 2.

8. See John J. Delaney, *How We Got Into a Workforce Housing Crisis: And Why Getting Out of It Will Not Be Easy*, in LAND USE INSTITUTE, ALI-ABA COURSE OF STUDY MATERIALS 287, n.9 (2006); Stuart Gabriel & Gary Painter, *Pathways to Homeownership: An Analysis of the Residential Location and Homeownership Choices of Black Households in Los Angeles*, 27 J. REAL EST. FIN. & ECON. 87, 92–93 (2003); Kevin R. Johnson & George A. Martinez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227, 1239–40 (2000); Jorge H. del Pinal, *Latinos and California's Future: Too Few at the School's Door*, 10 LA RAZA L.J. 631, 635–36 (1998).

9. See Jennifer Schlotterbeck, *Preserving Biological Diversity with Wildlife Corridors: Amending the Guidelines to the California Environmental Quality Act*, 30 ECOLOGY L.Q. 955,

formal legal perspective, but its physical and spatial characteristics resemble those of a much larger entity.

This Essay analyzes local climate regulation in San Bernardino County as a window into the complexities of defining a local scale in an interconnected world.<sup>10</sup> In so doing, it aims to contribute to the Symposium's broader dialogue about "Territory Without Boundaries" and the Panel's more specific discussion of "Urban Territory in a Global World." As a purely territorial matter, U.S. cities and counties differ substantially in their sizes, the quantity and physical characteristics of their land, the size and density of their populations, and the needs of their citizens. Structurally, these localities remain administrative subunits of states, but they also have significant autonomy.<sup>11</sup> Finally, their substantive decision-making requires them to engage with a wide range of actors at different scales as they make decisions about multiscale problems.<sup>12</sup>

These layered interactions suggest that a law and geography analysis<sup>13</sup> of San Bernardino County might help to capture the nuances of

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965 (2003) (providing an analysis of United States Census Bureau, County Population Estimates for July 1, 1999 and Population Change from April 1, 1990 to July 1, 1999).

10. For examples of the rich literature exploring the role of localities, and more particularly cities, in a globalizing world, see NEIL BRENNER, *NEW STATE SPACES: URBAN GOVERNANCE AND THE RESCALING OF STATEHOOD* (2004); *GLOBAL NETWORKS, LINKED CITIES* (Saskia Sassen ed., 2002); *GLOBALIZING CITIES: A NEW SPATIAL ORDER?* (Peter Marcuse & Ronald van Kempen eds., 2000); HEIDI H. HOBBS, *CITY HALL GOES ABROAD: THE FOREIGN POLICY OF LOCAL POLITICS* (1994); NAT'L RESEARCH COUNSEL, *CITIES TRANSFORMED: DEMOGRAPHIC CHANGE AND ITS IMPLICATIONS IN THE DEVELOPING WORLD* (Mark R. Montgomery et al. eds., 2003); SASKIA SASSEN, *THE GLOBAL CITY: NEW YORK, LONDON, TOKYO* (2d ed. 2001); H.V. SAVITCH & PAUL KANTOR, *CITIES IN THE INTERNATIONAL MARKETPLACE: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT IN NORTH AMERICA AND WESTERN EUROPE* (2002); RICHARD SENNETT, *THE CONSCIENCE OF THE EYE: THE DESIGN AND SOCIAL LIFE OF CITIES* (1990); *SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL* (Kevin R. Cox ed., 1997); *WORLD CITIES IN A WORLD-SYSTEM* (Paul L. Knox & Peter J. Taylor eds., 3d ed. 1995). In a legal context, see Gerald E. Frug & David J. Barron, *International Local Government Law*, 38 *THE URBAN LAWYER* 1, 2 (2006) (analyzing cities "as simultaneously subordinate domestic governments and independent international actors."). See also Keith Aoki et al., *(In)visible Cities: Three Local Government Models and Immigration Regulation*, 10 *OR. REV. INT'L L.* 453 (2008) (engaging Frug and Barron's ideas in an immigration context).

11. See Neuman, *supra* note 4.

12. See sources cited *supra* note 10.

13. Geography considers the relationship of space, place, and scale over time. The discipline bridges the physical and social sciences and, in so doing, considers a wide range of subjects through a unifying spatial lens. Jane Holder and Carolyn Harrison have defined a law and geography approach as including both the spaces of law (Geography in Law), and the way in which "law shapes physical conditions and legitimates spatiality" (Law in Geography). See Jane Holder & Carolyn Harrison, *Connecting Law and Geography*, in *LAW AND GEOGRAPHY* 3, 3-5 (Jane Holder & Carolyn Harrison eds., Oxford 2003). As leading law and geography scholars David Delaney, Nicholas Blomley, and Richard Ford note:

Our legal lives are constituted by shifting intersections of different and not necessarily coherently articulating legal orders associated with different scalar spaces.

appropriate and effective local policymaking with respect to climate change. Although law defines the boundaries of San Bernardino in specific ways, the interaction among legal and socio-political spaces reveals a more complex terrain. As local actors span a wide range of geographic and legal scales and of urban and rural environments, supposedly local climate regulation involves multiple territories at different levels of government engaging in a variety of relationships.<sup>14</sup> This Essay opens such a law and geography discussion of San Bernardino County's approach to greenhouse gas emissions regulation in order to raise questions for further research about the scale of "local," the County's efforts on climate change, and the implications of both for local climate change initiatives.

More specifically, the Essay explores the dynamic between "place" and "space," and their construction of scale, to provide insight into the boundaries of this "local" territory. Each of these terms has inspired thoughtful debate in the geography literature, which I have described in depth in my previous work, and I use them here in their richest sense.<sup>15</sup> Namely, the "place," San Bernardino County, is both a physical location

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The relations between these different legal spaces is [sic] a dynamic and complex one, but it is a pressing and important subject of inquiry given the ways in which codes operative at various scales intermingle.

David Delaney et al., *Preface: Where is Law*, in *THE LEGAL GEOGRAPHIES READER* xiii, xxi (Nicholas Blomley et al. eds., 2001). I provide a historical analysis of the emergence of law and geography in Hari M. Osofsky, *A Law and Geography Perspective on the New Haven School*, 32 *YALE J. INT'L L.* 421 (2007).

14. Many streams of scholarship, only some of which are explicitly part of the law and geography literature, explore these questions. A full exposition of these literatures is beyond the scope of this Essay, which focuses more narrowly on Kevin Cox's approach to geographic network theory and on bottom-up lawmaking. However, I provide a sampling of some of the most salient scholarship below. For examples of the literature exploring how decisionmaking should be structured in metropolitan regions, see David J. Barron, *Reclaiming Home Rule*, 116 *HARV. L. REV.* 2255 (2003); Gerald E. Frug, *Beyond Regional Government*, 115 *HARV. L. REV.* 1763 (2002). For examples of new governance scholarship, which engages the incorporation of local knowledge into complex processes that cut across legal scale, see *LAW AND NEW GOVERNANCE IN THE EU AND US* (Gráinne de Búrca & Joanne Scott eds., 2006); Bradley C. Karkkainen, "New Governance" in *Legal Thought and in the World: Some Splitting as Antidote to Overzealous Lumping*, 89 *MINN. L. REV.* 471 (2004); Orly Lobel, *Setting the Agenda for New Governance Research*, 89 *MINN. L. REV.* 498 (2004); Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 *MINN. L. REV.* 342 (2004). See also J.B. Ruhl & James Salzman, *Managing Massive Problems in the Administrative State: Strategies for Whittling Away*, 98 *CAL. L. REV.* 1 (forthcoming 2010) (draft manuscript on file with author) (bringing together new governance, dynamic federalism, and transgovernmental network literatures to explore approaches to massive environmental problems like climate change).

15. See Osofsky, *supra* note 13; Hari M. Osofsky, *The Geography of Climate Change Litigation Part II: Narratives of Massachusetts v. EPA*, 8 *CHICAGO J. INT'L L.* 573 (2008) [hereinafter Osofsky, *The Geography of Climate Change Part II*]; Hari M. Osofsky, *The Geography of Justice Wormholes: Dilemmas from Property and Criminal Law*, 53 *VILLANOVA L. REV.* 117 (2008) [hereinafter Osofsky, *Justice Wormholes*].

and a cultural construct.<sup>16</sup> Its “spaces” include not only institutional and legal structures but also a range of informal interactions.<sup>17</sup> These spaces—from local planning meetings to courtrooms to coalitions of cities working on climate change—then help to constitute the scales at which the dispute over climate regulation there takes place, as the spaces define and are defined by the County.<sup>18</sup>

Part I describes the overlapping regulatory authorities and sociolegal spaces that converge in San Bernardino County as it addresses the problem of climate change. Part II examines those overlaps through a law and geography lens—specifically geographic network theory and bottom-up networking—to explore the scale of local climate efforts in the County. The Essay concludes with reflections upon the broader consequences of the dispute for how we conceptualize the “local” and its role in climate regulation.

## I. THE GEOGRAPHY OF SAN BERNARDINO COUNTY’S CLIMATE REGULATION

This Part maps the regulatory and sociolegal dimensions of San Bernardino County and its efforts to mitigate climate change. It examines the ways in which overlapping formal and informal spaces make the County’s efforts multiscalar and socially complex. Part I.A describes the County and its climate change efforts as comprised of multiple, overlapping levels of governance. Part I.B builds on that analysis to consider the sociolegal dimensions of the County and its environmental policymaking, and their interactions with the multiscalar regulatory structure.

### A. *Overlapping Regulatory Scales*

San Bernardino County is legally recognized as a physically defined territory delineated on a map.<sup>19</sup> Put simply, the County is a local entity because the relevant law defines it as such. But if we stop here in our

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16. See John A. Agnew & James S. Duncan, *Introduction* to JOHN A. AGNEW, *THE POWER OF PLACE: BRINGING TOGETHER GEOGRAPHICAL AND SOCIOLOGICAL IMAGINATIONS* 1, 1 (James S. Duncan ed., 1989).

17. See DOREEN MASSEY, *FOR SPACE* 62–99 (2005); YI-FU TUAN, *SPACE AND PLACE: THE PERSPECTIVE OF EXPERIENCE* 6 (1977); Helen Couclelis, *Location, Place, Region, and Space*, in *GEOGRAPHY’S INNER WORLDS: PERVASIVE THEMES IN CONTEMPORARY AMERICAN GEOGRAPHY* 215, 215 (Ronald F. Abler et al. eds., 1992); Michael R. Curry, *On Space and Spatial Practice in Contemporary Geography*, in *CONCEPTS IN HUMAN GEOGRAPHY* 3–32 (Carville Earle et al. eds., 1996).

18. For an in-depth discussion of scale, see *infra* notes 34–38 and accompanying text.

19. For examples of such official maps, see County of San Bernardino, California - County Map, <http://www.sbcounty.gov/maps.htm> (last visited June 13, 2009).

understanding of it as a place, then even from a legal perspective, we miss a great deal.

As a structural matter, the County is constituted by smaller and larger units. When we peer within the County, the twenty-four incorporated entities inside the County's border (some of which are cities) are local units within the local unit of the County; they vary in their degree of urban development and in their desired approach to greenhouse gas emissions.<sup>20</sup> Similarly, the large forest, national park, and military areas within the County have different identities from its cities and their spheres of influence.

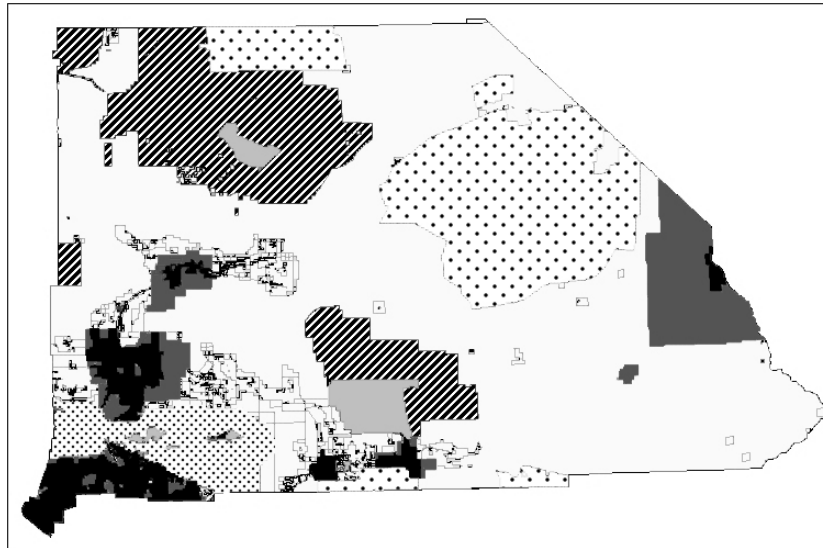
The following map, reprinted from my previous work,<sup>21</sup> delineates these complex layers.

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20. See Julie Hayward Biggs, *No Drip, No Flush, No Growth: How Cities Can Control Growth Beyond Their Boundaries by Refusing to Extend Utility Services*, 22 *URB. LAW.* 285, 288–95 (1990).

21. See Osofsky, *supra* note 1, at 607. Nathan Koch of the *Virginia Journal of International Law* did an excellent job of converting my original color map into this grayscale version, which is being reprinted here with the permission of the *Virginia Journal of International Law*.

SAN BERNARDINO COUNTY CURRENT LAND USE AND  
GENERAL PLAN FOR DEVELOPMENT



#### Legend

- County General Plan for Urban Growth
- Cities
- Cities' Spheres of Influence
- Additional Urban Areas
- Forests
- National Parks
- Military

30 15 0 30 Miles

#### Explanation of Map

This map shows current major land use patterns layered over the County's plan for future development. The black lines in the County's General Plan indicate areas of future development that range from residential to agricultural. These plans have been consistent in the 2002, 2004, and 2006 General Plans. From my GIS analysis, the three plans appear to overlap entirely. This map displays that overlap under the header: "County General Plan for Urban Growth."

Created by Hari M. Osofsky based on data collected from <http://www.sanbag.ca.gov/resources/GIS-data.html>.

The map shows the County as made up of cities encircled by their spheres of influence, military bases with adjacent urban areas, forests, and national parks. If the County's plan for urban growth depicted on the map accurately predicts the future, further expansion of development will take place, particularly in southwestern areas. And if we gradually move our view outward, we see the County as part of California's "ex-urban" periphery, then the State of California, the United States, North America, and the planet.<sup>22</sup>

22. See Steven P. Erie & Pascale Joassart-Marcelli, *Unraveling Southern California's Water/Growth Nexus: Metropolitan Water District Policies and Subsidies for Suburban Development, 1928–1996*, 36 CAL. W. L. REV. 267, 270 (2000); see also Craig Manson, *Natural*

Despite its political boundaries, each of the County's edges has ecological, social, and political interactions with the adjacent counties.<sup>23</sup> The dispute between the state and the County reinforced that some localities are at the front end of climate regulation and others lag behind. In fact, state officials used the lawsuit against San Bernardino County as an example to push additional lagging counties to regulate more aggressively.<sup>24</sup> Moreover, the pattern of some California counties occupying the front end of emissions regulation and others resisting it is replicated at larger scales among states in the United States, and among countries around the world.<sup>25</sup>

Thus although San Bernardino County's approach to greenhouse gas emissions regulation occurs within bounded County decisionmaking processes, this scalar structure reveals far more fluidity in how one might define the territory as a legal matter. The overlapping regulatory authorities, and mix of physical and political characteristics, help to constitute the County as it engages in planning and decides its approach to greenhouse gas emissions.

### B. Overlapping Sociolegal Spaces

San Bernardino County does not simply consist of overlapping regulatory authorities. Even a brief glance at the County's website makes clear that, like other local governments, it serves as a focal point for a range of social and cultural needs. On January 28, 2009, for example, the website spotlighted a business survival workshop, a free cancer awareness and screening event, Calico Ghost Town's Civil War Reenactment, Arrowhead Regional Medical Center's 3rd Annual Run/Walk, the County's 2008–09 budget, information on foreclosure prevention, flu shot

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*Communities Conservation Planning: California's New Ecosystem Approach to Biodiversity*, 24 ENVTL. L. 603, 611–12 (1994); G. Nelson Smith & Evelio M. Grillo, *Let's Clear the Air Once and For All: Municipal Liability for Failing to Comply with Section 110 of the Clean Air Act*, 44 CATH. U. L. REV. 1103, 1121 (1995).

23. Such intersections have been explored in other contexts in the literature on adaptive management. See, e.g., C.S. Holling et al., *In Quest of a Theory of Adaptive Change*, in PANARCHY: UNDERSTANDING TRANSFORMATIONS IN HUMAN SYSTEMS 3 (Lance H. Gunderson & C.S. Holling eds., 2002) (providing a “cross-scale, interdisciplinary, and dynamic” theory of global change, termed “panarchy,” which integrates “economic, ecological, and institutional systems”); Ruhl & Salzman, *supra* note 14 (drawing from adaptive management to create models for administrative agencies to “whittle away” at massive environmental problems).

24. See Rob Luke, *Brown Gives California Counties Green Tips to Dodge Lawsuits*, LEGALNEWSLINE.COM, Nov. 13, 2007, <http://www.legalnewsline.com/news/203948-brown-gives-cal.-counties-green-tips-to-dodge-lawsuits> (last visited June 13, 2009).

25. For example, there were U.S. states on both sides of the *Massachusetts v. EPA* lawsuit. *Massachusetts v. Envtl. Prot. Agency*, 549 U.S. 497 (2007). For my analysis of these issues in that context, see Osofsky, *The Geography of Climate Change Part II*, *supra* note 15; Hari M. Osofsky, *The Intersection of Scale, Science, and Law in Massachusetts v. EPA*, 9 OR. R. INT'L L. 233 (2007).

clinics, Green County San Bernardino, property tax bill redesign, and earthquake preparedness.<sup>26</sup>

The County’s greenhouse gas reduction efforts—spurred by its August 2007 settlement with California—take place within a broader context of a range of environmental projects grouped together under the auspices of “Green County San Bernardino.”<sup>27</sup> As the County describes it,

[I]n August 2007, the Board of Supervisors launched Green County San Bernardino to spur the use of “green” technologies and building practices among residents, business owners and developers in the County. Additionally, Green County San Bernardino includes a public awareness component aimed at educating residents about steps they can take in their daily lives to conserve resources and protect the environment.<sup>28</sup>

California Governor Schwarzenegger has hailed the County as an environmental leader for its efforts on this initiative.<sup>29</sup>

This Green County initiative has many multiscalar aspects. It includes both County and regional projects, as well as links for residents and builders.<sup>30</sup> In addition, the County has invited cities within it to join an Inland Empire coalition, founded in June 2007, which includes governmental entities in San Bernardino and Riverside Counties.<sup>31</sup> According to the County:

Green Valley Cities must pledge to address five or more policy areas that aim to reduce greenhouse gas emissions. Cities have complete discretion over which policies they choose to adopt. GVI recognizes that each city is unique and a one-size-fits-all

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26. County of San Bernardino, California, <http://www.sbcounty.gov/> (last visited Jan. 28, 2009).

27. See Press Release, San Bernardino County, Biare Unveils “Green County San Bernardino” Programs (Aug. 27, 2007), available at [http://www.sbcounty.gov/greencountysb/content/press\\_releases/20070827\\_bosd2\\_green\\_county.pdf](http://www.sbcounty.gov/greencountysb/content/press_releases/20070827_bosd2_green_county.pdf) (last visited June 13, 2009).

28. Green County—San Bernardino, [http://www.sbcounty.gov/greencountysb/about\\_gc.htm](http://www.sbcounty.gov/greencountysb/about_gc.htm) (last visited June 13, 2009) [hereinafter Green County—San Bernardino].

29. Press Release, Office of the Governor, Gov. Schwarzenegger Applauds County of San Bernardino for Becoming a ‘Green’ Leader, Removing Barriers to Installing Solar (Aug. 28, 2007), available at <http://gov.ca.gov/press-release/7288/> (last visited June 13, 2009).

30. See e.g., San Bernardino County, Invitation to Join the Green Valley Initiative, [http://www.sbcounty.gov/greencountysb/content/green\\_valley\\_initiative\\_cities/gvi\\_jurisdiction.pdf](http://www.sbcounty.gov/greencountysb/content/green_valley_initiative_cities/gvi_jurisdiction.pdf) (last visited June 13, 2009); San Bernardino County, Resolution Recognizing the Green Valley Initiative and Endorsing Participation as a Green Valley Jurisdiction, [http://www.sbcounty.gov/greencountysb/content/green\\_valley\\_initiative\\_cities/gvi\\_resolution.pdf](http://www.sbcounty.gov/greencountysb/content/green_valley_initiative_cities/gvi_resolution.pdf) (last visited June 13, 2009).

31. San Bernardino County, Invitation to Join the Green Valley Initiative, *supra* note 30.

approach is counteractive to the overall goal of sustainable economic and community development.<sup>32</sup>

Current participants in this “coalition of cities” include a number of San Bernardino and Riverside County cities, but also water districts, and the Joint Powers Authority of a realigned Riverside County Air Force base.<sup>33</sup>

San Bernardino County’s efforts to regulate climate change are clearly local. They involve the County taking a range of actions, and promoting those actions as part of a broader environmental effort. But the ways in which these efforts involve multiple scales and actors raise a core question about the character of local action: How do the scalar and sociolegal complexities of local action influence the way in which we should define that scale?

## II. IMPLICATIONS FOR THE SPATIAL STRUCTURE OF LOCAL CLIMATE REGULATION

This Part begins to engage that question by drawing from the rich geography literature that grapples with defining the concept of scale. Robert McMaster and Eric Sheppard explain that “[a]lthough the relative merits of, and relations among . . . different perspectives of the construction of scale are still the subject of lively debate . . . , there is consensus on the need to move away from thinking about geographic scales as pre-given dimensions of society, to thinking about their social construction.”<sup>34</sup> Most relevant to understanding the scale of San Bernardino County, this literature engages foundational issues about what should be included in our delineation of the County’s scale and how we

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32. Green Valley Initiative Cities, [http://www.sbcounty.gov/greencountysb/green\\_valley\\_initiative\\_cities.htm](http://www.sbcounty.gov/greencountysb/green_valley_initiative_cities.htm) (last visited June 13, 2009).

33. See *id.*

34. See Robert B. McMaster & Eric Sheppard, *Introduction: Scale and Geographic Inquiry*, in *SCALE AND GEOGRAPHIC INQUIRY: NATURE, SOCIETY AND METHOD* 1, 18–19 (Eric Sheppard & Robert B. McMaster eds., 2004). For a summary of the different models of scale in the geography literature, see BRENNER, *supra* note 10, at 9. A recent exchange among leading geographers Sally Marston, Neil Brenner, Neil Smith, and Mark Purcell serves as a helpful example of some of the issues being debated. See Neil Brenner, *The Limits to Scale? Methodological Reflections on Scalar Structuration*, 25 *PROGRESS IN HUM. GEOGRAPHY* 591, 592 (2001); Sallie A. Marston, *The Social Construction of Scale*, 24 *PROGRESS IN HUM. GEOGRAPHY* 219, 219 (2000); Sallie A. Marston et al., *Human Geography Without Scale*, 30 *TRANSACTIONS OF THE INST. OF BRIT. GEOGRAPHERS* 416 (2005); Sallie A. Marston & Neil Smith, *States, Scales and Households: Limits to Scale Thinking? A Response to Brenner*, 25 *PROGRESS IN HUM. GEOGRAPHY* 615, 616 (2001); Mark Purcell, *Islands of Practice and the Marston/Brenner Debate: Towards a More Synthetic Critical Human Geography*, 27 *PROGRESS IN HUM. GEOGRAPHY* 317 (2003).

should describe its multiscale dynamics.<sup>35</sup> For example, should the County be treated as a fixed level of governance or should we view its scale more fluidly?<sup>36</sup> How does and should the territorial extent of the County compare to the scale of its approach to climate change?<sup>37</sup> Finally, to what extent does the County's creation and implementation of a climate change plan constitute a rescaling of what it means to be local?<sup>38</sup>

This Part considers these issues through a focus on two particular conceptual constructs grounded in the geography literature on scale. Part II.A views the County's efforts on climate change through the lens of geographer Kevin Cox's theoretical work bringing together scale and space. In particular, it examines San Bernardino County's measures as occurring within multiscale spatial networks that define this "local" action. Part II.B then focuses on the rescaling taking place through the lawsuits and San Bernardino County's policy steps, and analyzes that rescaling from a "bottom-up networking"<sup>39</sup> perspective.

#### A. Local Scale as Spatial Networks

This Section relies upon Cox's article *Spaces of Dependence, Spaces of Engagement and the Politics of Local Scale, or: Looking for Local Politics*,<sup>40</sup> because its exploration of space and scale applies particularly

35. I have explored similar scale questions in the context of justice wormholes. See Osofsky, *Justice Wormholes*, *supra* note 15.

36. For a discussion of fixity and fluidity issues in the geography literature, see Neil Brenner, *Between Fixity and Motion: Accumulation, Territorial Organization and the Historical Geography of Spatial Scales*, 16 ENV'T & PLAN. D: SOC'Y & SPACE 459, 461 (1998); Kevin R. Cox, *Spaces of Dependence, Spaces of Engagement, and the Politics of Scale, Or: Looking for Local Politics*, 17 POL. GEOGRAPHY 1, 19–21 (1998); David Delaney & Helga Leitner, *The Political Construction of Scale*, 16 POL. GEOGRAPHY 93, 93 (1997); Andrew Herod, *Scale: The Local and the Global*, in KEY CONCEPTS IN GEOGRAPHY 229, 234–42 (Sarah L. Holloway et al. eds., 2003); Deborah G. Martin, *Transcending the Fixity of Jurisdictional Scale*, 17 POL. GEOGRAPHY 33, 35 (1998); Anssi Paasi, *Place and Region: Looking through the Prism of Scale*, 28 PROGRESS IN HUM. GEOGRAPHY 536, 542–43 (2004); Erik Swyngedouw, *Excluding the Other: The Production of Scale and Scaled Politics*, in GEOGRAPHIES OF ECONOMIES 167, 169 (Roger Lee & Jane Wills eds., 1997); Erik Swyngedouw, *Neither Global nor Local: "Globalization" and the Politics of Scale*, in SPACES OF GLOBALIZATION: REASSERTING THE POWER OF THE LOCAL 137, 141 (Kevin R. Cox ed., 1997).

37. For analyses of issues of extent and resolution, see McMaster & Sheppard, *supra* note 34; Nathan F. Sayre, *Ecological and Geographical Scale: Parallels and Potential for Integration*, 29 PROGRESS IN HUM. GEOGRAPHY 276, 281 (2005); Neil Smith, *Geography, Difference and the Politics of Scale*, in POSTMODERNISM AND THE SOCIAL SCIENCES 57, 73–74 (Joe Doherty et al. eds., 1992).

38. For an example of an in-depth examination of those processes, see BRENNER, *supra* note 10, at 9–11.

39. See Osofsky & Levit, *supra* note 1.

40. Cox, *supra* note 36, at 1. For analyses of Cox's approach, see Kevin R. Cox, *Representation and Power in the Politics of Scale*, 17 POL. GEOGRAPHY 41 (1998); Katherine T. Jones, *Scale as Epistemology*, 17 POL. GEOGRAPHY 25 (1998); Dennis R. Judd, *The Case of the Missing Scales: A Commentary on Cox*, 17 POL. GEOGRAPHY 29 (1998); Michael Peter

well to local climate change action.<sup>41</sup> More specifically, Cox uses geographic network theory to understand local behavior as both locally-based and deeply interconnected with other levels of government. He introduces the concept of localities as being defined through what he terms “spaces of dependence” and “spaces of engagement” in order to describe these dynamics.<sup>42</sup>

Cox explains that spaces of dependence are established through “those more-or-less localized social relations upon which we depend for the realization of essential interests and for which there are no substitutes elsewhere; they define place-specific conditions for our material well-being and sense of significance.”<sup>43</sup> In the context of San Bernardino County’s climate policy, these spaces are constituted at least in part through the social and cultural patterns and expectations surrounding building construction, transportation, and energy use. For example, the County’s website for its Green County Initiative has specific links for residents, builders, and businesses. It explicitly “includes a public awareness component aimed at educating residents about steps they can take in their daily lives to conserve resources and protect the environment.”<sup>44</sup>

These spaces of dependence interact with what Cox terms “spaces of engagement,” which are “the space[s] in which the politics of securing a space of dependence unfolds.”<sup>45</sup> In the case of San Bernardino County, those spaces of engagement include, among others, the court in which the lawsuits against the County were filed, the Green County Initiative itself, the governments that are engaging in it, press releases, and the County website. Cox explains that “[p]eople, firms, state agencies, etc., organize in order to secure the conditions for the continued existence of their spaces of dependence but in so doing they have to engage with other centers of social power: local government, the national press, perhaps the international press, for example.”<sup>46</sup> The social and cultural spaces that define people’s patterns of emissions are then reshaped through these multiscalar loci of sociolegal power.

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Smith, *Looking for the Global Spaces in Local Politics*, 17 *POL. GEOGRAPHY* 35 (1998); Lynn A. Staeheli, *Globalization and the Scales of Citizenship*, 19 *GEOGRAPHY RES. F.* 60 (1999).

41. See Osofsky & Levit, *supra* note 1. I have also relied upon Cox’s analysis in other contexts. See, e.g., Osofsky, *supra* note 1; Osofsky, *Justice Wormholes*, *supra* note 15. I base my analysis on Cox’s work, in particular, because of the way in which he brings together space and scale. For examples of additional approaches to network theory that draw from other disciplines, such as political science and anthropology, see ANNE-LISE RILES, *THE NETWORK INSIDE OUT* (2000); ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 18–23 (2004).

42. Cox, *supra* note 36.

43. *Id.* at 2.

44. See Green County—San Bernardino, *supra* note 28.

45. Cox, *supra* note 36, at 2.

46. *Id.*

Cox’s theory does more than just map out these spaces. Most critically for this Essay’s analysis of the scale of the “local,” Cox claims that the dynamic interactions among spaces of dependence and spaces of engagement suggest that networks comprised of many different political, economic, social, and cultural entities form the spatial structure of scale.<sup>47</sup> The spaces of San Bernardino County’s climate change regulation efforts described in Part I—from the state court supervising the settlement to the cities, companies, and individuals participating in the Green Valley Initiative—shape the multiscale character of the local regulatory scale. That local governmental regulator, here the County, at the same time molds the character of those spaces, such as by pushing cities to take additional steps or by modeling implementation of a California Environmental Quality Act settlement agreement. The next Section explores the specifics of these dynamics further by building upon Cox’s theory to begin a bottom-up networking narrative of the County’s efforts.<sup>48</sup>

### B. Rescaling from the Bottom and the Top

In our prior work on local climate networks, Janet Koven Levit and I introduced the concept of bottom-up networking.<sup>49</sup> This approach brings

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47. Cox, *supra* note 36, at 2–3.

48. *Id.*

49. See Osofsky & Levit, *supra* note 1, at 433–34. For other examples of the growing legal literature on local climate networks, see Carolyn Kousky & Stephen H. Schneider, *Global Climate Policy: Will Cities Lead the Way?*, 3 CLIMATE POL’Y 1, 11 (2003); Janet Koven Levit, *Bottom-Up International Lawmaking: Reflections on the New Haven School of International Law*, 32 YALE J. INT’L L. 383, 402–05 (2007); Judith Resnik, *Law’s Migration: American Exceptionalism, Silent Dialogues, and Federalism’s Multiple Ports of Entry*, 115 YALE L.J. 1564, 1627–33 (2006); Judith Resnik et al., *Ratifying Kyoto at the Local Level: Sovereignty, Federalism, and Translocal Organizations of Government Actors (TOGAS)*, 50 ARIZ. L. REV. 709 (2008); see also Randall S. Abate, *Kyoto or Not, Here We Come: The Promise and Perils of the Piecemeal Approach to Climate Change Regulation in the United States*, 15 CORNELL J.L. & PUB. POL’Y 369 (2006); Donald A. Brown, *Thinking Globally and Acting Locally: The Emergence of Global Environmental Problems and the Critical Need to Develop Sustainable Development Programs at State and Local Levels in the United States*, 5 DICK. J. ENVTL. L. & POL’Y 175 (1996); Ann E. Carlson, *Implementing Greenhouse Gas Emissions Caps: A Case Study of the Los Angeles Department of Water and Power*, 55 UCLA L. REV. 1479 (2008); Kirsten Engel, *AALS Symposium: State and Local Climate Change Initiatives*, 38 URB. L. 1015 (2006); Alice Kaswan, *Climate Change, Consumption, and Cities*, FORDHAM URB. L.J. (forthcoming 2009) (draft manuscript on file with author); Robert B. McKinstry, Jr., *Laboratories for Local Solutions for Global Problems*, 12 PENN ST. ENVTL. L. REV. 15 (2004); Hari M. Osofsky, *Climate Change Litigation as Pluralist Legal Dialogue?*, 26 STAN. ENVTL. L.J. & 43 STAN. J. INT’L L. 181 (2007) (Joint Issue) [hereinafter Osofsky, *Pluralist Legal Dialogue*]; Osofsky, *supra* note 1; Hari M. Osofsky, *Local Approaches to Transnational Corporate Responsibility: Mapping the Role of Sub-National Climate Change Litigation*, 20 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 143 (2007); Richard B. Stewart, *States and Cities as Actors in Global Climate Regulation*, 50 ARIZ. L. REV. 681 (2008); Katherine Trisolini & Jonathan Zasloff, *Cities, Land Use, and the Global Commons:*

together Levit's work on bottom-up lawmaking<sup>50</sup> with my law and geography work drawing from Cox's network theory of scale. Bottom-up networking treats local decisions as creating and being created by networks through bi-directional (up and down) rescaling processes, and emphasizes on-the-ground, smaller-scale details as crucial to that narrative. We argued that such an approach would have the advantages of "defining the 'bottom' as a socially-constituted and ever-shifting terrain," providing a more complete rendering of the networks, and allowing for better climate policy by locating local efforts more accurately.<sup>51</sup>

This Section builds upon that work to provide a bottom-up networking narrative of San Bernardino County's climate mitigation efforts. In so doing, however, the Section has a somewhat different focus than Le-

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Genesis and the Urban Politics of Climate Change, in ADJUDICATING CLIMATE CHANGE: STATE, NATIONAL, AND INTERNATIONAL APPROACHES (William C.G. Burns & Hari M. Osofsky eds., forthcoming 2009), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1267314](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1267314) (last visited June 13, 2009); William Andreen et al., *Cooperative Federalism and Climate Change*, (Ctr. for Progressive Reform, White Paper No. 803, 2008), available at [http://progressiveregulation.org/articles/Cooperative\\_Federalism\\_and\\_Climate\\_Change.pdf](http://progressiveregulation.org/articles/Cooperative_Federalism_and_Climate_Change.pdf) (last visited June 13, 2009).

50. See Janet Koven Levit, *A Bottom-Up Approach to International Law Making: The Tale of Three Trade Finance Instruments*, 30 YALE J. INT'L L. 125 (2005).

51. See Osofsky & Levit, *supra* note 1, at 433–34. Our work is also grounded in legal pluralist notions of law being constituted through multiple normative communities which share formal and informal sociolegal spaces. For an overview of legal pluralism, see Robert M. Cover, *The Supreme Court 1982 Term Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Ambreena Manji, *'Like a Mask Dancing': Law and Colonialism in Chinua Achebe's Arrow of God*, 27 J. L. & SOC. 626 (2000); Emmanuel Melissaris, *The More the Merrier? A New Take on Legal Pluralism*, 13 SOC. & L. STUDIES 57 (2004); Sally Engle Merry, *Legal Pluralism*, 22 L. & SOC'Y REV. 869 (1988); Dalia Tsuk, *The New Deal Origins of American Legal Pluralism*, 29 FLA. ST. U. L. REV. 189 (2001). For examples of the legal pluralist literature focusing on international and transnational law, see MARK A. DRUMBL, *ATROCITY, PUNISHMENT, AND INTERNATIONAL LAW* 181 (2007); HAROLD D. LASSWELL & MYRES S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY* (1992); Robert B. Ahdieh, *Dialectical Regulation*, 38 CONN. L. REV. 863 (2006); Diane Marie Amann, *Abu Graib*, 153 U. PA. L. REV. 2085 (2005); Diane Marie Amann, *Calling Children to Account: The Proposal for a Juvenile Chamber in the Special Court for Sierra Leone*, 29 PEPP. L. REV. 167 (2001); Elena A. Baylis, *Parallel Courts in Post-Conflict Kosovo*, 32 YALE J. INT'L L. 1 (2007); Paul Schiff Berman, *Global Legal Pluralism*, 80 S. CAL. L. REV. 1155 (2007); William W. Burke-White, *International Legal Pluralism*, 25 MICH. J. INT'L L. 963 (2004); Levit, *supra* note 50; Myres S. McDougal & Harold D. Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 AM. J. INT'L L. 1 (1959); Myres S. McDougal et al., *Theories About International Law: Prologue to a Configurative Jurisprudence*, 8 VA. J. INT'L L. 188 (1967–68); Myres S. McDougal et al., *The World Constitutive Process of Authoritative Decision*, 19 J. LEGAL EDUC. 253 (1966–67); Sally Engle Merry, *International Law and Sociolegal Scholarship: Towards a Spatial Global Legal Pluralism*, 41 STUDS. L. POLITICS & SOC'Y 149 (2008); Ralf Michaels, *The Re-State-Ment of Non-State Law: The State, Choice of Law, and the Challenge from Global Legal Pluralism*, 51 WAYNE L. REV. 1209 (2005); Osofsky, *Pluralist Legal Dialogue*, *supra* note 49; Balakrishnan Rajagopal, *The Role of Law in Counter-hegemonic Globalization and Global Legal Pluralism: Lessons from the Narmada Valley Struggle in India*, 18 LEIDEN J. INT'L L. 18 (2005).

vit’s and my work on local climate change coalitions. Specifically, the Section relies upon bottom-up networking theory to explore the meaning of “local” as expressed through the County’s decisionmaking.

The County’s general planning process is at the core of what we would typically think of as local. However, even before the lawsuit by the state forced the County to address greenhouse gas emissions more directly, the County’s comment process and informal interactions were multiscalar. For example, the nongovernmental organizations that commented and ultimately sued the County have ties to multiple levels of government through their mix of local, state, and national offices and relationships. When they viewed the County as insufficiently responsive to their comments regarding climate change, these nongovernmental actors, as well as the state of California, used the top-down approach of a lawsuit under the California Environmental Quality Act to force further action.<sup>52</sup>

Although the state court’s authority over the County through the lawsuits is top-down, the County’s environmental efforts, most of which are not explicitly linked to the lawsuit, have both top-down and bottom-up elements. For example, Green County San Bernardino involves smaller governmental and social units within its borders, but is also a collaboration with a same-level governmental entity, Riverside County (itself comprised of smaller units and through relationships with larger ones), to form the regional initiative, Green Valley Cities. In addition, one of the “smaller-scale” units participating in Green Valley Cities is the March Air Force Base Joint Powers Authority, which is both “a federally recognized reuse authority for a formerly active base” and a local governmental entity governed by three cities and Riverside County.<sup>53</sup> Even in the portion of its efforts most directly linked to the lawsuit—the revision of its General Plan<sup>54</sup>—the County makes choices based on the consultant’s recommendations about how to monitor emissions and reduce them.

Moreover, when these interactions are viewed through a broader scalar lens, most of them take place near the legal “bottom.” The top-down forcing of San Bernardino County’s regulatory efforts comes from state-level government, a level well below the national and international negotiations about climate treaties and national implementation. Although certainly the County makes choices which are impacted by federal legislation and regulation, an influence that will likely grow in

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52. See sources cited *supra* note 2.

53. See *supra* notes 31–33 and accompanying text. For the history and organizational structure of the March Air Force Base Joint Powers Authority, see March Joint Powers Authority, <http://www.marchjpa.com/about.html> (last visited June 13, 2009).

54. See sources cited *supra* note 3.

the climate change arena under the Obama Administration,<sup>55</sup> most of the key actors in this narrative are entities that are a step up or down from the County on the regulatory chain.

In this version of local climate regulation, then, what constitutes “the local” emerges from complex, multiscalar interactions of sociolegal spaces across networks. However, those networks are largely comprised of smaller-scale actors. As a result, the County’s regulatory scale in this climate context develops through an ever-evolving web of relationships clustered around the county level. That clustering reinforces the notion that county-based efforts have a distinct scale—one that comports with a traditional sense of “local” as small-scale—even as those efforts are multiscalar.

### III. CONCLUDING REFLECTIONS ON THE SCALE OF LOCAL

San Bernardino County’s efforts to regulate climate change can only be understood through a detailed engagement of specifics, a full exposition of which is beyond the scope of this Essay. The County has a particular geography, economy, ecology, population, politics, and culture, all of which vary within the County and remain connected to forces beyond the County’s border. Other local entities’ attempts to address climate change are similarly unique.<sup>56</sup>

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55. For examples of President Obama’s positions on climate and energy, see Address to Joint Session of Congress, 2009 DAILY COMP. PRES. DOC. 00105, at 5 (Feb. 24, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/Remarks-of-President-Barack-Obama-Address-to-Joint-Session-of-Congress/](http://www.whitehouse.gov/the_press_office/Remarks-of-President-Barack-Obama-Address-to-Joint-Session-of-Congress/) (last visited June 13, 2009); President Barack Obama, Remarks by the President on Jobs, Energy Independence, and Climate Change, 2009 DAILY COMP. PRES. DOC. 0009 (Jan. 26, 2009), available at [http://www.whitehouse.gov/blog\\_post/Fromperiltoprogress/](http://www.whitehouse.gov/blog_post/Fromperiltoprogress/) (last visited June 13, 2009); Obama for America, Barack Obama and Joe Biden: New Energy for America, [http://www.barackobama.com/pdf/factsheet\\_energy\\_speech\\_080308.pdf](http://www.barackobama.com/pdf/factsheet_energy_speech_080308.pdf) (last visited June 13, 2009). President Obama and his administration began their term with substantial action on climate change and energy. See, e.g., Memorandum on the Energy Independence and Security Act of 2007, 2009 DAILY COMP. PRES. DOC. 00024 (Jan. 26, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/Presidential\\_Memorandum\\_fuel\\_economy/](http://www.whitehouse.gov/the_press_office/Presidential_Memorandum_fuel_economy/); Memorandum on the State of California Request for Waiver Under 42 U.S.C. 7543(b), the Clean Air Act, 2009 DAILY COMP. PRES. DOC. 00025 (Jan. 26, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/Presidential\\_Memorandum\\_EPA\\_Waiver/](http://www.whitehouse.gov/the_press_office/Presidential_Memorandum_EPA_Waiver/) (last visited June 13, 2009); Memorandum from Lisa P. Jackson, Adm’r, Evtl. Prot. Agency, to All EPA Employees (Jan. 23, 2009), <http://www.epa.gov/administrator/memotoemployees.html> (last visited June 13, 2009). Most significantly thus far, the EPA has submitted a proposed endangerment finding for greenhouse gases in response to the Supreme Court’s decision in *Massachusetts v. EPA*. See Evtl. Prot. Agency [EPA], Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act (Apr. 17, 2009), available at <http://epa.gov/climatechange/endangerment/downloads/GHGEndangermentProposal.pdf> (last visited June 13, 2009) (prepublication copy).

56. Levit’s and my prior work on Portland and Tulsa engages two examples of such local variation. See Osofsky & Levit, *supra* note 1.

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But throughout these individual stories are common threads of micro-interactions and multiscale networks which help to shed light on the scale of “local.” In order to influence local efforts on climate change and understand their impact, we have to unpack these networks and the many small-scale relationships that help to constitute them. Bottom-up networking narratives like the one begun in this Essay serve as small steps in such an approach. Such narratives provide a means for exploring the nuances of what it means to be a local territory in a globalizing world, and how smaller scale efforts fit into the transnational regulation of multiscale problems like climate change.