

I often tell students in my Climate Change Law and Policy course that adaptation—that is, how we can best adapt to the unavoidable impacts of climate change—is the poor stepchild of the debate over greenhouse gas emissions and climate change. By that I mean that climate change *mitigation* (i.e., how to reduce greenhouse gas emissions) generates far more attention and activity—in legislative chambers, regulatory agencies, courts—than do climate change adaptation issues.

Now two new reports offer mixed messages regarding the effectiveness of the State of California’s efforts to focus on climate adaptation strategies.

California’s longstanding, pioneering role when it comes to climate change law and policy is undisputed. Reflecting national and international patterns, most of the Golden State’s efforts fall on the greenhouse gas emission mitigation side of the ledger: AB 32, a mandatory renewable portfolio standard, low carbon fuel standards, an expanding cap-and-trade program, etc., etc.

But California government leaders have also been working on the climate change adaptation front, albeit with less fanfare. In 2009, former Governor Arnold Schwarzenegger’s administration issued the nation’s first state climate change adaptation strategy. Since then, many other state and local governments in the U.S. have followed suit, prompted by such disasters as Superstorm Sandy, persistent droughts and wildfires in the Western states, and dramatically changing weather patterns nationwide.

But can and should California be doing even more on the climate change adaptation front?

That’s the issue addressed in a report issued by California’s Little Hoover Commission earlier this month: [“Governing California Through Climate Change.”](#) The Little Hoover Commission is an independent, nonpartisan state oversight agency whose mission is to investigate state government operations and—through reports, recommendations and legislative proposals—promote efficiency, economy and improved service from California’s state government. Created a half-century ago, the Commission is perhaps the single most highly respected institution within California government. Its reports and recommendations get noticed, and often wind up being implemented.

So the Commission’s just-issued report analyzing California’s climate change adaptation efforts is noteworthy. One of the report’s key findings is that current state adaptation policies are decentralized and not sufficiently coordinated. The Commission recommends creation of a new, “one-stop” adaptation office within state government to prepare for and respond to the projected impacts of climate change. Good idea.

But it was another, more provocative recommendation contained in the Commission report that caught my eye: increased reliance on the public trust doctrine to anticipate and resolve legal questions associated with projected climate change impacts. The report's key language:

“[T]he Commission urges the Governor and Legislature to avert potential legal dysfunction by clarifying California's Common Law Public Trust Doctrine in light of a rising ocean that will eventually begin to condemn private property. Few yet know that a rising ocean moving onto beachfront private property will legally convert it to public property via provisions in the California Constitution. This portends potential controversy and crippling litigation in the courts. The Commission recommends that key state agencies meet to clarify the impact and create a legal framework in advance.”

Another excellent idea, but one that will undoubtedly be more controversial and difficult to implement. Nevertheless, Governor Brown and legislative leaders—assisted by legal experts—should convene the public trust deliberations suggested by the Commission.

Meanwhile, California's Natural Resources Agency today issued the first update of the state's original 2009 adaptation strategy. The new report, titled “Safeguarding California: Reducing Climate Risk,” can be accessed [here](#).

Interested observers might consider carefully reviewing California's newly updated adaptation strategy with two questions in mind: 1) what are the major changes in adaptation policy that five years of additional experience and study have produced?; and 2) how well or poorly does California's new adaptation strategy respond to the thoughtful analysis and recommendations contained in the recently issued Little Hoover Commission report on the quality and effectiveness of the state's contemplated climate change adaptation efforts?