

**CLIMATE INTERVENTION LAW  
FINAL EXAM SAMPLE QUESTION**

MODEL ANSWER  
FALL 2019

Question: personal climate intervention actions by Queen Ranch, incl. limited SAI and MCB.

- I. International Law
  - a. No UNFCCC, Paris obligations; CIL – perhaps *Trail Smelter*. Withdrawal from Paris Agreement makes even less likely.
  - b. No state action or state actor, unless U.S. participates or approves.
  - c. Actions over marine waters – LOCS, Ocean Dumping Act – but discard unlikely, even with MCB
  - d. No human rights violation or violation with universal jurisdiction
  
- II. Transnational Law
  - a. Claim filed in Mexico for judgment under Mexican law, with enforcement of judgment in U.S. court
  - b. *Hilton v. Guyot* factors for enforcement
  - c. Texas statute barring GHG climate nuisance actions – relevance
  
- III. U.S. Law
  - a. National Weather Modification Act – NOTICE REQUIRED
  - b. CAA – no stationary source, no Title II mobile source requirements, no “pollutant” release arguably unless SO<sub>2</sub> – then either PSD or N/A NSR for SAI.
  - c. ESA, with MBTA (for SAI) and MMPA (for MCB)
  - d. NEPA, if federal action and other requirements
  - e. CWA (MCB)
  - f. Note – private party, so no invocation of emergency powers possible
  
- IV. Tort
  - a. Public nuisance
  - b. Private nuisance
  - c. Trespass (SAI)
  - d. Negligence
  
- V. Strategies
  - a. File notice under NWMA
  - b. Assess whether any federal permits needed – if so, work with action agency on ESA consultation and takings (ITP and HCP)
  - c. Try MCB first, and then expand to SAI as needed