Is there any legislation that could help fix problems related to resource depletion?

Our PA Supreme Court has held that any land-use regulation that entirely excludes any lawful land use from a municipality—typically a small one—is exclusionary and violates our due-process clause. The curative amendment remedy makes restrictive regulation difficult. The courts have not yet fleshed out what implications our newly reinvigorated Environmental Rights Amendment means for this issue. That being said, almost every acre of Pennsylvania has been farmed and timbered for at least one season since European settlement, so there are no virgin natural resources [here].

How can attorneys help address these issues?

If we want efficient and effective economy-wide [greenhouse-gas] regulation, we probably need better statutory authority—and on a national level. Lawyers can draft that, but it would require a political consensus that isn’t there. Note that there is a pending petition [with] the Environmental Quality Board contending that the Environmental Rights Amendment constitutionally requires climate-change mitigation rulemaking.

Much state environmental law is based on federal statutes. How can environmental-law attorneys help?

Environmental lawyers can be instrumental in sustaining rural communities and protecting natural resources by helping landowners and businesses understand the complex and interrelated laws and regulations governing so many aspects of economic development. Many municipalities in Pennsylvania have passed ordinances designed to protect residents in rural areas from environmental harm associated with natural resource development. Sorting out the laws and ordinances applicable to these activities, and determining which governmental authority has jurisdiction over them, are tasks well-suited to attorneys trained in environmental law.

Many states have developed their own climate-change plans. Do you think Pennsylvania will do that?

In 2018, Governor Tom Wolf issued an executive order establishing a Climate Action Plan for the commonwealth. The plan seeks to achieve, by 2025, a 26 percent reduction in greenhouse-gas emissions from 2005 levels. It also contemplates development of a cap-and-trade program to limit carbon-dioxide emissions.

Will the passage of certain laws be necessary?

Wolf’s executive order requiring the development of a cap-and-trade program has been met by stiff resistance from parties concerned about the costs and potential adverse economic consequences associated with a carbon tax. In December 2019, members of the Pennsylvania House and Senate referred bipartisan companion bills, known as the Pennsylvania Carbon Dioxide Cap and Trade Authorization Act, to their respective environmental and energy committees. Regardless of the outcome, any laws dealing with a cap-and-trade program in Pennsylvania are likely to receive considerable attention and require input from environmental lawyers representing all interested parties.