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Climate Change Policy Update Week of December 8-12, 2008

Commentary: *President-elect Obama named his green team this week. Eschewing the kind of political heavy-weights he selected for other cabinet-level posts, the President-elect went with experienced, tough-minded regulators and a Nobel-prize winning physicist . . . As expected, Poznan ended without meaningful agreement. However, several countries announced significant reduction commitments. In particular, the European Union made progress on finalizing its Phase III program, including a compromise for Eastern European countries not quite ready for full auctioning of allowances . . . The die is cast in California. The California Air Resources Board formally adopted the CARB Scoping Plan for implementation of AB 32 . . . Statements in Congress make clear that a Democratic majority does not mean Democratic unanimity on the timing and ambition of cap-and-trade legislation.*

Presidential Transition

- **President-elect Obama Urges Quick Action on Climate Change; Names Environmental Team.** After meeting with former Vice President Al Gore this week, President-elect Barack Obama told reporters that “the time for delay is over” and that climate change “is a matter of urgency and national security, and it has to be dealt with in a serious way.” The President-elect then moved to fill key energy and environmental posts. According to transition team officials, President-elect Obama will nominate Lisa P. Jackson, formerly Commissioner of Environmental Protection in New Jersey and current Chief of Staff to New Jersey Governor Jon Corzine, to head the EPA. Steven Chu, Nobel Prize-winning physicist and current director of the Lawrence Berkeley National Laboratory, will be nominated as Secretary of Energy. Nancy Sutley, Deputy Mayor of Los Angeles for Energy and Environment, will head the White House Council on Environmental Quality. According to reports, Carol Browner, EPA Administrator under President Bill Clinton, will have an as of yet untitled White House position with authority to coordinate environmental and energy policy for the Obama Administration.

Congress

- **Debate in Congress Over How (and Whether) to Move on Climate Change.** Sen. Barbara Boxer (D-CA), Chairman of the Environment and Public Works committee, said this week that the committee will look at various approaches for moving climate change legislation in 2009, including adoption of a simplified bill that would delegate significant implementation responsibility to the EPA. She cited California’s 2006 Global Warming Solutions Act (AB 32) as a model for such legislation. Chairman Boxer also stated that she believes a cap-and-trade program will help the U.S. economy—although Rep. James Sensenbrenner (R-WI), ranking Republican member of the House Select Committee on Energy Independence and Global Warming, warned Democrats that pushing for aggressive carbon caps at a time of economic uncertainty could lead to a Republican takeover of Congress in 2010. Rep. John Larson (D-CT), newly-elected chairman of the House Democratic Caucus, argued that the economic crisis and the risks of involving fallible investment banks in an emission allowances market provided further support for his carbon tax proposal as the quickest, easiest, and most efficient way to address global warming. Sen. Claire McCaskill (D-MO) said “a

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delay may be necessary.” She further explained: “I’m from a state where most of the people who turn on the lights in the state get it from utility companies that depend on coal. And the cost of switching all that to clean coal technology or to alternative sources is going to be borne by them – by regular folks who are trying to figure out how to pay their mortgages right now.”

- **Congressional Aides Suggest Fast U.S. Action on Climate Change is Unlikely.** Aides to U.S. Senators John Kerry (D-MA) and Richard Lugar (R-IN) sought to dampen expectations of quick U.S. action on climate change after the Democratic takeover of the White House and gains in Congress. Speaking at a Pew Center for Global Climate Change panel organized around the 14th Conference of the Parties of the United Nations Framework Convention on Climate Change in Poznan, Poland, the aides suggested that domestic legislation and international negotiations might proceed on parallel tracks. They noted that it might be difficult to corral a filibuster-proof 60 Senate votes for climate change legislation given that some Democratic senators are worried about impacts on carbon-intensive industries in their states. They further observed that ratifying an international treaty would require 67 votes, a significantly stiffer challenge. Sen. Kerry told reporters in Poznan that it is nevertheless “vital” to stay on track to meet the December 2009 deadline for a global agreement to mitigate climate change.

States and Cities

- **California Air Resources Board Unanimously Approves AB 32 Scoping Plan to Address Climate Change.** The California Air Resources Board (CARB) approved a climate change Scoping Plan in a unanimous vote this week, adopting a framework for how the state will implement the requirements of the 2006 Global Warming Solutions Act (known as AB 32). The Scoping Plan outlines regulations that CARB will adopt to meet the AB 32 emission targets, which call for reducing state GHG emissions to 1990 levels by 2020. The Scoping Plan was adopted with few major changes from the draft plan introduced in October 2008. The plan includes a statewide cap-and-trade program that will cover 85 percent of the state’s GHG emissions and which will be implemented in conjunction with the planned Western Climate Initiative trading program. Other key aspects of the Scoping Plan include measures to improve building energy efficiency; incentives for increased generation and use of renewable energy; a low-carbon fuel standard; regulations to reduce GHG emissions from the transportation sector, including public transportation, trucking, and shipping; and a solar energy initiative. Under the AB 32 legislation, the deadline for the Scoping Plan regulations to be in effect is 2012.
- **Southern California Air District Creates Climate Exchange.** The South Coast Air Quality Management District (SCAQMD), an air quality district in the Los Angeles area, established a local exchange for GHG emission reduction projects. The “SoCal Climate Solutions Exchange” will certify emission reduction projects that are developed in compliance with CARB emission quantification methodologies. The Exchange will cover projects located in SCAQMD jurisdiction, which extends throughout Orange County and to parts of Los Angeles, Riverside, and San Bernardino Counties.

Studies and Reports

- **White House Climate Report Finds Evidence of Anthropogenic Warming in North America.** On December 11, the White House Climate Change Science Program released a report analyzing

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average temperature change across North America from 1951 to 2006. The report found that virtually all of the global warming occurring during that period took place after 1970, and that more than half of the warming “is *likely* the result of human-caused greenhouse gas forcing of climate change.” (Emphasis in the original). The report also concluded that it is “*likely* that anthropogenic warming has increased drought impacts over North America in recent decades through increased water stresses associated with warmer conditions” (Emphasis in the original.) The report is available at <http://www.usgcrp.gov/usgcrp/default.php>.

- **Business Analysts Advocate Linking Carbon Markets.** A joint study by The Bank of New York Mellon and Point Carbon found that moving quickly to link regional carbon markets and cap-and-trade programs internationally—without waiting for a global cap-and-trade system to be established—will be essential to improving liquidity in carbon markets and producing the greatest reductions in GHG emissions at the least cost. The study suggests the Kyoto Protocol’s Clean Development Mechanism as a point of departure for creating a framework for global linkage, and predicts that an interconnected system with a minimum of market constraints, such as allowance price caps, and a variety of liquid instruments, such as carbon futures and derivatives, could produce a \$3 trillion carbon market by 2020. The report is available at <http://www.pointcarbon.com/advisory/newreports/1.1018681>.

International

- **European Union Parliament and Council Reach Compromise on EU ETS Phase III.** The compromise allows the program to go to a full vote by the Parliament. Under the compromise, the emission target remains set at 20 percent below 1990 emissions by 2020. The limit on use of offsets was set at approximately two-thirds the amount of reductions needed to meet the target, according to an EU spokesperson. Addressing objections from Poland, the compromise moved away from 100 percent of auctioning of allowances. Instead, the compromise program allocates allowances to countries with high fossil fuel reliance and limited access to transnational grids; the allocations zero out by 2020. The program also dedicates 300 million allowances to fund carbon capture and sequestration.
- **14th Conference of the Parties to the UNFCCC Ends Without Agreement; Several Nations Commit to Reductions.** The 14th Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC) drew to a close in Poznan, Poland this week. At the annual meeting of representatives from parties to the UNFCCC, negotiators sought to lay the groundwork for a successor to the Kyoto Protocol, which expires in 2012. A bid to increase the size of a new fund for adaptation in developing countries failed, resulting in some North-South bitterness. In the later phase of discussions, much of the focus was on the role of developing nations and whether such countries should adopt GHG reduction targets. Some major announcements include the following:
 - *Australia Agrees to Reduce GHG Emissions by 5 or 15 Percent by 2020 from 2000 Levels.* The Government of Australia said it would adopt the deeper target if an international agreement is finalized next year with targets for developing countries such as China and India. Regardless of the 2020 target, the government said it is committed to cutting emissions 60 percent by 2050. Environmental groups in Australia contrasted the government’s commitment unfavorably with the European Union, which has committed to a more ambitious emissions target over the same period (20 percent below 1990 emissions by

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2020); however, the government asserted that, in light of Australia's population growth from immigration, the Australia target will require a greater reduction in per-capita emissions (27 percent reduction vs. 24 percent). The 5 percent reduction translates to a reduction in emissions of 20 percent below projected levels. The proposal is part of a cap-and-trade program that the Prime Minister is bringing to the legislature.

- *UN Secretary General Calls on Developing Nations to Adopt GHG Reduction Goals.* In a speech to the main plenary at the beginning of high-level negotiations, United Nations Secretary General Ban Ki-moon urged developing countries to adopt reduction goals for the post-2012 period in conjunction with measures to increase economic growth and poverty alleviation strategies. The Secretary General stated, however, that economic assistance from developed nations would be essential to developing nations' success in reducing emissions. Officials participating in the high-level discussions considered such financial initiatives, as well as adaptation funds to benefit developing countries, funding and guidelines for carbon capture and sequestration projects, revisions to the Clean Development Mechanism (CDM), and specific emission reduction targets for the post-2012 period.
- *Mexico Agrees to Reduce GHG Emissions by 50 Percent by 2050 in Exchange for Technological and Financial Aid.* Mexican Environmental Minister Juan Rafael Elvira announced that the country would reduce its GHG emissions to 50 percent below 2002 levels by 2050 through a national "trans-sectoral" cap-and-trade program that could be in place by 2012. The nation also plans to address emissions through natural gas cogeneration, establishing 2,500 megawatts of wind power, and solar water heating for the commercial and residential sectors. The officials attending the UN climate negotiations emphasized that Mexico was seeking economic assistance in the form of loans to speed up technological deployment and assistance in restructuring its banking regulations to ease project financing.
- *Italian Environment Minister Says Participation in Post-2012 Agreement is Contingent on "Truly Global" Commitments.* Stefania Prestigiacomo said that Italy is willing to commit to additional GHG emission reduction targets as long as all other nations are part of the effort. She acknowledged that nations have differing abilities to make GHG reductions, but called on all nations to take steps to reduce emissions. If a post-Kyoto agreement does not require global participation, she indicated that Italy may reconsider its role.

The Climate Policy Update is intended as a general summary of major climate change-related policy developments that we judge to be of interest to a broad range of our clients and friends. We welcome your comments and suggestions. Coverage in, and selection of topics for, the Update is not intended to reflect the position or opinion of Van Ness Feldman or any of its clients on any issue. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.

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