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Climate Change Policy Update Week of February 2-6, 2009

Commentary: Chairman Boxer issued a set of “principles” for climate change legislation. The principles are, for the most, fairly high-level and spare -- the document did not specify an emissions target. Notably, the most detailed part of the principles elaborates a wide-ranging list of recipients of “carbon market revenues,” including consumers, clean energy initiatives, wildlife programs, and adaptation initiatives in developing countries. This approach seems likely to arouse some of the critics who said that the Lieberman-Warner bill became too much like an appropriations program. In addition, the principles emphasize the importance of ensuring continued progress for state and local efforts . . . Indeed, the week was full of news related to state and local climate policy. EPA initiated its reconsideration of the denial of the California waiver for GHG standards for new motor vehicles. A group of governors from states with cap-and-trade programs wrote to President Obama seeking federal-state cooperative efforts, and a group of attorneys for states and localities sent a letter to EPA Administrator Jackson asking her to begin the process of regulating GHG emissions under the Clean Air Act. In addition, White House Energy and Climate Change advisor Carol Browner appointed a counsel who is a leading scholar on public-private cooperation in regulation.

Executive Branch

- **EPA Administrator Announces Reconsideration of California GHG Waiver.** EPA Administrator Lisa Jackson signed a notice on February 6 formally announcing the agency’s decision to reconsider its denial of California’s request for a waiver to implement its GHG emission standards for new motor vehicles. In January, President Obama issued an Executive Order directing the agency to proceed with a review of the decision made by the Bush Administration. The state of California also sent a letter to the agency on January 21, 2009, suggesting issues for EPA to consider when reviewing the decision to deny the waiver. The notice, which is expected to be published in the *Federal Register* during the week of February 9, states that the denial of the waiver was a significant departure from EPA’s “longstanding interpretation of the Clean Air Act” and the agency’s “history . . . of granting waivers to California for its new motor vehicle emission program.” EPA specifically requests comments on whether the denial was appropriate, as well as the effect of the denial on EPA’s ability to find that the standards are consistent with the Clean Air Act, particularly on the issue of the amount of lead time that must be provided to vehicle manufacturers to comply with the standards. EPA will hold a public hearing on the reconsideration on March 5, 2009 and will accept written comments until April 6, 2009. If EPA reverses itself and grants the waiver, other states may also enforce the California standards. Thirteen states have formally adopted the California standards.
- **Administration’s Green Leadership Picks Continue.** Several environmental and climate change positions within the Obama Administration were filled this week, including the following:
 - White House Energy and Climate Change advisor Carol Browner has selected Harvard Law Professor Jody Freeman to serve as an advisor. Freeman has authored papers on public-private collaborative approaches to regulation.

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- Lisa Heinzerling, a Professor of Law at Georgetown, will serve as Senior Policy Advisor on Climate Change for EPA Administrator Lisa Jackson. Heinzerling has been a critic of cost benefit analysis of regulations in her academic work, and was the lead author of the petitioners' briefs in *Massachusetts v. EPA*. Robert Sussman, Deputy EPA Administrator under the Clinton Administration, will also be serving as a senior policy counsel to Jackson on climate and air pollution issues. David McIntosh, former counsel and legislative assistant for energy and environment to Sen. Joseph Lieberman (I-CT), will assume the post of Senior Counsel in the EPA Office of Congressional and Intergovernmental Relations. He will focus on climate change.
- Ron Sims has been selected to serve as deputy secretary at the Department of Housing and Urban Development. Sims was the county executive of King County, Washington, where he helped expand public transportation, protected green space, expanded the trail system, and increased biofuel use. Sims will join HUD Secretary Shaun Donovan, a champion of energy-efficient affordable housing during his time as commissioner of New York City's Department of Housing Preservation and Development.
- **President Obama Accelerates Efficiency Standard Development.** In a memorandum to Energy Secretary Steven Chu, President Obama ordered the Energy Department to accelerate deadlines for setting new energy efficiency standards for household appliances. DOE is currently operating under a consent agreement with environmental groups and several states that established deadlines for promulgating standards for 22 product categories; President Obama asked that the Department act in advance of these deadlines where large energy savings could be achieved.

Congress

- **Senator Boxer Releases Climate Principles.** Promising to move major climate change legislation through the Senate Committee on Environment and Public Works before December, Committee Chairman Barbara Boxer (D-CA) put forward six principles supported by all of Democrats on the committee, as well as by Independent Sen. Bernie Sanders (VT). December is seen as a critical deadline for the Senate because it is when the next major international climate change meeting will be held, as well as the deadline to reach agreement on a successor treaty to the Kyoto Protocol. Chairman Boxer's principles signal a focus on supporting existing state and local climate change efforts, providing incentives for international engagement (and deterrents for a lack of engagement), and using "carbon market revenues" to aid consumers and businesses, develop clean energy and efficiency technologies, and support developing nations in mitigation and adaptation efforts. Notably, the principles did not state a specific emission reduction target. Chairman Boxer said that "We want to get a bill out there that is straightforward, that doesn't have so much weight that it sinks," and added, in reference to the 2008 Boxer-Lieberman-Warner bill, "We're starting fresh. We'll take the best of it." Chairman Boxer also said that she plans to ask Sen. Max Baucus (D-MT), Chairman of the Finance Committee, for advice on how to develop legislation that will not run afoul of international trade agreements, and to seek guidance from the Banking Committee on how to set up an oversight board for the GHG emissions trading market. The principles are available at http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=14dc734d-74c9-4fb3-8bf2-6d5d539226d1.

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- **New Climate Related Bills Circulated.** Although the committees with primary jurisdiction over climate change in the House and the Senate are still in the early stages of drafting major legislation, a number of senators and representatives have put forward proposals related to climate change.
 - Sen. Jeff Bingaman (D-NM) is proposing a Renewable Electricity Standard that would require sellers of electricity to retail consumers to obtain increasing percentages of their electricity from new renewable sources, beginning with 4% by 2011 and rising to 20% by 2021. Existing hydropower generators and municipal solid waste generators would be excluded from the base electricity amount used to calculate the percentage requirements. (some details are available at http://energy.senate.gov/public/index.cfm?FuseAction=PressReleases.Detail&PressRelease_id=199f3c0e-de0d-4085-97e0-47b43a06b494&Month=2&Year=2009&Party=0).
 - Rep. Edward Markey (D-MA), chair of the House Subcommittee on Energy and the Environment, and Rep. Todd Platts (R-PA) introduced a renewable electricity standard that would require that 25% of U.S. electricity be produced by renewable energy sources by 2025. (American Renewable Energy Act, available at <http://globalwarming.house.gov/tools/3q08materials/files/0094.pdf>).
 - Rep. Markey also introduced an energy efficiency resource standard with the aim of reducing electricity demand 15% by 2020. The savings would be achieved through utility efficiency programs, building energy codes, appliance standards, and related measures. The renewable energy production and the energy efficiency reductions to be achieved via the Markey bills dovetail with the stated goals of the Obama Administration. (Save American Energy Act, available at <http://globalwarming.house.gov/tools/3q08materials/files/0095.pdf>).
 - Rep. Collin Peterson (D-MN), Chair of the Committee on Agriculture, said he intends to move a bill to improve the transparency and accountability of commodity markets through committee by Presidents' Day. The bill would give the Commodity Futures Trading Commission (CFTC) jurisdiction over GHG allowance and offset trading, and require that trading occur on a "designated contract market" under CFTC regulation. Representatives of broker organizations and the futures industry spoke in opposition to these measures at a hearing on the bill, arguing that the proposal would constrain market development and competition. (Derivatives Markets Transparency and Accountability Act of 2009; available at <http://agriculture.house.gov/inside/legislation.html>).
 - Rep. Pete Stark (D-CA) introduced legislation that would impose a \$10 per ton of carbon content tax on fossil fuels, to increase by \$10 each year until GHG emissions are 80% below 1990 levels. (H.R. 594, Save Our Climate Act of 2009, available at <http://www.house.gov/stark/news/legislation.htm>).
- **Senator Murkowski Takes Top Minority Slot on Energy.** Sen. Lisa Murkowski (R-AK) has been named the ranking Republican on the Committee on Energy and Natural Resources. New Energy Committee members Sen. John McCain (R-AZ), Sen. Sam Brownback (R-KS), Sen. James Risch (ID), and Sen. Robert Bennett (R-UT) will join current minority members Sens.

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Richard Burr (R-NC), John Barrasso (R-WY), Jim Bunning (R-KY), Jeff Sessions (R-AL), and Bob Corker (R-TN). In the House, Rep. Steve Scalise (R-LA) became the newest member of the Committee on Energy and Commerce, where the Democrats now hold a 36-23 majority. Rep. Scalise will serve on the Energy and Environment Subcommittee.

States and Cities

- **Governors Urge State-Federal Cooperation on Climate.** A group of twelve governors from states participating in regional cap-and-trade programs around the country sent a letter to President Obama and members of his administration responsible for energy and environmental issues calling for a partnership between state, local and federal leaders in developing a national climate change program. The governors' letter detailed a set of principles that should guide a future national climate change program, stating that such a program should: 1) create ambitious national emission reduction goals; 2) use a combination of market mechanisms, such as a cap and trade system, emission performance standards, and clean technology incentives; 3) use emission allowance auction revenues from a cap-and-trade program to create jobs, fund energy efficiency and renewable energy programs, and assist disadvantaged communities; and 4) permit state experimentation with new and innovative GHG reduction programs and measures. The group of governors included California Governor Arnold Schwarzenegger (R), New York Governor David Patterson (D), and Florida Governor Charlie Crist (R).
- **States, Cities Seek Quick EPA Action on GHG Endangerment Finding.** Attorneys for eighteen states and the cities of New York and Baltimore sent a letter to new Environmental Protection Agency (EPA) Administrator Lisa Jackson requesting quick action on an endangerment determination for CO₂. The endangerment decision is required by the U.S. Supreme Court's April 2007 *Massachusetts v. EPA* decision, which mandated that the agency either determine whether CO₂ emissions are a threat to public health or welfare, or provide a statutorily permissible explanation for why it will not do so. An endangerment finding by EPA would require the agency to begin the process of promulgating rules to address CO₂ emissions from motor vehicles, power plants, and many other smaller sources. While EPA under the Obama Administration has not expressly indicated how it will resolve the issue, Administrator Jackson has previously noted that she will comply quickly with the Supreme Court's decision.
- **Michigan Governor Announces 45 Percent Reduction in Fossil Generation By 2020.** Michigan Governor Jennifer Granholm (D) announced during her annual state-of-the-state address a goal of reducing the state's reliance on fossil fuel-fired electricity generation by 45 percent by 2020. The governor proposed to achieve the goal by increasing spending on wind and solar power generation, promoting energy efficiency, developing new technologies, decoupling energy utility revenues from electricity and natural gas sales, and implementing the nation's first feed-in tariff for small-scale wind turbines and rooftop solar panels. The governor also directed state agencies to strengthen reviews of proposals for new electricity generation by evaluating the need for the generation and approving new coal-fired generation capacity only after reviewing all feasible and prudent alternatives. The new initiatives will be funded in part using \$2 billion that the state spends annually to import coal and natural gas for electricity generation.
- **California Creates Panel to Reduce Emissions Through Urban Planning.** The California Air Resources Board (CARB) has created a panel that will focus on reducing GHG emissions through

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urban planning. The Regional Targets Advisory Committee (RTAC) panel will oversee implementation of a 2008 state law that requires the state to reduce emissions associated with urban sprawl and transportation planning. The panel will develop recommendations for specific land-use policies to help achieve those goals.

Studies and Reports

- **Ethanol Studies Conflict on Environmental Impacts.** A study published in the Proceedings of the National Academy of Sciences compared the GHG and fine particulate matter emissions produced by gasoline versus corn-based ethanol and cellulosic ethanol. The study employed a full life cycle analysis, and also analyzed the emissions generated by land-use change (i.e. cultivating fallow fields to produce more corn). The study also estimated the monetary costs to society of GHG emissions, based on GHG mitigation costs, GHG market prices, and projections of climate change impacts and their societal costs. Lead author Jason Hill, an economist at the University of Minnesota, reported that the climate change impacts caused by producing and burning gasoline cost society an estimated 37 cents per gallon, while corn-based ethanol climate change costs range from 32 to 52 cents per gallon; and cellulosic ethanol is under 10 cents per gallon. The study is available at <http://www.pnas.org/content/early/2009/02/02/0812835106.full.pdf+html?sid=dd02103e-fed-4621-88af-4ac8a56f920d>. Kenneth Cassman, co-author of another study published in the *Journal of Industrial Ecology*, found that models reflecting efficiency improvements in corn-based ethanol agriculture and biorefineries indicate that, if land use changes are ignored, corn-based ethanol reduces GHG emissions by 48% or more as compared to gasoline, which creates a buffer against the emissions caused by land use changes. The study is available at <http://www3.interscience.wiley.com/journal/120124424/issue>. Hill argues that Cassman's data were too limited and that the results would not change the overall comparison with cellulosic ethanol significantly, and noted that the benefits of cellulosic relative to corn-based ethanol increase when air pollution health impacts are considered (with gasoline production and combustion generating 34 cents in health costs per gallon; corn-based ethanol up to 93 cents and cellulosic ethanol 16 cents).
- **World Faces Shortage in Climate Change Workforce.** An international survey of climate change professionals found that over 83% believe there is a shortage of qualified workers to perform critical jobs in the growing climate change sector, such as GHG accountants, verifiers, and managers. The same number believe that given the lack of qualified personnel, there is a moderate or high risk that the carbon markets will suffer from problems similar to the Enron, Tyco, and WorldCom accounting scandals. 81% believe that universities are not currently providing graduates with the necessary skills to work in this industry. Michael Gillenwater, Dean of the Greenhouse Gas Management Institute, one of the report's institutional authors, argues that students need interdisciplinary training—including engineering, economics, and hard science—to be prepared for careers in climate change. The report is available at <http://www.ghginstitute.org/downloadables/Reports/2009survey.pdf>.

International

- **Turkey Ratifies Kyoto Protocol.** With ratification by its Parliament, Turkey became an official party to the Kyoto Protocol, the 1997 treaty that created binding emission targets for developed

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nations. Turkey will not, however, take an emissions cap due to the relatively short time before the treaty's expiration in 2012. Observers suggest that the Turkish action is intended to create additional negotiating power for the country during the Fifteenth Conference of the Parties to the U.N. Framework Convention on Climate Change (COP-15) at which a successor treaty to the Kyoto Protocol will be negotiated.

- **Danish Prime Minister Seeks High-Level Climate Meeting Prior to Copenhagen.** Speaking at the World Economic Forum in Davos, Switzerland, Danish Prime Minister Anders Fogh Rasmussen called on world leaders to hold a high-level climate summit prior to COP-15 in December of this year. Prime Minister Rasmussen suggested that such a meeting could allay concerns that many nations will not be prepared for the binding GHG emission reduction commitments that will be sought during the COP-15 negotiations. According to the Prime Minister, the climate summit should be held as early as possible.
- **EU Parliament Adopts Committee Report Calling For Short-, Medium-Term Actions.** The European Union (EU) Parliament adopted a report prepared by its Temporary Committee on Climate Change that lays out a long-term road map for addressing climate change. The report found that short- and medium-term actions are necessary to achieve a long-term goal of reducing developed world emissions 80 percent from 1990 levels by 2050. The report called for the EU to set targets of net-zero energy performance for new homes by 2015, and 20 percent energy efficiency savings by 2020. The EU Commission, which released its own set of climate proposals last week, will consider the non-binding EU Parliament positions in developing EU climate policy.
- **Sweden Targets 40 Percent GHG Emission Reduction by 2020.** Sweden announced a national goal of reducing GHG emissions 40 percent below 1990 levels by 2020. The emission reductions will be achieved through increases in energy efficiency and renewable energy, expansion of an existing national carbon tax, and removal of a nation-wide ban on new nuclear power stations. Sweden aims to meet two-thirds of the reductions goal through actions in Sweden, while the remaining one-third will be met by funding offsetting reductions in other EU countries.
- **China, Germany Sign Climate Cooperation Agreement.** Germany and China signed a Memorandum of Understanding (MOU) under which the two countries will partner to address climate change. The partnership will involve cooperation on climate change, energy, and research and technology issues. As part of the partnership, the two countries will create a working group managed by German's Environment Ministry and China's National Development and Reform Commission.
- **Guyana, Norway Enter Into Bilateral Climate Agreement.** Guyana President Bharrat Jagdeo and Norway Prime Minister Jens Stoltenberg met in Oslo, Norway to sign a bilateral climate change cooperation agreement. The two countries will cooperate in developing low carbon technologies in Guyana and reducing emissions from deforestation and degradation (REDD).
- **Australian Stimulus Package Includes Boost For Emission Reducing Programs.** An A\$26 billion (US\$16.6 billion) economic stimulus package passed by the Australian government will substantially increase spending on a number of programs intended reduce emissions and lower energy bills. Included in the package are increases in funding for a residential weatherization

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program, and a funding program that provides solar power and low-emission homes for renters. The home weatherization program will focus on reducing energy needs by installing ceiling insulation and is expected to benefit 2.7 million Australian homes.

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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