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## Climate Change Policy Update Week of February 23-27, 2009

*Commentary: The Audacity of Auctioning . . . President Obama made a dramatic entrance into the debate over climate change legislation this week. He called for a cap-and-trade program with an emissions cap starting at 14 percent below 2005 emission levels by 2020, declining to 83 percent below 2005 levels by 2050. President Obama also took a position on the controversial issue of how to distribute allowances. Consistent with his campaign pledge, he called for 100 percent auctioning. Furthermore, he linked the auction to a promised tax cut for 90 percent of Americans by pledging over three quarters of the auction revenues to this purpose. The balance of the revenues would go to fulfilling a campaign promise to devote \$150 billion to clean energy technologies over 10 years . . . Will Congress, including members of the President's own party, be willing to go along with this approach? Is it possible to do both broad-based tax cuts and technology funding, yet also use allowance value as a means of transitioning otherwise hard hit industries or regions into the program? What about energy-intensive industries in internationally competitive markets and regions of the country currently relying on coal-fired electric power? . . . White House energy and climate coordinator Carol Browner strongly suggested that, while a cap-and-trade program is the main objective, the Obama Administration will consider using its Clean Air Act authorities to develop back-stop emission standards for major sources of emissions, such as cars and power plants.*

### Executive Branch

- **President Obama Calls for Cap-and-Trade with 100 Percent Auctioning of Allowances.** In his first address to Congress, President Obama called for legislation with a “market-based cap” on greenhouse gas emissions to “transform our economy, protect our security, and save our planet from the ravages of climate change.” In his proposed 2010 budget, President Obama forecasts government revenue from the sale of 100 percent of GHG emission allowances beginning in 2012, and White House officials have stated that proposed tax cuts for middle and low-income households and investments in renewable energy and infrastructure are conditioned on those revenues. The revenues presume legislation that would establish an emissions cap starting at 14 percent below 2005 emission levels in 2012. The cap would become increasingly stringent over time, reaching a level that is 83 percent below 2005 levels by 2050. White House Office of Management and Budget Director Peter Orszag said that President Obama’s cap-and-trade program would give taxpayers direct payments to help with increases in energy prices. Data in the budget table suggests that approximately 80 percent of revenues from the allowance auction would go to the tax cut, with the remaining 20 percent going to fund clean energy technologies. President Obama also promised to invest \$15 billion a year to accelerate development of renewable energy, advanced biofuels, and more efficient vehicles.

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- **Browner: Clean Air Act Regulations for Cars and Power Plants are Possible.** In remarks to a meeting of Governors, White House energy and climate coordinator Carol Browner stated that while President Obama would prefer legislative action on climate change to regulatory action by the Environmental Protection Agency (EPA) under its existing Clean Air Act authorities, he is open to setting rules for cars and power plants as a backstop. According to Browner, President Obama is also considering a nationwide policy for regulating vehicular greenhouse emissions that would link new Corporate Average Fuel Economy (CAFE) Standards with California's proposed vehicle emission laws. The California regulations will be implemented by California and more than a dozen other states if California is granted a waiver under the Clean Air Act by the EPA, denied under the Bush Administration and currently under reconsideration. Senator Carl Levin (D-MI), a key auto industry supporter, has said he would support such a proposal if it set an industry average but allowed varied carmaker requirements based on product mix. Browner stated that the President is also contemplating an inter-agency "one stop" transmission siting team to cut red tape and help bring remote renewable energy to market.
- **U.S., China to Collaborate On Climate Change.** Secretary of State Hillary Clinton announced at a press conference in Beijing that the two countries will work together to facilitate transfer and deployment of clean technologies and will coordinate policies in advance of the December U.N. conference on climate change in Copenhagen.
- **Nominees Fill Out Commerce, EPA, Agriculture, Interior Leadership.** In a third attempt to fill the position, President Obama has nominated former Washington Governor Gary Locke to serve as Commerce Secretary. As Governor of Washington, Locke was a founding member of the West Coast Governors' Global Warming Initiative, a precursor to the ongoing Western Climate Initiative. President Obama has nominated Joseph Cannon, a University of Virginia law professor and former EPA General Counsel under the Clinton Administration, to serve as Deputy Administrator of the EPA. As EPA General Counsel, Cannon argued that EPA has the statutory authority under the Clean Air Act to regulate CO<sub>2</sub>. Kathleen Merrigan, an expert on sustainable agriculture, professor at Tufts University, and former administrator for the Agriculture Marketing Service, has been nominated to serve as Deputy Secretary for the Department of Agriculture. In addition, President Obama nominated Tom Strickland as Assistant Secretary of Interior for Fish, Wildlife and Parks. Strickland, who ran unsuccessfully for Senate in 1996 and 2002 in Colorado, is already serving as Chief of Staff for Interior Secretary Ken Salazar. In the meantime, President Obama's nominee to head the Commodity Futures Trading Commission (CFTC), Gary Gensler, told the Senate Agriculture Committee at his nomination hearing that the CFTC has the "best experience" and the regulatory authority to oversee a carbon futures market.

## Congress

- **House Passes 2009 Spending Bill With Energy Front and Center.** With a vote largely along partisan lines, the House of Representatives passed a \$410 billion omnibus appropriations bill for fiscal year 2009. The measure includes significant increases in funding for climate change research, the basic research program at the Department of Energy, energy efficiency, and renewable energy programs. Programs receiving funding increases include carbon sequestration, weatherization, ocean and hydropower technologies, and vehicle technologies. The Yucca Mountain nuclear waste repository and the Bush Administration's nuclear waste recycling initiative, the Global Nuclear Energy Partnership, were essentially terminated through drastic

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funding cuts, with funding for the FutureGen clean coal project reduced as well. Republicans are looking to trim funding from the bill during Senate consideration.

The omnibus bill also includes a provision requiring the EPA to decide by June 30<sup>th</sup> whether to grant California a Clean Air Act waiver to allow the state to implement its vehicle GHG emissions regulations. In addition, the measure contains controversial language empowering the Obama Administration to reverse a last minute Bush Administration endangered species ruling that prohibited the regulation of GHG emissions to protect the polar bear. Polar bears are threatened by the loss of sea ice due to climate change. Opponents fear the ruling could allow for back door climate change regulation, and provide a tool that could be used to block almost any development that could lead to increased GHG emissions.

- **Many Fingers in Congress' Climate Pie.** There was considerable activity on the Hill related to climate change in recent days:
  - Rep. Charles Rangel (D-NY), chair of the Ways and Means Committee, has promised to move climate legislation through his committee by Memorial Day, matching a parallel vow by Energy and Commerce Chair Rep. Henry Waxman. Chairman Rangel has called for a bipartisan task force to address committee jurisdiction over climate change legislation. Chairman Waxman said that, although he and Chairman Rangel have not discussed it, he expects them to work collaboratively.
  - Rep. Chris Van Hollen (D-MD) has announced plans to introduce “cap-and-dividend” climate legislation, featuring an upstream cap-and-trade program with 100% auctioning of emission allowances. At least 90% of the auction revenues would be returned to consumers in monthly dividend checks.
  - In the Senate, Majority Leader Harry Reid (D-NV) said he plans to tackle President Obama’s energy and climate change goals in three steps, starting with energy and smart grid / transmission legislation and moving to climate legislation in the second half of the year. Majority Leader Reid has said the smart grid legislation he is currently developing will give the federal government clear siting authority if transmission lines needed to develop renewable energy are not provided by regional or state planning efforts.
  - Rep. Jay Inslee (D-WA) has said that he plans to introduce legislation that will align with smart grid legislation being developed by Majority Leader Reid, and which will address the planning, financing, and siting of smart grid technology.
  - Senator Barbara Boxer, Chairman of the Senate Environment and Public Works Committee, acknowledged that she is considering use of the budget reconciliation process, which requires only a majority vote, as a means of getting climate legislation through the Senate without requiring 60 votes to break a filibuster.
  - Finally, a group of fiscally conservative Democrats in the House has formed a “Blue Dog Energy Task Force” with the goal of influencing climate legislation. The group will be chaired by Rep. Jim Matheson (D-UT) with Rep. John Barrow (D-GA) as vice-chairman. Both are members of the Energy and Commerce Committee.

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- **Biofuel Bill Reintroduced.** A bipartisan group of lawmakers has reintroduced legislation that would broaden the definition of “renewable biomass” to include biomass gathered from federal lands. Under the 2007 energy bill, renewable biomass qualifies for incentives for advanced biofuels. The sponsors of H.R. 1190, The Renewable Biofuels Facilitation Act, want to be able to include woodchips, slash and other wood waste that results from forest thinning for fire control or disease or insect management.

## States and Cities

- **Utah Enters Joint Venture to Develop CCS-Equipped Power Plants.** Along with the University of Utah and Headwaters, Inc., the State of Utah has created a joint venture that will develop and operate carbon capture and sequestration (CCS) projects for coal-fired power plants. The joint venture, called the Headwaters Clean Carbon Services, is the result of a three-year old state science and technology initiative. In addition to developing and operating its own CCS projects, the joint venture will also offer CCS services to existing coal-fired power plants. The joint venture plans to store carbon both in geologic formations using new pumping technologies and in storage tanks located on site at several power plants.
- **California Gov. Schwarzenegger Proposes State DOE to Facilitate Renewables Development.** In an effort to facilitate development of renewable energy projects, California Governor Arnold Schwarzenegger (R) has proposed a state Department of Energy (DOE) to handle all permitting issues related to renewable energy projects and electricity transmission. The proposed state DOE would assume permitting authority that is currently divided among nine state agencies. While electricity transmission projects generally take 5-7 years in most states, projects in California can take 10-12 years. The additional renewable energy projects and transmission capacity are necessary to help California comply with its A.B. 32 climate change law and to meet its aggressive renewable energy standard, which requires the state to generate 33 percent of its electricity from renewable sources by 2020.
- **Michigan AG Challenges Governor’s Authority to Issue Coal Plant Directive.** Three weeks after Michigan Governor Jennifer Granholm (D) issued an executive directive requiring state regulators to deny permits to coal-fired power plants if feasible alternatives are available, Michigan Attorney General Mike Cox (R) issued an opinion declaring that the Governor exceeded her authority in issuing the directive. The Attorney General’s opinion stated that the opinion was binding on the Governor and the state Department of Environmental Quality, the agency responsible for permitting coal-fired power plants. In response, the Governor expressed disagreement with the Attorney General’s interpretation of the Michigan Environmental Protection Act and stated that she would seek clarification on the issue from the U.S. EPA.

## Studies and Reports

- **CO<sub>2</sub> Satellite Crashes.** A project nine years in the making has failed spectacularly, as NASA’s Orbiting Carbon Observatory crashed into the ocean near Antarctica soon after it was launched. A nose cone that shields the satellite as it travels through the Earth’s atmosphere did not detach as intended, and the extra weight prevented the satellite from reaching orbit. The observatory was designed to monitor how CO<sub>2</sub> enters and exits the Earth’s atmosphere to help scientists understand the rate at which oceans and land are absorbing carbon dioxide.

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- **Demand from the West Driving China's Emissions.** Last year, China overtook the United States as the world's largest carbon emitter. According to a study from researchers at the Oslo Center for International Climate and Environmental Research, however, a third of China's emissions, and half of its recent increase, are the result of manufacturing goods for export. The study will be published in the journal *Geophysical Research Letters*. The abstract is available at <http://www.agu.org/pubs/crossref/2009/2008GL036540.shtml>.
- **Report Finds U.S. Climate Lobby Tripled.** The number of climate change lobbyists in Washington, D.C. tripled over the past five years to 2,340 according to a report by the Center for Public Integrity. The majority of the lobbyists represent interests outside the manufacturing and energy sectors. The article is available at [http://www.publicintegrity.org/investigations/climate\\_change/articles/entry/1171/](http://www.publicintegrity.org/investigations/climate_change/articles/entry/1171/).
- **Climate Risks Present at Low Temperature Increases.** A new report by members of the Intergovernmental Panel on Climate Change is projecting the onset of significant adverse effects of climate change at lower amounts of temperature change than previously projected. Many regions, for example, are now predicted to see increases in drought, heat waves, and floods leading to water stress, increased wildfire frequency, and flood damages with as little as 1 degree warming over 1990 temperatures. Global average temperatures already have risen 0.22 degrees since 1990. The study is available at <http://www.pnas.org/content/early/2009/02/25/0812355106.full.pdf+html>.
- **Study Suggests Carbon Market Design.** An analysis of possible carbon market designs by researchers at the Nicholas Institute at Duke University argues that policy makers should strive to produce a market that is fair, accurately reflects the marginal cost of emission abatement, and provides sufficient real-time market information to reduce uncertainty and trading costs. The report suggests that law makers consider regulating exchanges and brokers, tracking trades through a central limit order book and/or automated quotation system, limiting the maximum number of instruments controlled by a trader or group of traders, and/or setting minimum margin requirements for traders purchasing allowance-based instruments. The paper is available at [http://www.nicholas.duke.edu/ccpp/ccpp\\_pdfs/carbon\\_market\\_primer.pdf](http://www.nicholas.duke.edu/ccpp/ccpp_pdfs/carbon_market_primer.pdf).

## International

- **Taiwan Announces Emissions Goals.** Taiwan announced its targets for reducing GHG emissions. Contained in the nation's third-term plan for national development in the 21<sup>st</sup> century, the voluntary targets call for Taiwan to reduce its GHG emissions to current levels by 2020, and to 2000 levels by 2025. The plan also sets targets of increasing national energy efficiency by 2 percent annually, and reducing energy intensity to 20 percent below 2005 levels by 2015.

*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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