



Alaska Energy & Environmental Policy Update

April 9, 2009

At the end of March, House Democrats released a draft energy and climate bill that would establish a cap-and-trade regime and a “twenty-five by twenty-five” national Renewable Electricity Standard. The U.S. Senate has starting marking up certain titles of a comprehensive energy package but has yet to introduce or release a climate package. President Obama signed an omnibus public lands bill codifying the National Landscape Conservation System, permitting the Izembek land exchange proposal to move forward, and creating Alaska’s first national heritage area. Sixty-seven Democratic members of the U.S. House of Representatives delivered a letter to President Obama asking the President to establish a task force to re-write Arctic management programs, drawing a terse response from the Alaska congressional delegation. In Alaska, federal agencies have started distributing more than \$900 million available under the national economic stimulus bill passed in February. And, in April, Anchorage will host The Indigenous Peoples’ Global Summit on Climate Change, which will focus on the participation and role of indigenous peoples in responding to global climate change.

CONGRESS

Federal Energy and Climate Legislation Would Impose a National Renewable Electricity Standard and a National Carbon Cap-and-Trade Program

On March 31, 2009, House Democrats released a draft energy and climate bill that would establish a national carbon cap-and-trade program, a “twenty-five by twenty-five” national Renewable Electricity Standard (RES), and other national energy initiatives.

The “discussion draft” of the American Clean Energy and Security Act of 2009 (also being called the Waxman-Markey proposal) would require “retail electric suppliers”—*i.e.*, electric utilities that sell more than 1,000,000 megawatt hours per year of electricity—to obtain six percent of their energy from qualifying renewable energy resources for the calendar year 2012, rising to 25 percent by 2025. Qualifying renewable energy resources would include wind energy, solar energy, geothermal energy, limited types of biomass, landfill gas, qualified hydropower (which is defined to include incremental hydropower, but does not include small or micro-hydro units), and marine and hydrokinetic renewable energy.



The U.S. Senate has starting marking up certain titles of a comprehensive energy package. At this time, however, a Senate climate package has not yet been introduced or circulated. It remains uncertain whether a Senate bill will incorporate both national RES legislation as well as national carbon cap-and-trade legislation.

Senators Jeff Bingaman (D-NM) and Mark Udall (D-CO) have both introduced national RES legislation. Under Senator Udall's RES proposal, the RES mandate would apply starting in 2012, requiring regulated electric suppliers to obtain six percent of electricity from renewable resources the first year of the program, with the requirement increasing to 25 percent by 2025. Under Senator Bingaman's RES proposal, the renewable electricity mandate kicks in at four percent in 2011, and increases to 20 percent by 2021.

Senator Lisa Murkowski, ranking Republican on the Senate Committee on Energy and Natural Resources, has warned that a national RES could impose major hardships on parts of the country—particularly the Southeast—that lack an abundance of “qualifying” renewable resources. Senator Murkowski also has expressed concern that it may not make sense to impose a one-size-fits-all mandate in light of transmission capacity constraints that hinder the ability of utilities to reach potential sources of renewable energy. “In order for an RES to work, it must make the connection with transmission,” Murkowski has said. “We can't force utilities to meet a [a national RES] requirement if they lack access to renewable energy at any price.”

Van Ness Feldman recently published an Issue Alert on the Waxman-Markey draft energy and climate bill, which is available on our website, at <http://www.vnf.com/news-alerts-347.html>.

The House Committee on Energy and Commerce plans to complete consideration of the comprehensive energy legislation by Memorial Day, with subcommittee hearings the week of April 20, subcommittee markups beginning the week of April 27, and full committee markups beginning the week of May 11. The Senate Committee on Energy and Natural Resources's schedule for consideration of national energy legislation is, for now, less clear.

Conference on Climate Change Will Consider Effects of Global Warming on Indigenous Communities

The Indigenous Peoples' Global Summit on Climate Change will be held in Anchorage, Alaska, April 20-24, 2009. Participants will focus on the impact of climate change on indigenous peoples around the world, and the participation and role of indigenous peoples in responding to climate change.

The summit comes at a time Congress is considering energy and climate legislation that may establish a national carbon cap-and-trade regime.

The Waxman-Markey draft energy and climate bill would establish a market-based program for reducing global warming emissions from U.S. facilities that emit significant quantities of greenhouse gases. Under the proposed cap-and-trade program, regulated entities would be required to have tradable federal permits, or “allowances,” for each ton of pollution they emit into the atmosphere.



The proposed legislation could have significant impacts on indigenous communities in Alaska and abroad.

Under the Waxman-Markey proposal, regulated entities under a U.S. cap-and-trade program could meet part their emissions compliance obligations by submitting “offset” credits for activities that reduce deforestation in developing countries. Under a separate program, U.S. Environmental Protection Agency (EPA) would provide additional support for deforestation programs in developing countries by setting aside emissions allowances to support such programs. The proposed legislation directs the EPA, in developing and providing support for the proposed international deforestation reductions program, to seek to ensure that developing countries protect the rights and interests of local communities, indigenous peoples and vulnerable social groups, and to promote consultation and profit sharing with such communities.

The Kyoto Protocol, a global cap-and-trade program in which the U.S. has declined to participate, established a carbon offsets program called the Clean Development Mechanism (CDM). The availability of international offsets under the CDM has caused developed countries to finance billions of dollars of projects to reduce emissions and promote sustainable development in developing countries, often benefiting rural and indigenous populations in those countries.

Federal cap-and-trade legislation may represent a similar opportunity for rural and indigenous peoples in the U.S. and abroad, including Alaska’s rural and indigenous communities, to utilize carbon financing to help fund the development of renewable energy infrastructure. The draft Waxman-Markey bill permits regulated entities to submit up to 2 billion tons of domestic and international offset credits per year and could create a multi-billion dollar market for carbon offsets.

Access to reliable and affordable electricity is a prerequisite for economic development in all communities. Yet, a highly disproportionate share of the world’s rural and indigenous populations lack access to modern energy services. If a national carbon cap-and-trade bill like the Waxman-Markey proposal becomes law, it would likely create an offset program that could help fuel energy development for rural and indigenous communities in Alaska and abroad.

President Obama Signs Omnibus Public Lands Bill Codifying the National Landscape Conservation System, Permitting the Izembek Land Exchange Proposal to Move Forward, and Creating Alaska’s First National Heritage Area

On March 30, President Obama signed the Omnibus Public Land Management Act of 2009, Public Law No. 111-11, a collection of nearly 170 separate measures which, among other things, designates two million acres of wilderness area in nine states, codifies the establishment of the National Landscape Conservation System (NLCS) within the Bureau of Land Management (BLM), initiates the process of approving the Izembek land exchange, and creates Alaska’s first national heritage area.

The legislation codifies the establishment of the NLCS within the BLM. The NLCS, originally created by BLM in 2000, consists of over 26 million acres of National Conservation Areas, National



Monuments, Wilderness Areas, Wilderness Study Areas, Wild and Scenic Rivers, and National Scenic and Historic Trails, for the purpose of conserving, protecting and restoring nationally significant landscapes. The Public Land Management Act provides a congressional stamp of approval on this originally administratively-created program, with only the broad directive that NLCS be managed “in a manner that protects the values for which the components of the system were designated,” and provides only limited protection for certain types of recreation in specified areas.

The omnibus legislation includes the controversial Izembek National Wildlife Refuge Land Exchange, establishing a process which could increase the size of the Izembek and Alaska Peninsula Wildlife Refuges by more than 61,000 acres in exchange for a small gravel single-lane road corridor—incorporating 206 acres—leading from the community of King Cove to an all-weather airport in Cold Bay.

Before the Izembek land exchange can take place, construction of the road must receive federal permitting and environmental review under the National Environmental Policy Act. The legislation also requires the Secretary of the Interior to determine “that the land exchange (including the construction of a road between the City of King Cove, Alaska, and the Cold Bay Airport) is in the public interest.”

The omnibus legislation also creates the Kenai Mountains-Turnagain Arm National Heritage Area, Alaska’s first national heritage area. The National Park Service will administer the heritage area, although the Cooper Landing-based Kenai Mountains-Turnagain Arm Corridor Communities Association is eligible for up to \$1 million a year, for a maximum of \$10 million over 15 years, to promote tourism in the heritage area.

The legislation also approves a land conveyance to the City of Coffman Cove, directing the Secretary of Agriculture to convey to Coffman Cove a 12-acre parcel of U.S. Forest Service-owned land within the city.

ADMINISTRATION

Fate of Polar Bear Special Rule in Question

In the March issue of the Alaska Policy Update, we discussed the successful passage of a rider to the Omnibus Appropriations bill, signed by President Obama on March 10, which allows the Administration to roll back Endangered Species Act (ESA) regulations for the polar bear without standard notice and comment proceedings. The Department of the Interior is considering actions under the rider, with an expedited deadline of 60 days looming for action if the Department decides to use the special authority under the rider to withdraw the Polar Bear Special Rule, issued under section 4(d) of the ESA.

Obama Administration Pressured to Re-Write Arctic Management Programs

On March 24, 67 Democratic members of the U.S. House of Representatives delivered a letter to President Obama that asks the President to establish a task force to develop a conservation plan for



Alaska's Arctic, provide statutory wilderness designation for the coastal plain of Arctic National Wildlife Refuge, and suspend additional oil and gas development activities in the National Petroleum Reserve-Alaska.

The recommendations mirror recommendations that a coalition of 29 environmental groups made to the Obama Administration transition team in a November 2008 report entitled "Transition to Green."

In response to the letter, the Alaska congressional delegation delivered a letter to the President requesting a meeting with him to discuss Alaska's management of the Arctic, before his administration takes any actions that will have a significant impact on the State and its residents. The delegation urged the President not to take any "rash actions" regarding Alaska, stating that such actions could harm the nation's economic recovery and the shared goal of increasing the nation's energy independence.

Federal Agencies Move to Distribute Stimulus Funds in Alaska

Federal agencies have set about the task of distributing \$743 billion available under the economic stimulus bill passed in February, formally known as the "American Recovery and Reinvestment Act," (Pub. L. 111-5). Alaska could receive as much as \$930.7 million in federal stimulus funding. However, either the Alaska governor or the State Legislature must formally ask for the federal stimulus money in order for the state to receive it. In mid-March, Governor Sarah Palin announced her intention to refuse \$288 million, or about 31 percent of the funding. The Governor indicated that she would only request the portion of funding that would fund construction and infrastructure. The Governor remains committed to refusing much of the funding.

Alaska legislators have expressed concern that, even if the Alaska legislature accepts the money, the Governor could veto parts of it or refuse to fill out the necessary paperwork to receive it. Certain categories of the Recovery Act funds may only be accessed by a state if the Governor formally applies for them. Thus, for instance, regardless of the State legislature's actions, Alaska may not receive State Fiscal Stabilization Fund monies available "for the support of elementary, secondary, and postsecondary education" and "public safety and other government services" absent the Governor submitting the required application for such funds under the provisions of the Recovery Act. The requirements for funding under other Recovery Act authorities vary by account, with guidelines either already issued or to be issued soon.

NATURAL RESOURCE PROJECTS MOVING FORWARD IN ALASKA

Donlin Creek Mine

The Donlin Creek mining prospect in the Kuskokwim region is proving to be a model of success, completing studies and preparing state and federal permit applications to be filed in the near future.



Donlin Creek, LLC is a partnership between two Canadian mining companies, Barrick Gold Corp. and NovaGold Resources. The project, located on Native land, has generated significant public support.

Donlin would be one of the world’s largest gold mines, producing 30 million ounces of gold over its 25-year to 30-year lifetime.

Van Ness Feldman is assisting with pre-application efforts and federal permitting.

FOR ADDITIONAL INFORMATION

Previous additions of the Alaska Policy Update are available at Van Ness Feldman's website, <http://www.vnf.com/news-policyupdates.html>.

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