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Climate Change Policy Update Week of June 1-5, 2009

Commentary: Speaker Pelosi has set a firm deadline – or maybe not so firm – for the Ways & Means and Agriculture Committees to have their say on the contents of the American Clean Energy and Security Act. Agriculture groups, who have influence over a large number of House moderate Democrats, are seeking changes to the offsets provisions, including putting the U.S. Department of Agriculture in charge of agriculture and forestry offsets . . . The Senate Energy and Natural Resources Committee continued work on comprehensive energy legislation. The Committee’s fragile compromise on a Renewable Electricity Standard weathered another week of several offered amendments from both sides, although the current legislation will not produce appreciably more renewable energy or efficiency investments than the base case . . . Diplomats begin meeting this week in Bonn as part of one of the last major preparatory United Nations negotiating sessions before the Conference of the Parties in Copenhagen in December.

Executive Branch

- **Presidential Nominations and Appointments.**

- The Senate confirmed Gina McCarthy to serve as Assistant Administrator for Air and Radiation at the Environmental Protection Agency (EPA).
- The Senate Energy and Natural Resources Committee held confirmation hearings for Catherine Zoi, President Obama’s nominee for Assistant Secretary of Energy for Energy Efficiency and Renewable Energy, as well as William Brinkman, the nominee for Assistant Secretary of Energy for Science.
- Sen. Tom Coburn (R-OK) placed a “hold” on the nomination of Hilary Tompkins to serve as Solicitor for the Department of Interior.

If you have questions about topics covered in this Update, please contact Kyle Danish, head of the Climate Change and Emissions Trading Practice, at kwd@vnf.com

- **DOE Announces Major Investments in Energy Efficiency, Small Geothermal.** The Department of Energy (DOE) published a funding announcement for the latest disbursement of funds from the stimulus package last week, committing to provide \$256 million for energy-efficiency projects, as well as \$50 million for geothermal heat pump deployment. The energy-efficiency funding will support demonstrations and deployment of combined heat and power, district energy, and waste energy recovery projects; research into advanced materials for clean energy technology and energy-intensive industrial processes; and research and development to reduce power consumption of microprocessors, servers, and other information technology and communication equipment. DOE funds for geothermal heat pumps will be used to investigate low-cost installation methods and promote the technology to consumers.
- **Interior Releases Sequestration Study.** Pursuant to a mandate in the Energy Independence and Security Act of 2007 (EISA), the Department of the Interior sent recommendations to Congress last week identifying criteria for locating geologic greenhouse gas (GHG) sequestration sites on public lands, and discussing key legal and regulatory issues surrounding such sequestration

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projects. These issues include the implications of long-term liability for agencies entrusted with managing federal lands; property rights concerns where public lands are interspersed with private surface or subsurface rights; the impact of geologic sequestration on other commercial and recreational uses of public lands; and the potential for conflicts among the various environmental and resource management statutes that apply to sequestration sites. The Bureau of Land Management, EPA, U.S. Geological Survey, and Department of Energy collaborated in producing the report, which is available at:

http://www.doi.gov/news/09_News_Releases/EISA_Sec.714_Report_to_Congress_V12_Final.pdf.

Congress

- **Pelosi Pushes Other Committees to Move Quickly in Considering Climate Bill.** House Speaker Nancy Pelosi (D-CA) announced that she wants to bring the American Clean Energy and Security Act (ACES) to the floor of the House for debate before the July 4th Congressional recess, and hold a vote before the August recess. The ACES (Waxman-Markey) bill, reported out of the Energy and Commerce Committee on May 21st, has been referred to eight other House committees with jurisdiction over different sections of the bill. Speaker Pelosi set June 19th as the date by which she asked Ways and Means Committee Chairman Charles Rangel (D-NY) and Agriculture Committee Chairman Collin Peterson (D-MN) to complete their work on the bill, although she later promised to give them more time if they made progress. The Ways and Means and Agriculture Committees are viewed as the most likely sources of significant changes to the legislation, but it remains unclear if these Committees will mark-up the bill or if Speaker Pelosi will include any significant changes in the bill she sends to the floor for debate. It was reported that House Majority Leader Rep. Steny Hoyer (D-MD) may offer an amendment to address some of the concerns of the agricultural sector if the Agriculture Committee does not decide to conduct its own mark-up. Statements by Speaker Pelosi suggest that House Natural Resource Chairman Nick Rahall's (D-WV) oil and gas title will not be attached to ACES as he had hoped. Rep. Rahall's legislation, which has not yet been introduced, would raise onshore royalty rates and overhaul planning and regulatory oversight of onshore and outer continental shelf energy development.
- **Waxman Announces Allowance Hearing.** House Energy and Commerce Committee Chairman Rep. Henry Waxman (D-CA) announced that the Committee will hold a hearing on emission allowance allocation in the ACES bill on June 9th. Witnesses representing the Edison Electric Institute, Dow Chemical Company, the Environmental Defense Fund, the United Church of Christ, the American Trucking Association, Mid American Energy Holding Company, and Charles River Associates have been invited to attend.
- **Boxer Suggests Her Bill Will Reflect ACES Compromises.** On the Senate side, Environment and Public Works Chairman Barbara Boxer (D-CA) told reporters that the legislation her Committee considers will not "differ that much" from the ACES legislation, and that she will "take into account" many of the compromises made to pass the bill out of the Energy and Commerce Committee. Chairman Boxer also reiterated her opposition to the "cap-and-dividend" approach that would auction emission allowances and return the proceeds to tax payers, saying that the approach is too inflexible. Senator Maria Cantwell (D-WA) is expected to introduce cap-and-dividend legislation soon.

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- **Weak RES Survives Committee Mark-Up.** The Energy and Natural Resources Committee considered proposed amendments to the Renewable Electricity Standard (RES) legislation put forward by Committee Chairman Jeff Bingaman (D-NM) this week. The proposal would require utilities to obtain 15% of their electricity from renewable sources by 2021, a significantly weaker standard than the 25% by 2025 RES originally circulated by Sen. Bingaman (and also a weaker standard than the House ACES Act, which would establish a 20% RES by 2020). Among the rejected amendments was a proposal by Sen. Mary Landrieu (D-LA) that would have allowed the entire requirement to be met by energy efficiency gains, and Republican amendments that would have categorized existing nuclear power as renewable energy and eliminated the RES if a federal greenhouse gas cap-and-trade program were established. The Committee did adopt amendments by Ranking Member Sen. Lisa Murkowski (R-AK) that would allow a variance for utilities that cannot meet the requirement because of transmission constraints and that would exclude increases in new nuclear power from the baseline against which the standard is measured. Sen. Sam Brownback (R-KS) was the only Republican to support the RES. Some environmental groups criticized the measure as failing to increase renewable energy production beyond what will be required by state RES's and developed through business as usual. With only one major amendment still to consider, the Committee is expected to finish work on this subject and move on to oil and gas issues this week.

The Committee also considered building energy efficiency provisions, including measures: to provide additional funding for efficiency improvements in historic buildings; provide incentives and grant programs to improve efficiency in multi-family units, manufactured housing, and homes; and require states to certify revamped building codes to attain a 30% energy savings improvement by 2010 relative to 2006 standards and a 50% improvement by 2016 or later if the Energy Secretary determines the goal cannot be met by that date.

In addition, Sen. Bingaman circulated draft proposals on oil and gas development, energy markets, and renewable energy projects on public lands that he intends to roll into the comprehensive energy bill. The renewable energy proposal would streamline the federal permitting of renewable projects and the environmental analysis required to alter federal land-use plans to enable the projects to go forward. The bill would require the Interior Department to complete a programmatic environmental impact assessment of a program to develop solar power on Bureau of Land Management land within a year, and the Forest Service would have 18 months to complete parallel analyses of solar and wind project development on national forest lands. The agencies are directed to amend land-use plans as necessary to enable renewable energy development.

- **Committee Passes Climate Service Bill.** Legislation to create a national climate service, similar to the National Weather Service, was reported out of the House Committee on Science and Technology on June 3rd. H.R. 2407 would create a "Climate Service Office" at the National Oceanic and Atmospheric Administration, but directs the White House Office of Science and Technology Policy to "evaluate alternative structures to support a collaborative, interagency" climate service. The bill could be considered as stand-alone legislation or attached to the ACES.
- **Agriculture Committee Releases Climate Questionnaire Responses.** The House Agriculture Committee has released responses to a questionnaire sent to over 400 organizations connected to

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agriculture and forestry to gather opinions on legislative options for addressing climate change. Most of the responses argued against direct regulation of emissions from farms and forests, and for the inclusion of agriculture and forestry offset projects – projects to reduce emissions in uncapped sectors. The American Farm Bureau, the National Cattlemen’s Beef Association, and the National Farmers Union all advocated a cap-and-trade program over other policy design options such as a carbon tax or command-and-control regulation. Republican Committee members have circulated twelve letters expressing opposition to the ACES legislation representing 23 agricultural groups. The groups expressed disappointment that agricultural offset projects were not specifically mentioned in the legislation, which delegates eligible offset project type designation authority to EPA. The Committee is holding a hearing on the ACES bill on June 11th.

States and Cities

- **California Assembly Sends Bill Limiting Offsets to State Senate.** The California Assembly passed a bill that would limit the use of offsets under the state’s future cap-and-trade program. The bill would limit the use of offsets to ten percent of a covered entity’s compliance obligation. The offset restrictions would overrule the California Air Resources Board’s proposed offset limit of 49 percent (which limit also is supported by the Western Climate Initiative). The bill now heads to the state Senate.
- **Tennessee Senate Passes Resolution Opposing Federal Cap-and-Trade Program.** The Tennessee state Senate approved a resolution declaring that a federal cap-and-trade program would be harmful for both Tennessee and the nation as a whole. The resolution argued that an emission trading program would be an indirect tax that would disproportionately affect electricity consumers in the Southeast, where a higher percent of electricity comes from fossil fuels.

Industry

- **Agricultural Interests Outline Conditions for Support for ACES.** In a letter to House Speaker Nancy Pelosi (D-CA) and Majority Leader Steny Hoyer (D-MD), several major organizations representing farmers and agricultural concerns reaffirmed their opposition to the American Climate and Energy Security Act of 2009 (ACES). Organizations joining the letter included the National Farmers Union, the National Corn Growers Association, American Farmland Trust, National Association of Wheat Growers, National Milk Producers Federation, and the International Biochar Initiative. The signatories indicated they would change their position if ACES were amended to address seven key policy priorities, including: removing quantitative limits on the use of domestic offset credits for compliance; placing the administration of agriculture and forestry offset programs within the Department of Agriculture, rather than EPA; and allowing sponsors of agricultural offset projects to simultaneously benefit from other existing and future environmental payment programs.
- **Forest Offset Advocates Appear Before Congress.** Representatives of the Nature Conservancy, Forecon, and other organizations appeared before the House Committee on Agriculture to testify in favor of a more defined role for forestry-related offset projects in the ACES bill. Forecon’s Matthew Smith encouraged the House to allow greater recognition of

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offset credits that have already been issued to existing projects, and emphasized the need to allow certification of afforestation, reforestation, forest management and harvested wood products projects. The National Association of State Foresters called for the bill's renewable electricity standard to include a broader definition of renewable biomass, such as the definition included in the 2008 Farm Bill.

- **Global Recession Poses Challenges for Clean Energy Investment.** According to an annual report commissioned by the United Nations Environment Programme, the renewable energy and energy efficiency industries witnessed a steep 53% decline in new investments in the first quarter of 2009 relative to the same period last year. Clean energy companies also experienced a worse-than-average 61% fall in stock prices in 2008, amidst an even sharper decline in proceeds from initial public offerings of new clean energy companies. However, total 2008 investment in the clean energy sector – including government research spending and private investment in large-scale hydropower projects – actually increased 5% over 2007, to \$155 billion. Indeed, investments in new renewable power generation exceeded fossil fuel investment for the first time, by a margin of \$30 billion. The report is available at: <http://sefi.unep.org/english/globaltrends2009.html>.

Studies and Reports

- **RFF Analysis Unflattering to ACES Allowance Distribution.** An analysis by the think tank Resources for the Future (RFF) indicates that the free distribution of emission allowances to electric local distribution companies (LDCs) would greatly increase the overall cost of the program and provide lower benefits to low-income households relative to auctioning allowances and rebating the funds directly to the public. RFF found that allocating allowances to electricity distribution companies reduced electricity prices, thereby increasing electricity usage and related emissions and increasing the need for relatively expensive emission reductions in other sectors. Although the ACES legislation allocates allowances to LDCs, it prohibits LDCs from using allowance value to provide ratepayers with a rebate based solely on the quantity of electricity purchased, and provides that any rebates should be connected to the fixed portion of ratepayers' bills. This appears to be an attempt to avoid the results highlighted in the RFF study by giving ratepayers the value of allowances while retaining an incentive to reduce electricity usage. The analysis is available at http://www.rff.org/wv/Documents/Regions_Household%20Incidence_LBA%20090519.pdf.
- **REDD Could Backfire, Report Warns.** Research conducted by the International Institute for Environment and Development, the World Resources Institute, and the Center for International Forestry Research indicates that efforts to reduce greenhouse gas emissions by reducing tropical deforestation (Reducing Emissions from Deforestation and Forest Degradation, or REDD) could fail unless developing countries govern the programs effectively, educate local populations, and ensure that payments for forest protection and enhancement are not monopolized by a small number of power brokers. The report cites the lack of secure land rights, ineffective and inequitable governance, and the need for valid baselines against which to measure progress as problems that threaten the success of REDD efforts. The report is available at <http://www.iied.org/pubs/pdfs/13555IIED.pdf>.

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- **Academies Warn Public, Political Leadership on Ocean Acidification.** A network of 70 national science academies, including the U.S. National Academy of Sciences, issued a statement via the Interacademy Panel on International Issues warning that global greenhouse gas emissions must be cut by at least 50% by 2050 to avoid sharp declines in marine food supplies and the collapse of coral reef and polar ocean ecosystems. The scientific academies have concluded that ocean acidification caused by the increased absorption of CO₂ will have serious implications for food production and security for communities that are dependent upon fish protein. Over the past 200 years, the world's oceans have absorbed approximately 25% of anthropogenic CO₂. Dissolved CO₂ forms carbonate acid, which dissociates and releases hydrogen ions into the water. Hydrogen ions combine with carbonate ions, producing bicarbonate and reducing the carbonate ion availability. Carbonate ions are needed by many marine organisms to produce skeletons, shells, and other hard structures. Acidification will also make waters in polar regions corrosive for clams and other organisms. These effects, the scientists warn, will severely disrupt the base of the oceanic food chain. The statement is available at http://www.interacademies.net/Object.File/Master/9/075/Statement_RS1579_IAP_05.09final2.pdf.

International

- **Climate Negotiators Commence Talks in Bonn, Germany.** Negotiators from 191 countries met in Bonn, Germany to begin 12 days of climate negotiations. The negotiators are meeting for the 30th session of the U.N. Framework Convention on Climate Change (UNFCCC) Subsidiary Bodies. The purpose of the negotiations is to refine the draft treaty text for a successor treaty to the Kyoto Protocol to the UNFCCC.
- **UN Resolution Calls for Focus on Security Impacts of Climate Change.** The United Nations General Assembly passed a resolution seeking to focus attention on the security risks associated with a changing global climate. The resolution expresses the General Assembly's concern for the security impacts of climate change and calls for U.N. bodies to intensify their efforts to address the possible security implications of climate change. The resolution was described as an important first step in addressing climate change security issues.
- **U.N. Business Summit Issues Declaration Calling for Global Emission Targets.** The United Nations-sponsored "World Business Summit on Climate Change", a summit for global business leaders held in Copenhagen, Denmark, concluded with participants approving a declaration that calls for global emission targets. The declaration, which was not signed by individual participants of the summit, supports an emission reduction target of 50 percent by 2050.

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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