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## Climate Change Policy Update Week of July 27-31, 2009

*Commentary: This week's U.S.-China bilateral talks appeared to make incremental progress. It was difficult to discern any early evidence of a Copenhagen breakthrough . . . Will EPA be proposing GHG regulations using its Clean Air Act authorities this Fall? . . . The Brookings Institution issued a report on the need for a price collar in the Senate cap-and-trade program. The Bipartisan Policy Council recently made a similar recommendation. The issue will be getting greater attention in the Senate than it did in the House. The ACES bill incorporated a price collar concept in the form of the "strategic allowance reserve." However, the design of the reserve made it exclusively a remedy for short-term volatility; it would not be effective for addressing persistent, higher-than-expected costs.*

### Executive Branch

- **U.S., China Hold Bilateral Climate Talks, Sign MOU.** During a summit held July 27-28 in Washington, D.C., top officials from the United States and Chinese governments signed a Memorandum of Understanding (MOU) in which the world's two largest emitters of greenhouse gases (GHGs) agreed to "strengthen and coordinate our respective efforts to combat global climate change, promote clean and efficient energy, protect the environment and natural resources, and support environmentally sustainable and low-carbon economic growth." The MOU enhances an existing U.S.-China partnership to develop a joint Clean Energy Research Center that will facilitate bilateral efforts in the areas of building efficiency, carbon capture and sequestration and clean vehicles. However, the MOU did not include details on key outstanding issues, including emission reduction commitments and the level of financing by developed nations for helping developing countries to adapt to and mitigate the effects of climate change. The U.S. wants China to commit to concrete targets. The Chinese have pressed the U.S. to cut its emissions up to 40 percent from 1990 levels by 2020. The current climate change legislation before Congress calls for U.S. reductions of 17 percent from 2005 levels by 2020.
- **Draft of Executive Order Calls for Federal Government to Cut Emissions 20 Percent by 2020.** The Obama Administration circulated a draft executive order among various federal agencies that would set a goal for those agencies to reduce greenhouse gas emissions by 20 percent by 2020. The baseline year against which emission reductions would be measured is not clear. This target is more aggressive than the economy-wide target in the House-passed Waxman-Markey bill, which requires a 17 percent cut by 2020.
- **Non-Profit Files Petition Asking EPA to Establish Cap-and-Trade System.** The Institute for Policy Integrity, a non-profit advocacy group at the New York University School of Law, filed a petition for rulemaking with the Environmental Protection Agency (EPA) seeking to have the agency "propose and adopt regulations instituting a cap-and-trade system to control emissions of greenhouse gases from fuels used in motor vehicles, nonroad vehicles, and aircraft, and to begin

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](mailto:kwd@vnf.com)

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this process immediately.” The petition is available at:

[http://www.eenews.net/public/25/11954/features/documents/2009/07/29/document\\_gw\\_01.pdf](http://www.eenews.net/public/25/11954/features/documents/2009/07/29/document_gw_01.pdf)

- **Update on Administration Nominations and Appointments.**
  - President Obama nominated SueDeen Kelly for a third term as a Commissioner of the Federal Energy Regulatory Commission. Commissioner Kelly has served on FERC since 2003.
  - The Foreign Relations Committee confirmed the nomination of Kerri-Ann Jones as Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs.
  - The Senate confirmed Polly Trottenberg as Assistant Secretary for Transportation Policy in the Department of Transportation. Trottenberg, who served a total of twelve years on Capitol Hill as Deputy Chief of Staff and Legislative Director for Sen. Barbara Boxer (D-CA), Legislative Director for Sen. Chuck Schumer (D-NY), and Legislative Assistant to the late Sen. Daniel Patrick Moynihan (D-NY), will lead DOT’s Office of Transportation Policy, which is responsible for recommending overall surface transportation policy initiatives to Secretary Ray LaHood, as well as reviewing proposed rulemakings in that area, such as corporate average fuel economy (CAFE) standards.
  - The Senate confirmed Richard Newell as Administrator of the Energy Information Administration (EIA) at the Department of Energy. Newell will lead the analytical work of the EIA, which is relied upon by Congress and the private sector for information about energy, the economy and projected impacts on energy supplies, prices, production and the development of alternatives to conventional energy supplies among other matters.

## Congress

- **Senators Kerry and Boxer Publish Op-Ed Supporting Climate Change Legislation.** Senators John Kerry (D-MA) and Barbara Boxer (D-CA) authored an op-ed in *The Washington Post* responding to former Alaska Governor Sarah Palin’s claims in an earlier op-ed that climate change legislation will lead to job losses. Sens. Kerry and Boxer cite a report by the Center for American Progress that the climate change legislation could provide up to 1.7 million new jobs in the United States. The Senators also emphasized that the legislation will improve national security by reducing dependence on foreign oil. Both Sen. Kerry, as Chairman of the Foreign Relations Committee, and Sen. Boxer, as Chairman of the Environment and Public Works Committee, are expected to draft major portions of the Senate climate bill.
- **Congress Continues Climate Hearings.** House and Senate committees continue to explore aspects of climate legislation and climate change impacts.
  - **Senate Holds Hearing on National Security Threats Caused by Climate Change.** The Environment and Public Works Committee held a hearing on climate change and national security on July 30th. Witnesses included former Republican Senator John Warner of Virginia and representatives from the Center for Naval Analyses,

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the Truman National Security Project, and the Foundation for Defense of Democracies. Former Senator Warner testified that, without a climate change bill, the United States will continue to experience climate-induced migration and other threats to national security, including continued reliance on foreign oil. Warner urged the Senate Armed Services Committee to compile information on climate change and national security and make a recommendation to the Senate leadership on the pending legislation.

- **House Holds Hearing on Intellectual Property Protections for New Energy Technologies.** The House Select Committee on Energy Independence and Global Warming heard testimony urging protections for U.S. companies that develop clean-energy technologies. Small business owners and others advocated for intellectual property provisions to be incorporated into the climate change legislation. The issue of international, intellectual property protections is expected to be a major source of contention during U.N. climate change negotiations. While developing countries are in need of new energy technologies, developed nations do not want to be forced to share their new technologies without certain patent protections.

## States and Cities

- **WCI Issues Offsets Whitepaper, Calls for Stakeholder Feedback.** The Western Climate Initiative released a white paper analyzing possible design options for the use of offset credits in the regional emissions trading program. A major point of focus in the paper is the concept of additionality, which requires that offset credits only be issued to projects would not have occurred without the revenue generated from the sale of the associated carbon credits. The whitepaper outlines four options for determining additionality: a project specific approach, a performance standard, a protocol-specific approach, and a hybrid approach. The whitepaper is available at: [http://www.westernclimateinitiative.org/components/com\\_publiccomments/documents/WCI-Offset\\_Definition\\_and\\_Criteria\\_072409.pdf](http://www.westernclimateinitiative.org/components/com_publiccomments/documents/WCI-Offset_Definition_and_Criteria_072409.pdf).

## Industry

- **AEP Official States That CCS Will Be In Widespread Use by 2020.** At a hearing of the House Select Committee on Energy Independence and Global Warming, an engineering official at American Electric Power (AEP) expressed optimism that widespread commercial deployment of carbon capture and sequestration (CCS) technology would arrive by 2020. The official, Gary Spitznogle, cautioned that the commercialization of CCS was contingent on resolving key legal and financial uncertainties, including permitting and monitoring procedures for saline reservoirs where GHGs would be stored; standards for long-term stewardship of sequestration sites; and the availability of long-term insurance to manage liability associated with sequestration sites. Witnesses from SCS Energy and Calera Corp. testified at the same hearing on the advantages of alternative methods of CCS, including sequestration under the ocean floor and incorporation of captured CO<sub>2</sub> into building materials. These witnesses argued that federal spending on CCS research and development currently favors geologic sequestration, and that these alternative technologies should be placed on an “equal playing field.”

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## Studies and Reports

- **Brookings Report Advocates Price Collar.** The Brookings Institution released a report analyzing alternative U.S. cap-and-trade programs and cost containment measures. The report found that policy scenarios that would meet the Obama Administration and the Waxman-Markey discussion draft's emission reduction targets would have only modest effects on U.S. economic growth. The researchers also concluded that imposing a price ceiling or price "collar" (a floor and a ceiling) on emission allowance prices would protect against severe cost impacts without "unduly compromising" emission reductions. The report is available at [http://www.brookings.edu/reports/2009/07\\_cap\\_and\\_trade.aspx](http://www.brookings.edu/reports/2009/07_cap_and_trade.aspx).
- **Report Analyzes Allowance Allocation.** The World Resources Institute and the Georgetown State-Federal Climate Resource Center released a new analysis of allowance allocation under the Waxman-Markey bill. The report found that high population states receive more allowances, but that carbon intensive and low population states receive more allowances per capita. Alaska, Wyoming, North Dakota, Vermont, and the District of Columbia would all receive more than 4 allowances per person in 2016 under the Waxman-Markey bill. The report is available at <http://www.law.georgetown.edu/gcc/>.

*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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