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Climate Change Policy Update Week of March 31 - April 4, 2008

Commentary: *Twelve states have asked the D.C. Circuit Court of Appeals to force EPA to take action on GHG emissions, while a House of Representatives committee has subpoenaed documents from the agency with the aim of showing that EPA made the necessary findings some time ago . . . Three subcommittees of the Western Climate Initiative issued reports on design of the region's cap-and-trade program, but the reports reveal just how far the organizational effort still has to go to reach detailed decisions . . . Former Vice-President Al Gore is launching a major media campaign to build public support for a US effort to regulate GHG emissions . . . Bangkok hosted an official negotiating session in the effort to achieve the Bali Action Plan's goal of reaching a new, long-term global GHG agreement by the end of 2009.*

Congress

- **Senators Cantwell (D-WA) and Ensign (R-NV) Introduce “Clean Energy Tax Stimulus Act of 2008.”** The legislation would extend energy and efficiency tax credits, but the bill does not include any plan to offset the increased tax credits. Total incentives in the bill are \$6 billion, which includes the cost of an eight-year extension of the solar power investment tax credit, a one-year extension of the wind power investment credit and tax credits for energy efficient buildings and appliances. House-passed legislation has stalled in the Senate because the bill revoked tax breaks for oil companies in order to offset the costs of extending the renewable energy tax credits in the House bill.
- **Sen. Lieberman Suggests Senate Near 60 Votes For Climate Legislation.** Senator Joe Lieberman (D-CT), co-author of the Lieberman-Warner Climate Security Act (Lieberman-Warner), told participants at a climate change conference that nearly 60 senators support the climate change legislation. Under Senate rules, 60 senators are required to bring the bill before the Senate for a vote. Sen. Lieberman noted that 45 senators strongly support the bill, while another 15 are leaning toward supporting the bill and would support it with minor changes. The Senator stated that only 20 senators would oppose the bill even with amendments and estimated that the chances of the bill passing both the House and Senate by the end of this year are slightly better than fifty percent. Senate Majority Leader Harry Reid (D-NV) has approved bringing the bill to the Senate floor for a vote during the week of June 2-6. As currently drafted, the Lieberman-Warner bill would establish a mandatory cap-and-trade program in the United States with the goal of reducing GHG emissions to 70 below 2005 levels by 2050.
- **Congressional Committee Orders EPA to Submit Documents.** The House Select Committee on Energy Independence and Global Warming voted to subpoena documents from EPA. These documents are related to the Agency's work to comply with the Supreme Court ruling that required the EPA to determine if greenhouse gas emissions (GHGs) pose a threat to public health

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and the environment. (For more information on action to compel EPA to issue a proposal on GHG emission, see **States and Cities** below.)

- **Senate Staff Hears Briefing on Clean Development Mechanism.** Staff for several Senate offices held a briefing on the Clean Development Mechanism (CDM) with the aim of improving staff's understanding of how the CDM works and what role CDM credits could play in a US cap-and-trade program. Under the current language of the Lieberman-Warner bill, CDM credits from developing countries cannot be used for compliance; international allowances are limited to those from countries with nationwide emission caps. A recent EPA analysis of the bill under various scenarios suggests that the cost containment benefits of allowing use of at least some CDM credits could reduce allowance prices substantially. The briefing included presentations from Kyle Danish of Van Ness Feldman (counsel to the Coalition for Emission Reduction Projects), Jessica Orrego of EcoSecurities, and Derik Broekhoff of the World Resources Institute. Issues addressed included the rigors of the CDM project approval process works, the current concentration of CDM projects in Southeast Asian countries, and the cost containment benefits of CDM projects.

States and Cities

- **States Sue EPA Over Delay in Supreme Court-Mandated Determination on “Endangerment.”** Twelve states filed suit in the United States Court of Appeals for the District of Columbia Circuit to force the Environmental Protection Agency (EPA) to issue a decision on whether CO₂ emissions endanger the public health or welfare. The lawsuit comes one year after the Supreme Court ruled in *Massachusetts v. EPA* that EPA has authority under the Clean Air Act to regulate CO₂ emissions. As part of that decision, the Supreme Court required the Agency to either issue a determination on whether CO₂ emissions endanger public health or to provide a justifiable reason for not making such a determination. An “endangerment finding” would trigger obligations for EPA to regulate CO₂ emissions from a variety of different sources. The states are asking for the D.C. Circuit to issue an order requiring EPA to publish its decision on the endangerment issue within 60 days. Also joining the suit were the District of Columbia, two cities and eleven environmental groups.
- **Western Climate Initiative Subcommittees Issue Recommendations on Allowance Allocations, Offsets.** Under the Western Climate Initiative (WCI), seven states and two Canadian provinces have committed to developing the rules for a regional cap-and-trade program by August of this year. A WCI subcommittee on allowance allocations issued a report recommending that states be given flexibility in determining how to allocate their allowances, provided that each state should auction between 25% and 75% of its allowances through a coordinated regional auction. The WCI offsets subcommittee issued a report that did not reach a very detailed level, but indicated that the program should allow use of offsets up to an unspecified limit. It also suggested that offsets from Canada and Mexico might be authorized, and even offsets from other non-WCI jurisdictions, so long as they meet comparable environmental standards. The recommendations emphasized, however, that there would be a preference for offsets from WCI jurisdictions. A third subcommittee issued a report on measuring emissions from different sectors. All three subcommittees indicated that they would continue their work.

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- **Kentucky PSC Report Recommends Requiring Utilities to Consider Cost of Carbon in Planning Decisions.** A report prepared for the Kentucky Public Service Commission (PSC) recommended that the state require utilities to consider the financial impacts of future GHG regulations when making planning decisions. The report recommended that utilities include “best available estimates” of expected GHG allowance prices when making decisions related to their future energy portfolio. Under state energy legislation passed last year, the Kentucky PSC is currently holding hearings on energy efficiency and energy resource diversification policies, and will provide policy recommendations on those issues to the state legislature by July 1.
- **California GHG Reduction Agreements May Offer Insight On Pending CEQA Guideline Revisions.** GHG reduction agreements that California is entering into with new ethanol plant developers and with oil refineries in the process of expansion may help define the scope of future GHG regulations. The agreements precede new legislatively-required revisions to guidelines under the California Environmental Quality Act (CEQA) and could affect the new guidelines’ requirements for how new facilities assess and mitigate their GHG emissions. Several of the most contested issues under the new guidelines, which will be promulgated by the California Governor’s Office of Planning & Research in 2010, are how GHG emissions are determined to be significant and to what degree emissions must be mitigated.
- **Proposal Would Implement Climate Change Fee in Los Angeles County.** California Assemblyman Mike Feuer (D) proposed legislation that would charge Los Angeles County residents either an additional 9 cents per gallon of gas or \$90 dollars on their vehicle registration to reduce CO₂ emissions. The legislation, called the “Climate Change Mitigation and Adaptation Fee,” is intended to fund mass transit improvements, relieve congestion, and reduce GHG emissions from the transportation sector. The fee was endorsed by the Los Angeles County Metropolitan Transportation Board and is before the state legislature for consideration.
- **Maryland Senate Fails to Pass Legislation Allocating RGGI Allowance Auction Proceeds.** The Maryland Senate rejected legislation that would have apportioned revenues from the state’s auction of RGGI allowances. The bill would have allocated auction revenues to programs promoting renewable energy and conservation and programs providing rebates for electricity ratepayers. The Maryland House of Delegates is expected to consider similar legislation soon. The Maryland Senate and House have until April 7, the final day of the General Assembly session, to pass legislation allocating auction revenues. If no bill is passed by then, Maryland will still be able to conduct a RGGI auction in September, but the revenues would be unallocated.

Industry

- **Voluntary GHG Emission Registry Releases Final Reporting Protocol.** The Climate Registry, which counts 39 U.S. states as well as several Canadian provinces and Mexican states as members, released the final version of its General Reporting Protocol. The protocol “is designed to support the complete, transparent, and accurate submission of a [Registry member’s] GHG emissions inventory in a fashion that minimizes the reporting burden and maximizes the benefits of reporting GHG emission inventories annually.” The registry is scheduled to begin accepting GHG emissions data in July of this year.

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- **New Strategic Research Alliance for Biofuels Initiated.** ConocoPhillips announced that it is joining with the Department of Energy's National Renewable Energy Laboratory and Iowa State University to research conversion technologies for making liquid transportation fuels from non-food plants. A press release announcing the effort notes that "the processes that will be examined in this collaboration include gasification, pyrolysis and fermentation."

Non-Governmental Organizations

- **Former Vice President Al Gore Launches Media Campaign for Climate Change.** Al Gore announced plans for a \$300 million year-long media campaign to spur Americans to seek changes in policy and the law to address climate change. The campaign is being managed by Mr. Gore's Alliance for Climate Protection, and will use traditional and new media outlets. The campaign's aim is to build support for having the U.S. establish a cap on GHG emissions and ratify a new global climate change agreement.

Studies and Reports

- **International Monetary Fund Report Finds Small Tradeoff in Economic Growth to Address Climate Change.** The International Monetary Fund (IMF) released its semi-annual *World Economic Outlook* which included a chapter on climate change and the global economy. The report concludes that "climate change can be addressed without imposing heavy damages either on the global economy or on individual countries." The report highlights the risks of inaction on climate change, and finds that the prices of GHG stabilization can be moderate, provided that several carbon pricing policies are followed:
 - long-term, credible carbon pricing;
 - inclusive pricing that induces all world economies to participate;
 - seeking a common world price for emissions;
 - flexible pricing to accommodate business cycles; and
 - equitable distribution of mitigation costs.The report is available at <http://www.imf.org/external/pubs/ft/weo/2008/01/index.htm>.

- **Brookings Hosts Session on Climate and Global Security.** The link between climate change issues was explored by a number of speakers at a session hosted by the Brookings Institution. The session was led by the introduction of an interdisciplinary study sponsored by the German government titled "Climate Change as a Security Risk". Using social science methodologies and other analytical tools, the study labeled China and India as potential climate "hot spots" because they face the likelihood of climate impacts including food and water shortages, severe weather and migration driven by climate impacts. The report further warned that climate change will result in weak and unstable governments, raising the risk of countries being unable to adequately respond to security challenges as well as adaptation. The study and executive summary are available at www.wbgu.de.

International

- **Bangkok Talks Aim to Set Goals for Post-Kyoto Treaty Process.** Faced with a short time frame before the expiration of the Kyoto Protocol, climate negotiators met in Bangkok, Thailand

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this week to continue negotiations toward a post-Kyoto climate treaty. Officially called the Ad-Hoc Working Group on Long-Term Cooperative Action under the U.N. Framework Convention on Climate Change, the talks were the first significant climate change negotiations since the Thirteenth Conference of the Parties in Bali, Indonesia in December. The Bangkok talks included representatives from over 150 countries and focused on setting future goals for the negotiation process with the aim of reaching a final agreement by the end of 2009. The negotiations addressed such issues as the definitions of key terms that will establish the scope of the post-Kyoto treaty and issues related to the funding of GHG emissions reductions, especially in the developing world. At the talks, the United States issued a proposal to facilitate and recognize international climate change efforts that occur outside the U.N. framework through domestic, bilateral and multilateral activities. The outcome of the Bangkok talks appears to have been a draft agenda for next year's Conference of the Parties in Denmark.

- **UK, France Sign Joint Declaration Pledging Climate Cooperation.** The agreement, signed by British Prime Minister Gordon Brown and French President Nicolas Sarkozy, focuses on efforts to promote the integration of climate issues into developing economies and the goal of creating a low carbon economy in Europe. In particular, the two countries will review existing financial mechanisms for ensuring environmental protection in the developing world, including the Global Environment Facility, the Clean Energy Investment Framework of the Multilateral Development Banks, and the Strategic Climate Fund; strengthen implementation of the Clean Development Mechanism in Africa and work with the African Union and the Desertification Commission to analyze the security impacts of climate change on the continent; and promote carbon capture and storage (CCS) projects in China.
- **UK Targets US, Foreign Investors with Climate Initiatives.** In an effort to establish the UK as a leading market for the development of clean energy technologies, UK government officials met with US investors to promote current developments in the nation's regulatory framework. Among the initiatives touted were a pending energy bill, to be completed this year, and a climate change bill that would include three consecutive five-year carbon targets. The climate legislation would also create a committee tasked with tracking the nation's progress in meeting emissions targets and with advising the UK government on climate policy.
- **Australia Begins Operations on CCS Demonstration Project.** Using CO₂ from a natural gas well, Australia's CO₂ Cooperative Research Centre began pumping compressed CO₂ into a depleted natural gas reservoir. The project, an industry and government backed initiative, will pump 100,000 tons of CO₂ approximately 6,500 feet underground in an effort to determine the viability of using CCS at a larger scale. Project backers hope to eventually expand the project into a larger geosequestration plant capable of storing CO₂ from coal-fired power plants.
- **Russia Joins the International Transaction Log.** Russia joined Japan, New Zealand, and Switzerland as the fourth country to connect to the International Transaction Log (ITL), the carbon credit registry under the Kyoto Protocol. Having connected its domestic credit registry to the ITL, Russia must now wait for UN approval to begin trading on the platform. Due to its economic decline in the early 1990's that resulted in excess carbon credits, observers expect Russian to become largest source of carbon credits in the international market.

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- **Canadian Opposition Leaders Propose Domestic, International GHG Targets.** Canadian opposition leaders took action this week supporting emissions reduction targets at the domestic and international levels. Domestically, the New Democratic Party introduced a proposal, that subsequently was blocked by the Conservative government, that would have set a national target of a 20 percent reduction in GHG emissions from 1990 levels by 2020. The proposal was intended to replace the climate plan introduced last year by the Conservative government; the government plan aims to reduce Canadian emissions to 20 percent below *current* levels by 2020. Internationally, the opposition leaders pledged to support an international agreement that would cap Canadian GHG emissions at 25 percent below 1990 levels by 2020.
- **Japan Continues Multi-Pronged Efforts to Address Climate.** The Japanese government continued its recent efforts to address climate change on multiple fronts. Prime Minister Yasuo Fukua's Cabinet approved a program that will reduce domestic GHG emissions through a mix of international emission trading, voluntary industry and household measures, and possibly domestic emissions trading or an environmental tax. The program, which goes into effect April 1, will incorporate periodic reviews of each of the program elements. The Japan Bank for International Cooperation (JBIC) established a 20 billion yen (US \$196 million) Facility for Asia Cooperation and Environment (Facility) to promote investment in climate-related projects. The Facility will facilitate energy efficiency, renewable energy and forest conservation projects throughout Asia through direct investments and loan guarantees. Through a separate facility, the JBIC also committed to provide almost 10 billion yen (US \$100 million) to the government of Tunisia for a flood control project and a reforestation project aimed at helping the African country address the impacts of climate change. In addition, the Japanese Environment Ministry launched the Japan Carbon Offset Forum to promote carbon offset activities both domestically and abroad. Internationally, at negotiations in Bangkok, Thailand, Japan proposed that the post-Kyoto agreement under development include carbon credits for construction of nuclear power stations and CCS facilities.

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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