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ENERGY AND ENVIRONMENT UPDATE
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Energy and Climate Debate

With Congress back in full swing and the administration moving forward on numerous energy and environment initiatives, House and Senate committees are well into writing legislation and preparing hearings for the 113th Congress.

President Obama delivered the State of the Union address February 12, and in a heavily economics-focused speech, spent a considerable amount of time addressing energy and climate issues. Referencing revived congressional calls for a market-based approach to address climate change, the president vowed that the administration would move forward on its own if Congress does not act, and also proposed initiatives to support renewable and alternative energy programs such as making permanent tax incentives for solar and wind energy and doubling renewable energy generation by 2020. The president also proposed an Energy Efficiency Race to the Top program that would financially reward states that make efforts to improve energy productivity. The administration will request $200 million in the fiscal year 2014 budget for this program.

Representative Fred Upton (R-MI), chair of the House Energy and Commerce Committee, said February 13 that there may be areas of mutual agreement regarding congressional actions that would increase energy efficiency, hasten renewable energy production, and provide new funding for alternative vehicle research. Senators Ron Wyden (D-OR) and Lisa Murkowski (R-AK) have been working to identify modest, targeted issues that could receive bipartisan support both within the Senate Energy and Natural Resources Committee as well as Congress as a whole. Following the State of the Union address, Senator Murkowski said that she may agree with the president’s call for an Energy Security Trust fund, which would support advanced vehicle research; the proposal is similar to the Advanced Energy Trust Fund that Senator Murkowski outlined in her energy blueprint earlier this month. Other bipartisan efforts include one already underway by Senators Jeanne Shaheen (D-NH) and Rob Portman (R-OH), who are expected to soon reintroduce a version of their 112th Congress energy efficiency legislation (S. 1000), and a measure from Senators Murkowski and Mary Landrieu (D-LA) that would provide for revenue sharing for coastal states. Additionally, Senators Tom Carper (D-DE) and Susan Collins (R-ME) are expected to reintroduce an offshore wind investment tax credit the middle of next week.

Though it has not yet been formally noticed, the House Energy and Commerce Committee will hold a hearing February 26 on energy efficiency. Initially intended to focus on private sector efficiency, we anticipate that the Department of Energy will supply a witness as well, and notable senators are also rumored to attend. An energy service company may testify about energy savings performance contracts. One of the primary areas for potential bipartisan support on energy issues this Congress, the largest sticking point on energy efficiency is over a question of approach, with democrats interested in government components such as mandating energy efficiency standards and providing financial assistance for efficiency improvements, and republicans favoring market based models.

While the chances of Congress reaching a deal to avoid sequestration before the March 1 deadline are uncertain, Senate Democrats proposed February 14 a $110 billion plan, the American Family Economic

Protection Act, to delay for ten months the $1.2 trillion in automatic spending cuts for defense and domestic programs that are scheduled to begin under sequestration. Senate leaders will bring the measure to the floor when they return the week of February 25 after the President's Day recess. Democrats on the House Appropriations Committee released a report February 13 finding that the scheduled automatic 8.2 percent cut to discretionary spending would lead to enormous furloughs that would limit the federal government's ability to enforce environmental laws, clean up the nation's toxic sites, and approve energy development plans on federal lands and waters. The Senate Appropriations committee posted letters February 14 from various federal agencies detailing how the cuts would impact each agency's business.

Congress

Hydro Bill Passes
The House unanimously passed the Hydropower Regulatory Efficiency Act of 2013 (H.R. 267) February 13. The legislation would expand small hydropower projects by reducing the Federal Energy Regulatory Commission's licensing requirements for small-scale hydroelectric projects that are considered to have a low environmental impact. The Senate is expected soon to pass the measure. The House also passed legislation (H.R. 316) from Representative Elizabeth Esty (D-CT) that would allow Canton, Connecticut to operate two hydro dams on the Farmington River in order to generate power for the town. The measure now moves to the Senate, where Senator Chris Murphy, former House advocate of the issue, is expected to champion it.

House Majority Leader Advisor Announced
House Majority Leader Eric Cantor named Aaron Cutler as senior advisor for policy and outreach covering financial services, energy, and technology February 13. Prior to joining the office, Mr. Cutler was deputy policy director of the House Energy and Commerce Committee.

RIN Fraud Information Sought
The House Energy and Commerce Committee asked the Environmental Protection Agency February 7 to provide information on its renewable fuel credit verification plan and whether fraudulent renewable identification numbers have contributed to a price decline. The committee asked the agency to respond by February 22.

Adaptation Panel Urged
A group of 40 House members sent a letter to President Obama February 11 urging him to name a bipartisan, blue ribbon panel to create a national plan to help communities adapt to climate change impacts. The panel would examine the total federal expenditures on disasters and disaster recovery over the past five years, as well as the total amount of money communities need to develop and implement adaptation plans; it would deliver its results within six months and be made of public officials and others who have been a part of addressing the recent severe storms.

Tax Reform Groups Announced
Ways and Means Committee Chairman Dave Camp (R-MI) and Ranking Member Sandy Levin (D-MI) formed eleven Ways and Means Committee Tax Reform Working Groups February 13. Each group will be led by a Republican member serving as chair and a Democratic member serving as vice chair, and will be responsible for compiling feedback on its designated topic from stakeholders, academics and think tanks, practitioners, the general public, and House colleagues. The Joint Committee on Taxation will then prepare a report for the full committee by April 15. The energy group will be led by Representatives Kevin Brady (R-TX) and Mike Thompson (D-CA).

ENR Natural Gas Hearing
The Senate Energy and Natural Resources Committee held its first hearing under the new leadership of Senator Ron Wyden (D-OR) February 12, focusing on domestic natural gas development and its economic and environmental impacts. Senator Wyden said that he prefers limited federal fracking regulation, allowing the states to overlay additional regulations as needed for environmental protections, while Senator Murkowski argued for state fracking regulations rather than a federal program. Senator Wyden also expressed support for a strong chemical disclosure program, and outlined his opposition to hastening the export of liquefied natural gas. Senator Wyden and Ranking Member Lisa Murkowski (R-AK) plan to work together on bipartisan legislation on the issue as needed.

Climate Science Briefing
The Senate Environment and Public Works Committee held a briefing February 13 on climate science to which all senators were invited to hear from four climate scientists. During the briefing, Senator Barbara Boxer (D-CA), chair of the committee, promised to move broad climate change legislation through her

committee in the months ahead, but admitted that it will likely be a difficult battle in the committee and Congress as a whole, given Republican opposition. A handful of Democratic senators and House Energy and Commerce Ranking Member Henry Waxman (D-CA) asked questions, but no Republicans attended.

Climate Hearings Denied
House Energy and Commerce Committee Republicans rejected a final attempt February 12 by Democrats to hold climate change science hearings in the 113th Congress. Committee Republicans defeated two amendments, including one from Representative Henry Waxman (D-CA) that called for hearings to examine recent reports suggesting that the window for addressing climate change is swiftly closing, and another from Representative Jan Schakowsky (D-IL) that called for hearings to include witnesses from the National Academies to examine evidence that the Earth's climate is changing, that the changes are caused by human activities, and that rising temperatures pose significant risk to public health and the environment.

House Climate Caucus
Twenty-two House Democrats, led by Representative Henry Waxman (D-CA), formed the Safe Climate Caucus February 15. One member of the caucus will speak on the House floor about climate change every day that the chamber is in session.

Legislation Introduced
Representative Earl Blumenauer (D-OR) introduced legislation (H.R. 609) February 12 to amend the Internal Revenue Code of 1986 to repeal fossil fuel subsidies for large oil companies.

The same day, Representative Ted Poe (R-TX) introduced legislation (H.R. 621) to prohibit funding for the Environmental Protection Agency to be used to implement or enforce a cap and trade program for GHGs.

Senator John Barrasso (R-WY) introduced legislation (S. 306) February 13 to authorize all Bureau of Reclamation conduit facilities for hydropower development under Federal Reclamation law.

The same day, Senator Bob Menendez (D-NJ) introduced legislation (S. 307) to reduce the federal budget deficit by repealing tax incentives for the five biggest oil companies operating in the country – BP, Chevron, ConocoPhillips, Exxon Mobil, and Shell.

Senator Mike Johanns (R-NE) introduced legislation (S. 317) to require the inspector general of the Environmental Protection Agency to report to Congress twice a year on the agency's progress toward meeting regulatory reporting requirements, a measure (S. 318) to rescind weekly funds made available to the Environmental Protection Agency if the administrator fails to meet legal deadlines for regulatory agenda-setting, a bill (S. 319) to require the Environmental Protection Agency administrator to provide adequate data, modeling, and support in the development of a state implementation plan under the Clean Air Act, and legislation (S. 320) to make agency guidance documents subject to congressional review.

The same day, Representative Blaine Luetkemeyer (R-MO) introduced legislation (H.R. 662) to prohibit United States contributions to the Intergovernmental Panel on Climate Change and the United Nations Framework Convention on Climate Change.

Senator Bernie Sanders (I-VT) introduced the Sustainable Energy Act (S. 329) February 14 to eliminate $110 billion in fossil fuel subsidies over ten years, end royalty relief for deepwater drilling, abolish Department of Energy funding for fossil fuel research and development, eliminate tax deductions for oil spill clean up, extend through 2020 a production tax credit and investment tax credit for renewable energy projects, and extend for five years that Section 48C advanced energy manufacturing tax credit. The legislation is similar to the End Polluter Welfare Act (S. 3080) of the 112th Congress, which never made it out of the Senate Finance Committee.

The same day, Senators Sanders and Barbara Boxer (D-CA) introduced legislation (S. 332) to address climate disruptions, reduce carbon pollution, enhance clean energy use, and promote domestic infrastructure resilience. Covering 85 percent of domestic GHG emissions by targeting only domestic fossil fuel producers via an upstream approach, the Climate Protection Act would put a price on carbon -- $20/MT in the first calendar year after the bill is signed into law, and rising 5.6 percent/year over the next decade – and rebate 60 percent of the revenue to U.S. citizens, with the remainder going toward home weatherization, tripling ARPA-E's budget, creating a Sustainable Technologies Finance Program, investing in domestic manufacturing, and providing worker training programs; the bill would also allow the Environmental Protection Agency to regulate fracking under the Safe Drinking Water Act, using Senator Bob Casey's (D-PA) FRAC Act language.

Senator Claire McCaskill (D-MO) introduced legislation (S. 334) to terminate agricultural direct payments beginning with the 2013 crop year.

Senator Jeff Merkley (D-OR) introduced legislation (S. 335) to provide financing assistance for qualified water infrastructure projects.

Senator John McCain (R-AZ) introduced legislation (S. 339) to facilitate to efficient extraction of mineral resources in southeast Arizona by authorizing and directing an exchange of federal and non-federal land. Representative Paul Gosar (R-AZ) introduced companion legislation (H.R. 687) the same day.

Senator Roger Wicker (R-MS) introduced legislation (S. 344) to prohibit the Environmental Protection Agency administrator from approving the introduction into commerce of gasoline that contains greater than 10-volume-percent ethanol.

Senator Jon Tester (D-MT) introduced legislation (S. 362) to promote the mapping and development of domestic geothermal resources by establishing a direct loan program for high risk geothermal exploration wells, and to amend the Energy Independence and Security Act of 2007 to improve geothermal energy technology and demonstrate the use of geothermal energy in large scale thermal applications.

Senator Ron Wyden (D-OR) led a bipartisan group in introducing legislation (S. 363) to expand geothermal production.

Representative Bob Latta (R-OH) introduced legislation (H.R. 724) to amend the Clean Air Act to remove the requirement for dealer certification of new light-duty vehicles.

Representative Lois Capps (D-CA) introduced legislation (H.R. 764) February 15 to amend the Coastal Zone Management Act of 1972 to require the Secretary of Commerce to establish a coastal climate change adaptation planning and response program, and a measure (H.R. 765) to authorize the Environmental Protection Agency to establish a program awarding grants to owners or operators of water systems to increase resiliency or adaptability of the systems to any ongoing or forecasted changes to the country's hydrologic conditions.

Representative Jeff Duncan (R-SC) introduced legislation (H.R. 771) to establish requirements for oil and gas leasing in the Outer Continental Shelf off the coast of South Carolina.

Representative Ed Markey (D-MA) introduced legislation (H.R. 785) to prevent excessive energy commodity speculation.

Representatives Ed Markey (D-MA) and Earl Blumenauer (D-OR) introduced legislation (H.R. 786) to amend the Internal Revenue Code of 1986 to clarify that tar sands are crude oil for purposes of the federal excise tax on petroleum.

Representative Tim Murphy (R-PA) introduced legislation (H.R. 787) to enhance America's path toward energy independence and economic and national security and rebuild the country's aging infrastructure.

Representative James Sensenbrenner (R-WI) introduced legislation (H.R. 796) to limit the Environmental Protection Agency's authority to set cellulosic ethanol requirements under the renewable fuel standard. The measure would prohibit the agency from increasing the annual cellulosic biofuel requirement by greater of 5 percent or 1 million gallons.

Department of Defense

<u>Green Building Standards</u>
The National Research Council stated February 15 that the Department of Defense should maintain rules requiring new military construction and major renovations to achieve at least a silver certification under the Leadership in Energy and Environmental Design green building standard. The General Services Administration is considering whether federal agencies continue to use the LEED program, move to another third-party program or combination of programs, or forgo the use of any program.

Department of Energy

<u>Lighting Winners Announced</u>
The Department of Energy announced the four winners of the fifth annual Next Generation Luminaires Design Competition for outdoor living February 14. The agency, the Illuminating Engineering Society of

North America, and the International Association of Lighting Designers launched the competition in 2008 to promote excellence in the design of energy efficient light emitting diode commercial lighting fixtures.

$1 Million for Hydrogen Fuel
The Department of Energy announced a $1 million investment February 14 to analyze and evaluate potential cost-competitive ways to produce and transport hydrogen fuel. The project, led by Strategic Analysis, will identify cost-effective and efficient materials and processes to produce hydrogen from renewable energy sources and supports the agency's larger goal to achieve $2 to $4/gge of hydrogen fuel by 2020.

Department of Interior

23 RE Public Land Projects
The Department of Interior announced February 4 that it will prioritize 23 renewable energy projects on public lands in Arizona, California, and Nevada for expedited permitting and other priority treatment over the next two years. The projects, expected to generate 5.3 GW when completed, include 14 solar, six wind, and three geothermal projects, and are part of an effort to speed the development of utility scale renewable energy on public lands. The agency also established wind energy zones for offshore wind projects and solar energy zones in six western states where projects will be subject to fewer reviews; a similar effort is underway for onshore wind projects.

Solar Projects Challenged
The Western Lands Project, Desert Protective Council, and the Western Watersheds Project filed a lawsuit in the U.S. District Court for the Southern District of California February 12 challenging the Bureau of Land Management's record of decision on establishing hastened environmental review for solar projects in Arizona, California, Colorado, Nevada, New Mexico, and Utah. The Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States put aside almost 250,000 acres of federal land for the expedited development of large-scale solar energy projects in solar energy zones.

Environmental Protection Agency

Jackson Departs
Environmental Protection Agency Administrator Lisa Jackson stepped down from her position February 14. Top prospects for her replacement include Gina McCarthy, current air and radiation assistant administrator, and Bob Perciasepe, current acting administrator.

SO2 Violations ID'd
Using air quality monitoring data from 2009, 2010, and 2011, the Environmental Protection Agency identified 30 areas in 16 states February 15 that violate the 2010 air quality standard for SO2. Final nonattainment designations will be made by June 3. The agency is developing a strategy for making future attainment designations in locations without sufficient monitoring networks; doing so would include adding or moving air quality monitors near large SO2 emission sources or conducting air quality modeling.

SIP Revisions Needed
The Environmental Protection Agency issued a proposed rule February 12 that would require 36 states to revise their implementation plans to control excess emissions from sources during startup, shutdown, and equipment malfunction. The agency determined that the plans are inconsistent with Clean Air Act requirements; deficiencies include automatic exemptions from emissions limits, providing discretionary exemptions from directors, and appearing to bar enforcement by the agency or through citizen lawsuits. The proposed rule would allow states to provide an affirmative defense to enforcement actions for excess emissions on occasions of equipment malfunction.

Continued Boiler MACT Opposition Possible
The Congressional Research Service issued a report last week, *EPA's Boiler MACT: Controlling Emissions of Hazardous Air Pollutants*, finding that Congressional opposition and legal challenges to the Environmental Protection Agency's revised boiler MACT rule are still possible even though the agency has attempted to relax the rules. The agency signed final rules revising air toxics standards for major source boilers, area source boilers, and solid waste incinerators December 20.

Fuel Cube Determinations
The Environmental Protection Agency issued a comfort letter February 11 clarifying that certain fuel cubes will be considered fuels instead of solid wastes when burned in boilers or solid waste incinerators. To qualify as fuels, the fuel cubes would need to consist of a certain plastic and paper ration, would be

required to be treated to eliminate contaminants before being burned in incinerators, and could not contain hazardous materials or halogenated plastics.

Harmful Effects of Ozone Exposure
In a final science assessment released February 15, the Environmental Protection Agency found evidence confirming the long-held belief that short-term exposure to ozone can have a negative impact on respiratory health. The report also found evidence in new research suggesting a relationship between short-term exposure to ozone, cardiovascular effects, and death.

Federal Energy Regulatory Commission

Natural Gas Electric Reliability Issues
The Federal Energy Regulatory Commission conducted a technical conference February 13 during which it encouraged natural gas companies, electric utilities, and regional grid operators to work together to avoid conflicts that have led to electric reliability issues such as power outages during peak demand and severe weather periods. The commission ordered close monitoring and progress reports from regional grid operators and commission staff.

Government Accountability Office

High Risk List Released
The Government Accountability Office released its *High Risk List* February 14, adding climate change and gaps in weather satellite coverage to its biennial list of vulnerable federal agency programs or operations. The list is aimed at assisting each new Congress in setting oversight agendas, and agencies use it to develop agency-specific solutions to risks and develop broader, government-wide initiatives.

International

EU ETS Aviation Vote
Brian Simpson, chairman of the European Union Parliament's Committee on Transport and Tourism, said February 13 that it is likely to soon approve a proposal to suspend plans to include flights in and out of the area in the Emissions Trading System to allow time to reach a global solution for reducing aviation GHG emissions.

Canadian Heavy-Duty Vehicles
Environment Canada published final regulations February 13 to harmonize requirements for on-board engine diagnostic systems in heavy-duty vehicles with current American emissions requirements. The regulations take effect next January. The regulations apply to engines used in heavy-duty, on-road vehicles with a gross vehicle weight rating of more than seven tons.

Strict Chemical Controls Beneficial
The Center for International Environmental Law released a report February 13 contending that laws and regulations restricting hazardous chemicals hasten innovation, benefit commerce, and protect people and the environment. The report, *Driving Innovation: How Stronger Laws Help Bring Safer Chemicals to Market*, concluded that comprehensive laws requiring chemical manufacturers to generate information about their compounds' hazards and that enable authorities to mandate safer alternatives encourage innovation and the chemical and product sectors.

EU Climate Budget
European Union presidents and prime ministers reached a preliminary agreement February 8 under which a fifth of the EU's 2014-2020 budget would contribute to climate change mitigation and adaptation by incorporating climate-related objectives into a wide range of policy areas. The parliament will vote on the budget in April or May, and will include climate spending in agriculture, fisheries, rural development, infrastructure, research, and overseas development air to poorer countries.

Mexican Fuel Economy Standard
The Mexican environmental secretariat announced February 14 that Mexico's proposed fuel economy standard for new cars and light-duty trucks will be subject to a 60-day public comment period, after the new rule was criticized for giving too many incentives to industry. The proposed regulation, designed to emulate the United States' corporate average fuel economy standards, would save 700 million barrels of fuel and reduce CO2 emissions 265 MMT by 2032.

PR Coal Ash Disposal

Public Justice, a law firm representing the Puerto Rican citizens' group Comit Dialogo Ambiental, submitted an addendum February 14 to its intent to sue AES Corporation regarding violations of federal law governing the disposal of coal ash at the company's facility in Guayama, Puerto Rico. The addendum points to a recently issued Environmental Protection Agency report finding that heavy metal from coal ash waste can pollute local waterways.

States

<u>NY Fracking</u>
New York environmental conservation and health commissioners announced February 12 that fracking regulations await a public health review and an environmental impact statement, both of which are still weeks away. The proposed regulations cannot be finalized until these steps are complete, and the Department of Environmental Conservation has until February 27 to take action.

<u>CA Trucking Emissions Standards</u>
The California Construction Trucking Association asked the U.S. Court of Appeals for the Ninth Circuit February 13 to review the Environmental Protection Agency's approval of California's emissions standards for in-use, heavy-duty diesel trucks and buses as part of the state implementation plan. The court issued an order giving the association until May 6 to file its opening brief, and the agency will have until June 3 to submit its response.

<u>CA ZEVs</u>
California's Office of Planning and Research released a plan February 5 to put 1.5 million zero-emission vehicles on state roads by 2025. The *2013 ZEV Action Plan: A Roadmap Toward 1.5 Million Zero-Emission Vehicles on California Roadways by 2025*, comes a year after Governor Jerry Brown (D) issued an executive order establishing the goal and requiring urban areas to provide infrastructure to support hydrogen fuel cell and plug-in electric vehicles and plug-in hybrids.

<u>CA Fracking</u>
During a joint hearing of California's Senate Natural Resources and Water Committee and Environmental Quality Committee February 12, lawmakers questioned whether a proposal to regulate fracking activities would sufficiently protect public health and the environment. The proposal would repurpose existing standards that apply to drilling oil and gas well casings, and would require pre-fracking testing to ensure that wells and cement can withstand the high pressures of fracking.

<u>CO Setback Rules</u>
The Colorado Oil and Gas Conservation Commission authorized February 11 rules establishing a statewide setback distance of 500 feet for drilling operations, replacing the currently mandated setback distances of 150 feet in rural areas and 350 feet in urban areas. The rules, which take effect August 1, include notice and outreach obligations and require operators to make efforts to limit the effects of drilling operations on nearby homes and occupied buildings.

Miscellaneous

<u>Corporate Emissions, Risk Data Requested</u>
The Carbon Disclosure Project said February 11 that a coalition of hundreds of institutional investors have asked more than 5,000 companies to disclose their GHGs, plans for addressing climate change risks, and other environmental data. Companies have until May 31 to provide the information, and the CDP will release the data this fall.

<u>Climate Change Economic Impacts</u>
Greenbiz and Trucost issued a report February 12 finding that companies are facing increased pressure to measure the impact of their operations on natural resources, and they are increasingly assigning economic value to natural capital or measuring their impact on natural resources that provide clean water, breathable air, wildlife habitat, and soil formation. The *State of Green Business 2013* report found that companies are beginning to consider climate change and resource constraints as business risks.

<u>Carbon Tax Could Raise Revenue</u>
The Urban Institute and the Brookings Institution issued a study February 11 finding that taxing fossil fuel content could allow Congress to reduce corporate tax rates from 35 to 25 percent while raising $1.2 trillion in new revenue over the next decade to address the federal budget deficit.

<u>Water Sustainability Investment Needed</u>

The Pacific Institute released a report February 14 finding that increasing support for technologies and strategies to improve water efficiency would alleviate some of the challenges caused by drought, stormwater management, and declining water supplies. The report, *Sustainable Water Jobs: A National Assessment of Water-Related Job Opportunities*, encouraged sustainable water strategies that would reduce or eliminate water contamination, restore watershed systems, and increase efficient use of natural, social, and financial resource, and concluded that increased support for water sustainability would create jobs.

Sustainability Impacts Stock Performance
Deloitte released a report February 13 finding that a company's sustainability activities may have a short-term effect on its stock market performance. Short-term negative impacts may be caused by violations of environmental laws, boycotts, and other negative media coverage events. The report, *Finding the Value in Environmental, Social, and Governance Performance*, concluded that investors are paying greater attention to a company's performance on environmental, social, and governance issues and that attention to these issues is likely to increase with time.

E-Waste Recycling Certification
The Solid Waste Association of North America released a statement February 13 supporting national certification programs for the safe recycling and management of used electronic product, but suggested that it would not back an outright ban on exporting e-waste to developing countries. The association favors additional support for local infrastructure to promote increased used electronics recycling.