

Client Alert

April 30, 2015

California Greenhouse Gas Mandates Keep Coming— Governor Orders 40 Percent Reductions Below 1990 Levels by 2030

By William M. Sloan, Peter Hsiao and Dan Gershwin

On April 29, 2015, California's Governor Jerry Brown issued an executive order to set a new interim target for reducing the state's emissions of greenhouse gases (GHGs) to 40 percent below 1990 levels by 2030. In [March 2015](#), we wrote about the current state of play in GHG regulation in California, noting that the California Global Warming Solutions Act's (AB 32) silence on GHG reduction requirements after 2020 left a vacuum that could be filled by a 2005 Executive Order issued by Governor Schwarzenegger. The 2005 Executive Order called for GHG emissions to be reduced to 80 percent below 1990 levels by 2050. Governor Brown's new Executive Order doubles down on that ambitious goal by setting a similarly ambitious interim target of 40 percent reduction by 2030.

Depending in part on how currently pending litigation and proposed Senate Bill 32 (SB 32) are resolved (which we also reported on in our March alert), this latest order threatens to be yet another standard for project proponents to grapple with in determining the significance of their GHG emissions when undergoing environmental review. SB 32 would codify into state law the requirement that the California Air Resource Board (CARB) approve a statewide GHG emissions limit of 80 percent below 1990 levels by 2050. As for litigation, briefs have not yet been filed in *Cleveland National Forest Foundation et al. v. San Diego Association of Governments*, in which the California Supreme Court will determine the import of GHG reduction targets established by gubernatorial decree, such as those in Governor Schwarzenegger's—and now Governor Brown's—Executive Orders, unless the state legislature beats it to the punch with SB 32.

In the meantime, Governor Brown's new Executive Order contains numerous requirements directed at state agencies to achieve these ambitious goals. It calls on CARB to update its Climate Change Scoping Plan, which provides the road map for how GHG reductions will be achieved. This critical document provides industry with detailed information on what exactly the state will do to regulate GHG emissions. The Governor's announcement also can be seen as aligned with many of his other proposals, such as further tightening of the caps in CARB's aggressive cap-and-trade program, the controversial high-speed rail program, and the initiatives to shift electricity generation to renewable energy sources. While many experts believe that the interim reductions can be achieved with the increased use of existing technologies, the wild card will be California's future economic growth, which may strain or counteract the projections of emission reductions. Thus, the ambitious goals called for by 2030 and 2050 will likely demand a multipronged approach that could have serious impacts on California businesses, including the need for development of new technologies that are not currently available.

In connection with the California Natural Resources Agency's climate adaptation strategy document known as "Safeguarding California," agencies in key sectors, including water, energy, transportation, and forestry, will be required to prepare implementation plans by September 2015 and to report on actions taken by June 2016. This aspect of the Executive Order cements climate adaptation as a critical element of agency planning.

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State agencies will also be required to take climate change into account in planning and investment decisions. Full life-cycle cost accounting will likely become the norm for state-funded projects. In other words, projects that utilize GHG reduction strategies to a greater extent will presumably receive an additional boost when being compared to alternatives, even if the alternatives have potentially lower up-front costs. Current and future climate change impacts will also be taken into account for all infrastructure projects going forward under the state's Five-Year Infrastructure Plan.

To assist agencies with their new responsibilities and obligations, the Governor's Office of Planning and Research (OPR) is establishing a technical advisory group. It will be important to track who is selected to be part of this advisory group, as its technical expertise may significantly influence the actual agency decisions that will affect California businesses.

Governor Brown is not backing down from the ambitious, aggressive target of an 80 percent GHG emissions reduction below 1990 levels by 2050. His Executive Order assures that the trajectory for such reductions is in place by adopting the interim target of a 40 percent emissions reduction below 1990 levels by 2030. Further action by the state legislature or the California Supreme Court may ultimately determine the future of California GHG regulation, but, for now, California businesses must focus on the new Executive Order and the additional regulation it is likely to induce across the state.

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