

Golden Gate University Law Review

Volume 36

Issue 3 *Symposium Issue: California's Renewable
Energy Sector*

Article 1

January 2006

The Addiction and the Portfolio: An Introduction to the Issue

Paul Stanton Kibel

Golden Gate University School of Law, pkibel@ggu.edu

Ida Martinac

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/ggulrev>

Recommended Citation

Paul Stanton Kibel and Ida Martinac, *The Addiction and the Portfolio: An Introduction to the Issue*, 36 Golden Gate U. L. Rev. (2006).
<http://digitalcommons.law.ggu.edu/ggulrev/vol36/iss3/1>

This Introduction is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Law Review by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

THE ADDICTION AND THE PORTFOLIO: AN INTRODUCTION TO THE ISSUE

PAUL STANTON KIBEL*

IDA MARTINAC**

The global political economy of this century is unfolding in the context of exponentially growing energy demands in a world of ever diminishing fossil fuel supplies. In light of these twin pressures, the challenges presented by global climate change are daunting and call for a core paradigm shift in our thinking about energy resources.

There is now broad consensus in the scientific community that burning carbon is the primary cause of global climate change and that we are likely reaching the tipping point.¹ That is to say, the melting of glaciers starts slowly, but once it catches momentum we may not be able to halt, let alone reverse, the resulting sea rise and other climatic consequences.² According to a March 2004 article in the journal *SCIENCE*, the glaciers on both poles are melting much faster than previously believed and could result in a 20-foot sea level rise by the end

* Faculty Editor for *Renewed Interest* Edition of Golden Gate University Law Review, and Adjunct Professor at Golden Gate University School of Law; Director of Policy West and Of Counsel to Fitzgerald, Abbott & Beardsley.

** Student Symposium Editor for *Renewed Interest* Edition of Golden Gate University Law Review, and 2006 J.D. candidate at Golden Gate University School of Law.

¹ See David Perlman, *Oceans Rising Fast, New Studies Find: Melting Ice Could Raise Levels Up to 20 Feet by 2100, Scientists Say*, SAN FRANCISCO CHRONICLE, March 24, 2006, at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/03/24/MNG22HTTIV1.DTL&hw=david+perlman+oceans+rising+fast&n=001&sc=1000> (last visited March 29, 2006).

² *Id.*

322 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36]

of the twenty-first century.³ To appreciate the practical consequences of this impact, one need not look farther than the San Francisco Bay Area. With a 20-foot rise in sea level, absent a fortified New Orleans-style levee system circumscribing the entire bayfront, the following areas would face submergence or severe inundation: the financial district, South of Market, the Marina and Fisherman's Wharf neighborhoods of San Francisco; the entire City of Alameda; the flatland portions of Berkeley and Oakland. The situation would be the same for many coastal communities throughout California, the United States and the world, and would be particularly dire for Small Island States threatened with disappearance.⁴ The economic, human and ecological dimensions of this forecast are staggering in scope.

A 2005 report by the California Climate Change Center offered another glimpse of some of the impacts resulting from past and anticipated carbon emissions.⁵ The report predicted that higher sea levels would cause, among other things, the intrusion of saline sea water into the Bay Delta (where the freshwater Sacramento and San Joaquin Rivers empty) and coastal aquifers; increased evaporation from surface storage reservoirs such as those behind Friant, Folsom, Oroville Dam, O'Shaughnessy, and Shasta Dams; and extensive submergence and loss of coastal and riparian wetlands.⁶

At the federal level in the United States, there presently appears to be a disconnect between the public pronouncements of the current administration and the substantive energy policies being pursued. On the one hand, there is a recent willingness on the part of the administration of President George W. Bush to admit that the nation's heavy dependence on fossil fuel energy sources is unsustainable and destructive. More specifically, in his January 31, 2006 State of the Union address, President Bush acknowledged: "[W]e have a serious problem: America is addicted to oil which is often imported from the unstable parts of the world. The best way to break this addiction is through technology . . . By applying the talent and technology of America, this country can dramatically improve our environment, move beyond a petroleum-based economy and

³ *Id.*

⁴ For specific statistics see UN Dept. of Economic Affairs, *Small Island States*, at <http://www.sidsnet.org/> (last visited Apr 27, 2006).

⁵ Michael Hanneman, California Climate Change Center at UC Berkeley, *ECONOMICS OF CLIMATE CHANGE*, July 12, 2005, Panel Discussion on Climate Change Science: Impacts, Adaptation, and Climate Change – Mitigation Strategies, available at http://www.energy.ca.gov/2005_energypolicy/documents/2005-07-11+12_workshop/presentations/2005-07-12_PANEL_DISCUSSION.PDF (last visited March 29, 2006).

⁶ *Id.*

make our dependence on Middle Eastern oil a thing of the past.”⁷ In his remarks, there was no specific reference to the contribution of the United States’ addiction to the problem of climate change. Nonetheless, the administration’s public assertion that a petroleum-dependent economy is something to be remedied rather than perpetuated received broad news coverage. Perhaps this was because this assertion diverged with much of the administration’s actions in regard to the alternative/renewable energy sector.

For instance, in August 2005 President Bush signed the much-anticipated Energy Policy Act, which continues to keep the playing field vastly uneven in favor of conventional fuels versus renewables.⁸ As another example, the Bush Administration has expended significant political capital over the past few years to win Congressional approval for opening up the Arctic National Wildlife Refuge (“ANWR”) to oil drilling.⁹ While drilling in ANWR might eventually provide some short-term relief from the United States Middle-East petroleum dependence, it would also provide more carbon to burn thereby contributing further to global warming, and would reduce petroleum prices thereby hindering

⁷ Transcript of President Bush’s January 31, 2006 State of the Union address provided on the Washington Post’s website, at <http://222.washingtonpost.com/wp-dyn/content/articles/2006/01/31/AR20006013101468.html> (last visited Apr. 27, 2006).

⁸ For example, the bulk of subsidies is through tax cuts, which mostly help mature businesses, such as the conventional fuel businesses, particularly with new, even faster depreciation methods allowed. The smaller portion of subsidies for renewables qualifies for some coal. Moreover, the Energy Policy Act of 2005 (“EPAAct”) establishes a renewable fuels mandate, but fails to establish standards that would efficiently carry out that mandate: a national renewable portfolio standard and a national net metering requirement, and it imposes only non-binding government purchase requirements for renewable power and renewable fuels. Meanwhile, EPAAct provides not only for tax, but also for regulatory breaks for conventional sources via carving loopholes in the Clean Water Act, the Safe Drinking Water Act, and by relaxing NEPA permit and leasing requirements for drilling and pipelines. All in all, EPAAct, despite the Administration’s statements to the contrary, makes very little, if any progress in enhancing the use of renewables. See Alexandra Teitz, Minority Counsel, Committee on Government Reform, U.S. House of Representatives, *Renewable Energy in EPAAct: Business as Usual = Failure*, presentation at the October 19, 2005 ABA Renewable Energy Resources Committee Teleconference, available at <http://www.abanet.org/enviro/committees/renewableenergy/teleconarchives/101905/TeitzPPT.pdf> (last visited Apr. 27, 2006).

⁹ See, e.g., Lizette Alvarez, *Bush’s Energy Bill is Passed in House in a G.O.P. Triumph*, THE N.Y. TIMES, at <http://select.nytimes.com/gst/abstract.html?res=F10D1FFF3F580C718CDDA10894D9404482> (last visited Apr. 27, 2006); A web log about the Arctic and Energy, at <http://www.anwr.com/> (last visited Apr. 27, 2006); *Bush Delivers Speech on Renewable Fuel Sources*, CQ TRANSCRIPTIONS at <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/25/AR2006042500762.html> (last visited Apr. 27, 2006); *Transition in Washington; Excerpts from Senate Hearing on Norton’s Selection as Interior Secretary*, THE N.Y. TIMES at <http://select.nytimes.com/gst/abstract.html?res=F30F1EFC3C580C7A8DDDA80894D9404482> (last visited Apr. 27, 2006).

324 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36

the economic competitiveness of the renewable sector vis-à-vis the fossil fuel sector. Then there was the 2001 decision of President Bush to back the United States out of the Kyoto Protocol – the primary international regime to reduce carbon emissions.¹⁰ And most recently, in April 2006 there were reports that the Bush Administration pressured scientists conducting research for the federal government to downplay their climate change findings. According to the WASHINGTON POST:

Scientists doing climate research for the federal government say the Bush Administration has made it hard for them to speak forthrightly to the public about global warming. The result, researchers say, is a danger that Americans are not getting the full story on how the climate is changing. . . Employees and contractors working at the National Oceanic and Atmospheric Administration, along with a U.S. Geological Survey scientist working at a NOAA lab, said in interviews that over the past year administration officials have chastised them for speaking on policy questions; removed references to global warming from their reports, new releases and conference web sites. . . NOAA scientists [] cite repeated instances in which the administration played down the threat of climate change in their documents and news releases. Although Bush and his top advisors have said that the Earth is warming and human activity has contributed to this, they have questioned some predictions and caution that mandatory limits on carbon dioxide could damage the nation's economy.¹¹

Actions like these suggest that, on the substantive level of energy policy, the Bush Administration has done more on the whole to prolong rather than cure the United States' addiction to oil. Faced with inaction at the federal level, initiatives to curb carbon emissions and promote the renewable energy sector in the United States have increasingly come from the state level. California has been at the vanguard of such efforts.

The centerpiece of California's renewables promotion policy is the Renewable Portfolio Standard (the "Portfolio") adopted in 2002.¹² To achieve the goal of increasing California's renewable sector, the

¹⁰ See, e.g., Anthony Lewis, *Abroad at Home; The Feeling of a Coup*, THE N.Y. TIMES at <http://select.nytimes.com/gst/abstract.html?res=F60A15FC395B0C728FDDAA0894D9404482> (last visited Apr. 27, 2006).

¹¹ Juliet Eilperin, *Climate Researchers Feeling Heat from White House*, WASHINGTON POST, April 6, 2006, at A27.

¹² S.B. 1078 § 1, 2002 Leg., 2001-2002 Sess. (Cal. 2002) (amending Cal. Pub. Util. Code adding § 387) available at http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1078&sess=0102&house=B&author=she (last visited Apr. 27, 2006).

legislation establishing the Portfolio requires “all electrical corporations [operating in the state] to procure a minimum quantity of output from eligible renewable energy resources as a specified percentage of total kilowatt-hours sold to their retail end-use customers each calendar year.”¹³ More specifically, “each electrical corporation shall . . . increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017.”¹⁴ The California Energy Action Plan of 2005 supports an even more ambitious recommendation of the 2004 California Energy Commission Energy Report Update of setting the RPS goal at thirty-three percent by 2020.¹⁵

In this special symposium edition of the Golden Gate University Law Review, entitled *Renewed Interest: California’s Renewable Energy Sector*, we will examine the larger legal, political and policy framework in which the Portfolio is being implemented. This examination reveals both the promise and problems of California’s efforts to move the energy sector beyond petroleum.

The first article is by Daniel Kammen, who holds the Class of 1935 Distinguished Chair in Energy at the University of California at Berkeley, where he is also a Professor in the Energy and Resources Group and at the Goldman School of Public Policy, and where he co-directs the Berkeley Institute of the Environment. Kammen’s piece evaluates the 2005 federal energy bill and concludes that much greater diversity (in terms of sources) is needed. Kammen then identifies specific ways that a diversified federal energy policy could build on and support statewide renewable promotion efforts such as California’s RPS Program, and also considers foreign policy considerations impacting these domestic energy policy concerns.

Next, Bernadette Del Chiaro and Rachel Gibson of the Environment California Research and Policy Center analyze the past, present and future of statewide solar energy legislation. For the past several years, Environment California has been spearheading the debate over California’s proposed Million Solar Roofs Initiative. Del Chiaro and

¹³ CAL. PUB. UTIL. § 399.15 (a) (Cal. 2006).

¹⁴ CAL. PUB. UTIL. § 399.15 (b)(1) (Cal. 2006).

¹⁵ See CALIFORNIA ENERGY COMMISSION INTEGRATED ENERGY POLICY REPORT, available at <http://www.energy.ca.gov/2005publications/CEC-100-2005-007/CEC-100-2005-007-CMF.PDF> (last visited Apr. 18, 2006); See also Database of State Incentives for Renewable Energy, California Incentives for Renewable Energy, available at http://www.dsireusa.org/library/includes/incentive2.cfm?Incentive_Code=CA25R&state=CA&CurrentPageID=1 (last visited Apr. 18, 2006).

326 GOLDEN GATE UNIVERSITY LAW REVIEW [Vol. 36

Gibson discuss the complex politics surrounding this proposal, and also offer an illustrative comparative look at the thriving solar market in Japan and the role incentives played in the Japanese solar sector.

The third contribution is by Joseph Romm, who served as Acting Assistant Secretary for the United States Department of Energy's Office of Energy Efficiency and Renewable Energy. He is currently the Executive Director of the Center for Energy and Climate Solutions. Romm's article considers the Hydrogen Highway proposal presented by California Governor Arnold Schwarznegger. Romm argues that, although perhaps well-intended from a renewable perspective, the Schwarznegger Administration's rush toward hydrogen-fueled automobiles is premature in light of more cost-effective and technologically feasible renewable alternatives. According to Romm, the proposal may have the unfortunate result of diverting needed resources and attention away from more viable renewable transportation energy technologies.

The last article looks at California's involvement in the renewable energy sector in China. China's exponential economic boom is creating a corresponding appetite for energy, which has huge potential implications in terms of carbon emissions and therefore global climate change. The Chinese government is taking aggressive steps to ensure uninterrupted energy supply for its growing economy – both in terms of nonrenewable-fossil fuel sources and renewable sources. Jan Hamrin, President of the Center for Resource Solutions, reports on recent collaboration between Californian and Chinese renewable energy experts. This collaboration played a significant role in the recent adoption of energy legislation in China that places renewables promotion front and center.

The articles in the *Renewed Interest* edition illustrate the many challenges that lay ahead if we are to make meaningful progress on climate change. Given California's traditional role as a laboratory for innovative environmental regulation, the state's success or failure in mainstreaming renewable energy could have implications for national energy policy and possibly even international energy policy. With leadership and creativity, the process of ending the addiction to oil – a process with decades of hard work ahead of us – can start here.