

National Affairs and Legislation Committee
The Garden Club of America
110th Congress, 2nd Session – February 18, 2008
Update #13 – Issues in the 2nd Session

- (1) **Second Session Climate**
 - (2) **Agriculture**
- (3) **Budget and Appropriations**
 - (4) **Global Warming**
 - (5) **Law of the Sea**
- (6) **Clean Water Restoration Act**

The “Watch List” has not changed very much since Legislative Update # 12 was issued last November. An energy bill was wrapped up and the appropriations war between the White House and the Congress reached a truce. Otherwise, most of the same issues are in play, with very little measurable progress to show in the last two months. However, behind the scenes, a lot is going on. Much of it is colored by a general preoccupation with the upcoming November elections.

□ (1) **Second Session Climate**

In case anyone had not noticed, 2008 is a presidential election year. This political context is beginning to overshadow the legislative cycle.

- **Very short legislative time schedule:** The second session in a presidential election year means very few days on the congressional calendar available for legislation. After allowing for the usual breaks for “president’s day,” spring break, Republican and Democratic nominating conventions in July and August respectively, plus the customary August recess and religious holidays occurring in September, there are probably something on the order of 64 full days left on the schedule in 2008 for voting on legislation between March 1 and the targeted Sept 26 adjournment date (plus 22 days at the end of long weekends when there will be no votes before 6 p.m.). Therefore, do not look for major new initiatives to be launched in 2008. It will be a stretch for the legislative branch to finish the items already on the agenda, even allowing for a post-election lame duck session. Unfinished business will die with the 110th Congress. Everything will start afresh when the 111th Congress convenes in January, 2009.



- **Presidential politics part I – eyes on the horizon:** The presidential race already dominates the headlines and political thinking in the capital. President Bush is in the last year of his second term—he is a very lame duck. The focus is now on what comes next, be it a Republican or Democratic White House. Expect to see more energy going into developing positions and agendas for the 111th Congress than on putting the polish on “old” 110th Congress bills.
- **Presidential politics part II – locking in policies:** As has happened before, when a president is at the end of his permitted two terms in office, there is a concerted effort to lock in executive branch rules and regulations thereby perpetuating the policies preferred by the outgoing administration. To accomplish this, proposed rules changes must be published in the Federal Register; comments by the public and interested groups must be considered; and environmental reviews must be made if the regulations would affect policies under the

National Environmental Policy Act (NEPA). However, the regulations do not require any action by Congress. If members of Congress disagree with proposed regulations, their only recourse is to enact legislation overturning them. But, when a torrent of regulations is raining down in a burst just before upcoming elections, it is virtually impossible to enact bills negating or modifying them. This would be a fruitless exercise in any event since the administration would, of course, veto any such bill.

At the end of the Clinton administration, dozens of regulations were promulgated¹ to enshrine his policies on forestry and roads, use of public lands, protection of clean air and clean water, endangered species and a host of other environmental concerns. Predictably, during the eight years of the Bush Administration, many of these Clinton-era regulations were reversed, repealed or rewritten. Now, as the Bush Administration is nearing its end, look for a flurry of rule writing that will make the administration of public lands and forests more hospitable to business interests, lean toward permitting exploitation of energy resources in fragile ecosystems, and put environmental protections in second place behind security, energy, and commercial concerns.



➤ **Lame duck House members:** The House now stands at 199 Republicans to 232 Democrats (plus four vacant seats that will be filled soon by special elections.) However, an unprecedented number of House Republican members—29 thus far, and rising—have decided *not* to seek reelection in the fall, including some who are fairly senior. Only five Democrats have decided to retire. This lopsided retirement ratio increases the chances that the Democrats not only will again control the House in the 111th Congress but that their margin of control will grow. This will make it easier for the Speaker to set the agenda and push through legislation with a distinctly Democratic tinge.

- **Senate:** The Senate is nearly evenly divided in the 110th Congress, with 49 Republicans, 49 Democrats and two Independents who usually vote as Democrats. When there is a tie, the Vice President can cast a tie-breaking vote. However, since Senate procedures require a 60-vote majority to move ahead on controversial legislation, it has been said that although the Democrats have *possession* of the Senate they do not have *control* of it. Whether or not either party can achieve control in the 111th Congress depends on the upcoming elections. The outlook does not bode well for Republicans—nearly twice as many Republicans (21) are up for reelection as Democrats (12). Making the Republican seats even more vulnerable is the fact that five of them are held by Senators who have announced their retirements (Allard (CO), Craig (ID), Domenici (NM), Hagel (NE) and Warner (VA))

All these factors add up to a Congress that is essentially marking time, doing only what is necessary, and in the case of Democrats, planning for the 111th Congress when they expect to have strengthened control of both House and Senate and possibly the White House.

From the perspective of the Garden Club of American, we expect to be watching only a handful of issues as the 110th Congress winds down. They are discussed on the following pages.

(Note that the pages of this Legislative Update are set up so that you can file each topic separately if you wish.)

¹ A few examples: Established the American Heritage Rivers program; initiated an important series of enforcement actions against major electric utilities in the Midwest and South for violations of the Clean Air Act; issued an Executive Order establishing the Interagency Invasive Species Council; launched a 10-year strategy to eliminate childhood lead poisoning in the U.S.; created or enlarged 20 national monuments, including Grand Staircase-Escalante (UT), Giant Sequoia (CA), Abraham Lincoln-Soldiers' Home (D.C.), Cascade-Siskiyou (OR) with particular focus on plant life, Ironwood Forest (AZ), and Canyon of the Ancients (CO); and adopted the so-called "roadless rule" protecting 58.5 million acres of forestland—a rule that is still in place despite numerous attacks on it.

□ (2) Agriculture

Background: Federal crop subsidies, soil, water and habitat conservation programs, nutrition assistance and other parts of the “farm bill” are usually legislated on a five-year cycle. With the massive 2002 legislation expiring at the end of 2007, Congress worked throughout the first session of the 110th Congress to replace it.



The House passed its version of the farm bill, H.R. 2419, last July (See Legislative Updates #9 and 10). The Senate had a much more difficult time moving the legislation along, but Sen. Harkin (D-IA), chairman of the Agriculture Committee, eventually was able to mastermind enough compromises to bring the bill to the floor, shepherd it through six weeks of contentious debate and stand-offs, and eventually pass it by a resounding veto-proof 79-14 vote on December 14..

De facto March 15 deadline: No one expected a quick House-Senate conference agreement could be reached—the two bills were too different for that. But the “old” 2002 legislation was set to expire on December 31. Expiration would have a very perverse budgetary technical effect. It would reduce to zero much of the “baseline” against which reauthorized spending would be measured when negotiations resumed in 2008. This would mean

that merely continuing programs at their prior levels would count as spending increases. Therefore, both to provide a time window in which to work out a House-Senate conference agreement, and also to lock in the budgetary baseline against which the new legislation would be measured, it was agreed to extend the expiring farm bill through March 15, 2008. (This extension was tacked onto the FY 2008 omnibus appropriations bill discussed in item 3 below.)

If there isn't a new farm bill March 15, the underlying very antiquated 1949-era permanent farm subsidy law will kick into effect. It doesn't include conservation or nutrition programs or subsidies for several currently-covered commodities. *No one* wants this to happen—the mere prospect is powerful inducement to agree on a bill quickly.

The House has not officially appointed conferees as of this writing, but informal negotiations have been underway nevertheless. The Senate appointed its conferees on February 4: Democratic Senators Harkin (IA), Leahy (VT), Conrad (ND), Baucus (MT), Lincoln (AR), and Stabenow (MI), and Republicans Chambliss (GA), Lugar (IN), Cochran (MS), Roberts (KS) and Grassley (IA).

The third party to the triangular negotiations is the administration. As the negotiations are developing, the chief sticking point is money. As usual, Congress wants to spend more than the administration will accept.

- In last year's FY 2008 congressional budget resolution, Congress permitted a reserve fund for expanding agriculture “entitlement”² programs by \$20 billion over five years, subject to pay-as-you-go (PAYGO) rules.
- To meet the PAYGO requirements, House and Senate bills relied on a combination of spending cuts, budget gimmicks and timing shifts, and increased taxes mainly on foreign-owned corporations. The differences between the House and Senate versions of H.R. 2419 are large³ and both bills fully use the \$20 billion reserve fund.
- The administration is adamant that it will not sign a bill with any tax increases.
- House Agriculture Committee chair Peterson (D-MN) proposed a framework to Agriculture Department officials without consulting Senate Agriculture Committee chair Sen. Harkin.

² PAYGO applies to legislation changing mandatory spending (sometimes called “direct spending”). Mandatory spending is budget authority provided and controlled by laws other than annual discretionary appropriations. In the farm bill, this category includes the food stamp program, farm price supports, farm disaster assistance and several of the conservation programs.

³ If you are interested in seeing a typical document used by conferees to track the differences between the House and Senate bills, go to <http://agriculture.house.gov/inside//farmBill.html>. There click on the “side-by-side” for the Conservation Title to see three columns showing current law, the House legislation and the Senate legislation. You will notice a great many relatively minor “underbrush” issues that mostly will be resolved at the staff levels, as well as key major “member issues” that the negotiators will have to work out politically.

- By February 16, the word was that an understanding had been reached that President Bush wouldn't veto a Farm Bill that costs \$6 billion more than the current \$280 billion baseline if the extra \$6 billion is not raised through higher taxes.
- So now the “fun” begins—finding a way to squeeze \$20 billion of wishes and promises into a \$6 billion wallet.

Conservation: Of chief interest to the National Affairs and Legislation and Conservation Committees are the programs that encourage farmers to adopt good conservation practices for soil, water, wildlife and forests.

- Both House and Senate bills would expand total funding for conservation programs, but the Senate bill concentrates the majority of the new funding on a new Conservation Security Program (CSP), while keeping most other programs at baseline levels. However, the Senate version also included a \$7 billion package of tax credits and deductions for Conservation Reserve, recovery and restoration of endangered species, wetlands reserve, working grasslands, forest conservation and other purposes.
- The House gave no new funding to CSP; instead it would stop making new CSP contracts in 2008 and not resume until 2012 (a budget gimmick that cuts the bill's cost during the five-year budget window.) At the same time, the House bill would increase the Wetland Reserve Program by 1.33 million acres, increase the Grasslands Reserve Program by 1.34 million acres, increase the Environmental Quality Incentives Program by \$3.8 billion for 2008-2017, and increase Farm & Ranchland Protection by \$1.1 billion for 2008-2017.
- The House and Senate disagree on whether conservation payments should be subject to annual income limits. The Senate says the payments go to the land and therefore should be made even to “rich” farmers and farm-owners. The House says the income limits should apply to all programs.

As part of the Senate conservation tax package, the recently-expired deduction for contributions of qualified conservation property would be extended and made permanent. There is no similar provision in the House farm bill. The tax package probably will not fit into the \$6 billion limit. Look for it to pop up later alone or in another bill.

Biofuels and energy: Both House and Senate have energy titles that would reauthorize and expand energy programs created in the 2002 Act. Both bills add new energy programs intended to jump start cellulosic ethanol development. Farm income has never been higher, and farmers are keen to expand their ethanol production, despite the troubling environmental and world hunger consequences. The overall dollar amounts are similar in the two versions, but the money is put into different programs. The House has several programs to help farms become energy self-sufficient. The Senate has alternative fuel tax incentives and greenhouse gas reduction programs.

Subsidy caps: Both House and Senate struggled with the question of who should be eligible to receive crop subsidies for growing traditional crops including corn, wheat, cotton, soy, and rice. Aside from the equity and fairness considerations, restricting the total paid out in crop subsidies leaves money on the table to pay for conservation, nutrition and other programs authorized in the bill. Present law restricts payments to those with incomes of \$2.5 million or more but does not apply if 75% of that income is from farming. The administration advocates prohibiting subsidy payments to anyone making more than \$200,000 a year. Despite floor amendments to adopt tighter limits, the House bill ended up with a bar on payments to farmers with \$1 million in income or more and non-farmers with incomes of \$500,000 or more. The final Senate bill would bar payments to people with \$750,000 income or more but would exempt from the ban anyone with more than two-thirds of income from agriculture. The Senate bill also would exempt conservation payments from the subsidy cap.

Lacey Act: The Senate-passed farm bill includes Sen. Wyden's bill to stop illegal logging imports. (See Update # 11, item 6 for details). The House has cleared the bill for the Floor but it has not come up yet.

Hard choices: Assuming the conferees are willing to work within the \$6 billion constraint demanded by the administration, they must trim the spending expansions described above and many others (including school lunch and food stamp programs). One approach would be to give every program a “haircut,” equally offending all. That is what Rep. Peterson has proposed. Alternatively, they could single out winners and losers and make tough choices. Either way it won't be fun. But *everyone* agrees that a smaller scaled-down bill would be better than going back to the 1949 law.

□ (3) Budget and Appropriations

Old business: FY 2008

The money story could not have been more depressing last year. The FY 2008 appropriations process was simply a mess, and for the second year running, funding for environmental programs was one of the victims of the wrangling between the congress and the administration.

By the time FY 2007 ended on September 30, 2007, Congress had enacted only one FY 2008 appropriations measure—for defense. A second bill—for health, human services, and education—had been passed but was vetoed, and the House motion to override failed by three votes.

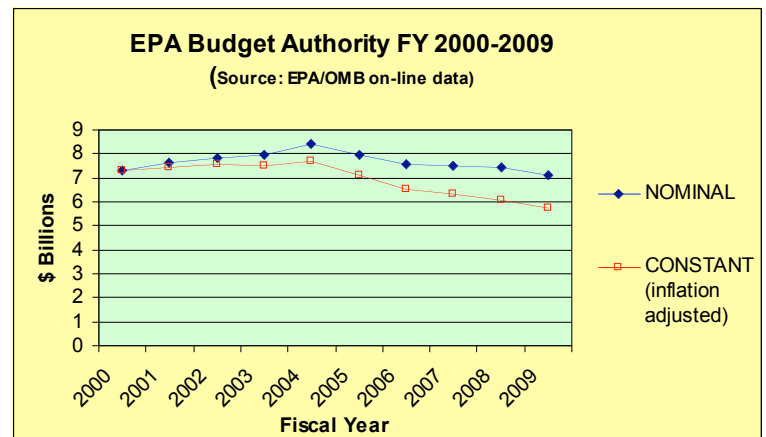
The fundamental disagreement between the congress and the administration was over how much to spend on domestic discretionary programs. The FY 2008 congressional budget plan allowed \$22 billion more in appropriations for domestic discretionary programs than the administration requested, targeted to a number of areas including environmental protection programs. (Ironically, this \$22 billion was trumped a month later by the \$152 billion economic stimulus plan—suggested, passed and signed into law in less than two weeks.)

To keep government agencies and programs running after FY 2007 ended, Congress was forced to pass four successive “continuing resolutions” to continue spending at the FY 2007 levels into FY 2008 while efforts continued to put a permanent appropriations bill in place. Eventually, barely a week before Christmas, a highly unsatisfactory agreement was reached between the two ends of Pennsylvania Avenue, and Congress passed a \$515 billion omnibus 11-bill appropriations measure to provide money for the remainder of FY 2008. It was signed into law on December 26.

Some FY 2008 highlights:

- EPA would receive \$7.5 billion under the bill, a \$264 million drop from fiscal 2007. The House had requested an \$8.1 billion budget for EPA, while the Senate had proposed \$7.8 billion in funding. The Clean Water State Revolving Fund is set to lose nearly \$400 million.
- For land management, the Interior Department would receive \$9.9 billion, \$195 million above the White House request but \$116 million below fiscal 2007.
- The Forest Service, part of USDA, would receive \$4.45 billion, \$321 million above the White House request but \$259 million below fiscal 2007.
- The National Oceanic and Atmospheric Administration would receive \$3.92 billion, above the White House's request of \$3.8 billion but below the \$4.2 billion the Senate approved in October.

The drop from FY 2007 in funding for EPA adds insult to injury. A year earlier, a similar budget battle resulted in adoption of a year-long continuing resolution that held most environmental protection and conservation programs to FY 2006 levels or below. Now the omnibus appropriation for FY 2008 reduces these programs still further. This sad outcome is a far cry from the optimism described in Update #7 when the House passed a bill that provided more than in the past and more than the president requested. We feared then that it was too good to be true—and it was.



FY2009 level is the President's requested level.

Note that in nominal dollars, EPA's budget has lost the apparent gains made in President Bush's first term and has fallen back to the level at the end of the Clinton administration. However, after inflation is taken into account, it is apparent that EPA is now getting less than at the end of the Clinton administration. These diminishing resources translate into less funding for administrative staff and scientists, and fewer dollars for grants to states.

New Business: FY 2009

Another year, another budget.⁴ It's important to remember that budgets are not just a series of dry numbers. Those figures represent policy goals and plans for how our government's resources should be used to carry out programs, distribute benefits and enforce laws. Budgets are about priorities.

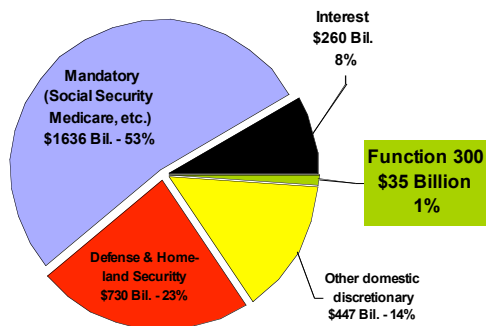
The administration sent its budget request for FY 2009 to Congress on February 4, 2008. As so often in the past, pundits pronounced it "dead on arrival" and "irrelevant." But, as the past year demonstrated, both ends of Pennsylvania Avenue have leverage in the final disposition of the federal budget.

Function 300: Federal budgets are arranged into budget "functions." Function 300 includes all the natural resource and environment programs. This is where the Garden Club of American members should focus.

Function 050: National Defense
Function 150: International Affairs
Function 250: General Science, Space and Tech
Function 270: Energy
Function 300: Natural Resources and Environment
Function 350: Agriculture
Function 370: Commerce and Housing Credit
Function 400: Transportation
Function 450: Community and Regional Development
Function 500: Education, Training
Function 550: Health
Function 570: Medicare
Function 600: Income Security
Function 650: Social Security
Function 700: Veterans Benefits and Services
Function 800: General Government
Function 920: Allowances

Function 300: This function includes funding for water resources, conservation and land management, recreation resources, and pollution control and abatement. Agencies with major program activities within the Function include the Environmental Protection Agency (EPA), the Army Corps of Engineers, the National Oceanic and Atmospheric Administration (NOAA), the Forest Service (within the Department of Agriculture), and the Department of the Interior, including the National Park Service, the Fish and Wildlife Service, the U.S. Geological Survey, the Bureau of Land Management and the Bureau of Reclamation, among others.

Administration Budget Request FY 2009



Annual appropriations for federal programs are considered "discretionary" spending, because Congress has discretion to decide how much to spend for each program. Discretionary spending makes up 38 percent of the budget. Far more discretionary money goes to defense and homeland security than to domestic programs. And, within domestic discretionary programs, the share that goes to Function 300 is minuscule—about 1% of the entire budget. Even getting this 1% requires competing against health care, education, energy, transportation and other popular areas.

Highlights of Administration's FY 2009 budget request:

Although Congress will follow the congressional budget process to develop its own plan for FY 2009, the administration's budget request will serve as a reference point. This is particularly true when the time comes to translate the congressional budget into appropriations bills, many of which are small or routine.

⁴ If you need a refresher on the congressional budget process, take a look at two Legislative Updates from the 109th Congress, #68 and #55.

In a way, this is unfortunate, because the administration has asked for a reduction or flat-funding in many areas affecting the environment, conservation, and pollution control. A comparison of the administration's FY 2009 budget request with the FY 2007 levels illustrates with depressing clarity a downward trend in many accounts.⁵ Also, keep in mind that according to official administration estimates, a program that cost \$100 in FY 2007 would cost \$106 to duplicate in FY 2009 because of inflation. Thus, if funding were not increased by at least \$6, the program would be falling behind.



Half empty? Half full?

That said, it's important to remember that the administration's budget request is really an opening bid, not the last word. But even if congress tries to provide more funding for environmental protection and pollution reduction than the administration has requested, we are facing a proposed budget deficit for FY 2009 of \$400 billion. Thus, increases will be hard to achieve, and probably will require offsetting cuts elsewhere.

Some illustrative figures:

(billions of dollars)

	<u>FY 2007 Actual</u>	<u>FY 2009 Request</u>
Function 300 total budget authority	33.784	35.456
Corps of Engineers	6.852	10.366 (Hurrah, WRDA!)
Watershed, flood prevention	.139	.135
Management of public lands (BLM)	1.025	.984
Forest Service	4.708	4.111
Highlands Conservation program	.00175	\$0
National Arboretum	.011	.009
Conservation of agricultural lands	.820	.794
Fish & Wildlife Service – conservation & land mgt.	1.222	1.213
Other conservation & land management	1.585	1.347
National Wildlife Refuges	.398	.434
State (and tribal) grants for pollution control & abatement	3.214	2.612
Clean Water State Revolving Fund	1.040	.555
NOAA	4.145	4.189

Bright spot: National Parks

The ever-popular national parks merited a high priority in the administration's budget. More than \$2.4 billion is proposed for FY 2009, compared to \$2.3 billion in FY 2007. This includes a \$161 million increase in operating funds to help restore our national parks. The administration is also asking for an additional \$100 million a year for the 50-50 Centennial matching fund. More than 200 projects with a total investment of \$370 million have already been identified as eligible for funding through the Centennial Challenge, if and when Congress approves the Centennial Challenge Fund legislation.

How you can help:

Tell your Representative and Senators that you hope they will work to *restore Function 300* to its previous levels in this year's Congressional Budget Resolution. Ask them to follow through in the appropriations for Function 300 programs. Funding for environmental programs has steadily declined since 2004. This decline should be reversed so that valuable environmental programs can protect our nation. If the Budget Resolution fails to provide enough for Function 300, it will be virtually impossible to add it later on in the budgeting process.

⁵ FY 2008 figures are still in flux and therefore not useful as a comparison benchmark.

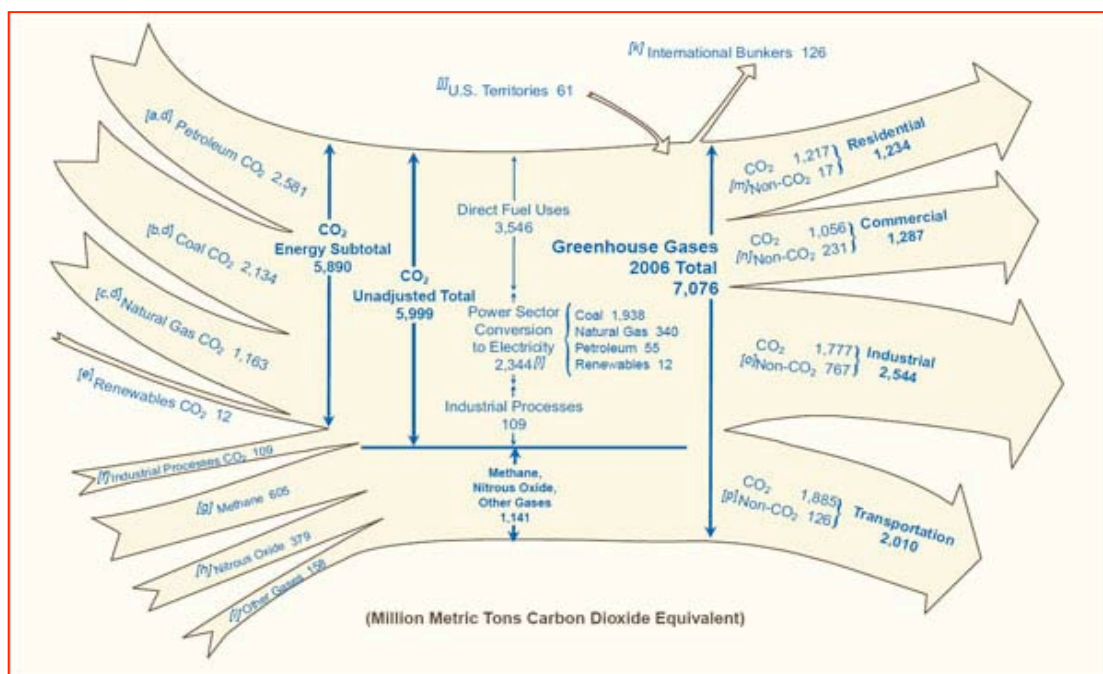
□ (4) Global Warming: Capping Greenhouse Gases

Background:

The Bush administration has emphasized energy supply and energy security. But it has not been eager to move ahead on requiring our nation to reduce its emissions of greenhouse gases (GHG). Administration foot dragging has not stopped the Congress however.

The energy bill enacted last year tightened auto-mileage standards gradually to 35 miles per gallon by 2020. Motor vehicles are major contributors of GHG gases, so this should gradually help once new fuel-efficient vehicles are substituted for the 243 million passenger vehicles now registered in the U.S. However, the slow vehicle turnover rate means that it will take decades to make a big dent in total vehicle emissions. Further, the two-thirds of CO₂ emissions from other non-transportation sources are not affected by the fuel efficiency requirements.

Previously, two significant test votes occurred in the Senate. In 2003, the McCain-Lieberman Climate Stewardship Act garnered surprisingly strong support but failed 43-55. This was the first time the Senate had addressed global warming since 1998. Then, in June, 2005, McCain and Lieberman tried to attach a GHG cap to the Energy Policy Act. They failed on a 38-60 negative vote, a poorer showing than in 2003 largely due to the addition of nuclear power subsidies to the proposed cap-and-trade mechanism.



Greenhouse Gas Emissions in the U.S. in 2006

Source: Energy Information Agency, DOE, Nov 28, 2007
<http://www.eia.doe.gov/oiaf/1605/ggprt/flowchart.html>

110th Congress:

After the 2006 elections gave Democrats a majority in both the House and Senate, many hoped that this would signal a drive to pass legislation to curb greenhouse gas emissions. However, the leaders of the 110th Congress have discovered that it is very hard to put together a winning coalition on legislation with teeth. In fact, even a non-substantive “sense of the Senate resolution” stating that the United States should participate in international climate negotiations has not garnered enough votes to be brought to the floor.

With so little time remaining for the 110th Congress to produce legislation, it will be a major feat to enact a bill. The complexity of the issue is evident from the flowchart above. Developing legislation to curb the multiple sources of emissions without harming the economy, working hardship on consumers or reducing U.S. competitiveness is a daunting prospect—in terms of both crafting a workable solution and developing political support to enact it.

- **In the Senate:** Senators Lieberman (I-CT) and Warner (R-VA) led a bipartisan team promoting *America's Climate Security Act*, S.2191. The bill squeaked out of Lieberman's Subcommittee on a 4-3 vote on November 1. Full committee arithmetic was more challenging. The Committee on Environment and Public Works has 10

Democrats and 9 Republicans. It took a nine-and-a-half hour marathon markup session and debate on more than 40 amendments from both Senators who wanted to weaken the act and one who wanted to make it tougher. But finally, on December 5 the committee voted on 11-8 to approve S. 2191 and send it to the Floor. Sen. Warner again was the only Republican vote.

Engineering a strategy to pass the bill in the Senate is proving to be devilishly difficult. Arch-foe Sen. Inhofe (R-OK) has vowed to stop the bill. In the Senate, 60 votes are required for “cloture” to end a filibuster—the tactic used by opponents to prolong debate so that a vote cannot be taken. Fifty senators are counted as supporters and another 20 or so as “possibles.”⁶ So legislative tacticians are trying to find out what it will take to get ten fence sitters to “yes” on cloture. One by one, their concerns are being addressed, and Senators are being promised a chance to offer floor amendments—all in an attempt to draw more senators to vote for the bill (without, at the same time, driving previous supporters away or making a hash out of an already compromised system to reduce GHG emissions.) Among the issues: nuclear power, economic impact, world trade ramifications, a “safety valve” ceiling price for emission permits and how many permits to give away without being auctioned.

- In the House, Rep. Dingell, chair of the Energy and Commerce Committee, is proceeding at a deliberate, stately pace to overcome political and economic hurdles. As a seasoned, long-tenured legislator from an auto-producing state, he fully appreciates the technological, economic and industrial challenges a cap on GHG emissions entails. (He has ruled out a carbon tax.) His committee’s 31 Democrats include both ardent environmentalists and rust-belt conservatives nervous about the economy—last June, a dozen committee Democrats sent Reps. Dingell and Boucher a letter stating their “strong opposition” to draft legislation. Rep. Boucher (D-VA) is Chair of the Subcommittee on Energy & Air Quality and is acting as Dingell’s chief lieutenant.

With the energy bill dominating 2007, the Committee is only now really focusing on a GHG bill. Rather than quickly cobbling together a bill that could get enough votes to pass the committee, but which might not be the best approach economically or environmentally for controlling greenhouse gases, Dingell and Boucher have been leading the committee through a comprehensive study of the economic, trade and other ramifications of an economy-wide federal cap-and-trade methodology for GHG emission control. Their first White Paper was released in the fall. A second late-January White Paper addressed competitiveness concerns and the need to engage developing countries. More white papers are planned. Reps. Dingell and Boucher have embraced the goal of cutting emissions 60 to 80 percent by 2050 by regulating emissions of carbon dioxide, methane from oil and gas systems and landfills, nitrous oxide and fluorinated gases.

- If the House passes a bill, there will be the usual House-Senate negotiations to develop a compromise measure. Given the utter complexity of the issue, the daunting challenge to get the economics right, and the myriad vested oil, gas, coal, nuclear, renewable, transportation, consumer and other interests, it could be hard to reach a compromise before time runs out for the 110th Congress. Should a compromise miraculously be crafted, returned to both bodies, passed and sent to the White House, all expectations are that the president would veto it. There probably are not enough votes to override—a two-thirds vote in each body is required. Alternative scenario: Congress passes a placebo bill (all bark, no bite) which the president signs but which does not do the job.



What happens in 2009? At this writing we don’t know who the nominees will be, much less who will be elected in November. However, Senators Clinton, McCain and Obama (listed alphabetically) all support cap-and-trade legislation to reduce GHG emissions. Clinton and Obama favor 100 percent auctioning of credits and cutting emissions by 80 percent by 2050. McCain has long been on record in support of cap-and-trade and has been one of the strongest Republican leaders on the issue. That said, passing a bill and getting it right will be extraordinarily difficult. European nations have discovered that they “got it wrong” and their programs to control carbon emissions have not worked.

⁶ Some reported fence-sitters: Republicans Alexander (TN), Gregg and Sununu (NH), Murkowski and Stevens (AK), Martinez (FL), Smith (OR), and Democrats Landrieu (LA), Conrad and Dorgan (ND).

□ (5) Law of the Sea

Oceans cover 70 percent of the earth's surface. More than half the U.S. population—53 percent and growing—lives in coastal counties. Marine resources and environment need to be protected. At a time when the earth's climate is changing, when populations are ever more hungry to use rapidly depleting fisheries and other sea life for food, and when industrial interests are mining the ocean floor for minerals and drilling for oil and gas, and large ships are transporting oil and other possible contaminants on the high seas, the oceans need to be well protected.

The U.N. Convention on the Law of the Sea (UNCLOS) was decades in the making. Concluded in 1982, it superseded old treaties that were generally unfavorable to the U.S. economic and security interests. However, the U.S. objected to deep seabed mining provisions of UNCLOS and declined to sign the treaty. Further negotiations resulted in a 1994 Implementing Agreement that satisfied U.S. concerns. Yet, despite broad support from the administration, business environmental and military groups, the Senate still has not ratified the treaty. (For background, see Updates #5, 11 and 12.)

UNCLOS has been ratified by 152 countries and has been in effect since 1994. Although the U.S. is in voluntary compliance, we do not get the benefits of being at the table when changes and modifications are negotiated.

The Senate Foreign Affairs Committee voted 17-4 on October 31 to approve the treaty. The four opponents were Republicans DeMint (SC), Vitter (LA), Isakson (GA) and Coleman (MN). Senate Minority Leader McConnell (KY) has also come out against UNCLOS, saying "I will oppose ratification . . . due to my refusal to subjugate the rights and interests of the United States to the jurisdiction of the International Tribunal for the Law of the Sea or a group of international arbitrators." This opposition from Republicans flies in the face of very strong Bush administration support for UNCLOS.



Vote counts will determine the timing: Supporters of UNCLOS do not plan to bring it to the Senate floor unless they are fairly certain of getting the votes they need for ratification. Right now there are 41 Democrats and 10 Republicans supporting the treaty. Ratification requires approval by two-thirds of the senators who are present—or 67 votes if all 100 senators are there. Thus, to be sure of ratification, another 16 "sure votes" must be lined up.

There are five undecided Republican Senators: Bennett and Hatch (UT), Bond (MO), Brownback (KS), and Smith (OR). Another seven Republicans are leaning in favor: Cochran (MS), Alexander and Corker (TN), Collins (ME), Graham (SC), and Martinez (FL). Eight Democrats also are leaning in favor: Landrieu (LA), Lincoln and Pryor (AR), McCaskill (MO), Ben Nelson (NE), Salazar (CO), Tester and Baucus (MT). From this group, 16 "yes" votes must be identified in order to ratify the treaty.

Some of these Senators personally are supportive of UNCLOS, or they are, at least, not opposed to it. However, they may have heard little or no support coming from "back home," giving them the impression that their constituents don't care about UNCLOS, or perhaps don't even know about it. At the same time, they may have received a handful of communications from contributors or conservative interests who agree with McConnell and other UNCLOS opponents. Unless they get some positive reinforcement from their constituents who favor ratification of UNCLOS, they could remain on the fence or even come out against the treaty.

How you can help:

If you are represented by any of the undecided or leaning-in-favor Senators, please tell them that you hope they will vote for this important environmental treaty. Remind your Senator that a Garden Club of America official position paper calls for the protection of ecosystems by development of national and global policies to protect coastal waters and the world's oceans.

□ (6) Clean Water Restoration Act (CWRA)

Garden Club:

The Garden Club of America's Position Paper on Clean Water supports the reduction of water pollution by reauthorization of a strengthened Clean Water Act and the protection of ecosystems by protection of surface water and groundwater. GCA has long been on record: Ellie Kelly, former chair of the GCA National Affairs and Legislation Committee, testified in 1972 in support of amendments that later became the Clean Water Act.

Supreme Court decision:

The Supreme Court in June, 2006 decided *Rapanos v. United States* in a confusing 4-1-4 vote. This muddled decision was a step backwards for enforcement of the 1972 Clean Water Act. The central issue is whether the Federal Water Pollution Control Act (commonly known as the Clean Water Act) was originally intended to protect wetlands located next to non-navigable tributaries.

Advocates of wetlands protection say the original intent was very broad and encompassing. However many farm, commercial, mining, development and other interests say the intent was never to extend clean water enforcement to minor tributaries and wet areas that are too small to be navigated.

Legislation:

The Clean Water Restoration Act would clarify the original intent of the Clean Water Act by replacing the term "navigable waters" wherever it appears with the term "waters of the United States." This new term is defined to mean *"all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing."*

H.R. 2421 was introduced by Rep. Oberstar (D-MN) and has attracted 170 cosponsors. S. 1870 was introduced by Sen. Feingold (D-WI) and has 20 cosponsors.

Senators Clinton (D-NY) and Chafee (R-RI) held a hearing in August, 2006 on restoring a broad scope of water protection, but there was too little time remaining in the 109th Congress to take on such a complex issue. At the end of the 109th, clean water legislative leaders vowed to make CWRA a top priority for the 110th Congress.

Despite these sentiments, CWRA has had a hard time getting out of the starting gate. Although both the House Transportation and Infrastructure Committee and Senate Environment and Public Works Committee have held hearings, neither has reported the legislation.

What's the hold up? CWRA advocates want to be sure of victory before they push the bill to full House and Senate votes. There are many staunch opponents, and legislators are hearing from a coalition of industry groups who object to the regulatory burdens of the Clean Water Act. These opponents prefer leaving the legal issues unresolved rather than returning to the decades-long previous enforcement regime.

Therefore, the bill will not be moved out of committee and scheduled for floor votes until enough firm votes for CWRA are lined up to ensure passage. Even getting the bill through the Senate Environment and Public Works Committee could be difficult. Senators Alexander (R-TN) and Voinovich (R-OH), for example, have not committed to support CWRA yet. Also, there is a huge difference between cosponsoring a bill and voting for it: CWRA advocates cannot assume that every cosponsor will be a "yes" when time comes to vote. And one last point: If legislators hear entirely or mostly from CWRA opponents, they will not appreciate that many of their constituents actually favor the measure.

How you can help:

- Tell your Representative and Senators that you favor the Clean Water Restoration Act and that you hope he or she will work to get it enacted this year.
- If your legislators haven't already cosponsored CWRA, urge them to do so now.

How to contact your legislators:

To send e-mail to your representative, go to <http://www.house.gov/house/MemberWWW.shtml>. Click on your representative's name, and then look for the "contact" box and follow the directions for sending e-mail.

To send e-mail to your senator, go to http://www.senate.gov/general/contact_information/senators_cfm.cfm and scroll to the senator's name. There you will see a "web form" address in red type. Click on that address and follow the directions for sending e-mail.

To telephone any representative or senator: Call the Capitol switchboard: 202-224-3121. Ask for your legislator's office. When the phone is answered, say that you want to leave a message about upcoming legislation. A young aide will take the message or send you to the legislator's voice mail. This seems impersonal, but is nevertheless effective—legislators keep track of how many calls come in on different issues and the direction in which sentiment is running. Even a relatively small number of calls are enough to warrant serious consideration of the view expressed.

NAL Update serves in an advisory capacity, based on committee research. Individual clubs and members may act on any issue as they choose.

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