Joint Legislative Committee on Climate Change Policies
June 14, 2017
Speaker: Alice Kaswan, Professor, USF School of Law

Biography:

Prof. Alice Kaswan is a professor of environmental law at the University of San Francisco School of Law, where she has taught environmental law since 1999. Her scholarly writing focuses on climate change policy, environmental federalism, and environmental justice. She is a member of the Board of Directors for the Center for Progressive Reform, a progressive think tank of environmental law professors, and an elected member of the American Law Institute. She received her law degree from Harvard (1991, *cum laude*) and a B.S. in Conservation and Resources Studies from UC Berkeley (1984, with highest honors).

A list of relevant writing is included at the end of this handout.

Testimony Outline:

I. Introduction

Primary focus: AB 197's prioritizing of "direct emission reductions at large stationary sources" and "mobile sources."

(1) What roles for direct regulations and cap-and-trade?
(2) To the degree we rely on cap-and-trade, how does AB 197 affect offsets and program linkages to other jurisdictions?

II. What Roles for Regulatory and Market-Based Approaches?

Overall: both regulation and markets have important roles to play. A key question is whether the 2017 Scoping Plan Update should provide a greater role for regulation.

A. <u>The Role of Regulation in the 2017 Scoping Plan Update</u>
   1. Direct regulation plays a substantial role in the energy and mobile source sectors.
   2. Industry: Less pervasive; Plan contemplates regulations for refineries and oil & gas production
   3. Overall: Plan's regulatory measures will achieve around 72 % of the cumulative reduction needed by 2030. (p. 42)
   4. To fill gap – 28% of reductions needed by 2030 -- ARB proposes continuing cap and trade program

B. <u>Value of Considering Additional Regulation for the Industry Sector</u>
   1. Context: Need for long-term decarbonization. Requires planning, coordination, technical and financial support, and pressure (through regulation or market signals)
   2. A market-based approach does not provide industry coordination, planning and support.
   3. Until 2025, the cap-and-trade program is unlikely to exert sufficient transformative pressure on industry (through a price signal), since regulations in other sectors will drive necessary reductions until then.
   4. The current cap-and-trade program has no mechanism for maximizing the co-pollutant or other co-benefits of decarbonization

C. <u>What Regulation is Possible?</u>
   1. <u>Results of Energy Efficiency Audits and Co-Benefit Analysis</u>

First AB 32 scoping plan: ARB required 5 major emitting industries to engage in energy efficiency audits and analyses of co-benefits. Proceeding with regulation in 3 industries (refineries, oil and gas production, electricity generation (indirectly))

Question: What about cement and hydrogen? Completed audits but Plan does not propose regulation

2. Need for Deeper Measures, Beyond Energy Efficiency?
   - Primary source of industrial emissions: on-site energy generation
   - Need to consider not just efficiency, but transition to clean energy.
   - Cap-and-trade says – "you figure it out." But is more needed to identify transformative opportunities and the steps to achieve them?
   - CA is a leader in electricity, in mobile sources, in the relationship of land use to GHGs … should ARB and California be leaders in driving transformative change in industry as well?

3. Any Role for Cap-and-Trade?
   - Valuable role for cap-and-trade.
     CAP: Bridges the expected gap between existing ideas and target, and provides backstop if/when strategies fail to deliver
     PRICE SIGNAL: Creates an ongoing incentive for emission reducing innovations
     REVENUE: Funds equity, investment in clean energy future, adaptation

III. AB 197 and Cap-and-Trade

A. Consistency of Cap-and-Trade with AB 197
   - Does AB 197 prioritize only direct regulation to achieve direct emission reductions?
   - Or does it prioritize any policy that achieves direct emission reductions – including cap-and-trade if it achieves such reductions?

B. AB 197 and Offsets
   - Offsets do not lead to "direct reductions" at large sources
   - Encourage ARB to analyze the effect of offsets on direct emission reductions and consider reducing or eliminating the C&T program's offset usage. (ARB considering revisiting – see p. 40)

C. AB 197 and Program Linkage
   - Linkage: Could affect whether reductions occur in California or outside California
   - Did AB 197 implicitly intend for "direct reductions" to be in California, or could they be out-of-state?
   - Raises important questions about how CA-centered the program should be, versus promoting regional and global climate change efforts.
     While California benefits are desirable, urge caution in taking an isolationist approach given the global nature of climate change and global stakes of encouraging climate action
   - The more ARB provides a regulatory foundation that sparks transformative change in California, the less risk that linkages would impede CA's progress.

IV. The Scoping Plan Update and Co-Pollutant Reductions

I presume there will be insufficient time for discussion of this topic, but include a few notes, and would be happy to follow up later in the hearing or at a later time. A key driver for AB 197's "priority" for "large

source reductions" is to prioritize GHG and associated co-pollutant reductions form large facilities, which are disproportionately located in disadvantaged communities.

- However, although AB 197 encourages data transparency that will make it easier to see the connection between GHG and co-pollutant emissions, it doesn't explicitly require that policies link GHG and co-pollutant reductions.
- In legislative proposals to extend cap-and-trade should perhaps go farther. Push for multipollutant air pollution control strategies that permit and foster multi-pollutant planning – legislation that isn't "GHG" or "co-pollutant" legislation, but multi-pollutant legislation that facilitates collaboration in achieving both climate and AQ goals.
- If transformation to clean energy is the goal, then can't continue along the path of end-of-the-pipe controls that typifies CAA permitting. ARB needs authority to consider production processes and energy sources.
- And likely to need incentives and investments as well as regulation

Relevant Scholarship

Selected blog posts:

"Landmark California Law Links Emissions Reductions and Environmental Justice Goals", Center for Progressive Reform (September, 2016)

"As court weighs clean power plan, rule's approach could reduce carbon emissions, improve public health," The Hill (September, 2016)

"With or Without the Clean Power Plan, It's Up to the States to Transition to Clean Energy", Center for Progressive Reform (December, 2016)

Selected Articles (available at https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=358100):

"Controlling Power Plants: The Co-Pollutant Implications of EPA's Clean Air Act § 111(d) Options for Greenhouse Gases," 32 *Virginia Journal of Environmental Law* 173 (2014).

"Climate Change and Environmental Justice: Lessons from the California Lawsuits," 5 *San Diego Journal of Climate and Energy Law 1* (2014).

"Environmental Justice and Environmental Law," 24 *Fordham Environmental Law Review* (2012-13)

"Climate Change, the Clean Air Act, and Industrial Pollution," 30 *UCLA Journal of Environmental Law & Policy* 51 (2012).

"Decentralizing Cap-and-Trade? State Controls Within a Federal Greenhouse Gas Cap-and-Trade Program," 28 *Virginia Journal of Environmental Law* 343 (2010).

"Greening the Grid and Climate Justice," 39 *Environmental Law* 1143 (2009).

"Decentralizing Cap-and-Trade? The Question of State Stringency," 1 *San Diego Journal of Climate & Energy Law* 103 (2009).

"A Cooperative Federalism Proposal for Climate Legislation: The Value of State Autonomy in a Federal System," 85 *Denver University Law Review* 791 (2008).

"Environmental Justice and Domestic Climate Change Policy," 38 *Environmental Law Reporter* 10287 (2008). (This article was published as "Justice in a Warming World" in *The Environmental Forum* (2009) and an excerpt of the article was published in *Environmental Justice: Law, Policy & Regulation*, 2009.)

"The Domestic Response to Global Climate Change: What Role for Federal, State, and Litigation Initiatives?," 42 *University of San Francisco Law Review* 39 (2007).