

ROBIN LANCASTER ASSESSES THE IMPACT OF THE US  
MID-TERM ELECTIONS ON THE COUNTRY'S EFFORTS TO  
CONFRONT CLIMATE CHANGE

# Toskinacat

The US midterm elections, which took place on 2 November, have been a focal point for many efforts to block the country's attempts to develop measures to deal with global warming. It was no surprise that the Republican party – with almost all of its candidates espousing views doubting the science behind man made climate change – made gains from the US Congressional and gubernatorial elections.

But, while some claimed the results signalled the death of carbon cap-and-trade in the US, the election outcome in California showed that, actually, plans for greenhouse gas (GHG) emissions trading are far from dead. A ballot initiative, known as proposition 23, that would have blocked California's carbon market plans was defeated and the US's most populous state also elected a Democratic party governor, Jerry Brown, who is pro-climate regulation (see pages 22–24).

The California election results also open the way for a wider North American carbon market under the auspices of the Western Climate Initiative (WCI). WCI is a coalition of seven US states and four provinces of Canada that aim to reduce GHG emissions 15 per cent below 2005 levels by 2020. California's cap-and-trade plans include linking to its partners in the WCI. But the depth of that linking is still to be finalised.

Even before the 2 November elections, the only other US state likely to be an active member of the WCI, when it plans to start in 2012, was New Mexico. On election day, the state's Environmental Improvement Board approved rules, which were proposed earlier this year by the New Mexico Environment Department, that would allow its participation in the WCI.

But the election saw New Mexico elect a Republican governor, Susana Martinez, who during her campaign had questioned the science behind climate change. Whether or not Martinez has the

authority to stop the state's participation in the WCI is still up for debate. But even if she can't block it directly, there are several options open to her that would, in practice, mean New Mexico couldn't take part in the scheme when it starts.

"How is (New Mexico's participation in WCI) going to be funded or administered, if the governor doesn't believe in climate change," said Richard Saines, head of the North American climate change and environmental markets practice at law firm Baker & McKenzie in Chicago.

The other US states that are WCI members – Arizona, Utah, Montana, Oregon and Washington – have said they will definitely not be part of the cap-and-trade programme in 2012. Although, Montana, Oregon and Washington could participate from 2015. There are strong indications that several provinces of Canada are likely to be part of WCI from 2012 – along with California. British Columbia (BC), Ontario and Quebec have indicated they will participate.

BC's Climate Action Secretariat released a consultation paper in late October outlining details of the province's cap-and-trade plans. The proposals follow previously published WCI regulations, apart from the coverage of emissions from residential, commercial and transport sectors. In BC, emissions from these areas will continue to be addressed by the province's carbon tax, rather than incorporated into the cap-and-trade scheme.

According to analysis by Point Carbon North America, 750 million tonnes (Mt) of carbon dioxide (CO<sub>2</sub>) could be covered by the WCI in 2015. Unlike Europe's emissions trading scheme, where the power sector is by far the largest emitter, the majority of emissions under WCI will be in the transport sector (44 per cent), followed by industry (24 per cent), power (20 per cent) and residential/commercial (12 per cent), said Point Carbon.

Meanwhile, the US' only functioning mandatory carbon cap-and-trade scheme – the Regional Greenhouse Gas Initiative



JIM YOUNG/REUTERS



(RGGI) – may still have a future following the midterm elections. The scheme, which started in 2009 and covers power generators in 10 northeastern US states, aims to cut CO<sub>2</sub> emissions by 10 per cent by 2018.

Before the midterms, possible Republican gubernatorial gains in the region had cast doubt on RGGI's continuation. "There were plenty of governors up for re-election and there was a little bit of concern. But the elections fared well," said Hannah Mellman, US policy advisor at lobby group the International Emissions Trading Association (Ieta) in Washington, DC.

One RGGI state – Maine – elected a climate sceptic as its

## The one thing that is certain in the US is that carbon cap-and-trade is firmly off the agenda at the federal level

governor. In two of the largest RGGI states – Massachusetts and New York – where gubernatorial elections took place in 2010, Democratic governors held onto power. This has raised expectations about the next stage of the scheme. "A state could drop out, but I'd be surprised if it's dismembered," said Saines at Baker & McKenzie.

RGGI Inc, the organisation that administers the northeastern trading scheme, has started work on what will culminate in a review of the programme in 2012. As a result of a generous allocation and the economic downturn, allowance prices have been trading at less than \$2/t of CO<sub>2</sub> – as Trading Carbon went to press in mid-November the RGGI price was \$1.89/t for December 2010 delivery. But

### President Barack Obama: Turning away from cap-and-trade

possible changes as a result of the review process could boost the scheme's standing, according to some market watchers.

"It may be a big battle going forward, but, if states stay in, it is possible that prices could go up in RGGI and offsets will become viable," said John Hodges, founder and president of project developer Sun One Solutions in Denver, Colorado. Higher RGGI prices would also make a link with California and WCI more viable.

"There is talk of RGGI linking with WCI and California," said Baker & McKenzie's Saines. "It will be interesting to see when California is finalised, whether RGGI states have the desire to link for better compliance opportunities," he said.

The future of the US' other planned regional programme to address GHG emissions – the Midwest GHG Reduction Accord – is uncertain following the midterms. The accord, which is made up of six US states and one province of Canada – Iowa, Illinois, Kansas, Manitoba, Michigan, Minnesota and Wisconsin – includes arrangements for cap-and-trade. Illinois saw a pro-environment governor elected – Pat Quinn – but several other states elected less supportive governors, said Baker & McKenzie's Saines. "And so it will be much harder to get critical mass," he said.

The one thing that is certain in the US is that cap-and-trade is firmly off the agenda at the Federal level. The Republicans gained control of the House of Representatives and, although the Democrats held on to the Senate by a slim 53–47 majority, it will be almost impossible to gain the 60 votes needed to avoid a filibuster. The vast majority of the newly-elected Republicans have come to power on a platform opposing increased government regulation.

Even President Barack Obama said at a press conference on

## US Congress following midterms\*

### Senate

Democrats: 53 seats (includes support of two independents)

Republicans: 47 seats (Alaska still to be decided, but winner will support Republicans)

### House of Representatives\*\*

Democrats: 190 seats

Republicans: 240 seats

\* 112th Congress will commence from 3 January 2011 \*\* Five seats still undecided

Source: Reuters

3 November, “Cap-and-trade was just one way of skinning the cat; it was not the only way. And I’m going to be looking for other means to address this problem.”

One possible way is through the US Environmental Protection Agency (EPA), which released details of the “best available control technology” (bact) that stationary sources can use to reduce GHG emissions from 1 January. From that date, facilities that already obtain EPA New Source Review permits for other pollutants, such as lead, sulphur dioxide and nitrogen dioxide, will be required to acquire GHG permits. In July 2011, the regulations will also cover all new facilities with GHG emissions of at least 100,000 t of CO<sub>2</sub> equivalent a year and modifications at existing facilities that would increase GHG emissions by at least 75,000 t of CO<sub>2</sub>e/y.

But Republicans in Congress, and some Democrats, are looking for ways to block the EPA’s regulation of GHG emissions. They claim EPA regulation is not the best way to deal with GHGs and believe Congress should legislate on the issue. In June, a proposal to stop the EPA regulating GHGs by Republican Senator Lisa Murkowski failed to get enough support. Another bill, to postpone EPA for two years proposed by Democratic Senator Jay Rockefeller is still to be voted on.

President Obama has said he would veto any Congressional attempts to stop the EPA’s action on GHG emissions. He cited, at the recent press conference, the fact that EPA is under a court mandate to deal with the issue. But, if such a bill reaches his desk, there could be room for concessions, according to some market sources.

“Is Obama going to allow EPA to be blocked as a compromise for a renewable energy or energy efficiency standard or ultimately for a GHG strategy going forward? He has to decide whether it’s a fight worth fighting,” said Baker & McKenzie’s Saines. “If the Republicans demand the EPA’s authority to regulate GHGs be overturned without the obligation for anything meaningful in return, I think he’ll veto,” he added.

“Congress is not in favour of EPA regulation, but it has no alternative,” said Ieta’s Mellman. “Stalemate over cap-and-trade and GHG regulation could create the possibility for a compromise,” she said.

According to Christopher Berendt, vice president, environmental markets, policy and strategy at energy consultancy Pace Global in Fairfax, Virginia, “Everything ‘clean energy’ is on the table for this next session of Congress.

It’s going back to the drawing board, where the focus is shifting away from direct regulation of GHG emissions to influencing the resource mix of our power fleet.”

One possible idea is for Congress to develop a clean energy standard, which has Republican support in Congress, said Baker & McKenzie’s Saines. Such a mechanism would include incentives for new nuclear power plants and carbon capture and storage, as well as renewables and energy efficiency. “It’s high on peoples’ minds for clean job creation in Congress,” added Berendt at Pace Global.

Another option would be for the EPA to allow more flexibility for companies to comply with GHG rules. Currently, the regulation, which is moving forward under the Clean Air Act, applies to individual installations and centres on Bact. The organisation released the first guidance on Bact on 10 November (see page 8). It did not define or specify a control option, but recommended that permitting authorities in states meet with operators of a facility to discuss their options for controlling GHGs.

The guidance did not include any market-based options for complying with the EPA rules, but this doesn’t rule out such opportunities in the future, said some carbon market sources.

“EPA has the ability to do market-based regulatory instruments and it will be interesting to see if they do that,” said Kyle Danish, a partner and coordinator of the climate change and emissions trading practice at law firm Van Ness Feldman in Washington, DC. “People are asking them to do that,” he added.

But would Congress be happy with more options for EPA? Ieta’s Mellman said, “It is definitely feasible. The EPA has the regulatory authority. What capacity is still being explored – it could be flexible mechanisms, such as using offsets. But I can’t

## The defeat of proposition 23 has brightened an otherwise dismal year for climate policy in the US

say whether it would be flexible enough to pacify Congress. This idea is in its early stages.”

It is still the early stages for California’s cap-and-trade and the WCI. But there is no question that the election results and, in particular, the defeat of proposition 23 has brightened an otherwise dismal year for climate policy in the US.

“In some of the darkest days in the last five–10 years for climate action in the US, California moving ahead demonstrates action in the US is sustaining and continues to grow,” said Pace Global’s Berendt.

“Recent experience has seen cap-and-trade get a very bruised reputation in Washington, DC, and not necessarily for fair reasons,” said Danish at Van Ness Feldman. “It’s unlikely for a number of years that Congress will enact cap-and-trade legislation, but there is momentum in a very large state – bigger than many countries. If California can demonstrate its effectiveness in reducing GHG emissions without being detrimental to the economy it will be an important case.” ●