

Sierra Club Summary of the American Power Act

May 2010

If the American Power Act proposal introduced by Senators Kerry and Lieberman stays true to its goals, it can serve as a foundation on which we can build an America free from oil dependence, with millions of new clean energy manufacturing, construction and service jobs here at home, less wasted energy, and less of the carbon pollution that is threatening our economy, our health and our climate.

But this proposal will only serve as a solid foundation if the Senate both improves and completes it.

We are working with Majority Leader Reid, Chairman Kerry, Senator Lieberman and our champions in the Senate to make sure this bill moves us away from coal and oil, and that the final bill represents Sierra Club priorities.

Because we know that legislation that can pass the House and Senate is going to be a mixed bag, we are working to pass the strongest targets possible now, fix the elements that would be impossible to change later and live to fight another day on elements were we know we cannot win today.

Essential Elements of the Bill: The strength of the bill is in the environmental provisions. We are working to make sure these strong provisions remain in the bill.

- **Strong Targets and Timetables for Reducing Greenhouse Gas Emissions.** The bill calls for a global warming pollution reductions of 17 percent below 2005 levels by 2020, 42 percent by 2030, and 80 percent by 2050.
- **Clean Air Act Regulation.** The draft retains a key Clean Air Act authority, New Source Performance Standards for carbon dioxide emissions from existing power plants and sets an aggressive new CO₂ standard for new power plants. On the down side, it removes the plant by plant New Source Review (PSD) authority over carbon emissions increases at modified power plants. This compromise represents a step forward from the House passed climate bill, with this regulatory authority EPA will be able to proceed with the clean up of old dirty power plants.
- **Energy Independence.** The transportation provisions in the American Power Act are a good first step to ending our dependence on oil and creating a clean and efficient transportation system. Senators Kerry and Lieberman get a good start by requiring states and metropolitan areas to create sustainable transportation plans, funding infrastructure projects that will create jobs and build a 21st century transportation system and by investing in advanced technology vehicles. While these programs represent a beginning, it is clear that we must aggressively invest in additional solutions that will end our dependence on oil and create a clean and efficient transportation system.

- **Offshore Drilling.** The bill does not expand offshore drilling, and does not call for leasing in areas previously protected by the Congressional drilling moratorium. The bill also provides a temporary moratorium on any new offshore drilling until the cause of the Deepwater Horizon oil spill is determined and the Secretary of the Interior certifies it is safe.
- **Liability Mechanism, Improved Safety Measures and Clean Up Technology.** Calls for all three but there are no details in the bill.
- **Impact Studies.** Allows impacted states to veto drilling in nearby states eligible to receive revenue sharing. The bill requires the Secretary of the Interior to study the environmental and economic impact of a potential oil spill on neighboring states eligible for revenues sharing before drilling can occur. For example, if the DOI study documents that an oil spill from Virginia would pollute beaches in New Jersey, its legislature could pass a law vetoing drilling off the coast of Virginia.
- **Allows states to establish a 75-mile drilling buffer.** There is currently no buffer zones in place for the Atlantic or Pacific coasts; the bill gives states the opportunity to petition the Department of the Interior for a 75-mile no leasing, no drilling, buffer zone.
- **Consumer Assistance.** The bill currently includes robust provisions to help consumers deal with rising energy prices.

Sierra Club Concerns with Draft: The bill is crafted to thread a political needle. As a result it sets performance standards for new coal plants, and requires carbon capture and storage for new plants, but it reduces Clean Air Act authority given to EPA to regulate existing coal plants. Additionally, the bill does little to limit the number of offsets (credits for emissions reductions outside of the cap allowed to replace reductions under the cap) – so companies willing to pay for other reductions could avoid making emissions reductions from power plants and other covered sources.

- **Offsets.** The bill would allow two billion tons of offsets, which could allow the near term targets to be met by reducing emissions from sources outside of the cap. The quality standards setting process for offsets should be strengthened by giving the Environmental Protection Agency equal status in developing the criteria to verify emissions reductions from offsets.
- **State Cap and Trade Programs.** The bill would prohibit states from creating their own cap and trade programs. The ability of states to continue to innovate is critical to developing a clean energy economy and reducing carbon emissions. It does not, however, prohibit states from setting emissions targets or employing other measures to reduce greenhouse gases.
- **Tropical Forest.** The bill eliminates the fund to prevent tropical deforestation that was established in the House passed climate bill. A robust fund would provide a significant additional reduction in emissions in developing countries.
- **Biomass.** The definition of ‘renewable biomass’ in Kerry-Lieberman – which is essentially the same definition that passed out of the House – is not the worst that we

have seen over the past year and a half. Thanks to some of the safeguards on key public lands, it is by far better than the Farm Bill definition. However, there are significant concerns, and when this definition appeared in the final House bill, we recognized it as a tough pill to swallow, primarily because of a loophole inserted around late successional stands and the fact that there are no safeguards on private lands.

- **Worker Protection.** The House passed bill included provisions that would require projects funded under this legislation pay the prevailing wage. It also includes a worker transitional title that is insufficient.
- **Nuclear Power.** The bill lavishes subsidies on the nuclear industry and further limits public participation in the permitting process.
- **Coal Power.** The bill includes billions of dollars per year worth of incentives for the implementation and study of carbon capture and storage.
- **Revenue Sharing.** The bill provides an incentive for future oil leasing and drilling by allowing states to keep 37.5 percent of the revenue from new offshore drilling for the lower 48; Alaska would keep 33 percent of the revenue. 12.5 percent would go to the Land and Water Conservation Fund, with the remaining funds allocated for deficit reduction. While this is bad precedent, it is expected to affect a small number of states.

Additional Positive Elements

- **Science Review Process.** The bill ensures that the emissions reduction program reflects the most recent science. A robust scientific review process will help us to avoid the worst impacts of climate change and adapt to the impacts we cannot avoid.
- **Disclosure of Hydraulic Fracturing Fluids.** The bill includes place-holder language that states the intention to require that the Emergency Planning and Community Right to Know Act (EPCRA) be amended to require disclosure of all of the components of the solutions used to break out natural gas in the hydraulic fracturing process. This section needs to be expanded and refined to assure that the structure of EPCRA can conform to getting this done effectively.
- **Floor Price for Greenhouse Gases.** The draft sets a minimum price on greenhouse gases of twelve dollars per ton starting in 2013, rising by three percent per year above inflation. In 2020 this means a price of approximately fifteen dollars per ton of emissions, or 1.5 cents per kilowatt hour for electricity from a coal-fired power plant. This increase in the operating cost of coal prices will cause some utilities, primarily in the East where coal prices are higher, to operate coal power plants less often. Coal power plants are facing many additional costs including new rules for hazardous air pollutants, sulfur and smog, and coal ash which when combined with a price on carbon we believe will result in the closure of many power plants.

The draft American Power Act is expected to be merged with elements of the American Clean Energy Leadership Act (ACELA) which passed the Senate Energy & Natural Resources Committee last year. At that time the Sierra Club opposed the bill because of its expansion of

offshore drilling, support for nuclear power and the relative weakness of its Renewable Electricity Standard (RES). The nuclear and offshore drilling pieces are expected to be replaced by what is now in the new draft. The following elements of ACELA should be included in the final package and in some cases strengthened:

- **Renewable Electricity Standard.** In order to ensure the near term deployment of renewable energy technologies and maximize the creation of clean energy jobs, the bill must include a Renewable Electricity Standard (RES). ACELA contains an RES that would require an electric utility to produce fifteen percent of its product from renewable energy by 2021 and would allow up to four percent of that to come from energy efficiency. For both renewable energy and energy efficiency this requirement is far below the status quo and must be strengthened. The Sierra Club supported a combined renewable energy requirement of 25 percent (seventeen percent renewable energy, eight percent energy efficiency) in the House. ACELA does not have a separate Energy Efficiency Resource Standard (EERS).
- **Energy Efficiency: Building codes, appliance standards and industrial efficiency.** ACELA does contain appliance and industrial efficiency provisions that would be an important step forward and help the nation achieve some the most cost-effective reductions in energy use and global warming pollution. In addition to efficiency standards for a number of products, the bill also includes improvements to the Energy Star program that will result in more frequent updates, better oversight, and consideration of several other improvements.
- **Building Codes:** ACELA also includes national efficiency targets set for residential and commercial buildings. The building code provisions will help cut energy use in buildings significantly by providing targets for improvement and aiding state enforcement, as well as effective incentive programs to encourage retrofits of homes and commercial buildings. It is critical that the final package include significant funding to provide the resources necessary to enable implementation and create an incentive to adopt the new codes.

Sierra Club Funding Priorities: The current draft of the American Power Act fails to deliver sufficient funding to key Sierra Club priorities. We will work with Senate Leadership and our champions to improve the balance of the funding as this bill moves forward.

- **Energy Efficiency.** The bill and the Senate energy bill create several important energy efficiency programs to set standards for buildings, appliances, and industry in addition to an ambitious program to retrofit existing homes and commercial buildings. It is critical that these programs receive funding in order to maximize the effectiveness of energy efficiency to reduce emissions and keep down costs. Though we sought to designate that a percentage of the large quantity of free allowances to be given to utilities be required to

be spent on energy efficiency, such a carve-out was not included in the bill -- leaving a funding void for utility-based energy efficiency.

- **International.** U.S. support of international adaptation and clean tech funding is necessary to achieving our country's national security, economic stimulus, development, and climate and energy objectives and to achieve a global climate agreement this year.
- **Renewable Energy.** A strong climate bill should provide funding for the deployment of renewable energy technologies especially emerging and distributed generation technologies.
- **Domestic Adaptation.** The funding for long-term planning to safeguard wildlife habitat and communities from forest fires, increased flooding, invasive species, shifting species ranges, sea-level rise, and increasing drought should be increased. This will protect our natural resources as well as our economy. This funding would be spent across the federal agencies responsible for natural resources – including activities on the 750 million acres managed by the four largest federal land management agencies, 50 state agencies, scores of tribal partners, and on extensive private lands.