

Anthropogenic Global Warming: *Believe it or Not, it's Here*

By Donald C. Nanney

Do you believe...That global warming is caused by human activity (anthropogenic)? That climatologists are in consensus without credible dissent? That climatologists can reliably forecast global catastrophe decades ahead when weather forecasting for next week is often wrong?

That reduction in CO2 emissions may avoid the catastrophe? That the United States is primarily to blame and should give billions of dollars to the United Nations, as requested, for mitigation projects around the world? That the United States should have joined the Kyoto Protocol? That Al Gore deserved his 2007 Oscar and Nobel Prize for his movie "An Inconvenient Truth"?

If you believe, join the crowd.

Or do you believe that anthropogenic global warming is an unproven theory? A deception? Media driven hysteria? Political correctness? That it relies on cherry-picked data and assumptions? That anthropogenic sources are minuscule compared to natural causes and climatic cycles? That attempts to "fix" climate change will be a futile waste of resources, damaging the economy?

If you doubt or don't believe, be careful what you say. Emotions tend to run high. You can lose friends and colleagues.

Will the Benjamin S. Crocker Symposium 2008 answer those questions and affirm or change your beliefs? Probably not. There will be a panel of esteemed speakers on *Global Warming, Risk, Sustainability, and Development – A New World*, and we are honored to have California's Attorney General Jerry Brown as our opening keynote speaker. But they would have insufficient time to provide scientific education in climatology, let alone to debate the questions even if they are not all true believers.

Moreover, the subject must be dealt with regardless of individual belief. It is here and

cannot be ignored. Rightly or wrongly, the California legislature has become a believer and has adopted AB 32 (the California Global Warming Solutions Act of 2006). Attorney General Brown has pursued legal actions to force consideration of the impact of development projects on global warming as part of the CEQA process, and municipalities are adopting policies for such consideration.

Even banks are getting on the bandwagon. Citigroup, JPMorgan-Chase and Morgan Stanley recently established the Carbon Principles, lending guidelines to reduce CO2 emissions. These principles apply to power plants, but similar lending guidelines may be adopted for other contexts.

Carbon offset and credit trading programs like those sanctioned by the Kyoto Protocol may yet develop widely in the United States.

There are pending international negotiations to replace the Kyoto Protocol with a new program for caps on greenhouse gas emissions. China is contending that the United States and other "rich" nations are the "culprits" and should have more stringent caps per capita than developing nations.

Given the views of the leading presidential candidates, the next administration may be more receptive to carbon cap regulations and treaties.

In this new world, the *Global Warming* panel will provide current, practical information about the role of CEQA in addressing climate change effects of development projects; how owners and developers are grappling with climate-related risk and insurance issues; and what innovative developers, urban planners and local governments are doing to design neighborhoods to reduce climate change impacts.

It will be left for another forum whether Al Gore was correct, perhaps in a court case involving a claim under an environmental insurance policy covering pollution conditions that are not naturally present. If contam-

inants were spread by severe weather due to global warming, would the cleanup be covered? The insurer may contend that the weather event causing the deposit of pollutants was the result of natural climatic cycles creating new "background" conditions that are not covered. Experts could dispute anthropogenic vs. natural cause and the courts would decide.

The practical lesson of that scenario for transactional attorneys and risk managers is that policies should be reviewed and, if necessary, endorsed to clarify that coverage applies regardless of the cause of global warming and resulting damage. It will be interesting to see which companies will assume the risk of damage caused by climate change or will exclude it and from which kinds of policies.

With all this, the Crocker 2008 *Global Warming* panel should be fascinating. See you there!

© Copyright 2008. **Donald C. Nanney. All rights reserved.** This article was published in the March 2008 issue of *Real Estate Southern California* in a promotional supplement for the Benjamin S. Crocker Symposium on Real Estate Law and Business 2008, which is produced jointly by the Real Property Section, Los Angeles County Bar Association, and the Richard S. Ziman Center for Real Estate at UCLA.



Donald C. Nanney heads the environmental law practice of Gilchrist & Rutter Professional Corporation in Santa Monica, California. He is a frequent lecturer on environmental law and real estate issues. He is the author of *Environmental Risks in Real Estate Transactions: A Practical Guide (Second Edition)*, McGraw-Hill, Inc./Executive Enterprises Publications Co., Inc. (1993), and numerous other published works.