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From the Selected Works of David R. Hodas

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According to the old saw, "everyone complains about the weather, but nobody does anything about it." Perhaps this should be changed to "nobody should complain about the weather because we all do something about it." The greenhouse effect makes our planet livable, but since the industrial revolution we have significantly increased atmospheric concentrations of greenhouse gases (GHGs); we are warming the planet, and changing its climates. Responding to this risk, in 1992 world leaders signed the Framework Convention on Climate Change (which entered into force as international law in 1994) "to stabilize greenhouse gas emissions in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."

The hard work of implementation remains. Developed countries worry that rapid reduction of GHG emissions (most of which come from burning fossil fuels such as oil, coal and natural gas) could hobble their economies. Developing countries worry that limiting growth of their meager per capita use of fossil fuels would deny them the opportunity to achieve the economic wealth that developed countries now enjoy. But we face a further dilemma: if the developing world adopts existing technology, its GHG emissions would dramatically increase and accelerate climate change. Accommodating these competing equity, economic and environmental concerns will require us to eliminate significant inefficiencies in our present energy use, and to employ renewable sources of energy to drive our economies. Jumping to this new level of technology requires government policies that harness the magic of market innovation. These concepts are the focal point of the ongoing negotiations over how emissions limitations should actually be achieved. Despite the immensity of the task, we are in the final stages of deciding what we should do about the weather.

As we move from the broad policy and scientific discussions of a decade ago to the particulars of program design and implementation, the role of lawyers grows rapidly. As you will see from this issue, lawyers are now actively practicing in this field, which will emerge, if the world agrees even modestly to limit GHG emissions, as the next great environmental law practice area. It will involve government policy, regulatory practice and, most importantly, extensive transactional work in support of an emerging multibillion dollar market in emissions reduction trading.

How can all this be? This issue will tell you. Starting with a general overview of the science and policy, from both American and European perspectives, the issue will explain how these markets might work, and even how to negotiate and draft documents to support emission trading transactions. Our cover tells the story of our issue: the most probable response to climate change will be the emergence of a lively global market in GHG emissions reductions trading.

(Continued on page 146)
We are privileged to begin this issue with an outstanding overview of the current state of climate change science by the director of the [Clinton] White House Office of Science and Technology, Neal F. Lane, and the office's associate director for environment, Rosina Bierbaum. We are also privileged to have Frank E. Loy, Under Secretary of State for Global Affairs, elaborate on the United States policy on climate change and the role of lawyers in fighting climate change. However, the United States is only one crucial actor in the climate change debate. We are fortunate to have John Gun-mer, a member of the British Parliament and previously the Secretary of State for the Environment under former Prime Minister John Major, challenge us with a perspective from his British outpost.

With this basic grounding in science and policy,

Richard B. Stewart, James L. Connaughton, and Lesley C. Foxhall begin our exploration of the role of markets to meet our GHG emission limitations goals. Using lessons learned from the U.S. market experiences, such as the Clean Air Act's SO2 trading program, they describe how to design an emissions trading system to facilitate investment in GHG emissions limitations. Alan S. Miller and Eric Martinot illustrate the wide variety of projects that are emerging, and tell us how to get financing and regulatory support in developing countries for these projects. Kyle W. Danish and Jonathan C. Rotter provide expert, practical advice to environmental and transactional lawyers negotiating and drafting contracts for these exciting projects.

William L. Thomas, Daniel Basurto, and Gray Taylor look at the developments in the United States, Mexico and Canada to promote emissions trading among the NAFTA trading partners. James Cameron, David Robertson, and Paul Curnow survey emerging legal strategies around the world for regulating GHGs. Their excellent, but necessarily concise, review covers the European Union, Denmark, France, Germany, The Netherlands, Norway, United Kingdom, and Australia.

Due to space limitations, a survey of legal developments in the United States could not be included; moreover, we could not have duplicated the outstanding, comprehensive coverage by a vice-chair of the Section's Climate Change and Sustainable Development Committee, recently published elsewhere. See John Dernbach, Moving the Climate Change Debate from Models to Proposed Legislation: Lessons from State Experience, 30 Envtl. L. Rep. (Envtl. L. Inst.) 10,933 (Nov. 2000). Sean S. Clark, Mark C. Trexler, and Laura H. Kosloff conclude with an outstanding report on the just concluded Sixth Conference of the Parties in The Hague. They provide a scorecard of the players, issues, and an analysis of what lies ahead on the negotiations.

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