In its first few months, the Trump administration has taken several high-profile steps to unravel the suite of federal regulations and policies related to climate change. While the scope of these actions is quite broad, several proposed or adopted federal policy changes are particularly relevant to California and to other states. These include: the President’s Executive Order on Energy Independence of March 28, 2017,\(^1\) which, among other things, calls for a review (and likely the withdrawal or significant weakening) of the Clean Power Plan; the Administration’s decision to revisit the federal automotive greenhouse gas emissions standards for model years 2022-2025;\(^2\) and proposed budget cuts to the Environmental Protection Agency, the Department of Energy, and other federal departments and programs relevant to climate policy.\(^3\)

The intent of this background paper is twofold. First, it provides an overview of some of these federal climate policy changes, focusing on the ways in which federal action may affect California and other states. Second, it aims to prepare the way for a discussion of potential policies that states may pursue in response to federal changes or as a backstop for weakened or eliminated federal climate policy. In light of these limited purposes, this paper is not a comprehensive description of the ways that the Trump administration may threaten environmental protection or even climate progress. Instead, it explores a few areas likely to be of key importance to state climate policy.

I. Executive Order on Promoting Energy Independence and Economic Growth

President Trump’s Executive Order lays out a new policy focused on domestic energy generation and energy resource development, calling on federal agencies to review and eliminate

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all regulations, guidance documents, and other actions that “unduly burden” energy
development. The Order specifically targets for review the Clean Power Plan—the Obama
EPA’s program for regulating carbon dioxide emissions from existing power plants—and related
rules affecting new power plants.

A withdrawal of the Clean Power Plan would not directly affect any state-level policies in
place in California. The plan, enacted under the Clean Air Act, is designed to give states
considerable flexibility in how they construct their policies to meet CO₂ emission reduction
targets—but it has been stayed pending its review by the federal courts. The governors from
California and New York issued a joint statement on the same day that the Executive Order was
released announcing that the two states intend to meet their Clean Power Plan goals, even in the
absence of any binding rule at the federal level. California’s SB 32, enacted in 2016, already
requires the state to make statewide GHG emission reductions by 2030 that are deep enough to
overtake Clean Power Plan goals in any event.

However, removing the Clean Power Plan and related rules for new power plants would
undoubtedly change the context for broader state-level policymaking on climate change. States
that were unlikely to regulate GHG emissions from their power plants in the absence of the
Clean Power Plan may revert to an unregulated approach. This, in turn, may impact California’s
policies indirectly by removing the incentive that other states may have had under the federal
policy to collaborate with California on a regional basis toward reducing emissions from the
electricity generating sector. For example, states may be less likely to invest in transmission or
other infrastructure to increase the proportion of renewable energy sources on the grid, or to link
with California’s GHG cap-and-trade program. Whether underlying market forces in the energy
sector nevertheless accomplish many of the Clean Power Plan’s aims remains to be seen.

The March 2017 Executive Order also rescinds the White House Council on
Environmental Quality’s (CEQ) guidance on the consideration of GHG emissions and the effects
of climate change in environmental reviews under the National Environmental Policy Act
(NEPA). This does not have a direct impact on California’s state law and policy, but may affect
planning for federal and federally-supported projects in the state. To the extent that the
California Environmental Quality Act (CEQA) applies, environmental review must still follow
state regulation, include analysis of GHG emissions associated with proposed projects, as well as
the consideration of climate change impacts.

Finally, the Executive Order may make it easier to extract fossil fuels from federal lands
in states across the country. It ends the moratorium on coal leasing on federal lands and calls for
review of other regulations related to oil and gas development on federal lands, including rules
on hydraulic fracturing. Depending on the outcome of those reviews, restrictions on oil and gas
development on federal lands in California and in other states may be loosened.

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5 See our companion Symposium Background Paper #1 for a discussion of SB 32 and its requirements.
Though not as high profile as the Executive Order on Promoting Energy Independence and Economic Growth, a second order signed by President Trump may also affect federal climate regulations in significant ways. The order is entitled “Reducing Regulation and Controlling Regulatory Costs,” and it directs federal agencies to eliminate two regulations for every one new one enacted, to ensure that “total incremental cost” of all new regulations in this fiscal year is zero, and to ensure that if a new regulation is enacted, any “incremental costs” are offset by the “elimination of existing costs” from at least two prior regulations.

II. Greenhouse Gas Car Standards – Midterm Review for 2022-2025 Model Years

Car emission standards for greenhouse gases under the Clean Air Act and under state law may also be under threat. In recent years, California’s approach to regulating GHGs from cars has largely been in lockstep with the federal approach. During the Obama Administration, the EPA granted California a waiver under Section 209 of the Clean Air Act to allow the state to regulate GHG emissions from new cars. Using that waiver authority, California imposed state-law greenhouse gas standards for cars. This was done in conjunction with an agreement by the EPA and the National Highway Traffic Safety Administration (NHTSA) to issue joint regulations that mandate federal improvements in fuel economy and federal GHG car standards. In 2012, the federal emissions standards were increased through 2025; one year later, the EPA granted California’s waiver request for the state’s Advanced Clean Car (ACC) regulations, which extend the state’s requirements for both conventional air pollutants and GHG emissions from cars. Since 2009, California’s car emissions standards have mirrored those enacted through federal law.

Under the Trump administration, the EPA and NHTSA have announced that they will reopen a process for reconsidering GHG standards for model years 2022-2025. This sets up a potential conflict between federal and state approaches to GHG emission standards for cars, because California’s Air Resources Board has already approved its ACC program through 2025. California has indicated its intent to continue with its car standards regardless of the federal review outcome. The Trump administration, however, is also reportedly considering revoking California’s Clean Air Act waiver for car GHG standards. Without a waiver, California (and other states that follow California’s regulations) would be preempted from enforcing its vehicle GHG standards. It is not clear whether the EPA could successfully defend a decision to revoke (or to fail to extend) California’s waiver for GHG emission standards, given the Clean Air Act standards for granting such waivers.

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If California loses its ability to set GHG emissions standards for cars, it could consider other regulatory options for reducing GHG emissions from cars and other transportation sources. In doing so, it would have to grapple with and overcome preemption constraints within the Clean Air Act.

III. Proposed Budget for FY 2018

In March 2017, the Trump administration released a preliminary outline of its proposed budget for the federal government for Fiscal Year 2018.11 This proposal is just the first step in a long budgeting process. It does not provide a full level of detail within agencies and is not binding; appropriations must be made by Congress, and then submitted for the President’s signature. Nevertheless, the proposed budget is telling in its potential ramifications for environmental protection.

The proposed budget would make very deep cuts to the EPA as well as other environment-related programs at other agencies. Some of these cuts would mean reduced grants to states for implementation of environmental policies, programs, and standards. Additionally, the budget would represent very steep cuts to scientific research and development funding. Some examples of the ways in which the proposed budget could affect the climate and environmental programs of California and other states include:

- **Environmental Protection Agency.** The EPA’s budget would be cut by $2.6 billion, or 31% of its current funding. Federal civil and criminal enforcement budgets would be cut by more than half, placing greater pressure on state enforcement authorities.12 The federal cleanup program for the San Francisco Bay would be eliminated. Many other specific and general grants to states for environmental programs—ranging from brownfields redevelopment, prevention of lead poisoning, and air and water quality management—would be cut as well, by hundreds of millions of dollars. If California and other states were to make up the difference for these federal cuts, it would place additional strain on state resources for climate change mitigation and adaptation and other environmental programs.

- **Scientific research and development.** The state of California receives hundreds of millions of dollars annually in federal funding for scientific research on energy and environmental issues. In 2015, universities in California reported $239 million in research and development expenditures from federal sources, just in the areas of environmental sciences. Public and private institutions also rely on federal funding for research on renewable and low-carbon energy. The proposed budget would eliminate the Department of Energy’s Advanced Research Projects Agency-Energy (ARPA-E), a major source of funding for these projects. It would also cut other funding programs that promote energy efficiency.

It is worth noting that the short-term budget agreement recently reached to fund the federal government through Fall 2017 did not hew to this budget proposal. Instead, it kept funding at or near full levels for many of these programs. If, however, significant budget cuts along the lines of the Trump Administration’s proposal are ultimately passed, California and other states may respond by ramping up or creating new state-level programs with funding to support climate science or research and development on alternative energy and energy efficiency.

IV. Responses in California

California appears likely to take legislative, administrative, and (if necessary) litigation action in response to the federal initiatives described above. As just one example of an early anti-backsliding state measure, in February leaders in the California State Senate introduced Senate Bill 49, the California Environmental Defense Act. That bill aims to preserve the application of current federal environmental standards in the state, even if those federal standards are loosened in the future. The bill, as drafted, would incorporate into California state law “baseline federal standards,” notwithstanding any potential changes to federal laws or regulations. It would apply to regulations under the federal Clean Air Act, Clean Water Act, Safe Drinking Water Act, Endangered Species Act, and other federal laws “relating to environmental protection, natural resources, or public health,” that are “in existence as of January 1, 2016, or January 1, 2017, whichever is more stringent.” Many federal climate-related regulations would come within the scope of this bill. Other states may consider like-minded approaches.

California has also made clear in other ways that it does not intend to back down from its ambitious climate regulatory program. Despite the Trump Administration’s call for a reopening of the Midterm Review of car emission standards for 2022-2025, and as mentioned above, California has indicated its intent to continue with its GHG car standards. It seems well prepared to go to court to defend its waiver under the Clean Air Act to regulate GHGs from cars, if necessary. With regard to possible cuts in the federal budget, state agencies could face a greater burden in the enforcement and implementation of environmental statutes. To offset reductions in research and development funding, California and other states could respond by dedicating funding streams or organizing state-level institutions to fill in any gaps.

Regarding transnational coordination of climate policy, California and other subnational jurisdictions have already built a network of states and provinces that are coordinating on climate pledges and the means to achieve them. Members of that network, called the “Under 2 Coalition,” already number 170 jurisdictions representing over 35% of the global economy. If President Trump chooses to withdraw the United States from the Paris Agreement, subnational networks like the Under 2 Coalition could play a key role in maintaining momentum and communication across borders.

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Many other state responses are possible. We look forward to discussing some of them at today’s symposium.

**Further Resources**

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