



Department of Energy
Western Area Power Administration
Office of General Counsel
P.O. Box 281213
Lakewood, CO 80228-8213

September 21, 2011

California Air Resources Board
1001 I Street
Sacramento, CA 95814
Submitted electronically:

http://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=capandtrade10&comm_period=2
http://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=ghg2010&comm_period=2

Dear Members of the Board:

Western Area Power Administration (Western) previously submitted written comments in the above proposed rules. Western will not repeat its earlier comments, but hereby incorporates them by reference.

Western continues to express concerns that California Air Resource Board (CARB) is requiring federal agencies to consent to state jurisdiction. For instance, Section 96022 provides:

Any party that participates in the Cap-and-Trade Program is subject to the jurisdiction of the State of California.

These types of provisions could significantly impact the ability of federal agencies to voluntarily comply with CARB's proposed rules. Federal agencies are unable to consent to state jurisdiction without an express waiver of sovereign immunity. Only the U.S. Congress (with consent by the President) can waive sovereign immunity. Western continues to encourage CARB to modify these provisions and acknowledge that federal agencies are not subject to state jurisdiction.

While Western continues to disagree with CARB's suggestions in its greenhouse gas reporting rules and cap and trade rules that CARB has "authority" to regulate Western and that Western is "required" to comply, Western supports the state initiatives and has attempted to voluntarily participate in the state's green house gas (GHG) programs. Western understands the importance of having all in-state utilities participate in the GHG programs and to this end Western has had numerous conversations with and has provided data to CARB staff. While Western welcomes continued interaction with CARB, Western wishes to make clear that Western's participation in CARB's GHG reporting program and cap and trade programs are on a voluntary basis and Western is not conceding that CARB has jurisdiction over Western in these matters. After CARB issues its final rule, Western will evaluate if, how, and to what extent, Western can voluntarily participate in CARB's GHG programs.

If you have any questions with regard to the above, please feel free to contact me at (720) 962-7017 or kawamura@wapa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Koji Kawamura', with a long horizontal flourish extending to the right.

Koji Kawamura
Attorney