

# California League of Food Processors

## CARB Investment Plan Comments

### March 8, 2013

The February 15 Draft Concept Paper is a useful guide regarding the development of an investment plan for the cap-and-trade auction proceeds. The California League of Food Processors (CLFP) is encouraged by the focus of the concept paper on ensuring that any use of auction proceeds will be strongly guided toward meeting AB 32 strictures which provide that funds *must result in actual* greenhouse gases (GHG) reductions.

The recommendations of CLFP are aimed at supporting the development of criteria for evaluating investment that supports a strong preference for investment in regulated industry, support for industry-specific technology that will result in actual and verifiable reductions in GHG, and investment in industry/academic advisory entities as the source for industry investment.

However, there are a number of challenges that must be resolved prior to developing a workable Investment Plan.

First, the timeline for this endeavor is extremely short given the importance of ensuring that the money provides actual, verifiable GHG reductions. There is no rush, no overwhelming requirement that the auction money be distributed immediately.

Second, CARB has yet to complete a thorough, supportable leakage risk analysis. For example, the food processing leakage study will not be completed before Fall 2014. Expenditures prior to that analysis being done will not be justified.

Third, the cap-and-trade revenues are under a legal cloud due to outstanding court challenges to CARB's regulatory authority and the feasibility of CARB's reduction programs. Any decision to distribute this money prior to a resolution of these legal challenges puts the state at risk for reimbursement of illegally collected funds. Until a court determines that the revenues have been legally acquired under AB 32, any decision to distribute money is premature and imprudent and would potentially expose the general fund to liability if some or all of the revenues are ordered to be refunded.

Finally, the cap-and-trade regulation is incomplete. No rules yet exist concerning the cap-and-trade programs in 2015 and beyond. Rules and regulations must be in place to accommodate the inclusion of transportation fuels and natural gas under the cap before the release of any auction funds.

CLFP comments provide additional considerations that we believe should be taken into account as work proceeds, in particular with regard to the methodology to be used to evaluate competing proposals for the use of the funds.

#### Investment Plan Comments

1. **Auction proceeds should be exclusively available to regulated entities for the compliance period in which they were collected.** Any remaining funds may be released in a subsequent

compliance period for subsidizing or investment in non-regulated, non- industry projects. The purchase of allowance allocations represents a diversion of capital that could be utilized in meeting compliance obligations through direct investment. Companies facing the magnitude of investments required to meet air quality goals generally do not make such decisions in a quick manner. In general, a significant capital investment will generally take between 1 to 3 years before the decision to invest is finalized.

In order for regulated companies to incorporate the availability of incentives or subsidies to reduce costs, such funds need to be available for such investment. By limiting the use of the funds to only regulated entities for the compliance period for which it was collected will:

- Ensure funds are available
  - Prevent reliance on estimations of future auction funds
  - Accommodate company timelines in investigating and researching the most cost effective technologies and the impacts on the company.
2. The regulated entities should have a direct say in how the money is spent. **The Investment Plan should provide for the creation of a steering/advisory committee or oversight board with significant regulated industry representation.** Food processors must have a seat at the table. AB 32 requires that CARB "...achieve the maximum technologically feasible and cost-effective reductions in greenhouse gas emissions..." To date the cap-and-trade has not achieved a single ton of reductions, but then again neither has CARB determined what is technologically feasible and cost-effective. The only entities qualified to determine both the economics and the feasibility of reduction options are the industries themselves as they will be the ones deploying such technologies. **The Steering /Advisory Committee should consist of representatives from the legislature, ARB, the Governor's office, industry, utilities, and after 2014, representatives from the natural gas and transportation fuels sectors.**
  3. **The Investment Plan should provide for allowance buy back by the Steering/advisory committee in order to aid in cost controls and ensure available credits for regulated entities.**
  4. **The Investment Plan should focus solely on achieving the AB 32 mandate** regarding emissions reductions, and minimize the money extracted from regulated entities as long as the obligated industries continue meeting their GHG targets. The declining cap ensures that the state will reach the reductions required by AB32 by the 2020 deadline. If obligated industries are showing steady progress in reducing emissions, the cap-and-trade auction should be reexamined to determine its continued efficacy in providing a reasonable, cost-effective alternative to companies.
  5. **The funds should be focused entirely on projects and research directed towards the regulated entities** to develop cost effective means to address GHG compliance obligations.
  6. **The Investment Plan should actively acknowledge Sinclair's controlling language** in order to provide clear and unambiguous parameters for use of the auction proceeds. Funds should not be used for other non-related projects as it may violate Sinclair and undermine the confidence and integrity of the program. Any potential projects seeking subsidies should first pass a rigorous Sinclair Test.

7. **The Investment Plan should require ARB to provide timely, complete, and transparent accountings** of how every dollar is spent, and report back to the legislature and public.
8. The Investment Plan should include specific limitations on the amount of auction funds, if any, devoted to staff overhead or administrative costs of implementing AB 32 or the cap-and-trade.
9. **A public report should be generated annually** informing the public about the use of the proceeds, and the amount of greenhouse gas emissions reduced by each project. The report should be approved by the Steering/Advisory Committee.
10. **A portion of the Investment Plan should include dollars dedicated to research and development**, both private and university-based, for technological assistance for regulated industries in achieving cost-effective GHG reduction.