California Environmental Protection Agency

Air Resources Board

PUBLIC MEETING AGENDA

April 19, 2013 (Friday)

LOCATION:
Air Resources Board
Byron Sher Auditorium, Second Floor
1001 I Street
Sacramento, California 95814
http://www.calepa.ca.gov/EPAbldg/location.htm

This facility is accessible by public transit. For transit information, call (916) 321-BUSS, website: http://www.sacrt.com
(This facility is accessible to persons with disabilities.)

TO SUBMIT WRITTEN COMMENTS ON AN AGENDA ITEM IN ADVANCE OF THE MEETING GO TO: http://www.arb.ca.gov/lispub/comm/bclist.php

Friday, April 19, 2013
9:00 a.m.

DISCUSSION ITEMS:

Agenda Item #

13-4-1: Public Hearing to Consider Adoption of Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions

Staff will present to the Board the proposed amendments to the Cap-and-Trade Regulation to link the California and Québec cap-and-trade programs.

CLOSED SESSION

The Board will hold a closed session, as authorized by Government Code section 11126(e), to confer with, and receive advice from, its legal counsel regarding the following pending or potential litigation, and as authorized by Government Code section 11126(a):

POET, LLC, et al. v. Goldstene, et al., Superior Court of California (Fresno County), Case No. 09CECG04850; plaintiffs' appeal, California Court of Appeal, Fifth District No. F064045.

Rocky Mountain Farmers Union, et al. v. Goldstene, U.S. District Court (E.D. Cal. Fresno), Case No. 1:09-CV-02234-LJO-DLB; interlocutory appeal, U.S. Court of Appeal, Ninth Circuit Nos. 09-CV-02234 and 10-CV-00163.

American Fuels and Petrochemical Manufacturing Associations, et al. v. Goldstene, et al., U.S. District Court (E.D. Cal. Fresno) Case No. 1:10-CV-00163-AWI-GSA; interlocutory appeal, U.S. Court of Appeal, Ninth Circuit Nos. 09-CV-02234 and 10-CV-00163.

Association of Irritated Residents, et al. v. U.S. E.P.A., 2011 WL 310357 (C.A.9), (Feb. 2, 2011).

California Dump Truck Owners Association v. California Air Resources Board, U.S. District Court (E.D. Cal. Sacramento) Case No. 2:11-CV-00384-MCE-GGH; plaintiffs' appeal, U.S. Court of Appeals, Ninth Circuit, Case No. 13-15175.

California Construction Trucking Association v. United States Environmental Protection Agency, U.S. Court of Appeals, Ninth Circuit, Case No. 13-70562.

Engine Manufacturers Association v. California Air Resources Board, Sacramento Superior Court, Case No. 34-2010-00082774.

Citizens Climate Lobby and Our Children's Earth Foundation v. California Air Resources Board, San Francisco Superior Court, Case No. CGC-12-519554.

California Chamber of Commerce et al. v. California Air Resources Board, Sacramento Superior Court, Case 34-2012-80001313.

Sierra Club, et al. v. Tahoe Regional Planning Agency, United States District Court, Eastern District (Sacramento) No.2:13-at-00133.

Delta Construction Company, et al., v. United States Environmental Protection Agency (United States District Court of Appeals, District of Columbia Circuit, Case No. 11-1428).

City of Los Angeles Through Department of Water and Power v. California Air Resources Board, et al., Superior Court of California, County of Los Angeles, Case No. BS140620.

OPPORTUNITY FOR MEMBERS OF THE BOARD TO COMMENT ON MATTERS OF INTEREST

Board members may identify matters they would like to have noticed for consideration at future meetings and comment on topics of interest; no formal action on these topics will be taken without further notice.

OPEN SESSION TO PROVIDE AN OPPORTUNITY FOR MEMBERS OF THE PUBLIC TO ADDRESS THE BOARD ON SUBJECT MATTERS WITHIN THE JURISDICTION OF THE BOARD

Although no formal Board action may be taken, the Board is allowing an opportunity to interested members of the public to address the Board on items of interest that are within the Board's jurisdiction, but that do not specifically appear on the agenda. Each person will be allowed a maximum of three minutes to ensure that everyone has a chance to speak.

TO SUBMIT WRITTEN COMMENTS ON AN AGENDA ITEM IN ADVANCE OF THE MEETING GO TO:

http://www.arb.ca.gov/lispub/comm/bclist.php

ONLINE SIGN-UP:
You can sign up online in advance to speak at the Board meeting when you submit an electronic Board item comment. For more information go to:

http://www.arb.ca.gov/board/online-signup.htm

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE CLERK OF THE BOARD:
1001 I Street, 23rd Floor, Sacramento, California 95814
(916) 322-5594
ARB Homepage: www.arb.ca.gov

SPECIAL ACCOMMODATION REQUEST

Special accommodation or language needs can be provided for any of the following:

- An interpreter to be available at the hearing;
- Documents made available in an alternate format or another language;
- A disability-related reasonable accommodation.

To request these special accommodations or language needs, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 7 business days before the scheduled Board hearing. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Comodidad especial o necesidad de otro idioma puede ser proveído para alguna de las siguientes:

- Un intérprete que esté disponible en la audiencia.
- Documentos disponibles en un formato alterno u otro idioma;
- Una acomodación razonable relacionados con una incapacidad.

Para solicitar estas comodidades especiales o necesidades de otro idioma, por favor llame a la oficina del Consejo al (916) 322-5594 o envíe un fax a (916) 322-3928 lo más pronto posible, pero no menos de 7 días de trabajo antes del día programado para la audiencia del Consejo. TTY/TDD/Personas que necesiten este servicio pueden marcar el 711 para el Servicio de Retransmisión de Mensajes de California.

SMOKING IS NOT PERMITTED AT MEETINGS OF THE CALIFORNIA AIR RESOURCES BOARD

California Environmental Protection Agency

Air Resources Board

PUBLIC MEETING AGENDA

LOCATION:
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State of California
AIR RESOURCES BOARD

Third Notice of Public Availability of Modified Text

PUBLIC HEARING TO CONSIDER ADOPTION OF AMENDMENTS TO THE CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS TO ALLOW FOR THE USE OF COMPLIANCE INSTRUMENTS ISSUED BY LINKED JURISDICTIONS

Public Hearing Dates: June 28, 2012 and April 19, 2013
First Public Availability of Additional Documents Dates: June 11, 2012 - June 27, 2012
Second Notice of Public Availability Dates: January 8, 2013 - January 23, 2013
Third Notice of Public Availability Release Date: March 22, 2013
Deadline for Public Comment: April 6, 2013

At its October 2011 public hearing, the Air Resources Board (ARB or Board) adopted sections 95800 to 96023, title 17, California Code of Regulations (CCR). These sections comprise the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, including Compliance Offset Protocols (Regulation).

The Regulation provides a fixed limit on GHG emissions from the sources responsible for about 85 percent of the state's total GHG emissions. The Regulation reduces GHG emissions by applying a declining aggregate cap on GHG emissions, and creates a flexible compliance system through the use of tradable instruments (allowances and offset credits). The Regulation became effective January 1, 2012.

On May 9, 2012, staff released a Notice of a Public Hearing to Consider Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms at the June 28, 2012 Board Hearing, accompanied by the May 9, 2012 Initial Statement of Reasons (ISOR) for a regulatory amendment to link California's Cap-and-Trade program with a similar program in Québec. On June 11, 2012, staff released the first Notice of Public Availability of Additional Documents and Information. On January 8, 2013, staff released the Second Notice of Public Availability of Modified Text.

California and Québec have been working together to ensure that both systems' operations are compatible and will work together and without disruption to California covered entities. To that end, linkage between California and Québec will need to be effective as of January 1, 2014. California and Québec will be conducting several pre-linkage activities during the intervening time between adoption of this regulation and the effective date. These activities include a practice joint auction between California and Québec, testing of the current auction platform to allow for a joint auction, and an independent evaluation of processes, procedures and systems of California's and Québec's programs to ensure implementation readiness.

Additional modifications to the regulatory text are being proposed in this March 22, 2013 notice to address the effective date of the linkage regulations. The text of the modified regulatory language is shown in Attachment 1. The originally proposed regulatory language is shown in ~~strikethrough~~ to indicate deletions and underline to indicate additions. Deletions and additions to the proposed language that were noticed with the January 2013 Notice are shown in ~~double strikethrough~~ and double underline format, respectively. New deletions and additions to the proposed language that are made public with this March 2013 Notice are shown in **bold single underline** and **~~bold strikeout~~** format, respectively.

In the Final Statement of Reasons, staff will respond to all comments received on the record during the comment periods and at the hearing. The Administrative Procedure Act only requires that staff respond to comments on changes that are noticed. Therefore, staff will only address comments that are responsive to this notice or the changes detailed in Attachment 1.

Documents for this rulemaking action are available online at the Cap-and-Trade Program website referenced here:

http://www.arb.ca.gov/regact/2012/capandtrade12/capandtrade12.htm

The Board is scheduled to consider the proposed regulations on April 19, 2013.

Summary of Proposed Modifications

All references to sections: 95802, 95814, 95830, 95831, 95832, 95833, 95834, 95856, 95870, 95910, 95911, 95912, 95913, 95920, 95921, 95942, 95943, 96010, and 96022 are to title 17, CCR. For a complete account of all modifications in the proposed regulations, please refer to the double underline and double strikeout sections in Attachment 1.

A. Modifications to Section 95943 Linked external GHG ETS

Section 95943(a) was modified to add an explicit date on which compliance instruments issued by Québec could be used by California covered and opt-in covered entities.

Contacts

Inquiries concerning the substance of the proposed regulation may be directed to Dr. Steve Cliff, Chief, Climate Change Program Evaluation Branch, at (916) 322-7194 or Ms. Rajinder Sahota, Manager, Climate Change Program Monitoring Section at (916) 323-8503.

Public Comments

Written comments will only be accepted on the modifications identified in this notice and may be submitted by postal mail or as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: http://www.arb.ca.gov/lispub/comm/bclist.php

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alterno u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov.

Responses to Comments

on the

Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions

Released April 8, 2013

to be considered at the

April 19, 2013 Board Hearing

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Introduction

To meet the requirements of the California Environmental Quality Act (CEQA) under ARB's Certified Regulatory Program, the California Air Resources Board (ARB) staff prepared an environmental analysis as part of the Initial Statement of Reasons (ISOR) for the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions. The ISOR was released for public review on May 9, 2012 for a 45-day public review and comment period that concluded on June 28, 2012 at the Board Hearing. There were three sets of 15-Day change notices for modified regulatory text following the initial 45-day public review period. Those changes were largely administrative and did not affect the environmental analysis in the ISOR and no revision or recirculation of the environmental analysis was required.

This document presents verbatim a subset of all the comments received during the 45-day comment period that raise significant environmental issues and ARB's written responses to those comments. Substantive responses are limited to comments that "raise significant environmental issues associated with the proposed action," as required by PRC section 60007(a). ARB conservatively included comments and responses in this document if the comment raises an environmental issue even if the comment does not directly pertain to the adequacy of the environmental analysis. In accordance with ARB's Certified Regulatory Program, the Board will consider the written response to these environmental comments for approval prior to taking final action on the proposed amendments.

Staff will also prepare written responses to all public comments, not just the environmental comments, for purposes of the Administrative Procedures Act. The complete written responses to all comments will be included in the Final Statement of Reasons (FSORs) that will be made available in electronic form on the ARB rulemaking webpage at: http://www.arb.ca.gov/regact/2012/capandtrade12/capandtrade12.htm

The individual comments are presented under the correspondence within which they were received, ordered alphabetically by COMMENT ID and identified as follows:

COMMENT ID: *This is the abbreviation used to identify the comment correspondence in which the individual comments are contained.*

Name:	*Person(s) submitting the comment*
Affiliation:	*Affiliation of the commenter(s)*
Written Testimony: M/D/Y	*Type of comment and date received*
45-Day Comment #: 123	*Comment period and unique comment number. The unique ID number corresponds to numbering in the FSOR.*

Comment: *Comments received under the COMMENT ID are presented individually as shown in this example, beginning with* ***Comment*** *on the first line.*

Response: *Responses are presented following each comment. Responses are indented from the left margin.*

Comment: *All of the individual comments received under the COMMENT ID are presented as demonstrated in this example. This comment would be followed by subsequent comments from this commenter.*

Response: *Responses are presented following each comment. Responses are indented from the left margin*

Commenters

The list below identifies the commenters that submitted comments related to the Environmental Analysis, and includes commenter information.

Commenter ID	Commenter Information
BREATHECALIFORNIA	Andy Katz Affiliation: Breathe California Oral Testimony: 06/28/2012 Hearing Witness #: 10
CBD	Brian Nowicki Affiliation: Center for Biological Diversity Written Testimony: 06/27/2012 45-Day Linkage Comment #: 17
EDF2	Erica Morehouse, Environmental Defense Fund; Michelle Passero, The Nature Conservancy; Alex Jackson, Natural Resources Defense Council; Jennifer Martin, Center for Resources Solutions Written Testimony: 06/27/2012 45-Day Linkage Comment #: 16
EDF3	Tim O'connor, Environmental Defense Fund; Erica Morehouse, Environmental Defense Fund; Kristin G. Eberhard , Natural Resources Defense Council Written Testimony: 06/26/2012 45-Day Linkage Comment #: 15
EDF4	Erica Morehouse Affiliation: Environmental Defense Fund Oral Testimony: 06/28/2012 Hearing Witness #: 3
PFT1	Paul Mason Affiliation: Pacific Forest Trust Written Testimony: 06/27/2012 45-Day Cap-and-Trade Amendment Comment #: 18
TWS1	Ann Chan Affiliation: The Wilderness Society Written Testimony: 06/27/2012 45-Day Linkage Comment #: 2093

Commenter ID	Commenter Information
TWS2	Ann Chan Affiliation: The Wilderness Society Oral Testimony: 06/27/2012 Hearing Witness #: 14
WSPA1	Catherine Reheis Boyd Affiliation: Western States Petroleum Association Written Testimony: 06/27/2012 45-Day Linkage Comment #: 8

Location of Comment Letters on the ARB Website

All comment letters and attachments received on the proposed Cap-and-Trade Regulation are posted on the ARB website at the following link: http://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=capandtradelinkage12

To manually locate the comments on the ARB website:

- Go to www.arb.ca.gov.
- Select "Climate Change Program" in the left column.
- Under "Assembly Bill 32 Implementation and Other Activities," Select "Cap-and-Trade Program" on the Activities tab.
- Select "View All Public Comments" in the right column.

On the website, the comments are ordered by date received, grouped by review period.

BREATHECALIFORNIA

Name: Andy Katz
Affiliation: Breathe California
Oral Testimony: 06/28/2012
Hearing Witness #: 10

Comment: To clarify a process for ensuring that linked jurisdiction's programs continue in the future to meet the requirements of AB 32, I'm thinking specifically of environmental integrity criteria that are specified in AB 32. When you think about offsets, it's that they're real, permanent, quantifiable, verifiable, enforceable. They're additional to what would have otherwise occurred. And the overall program and compliance instrument from another jurisdiction is equivalent to California's jurisdiction.

Response: AB32 is clear what criteria an offset must meet in order to be eligible for use for compliance by California entities. Staff will continue to monitor and coordinate closely with any jurisdiction to which the California market program is linked to ensure any changes to existing protocols or new protocols would result in offsets that meet the AB32 criteria of real, quantifiable, permanent, enforceable, additional and verifiable. Staff will provide the Board with updates prior to the actual revision to existing or adoption of new offset protocols or linkage to another jurisdiction. The update would include an AB 32 offset criteria analysis, assessment of environmental factors, and evaluation of potential offset supply. This will provide stakeholders and the Board an opportunity to discuss and evaluate the proposed changes to a linked jurisdiction's program. It is difficult to plan responses to situations that have not yet occurred and whose potential impact on the California program cannot be determined at this time. Staff is committed to a transparent review process of the linked jurisdiction's programs and will work with stakeholders in providing recommendations to the Board. If staff identifies that potential changes to the jurisdiction's program could harm attainment of the program goals, California regulated parties or California, staff would brief the Board and pursue the Board's direction.

CBD

Name: Brian Nowicki
Affiliation: Center for Biological Diversity
Written Testimony: 06/27/2012
45-Day Linkage Comment #: 17

Comment: Our primary concern is that the regulation linking California's greenhouse gas cap-and-trade program with partner jurisdictions will force California to accept carbon offset credits from projects with low or no environmental standards, thereby leading to substantial negative environmental impacts. This is of particular concern with respect to forest offset projects, which, if not developed pursuant to environmentally rigorous standards, can impair forest ecosystems, wildlife habitat, and water quality, even in cases when those forest projects may provide climate benefits. California's cap-and-trade program should not contribute financial incentives that would drive forest ecosystem degradation in other states and provinces. California must ensure that our greenhouse gas reduction efforts do not rely on projects that result in ecosystem degradation to our forests or outside the state in order to reduce the costs of compliance for industrial polluters in California.

Response: In this introductory comment, and in the more specific comment that follow, the commenter expresses an overarching concern that linking with partner jurisdictions will force California to accept offset credits from projects with low or no environmental standards. The commenter expresses a particular concern with regard to potential future forest offset projects in potential future linked jurisdictions. The proposed amendments to the regulation currently under consideration would link the California market program only with Québec's market program. Québec does not currently have, nor is currently proposing, to develop or adopt a forest protocol. Québec's protocols are discussed in the ISOR, and the potential indirect environmental impacts associated with implementation of those protocols are specifically addressed in Chapter IV of the ISOR.

With regard to the general concern about the environmental integrity of offset protocols in other WCI partner jurisdictions, for over five years ARB has been engaged with these partner jurisdiction to establish a set of common goals and standards for offset projects and crediting. Through this process, ARB is able ensure there is consistency in environmental standards for offset protocols throughout a regional market program. ARB has also been coordinating with its WCI Partner jurisdictions to develop and approve the document entitled "Final Recommendations - Offset System Essential Final Recommendations." This document sets forth agreed upon standards for offset credits in state and provincial greenhouse gas emissions trading programs. In addition, the Linkage Agreement will describe how ARB and Québec will consult in the development of new protocols and modification of existing protocols. Please refer to the more detailed responses to the more detailed comments regarding offset credits below.

Comment: The regulation commits California to accept offsets generated under future regulations not yet written in other jurisdictions. The regulation requires California to accept any offset credit accepted by any linking partner. "*Once a linkage is approved, a compliance instrument issued by the linked jurisdiction may be used to meet a compliance obligation in California.*" § 95942 (e) at page 75.

This regulation would commit California now to accepting in the future offset credits from protocols that have not yet been developed yet by partner jurisdictions, as well as any offset credits issued by any other jurisdictions to which we link our cap-and-trade program in the future. California cannot rationally agree to offsets when we do not yet know the content of the protocols for those offsets. It is impossible for ARB to ensure that these as-yet-undeveloped protocols will meet AB 32 standards and other applicable laws, particularly AB 32's requirement that ARB maximize environmental co-benefits in developing market-based greenhouse gas reduction programs. It is not possible even to know the environmental costs of these protocols, much less maximize their environmental benefits, when they do not yet exist. ARB must first determine what the protocols are for any offset it wishes to potentially accept, and then must conduct environmental review of those protocols and receive public comment. ARB cannot and should not commit California to buying offset credits out of this "black box" of potential future protocols.

Furthermore, because we do not yet know the content of the protocols of other jurisdictions, ARB is creating a situation that could lead to contradicting protocols. In the future, when other jurisdictions establish their own protocols, those protocols may or may not be consistent with the protocols California has established. Also, it is not possible for the public to meaningfully comment on protocols that do not yet exist. Only after other jurisdictions establish their protocols can the public meaningfully examine and analyze those protocols.

Response: The proposed amendments to the regulation currently under consideration would link the California market program only with Québec's market program. The ISOR for the proposed amendments discusses Québec's offset program. Staff's analysis found Québec's offset program to be consistent with WCI recommendations and consistent with California's compliance offset program. Chapter IV of the ISOR also included an analysis of the potential indirect environmental impacts associated with implementation of those protocols, and Appendix C of the ISOR includes a table that depicts Canada's environmental protections that are in place at the national and provincial level.

Any proposal to link with another jurisdiction will involve a full rulemaking process with an opportunity for stakeholders to provide comment. The ISOR for any proposal to link with another jurisdiction would include a full analysis of that jurisdiction's program, including an analysis of the jurisdiction's offset program and an environmental analysis. ARB is not at this time, with the current

proposed amendments to link with Québec, committing California to buying offset credits out of a "black box" of protocols from other jurisdictions.

Furthermore, as discussed in the ISOR at page 34, ARB has been coordinating with its WCI Partner jurisdictions to develop and approve the WCI Offset System Essential Elements Final Recommendations Paper (Western Climate Initiative 2010b). This document incorporates the AB 32 offset criteria and is consistent with how California's program has defined and chosen to implement those criteria. This process provides a mechanism for ARB to ensure that offset programs in potential linked partner jurisdictions will be consistent with California's compliance offset program and meet a set of common goals and standards.

As far as concern about future changes to the Québec program once California is linked to its program, staff plans to provide the Board an update prior to any adoption of a new protocol in Québec. The update would include an AB 32 offset criteria analysis, assessment of environmental factors, and evaluation of potential offset supply. This update at a public meeting of the Board will provide stakeholders the opportunity to discuss any concerns about the proposed action by Québec before there is formal inclusion of the protocol by the linked program.

Comment: The regulation would force California to accept offset credits with low or no environmental standards.

While the regulation requires California to accept any offset credit accepted by any linking partner, there is no mention in the regulation or the ISOR of any review of offset protocols adopted by other jurisdictions, any consideration of the environmental impacts of offset projects, or any mechanism for reducing California's reliance on offset credits generated by projects with negative environmental impacts. Furthermore, Québec's cap-and-trade regulation contains no environmental criteria for offsets or the adoption of offset protocols.

Under this provision, California would be forced to accept offset credits generated under offset protocols with lesser environmental standards than the offset protocols adopted by California for the same project types (e.g. forest projects), even when the offset projects in other jurisdictions result in significant negative environmental impacts. And while the regulation requires ARB to ensure that all offsets accepted as compliance instruments in California's cap-and-trade are real, permanent, quantifiable, verifiable, and enforceable, it does not provide for any determination of the environmental impacts.

These agreements similarly exclude any determination of environmental impacts. The WCI agreements, to which ARB is a party but which have not been adopted under any California regulatory process, contain no environmental criteria for offset projects or the approval of offset protocols except for the practically meaningless requirement that "projects must meet all applicable local environmental regulations and be in compliance with all applicable laws." The WCI agreements acknowledge that offset projects have

"the potential to impact the environment or social environment in which the project is located," but sets neither standards for ensuring that offset projects do not result in negative environmental impacts nor thresholds for allowable levels of environmental impacts. Furthermore, the WCI agreements explicitly reject the notion of setting standards to achieve environmental or social benefits: "WCI Partners recognize the environmental, social, economic and health benefits that may arise from an offset project and the offset system will focus on those benefits directly related to mitigating climate change. A WCI offset project is required only to result in a greenhouse gas emission reduction or removal."

In December 2011, WCI adopted a process for the approval of offset protocols by WCI partner jurisdictions. Under that process, if a protocol is found to be consistent with WCI principles (which do not include environmental criteria or standards), the protocol would be available for use by any of the WCI partners. The WCI process thus appears to require California to accept any offset credits accepted by a WCI partner, and it does not appear to allow California to object to a protocol used by a WCI partner based on negative environmental impacts.

Response: Although the proposed amendments include a provision that California would accept any offset compliance instruments of a linked partner, the current proposal includes linkage with Québec only. Linkage with any other jurisdiction requires another amendment to the regulation which must go through the full rulemaking process required by the Administrative Procedures Act. The ISOR for any future linkage proposal would include an analysis of the jurisdiction's program, including its offset program as was conducted for Québec's program. With each linkage proposal, ARB would analyze, and stakeholders would have the opportunity to comment on, the offset credits of that jurisdiction and their potential environmental impacts as analyzed in an environmental analysis prepared as part of the ISOR for that proposal. With each linkage proposal, ARB will also analyze the program to ensure that all offsets accepted as compliance instruments in California's program are real, permanent, quantifiable, verifiable, and enforceable.

To ensure compatible standards with potential linkage partners, California has been coordinating with WCI Partner jurisdictions for five years and will continue to do so to ensure there is consistency throughout a regional market program.

Please refer to the response below that explains why ARB rejects what appears to be a recommendation to alter the regulation to include additional mechanisms for reviewing and accepting credits from adopted protocols from a linked jurisdiction.

Comment: The regulation would undermine California's authority to achieve AB 32's mandate to maximize environmental co-benefits.

AB 32 mandates that market-based compliance mechanisms, such as this one, must maximize environmental co-benefits. However, by explicitly committing to accept offsets from any future protocols yet to be written and providing no conditions on their acceptance, the regulation not only makes it impossible to maximize environmental co-benefits, it forfeits any opportunity to analyze, assess, or reduce negative environmental impacts of future protocols. The regulation should explicitly require ARB to analyze the environmental impacts of any offset protocol that generates offset credits that can be used as compliance instruments in California. In addition, the regulation should include provisions that explicitly require that all offsets used for compliance in California must maximize environmental benefits, and that all offset projects in linked jurisdictions meet or exceed the standards of protocols adopted by ARB for similar offset types.

> **Response:** ARB rejects the recommendation that the amendments should explicitly require ARB to analyze the environmental impacts of any offset protocol that generates offset credits that can be used as compliance instruments in California, because the implication is that if any offset protocols in a linked jurisdiction did not meet acceptable environmental standards, the resulting offsets could not be used in California. As described in Alternative 4 in the ISOR, this suggestion would not be effective, as Québec could still allow for the use of the resulting offsets, but California entities would not be able to use them and maximize the benefits of cost containment from a linked program. Such a situation could result in increased compliance costs to California entities. Only allowing certain offsets from a linked jurisdiction could result in a greater demand for "non-California-approved" offsets in the linked jurisdiction, whose entities would just use more offsets, maximizing their offset usage limit, for compliance and sell their allowances to California's covered entities. That being said, it is staff's intention to coordinate closely with any linked jurisdiction as it develops a protocol, and staff will report to the Board prior to any changes in a linked jurisdiction's program. This will provide an open and public process through which stakeholders can comment on those changes for Board consideration.

Comment: The Center for Biological Diversity has repeatedly expressed concerns over the potential for offset projects to result in negative environmental impacts. This is of particular concern with forest offset projects, which can result in substantial impacts to forest ecosystems, wildlife habitat, and water quality. In order to ensure that California's cap-and-trade program does not rely on or result in the degradation of forests and ecosystems elsewhere, the regulation should not allow credits from forest protocols adopted by any linked jurisdictions to be sold into California's cap-and-trade system absent meaningful minimum protections (e.g. provisions to ensure maintenance of native species, diverse age classes, structural diversity, wildlife habitat, water quality, and other natural resources).

Response: The proposed amendments link the California market program only with Québec's market program, which is not currently proposing to develop or adopt a forest protocol. California and Québec will continue coordinate closely with other WCI Partner jurisdictions in the development of any future offset protocols, including forestry. Staff will also provide a Board update prior to the adoption of a new protocol by a linked jurisdiction. The update would include an AB 32 offset criteria analysis, assessment of environmental factors, and evaluation of potential offset supply. This will provide an open and public process through which stakeholders can comment on those changes for Board consideration.

ARB rejects the recommendation that the regulation should be changed to not allow credits from forest protocols adopted by any linked jurisdictions to be sold into California's cap-and-trade system absent "meaningful minimum protections." As described in Alternative 4 in the ISOR, and in the prior response, this suggestion would not be effective, as Québec could still allow for the use of the resulting offsets, but California entities would not be able to use them and maximize the benefits of cost containment from a linked program. Such a situation could result in increased compliance costs to California entities. See also the responses below on the alternatives that restrict offset credits from linked jurisdictions analyzed in the ISOR.

Comment: Accepting lower quality offsets would allow project developers to choose among different protocols to select one with the lowest standards.

The regulation does not expressly prevent offset developers and projects located in U.S. states outside of California (or even within California) from choosing among offset protocols offered by other linked jurisdictions; therefore, a project can select the option that offers the lowest standards. Furthermore, the WCI agreements specifically allow any WCI partner to "issue offset certificates for projects located...outside the WCI Partner Jurisdictions within North America." This obviously includes U.S. states outside of California.

A WCI partner could propose a forest offset protocol with lower environmental standards than the protocol adopted by ARB, other WCI partners would be able to adopt the protocol with lower standards, and California would be forced to accept offset credits generated under those less stringent protocols. This scenario could place California in a position that violates the letter and intent of AB 32, which gives ARB the sole authority to adopt offset protocols, and specifically requires ARB to verify and enforce the quality of offsets used for compliance in California. Also, even if California were to reject credits generated under less stringent protocols—in fact, even if WCI were to reject a protocol, and a protocol was acknowledged only within a single partner jurisdiction—the fungible nature of offset credits in an auction system means that those credits still would effectively become part of California's compliance market.

Response: The currently proposed amendments link the California market program only with Québec's market program. The protocols approved in California are only applicable in the United States. The proposed protocols in Québec are only applicable in Canada or Québec. This design feature will ensure there is no protocol 'shopping' because there is only one choice for either region. Further, ARB cannot link with a program that does not achieve the AB 32 standards and objectives.

California and Québec will coordinate closely with each other and other WCI Partner jurisdictions in the development of any future offset protocols, including forestry. California stakeholders will be able to provide comments during the WCI development process. Staff will also provide a Board update prior to the adoption of a new protocol by a linked jurisdiction. The update would include an AB 32 offset criteria analysis, assessment of environmental factors, and evaluation of potential offset supply. This will provide stakeholders and the Board the opportunity to discuss any concerns about the proposed action by a linked jurisdiction before there is formal inclusion of the protocol by the linked program.

Comment: The ISOR fails to acknowledge or analyze potential environmental impacts of projects that will generate offset credits that become part of the California market.

The ISOR implies that because Québec has not adopted a forest protocol, there is no need to analyze potential impacts to forest resulting from linking. "*The proposed amendments to the cap-and-trade regulation would not change how entities would comply as evaluated in the FED for California's cap-and-trade regulation. Therefore, implementation of the Proposed Amendments to the cap-and-trade regulation would not result in any potentially significant agricultural and forest resources impacts, as evaluated and disclosed in the FED summarized above.*" ISOR at 53.

However, this ignores the possibility that Québec may develop a forest protocol in the future, and under the regulation California would be committed to accepting offset credits from that protocol. This also ignores the fact that British Colombia, also a WCI partner, has already adopted a forest offset protocol that fails to ensure the value of the reductions and fails to protect forest environmental values.

Response: ARB prepared an environmental analysis (EA) in the Staff Report that considered the potential for indirect impacts resulting from California-covered entities acquiring offset credits from projects in Québec based on Québec's current protocols. Québec is not currently proposing to develop or adopt a forest protocol. It is not reasonably feasible for ARB to conduct an environmental analysis based on the speculation that Québec could develop a forestry protocol at some point in the future or based on British Colombia's adoption of a forest offset protocol and staff is only proposing to link with Québec, not British Colombia. Please also see the responses below about the scope of the EA analysis.

California and Québec will continue to coordinate closely with other WCI Partner jurisdictions in the development of any future offset protocols, including forestry. California stakeholders will be able to provide comments during the WCI development process. Staff will also provide a Board update prior to the adoption of a new protocol by a linked jurisdiction.

Comment: Rather than analyze the potential environmental impacts of forest offset protocols issued by other jurisdiction, the ISOR largely defers to the environmental analysis in the FED for the cap-and-trade regulation. "*The environmental analysis for the proposed amendments to California's cap-and-trade regulation relies on the analysis conducted for the cap-and-trade regulation FED and the environmental analysis for the Landfill Regulations to the extent that the environmental impacts of the proposed amendments would be consistent with the impacts addressed in those prior documents.*" ISOR at 44. At the same time, the ISOR does acknowledge that forest offset programs have the potential for significant adverse environmental impacts, and that linking to partner jurisdictions could increase demand in California for offset credits generated in other jurisdictions.

However, the FED explicitly stated that it did not analyze the potential impacts of linking. "*No linkages are proposed at this time; however, future linkages are anticipated. Each linkage would be approved by the Board and subject to its own environmental review.*" FED at 33 "*Each compliance response project implemented by a covered entity in California, offset protocol adopted by ARB, or linkage agreement approved by ARB, that constitute a "project" as defined by CEQA, section 21065, would be subject to CEQA environmental review.*" FED at 130.

Furthermore, the FED, in its analysis of potential environmental impacts of forest offsets, acknowledged the need for environmental criteria. The FED also acknowledged that linking to jurisdictions with lower environmental criteria could result in discrepancies in the environmental quality of offsets. Also, the FED acknowledged the need for comprehensive environmental standards to apply to protocols in all linked jurisdictions. "*A linkage program with comprehensive environmental protection standards adopted as conditions of approval would create the opportunity to gain GHG reduction benefits while avoiding or minimizing the potential for other environmental impacts. Protocols could be established to require achievement of environmental standards, including definition of the standards, monitoring procedures, regular reporting of monitoring results to California, and adaptive environmental management for refining the standards and approaches for their achievement over time. Variations in the approvals of linkages could influence environmental impacts of allowances and offset credits created under other linked programs. A primary question related to the environmental impacts of linked programs is the degree of environmental review and protection/mitigation requirements in the other jurisdictions where linked programs would be approved. California environmental laws are typically more protective than the laws of other states and nations. If linkage was restricted to California programs only, the state's environmental laws would maintain protections through environmental impact*

assessment of public agency actions (under CEQA) and other laws protecting natural resources. Restricting linkage to California may have some advantages for environmental protection; however, the capacity to develop emissions credits would be substantially limited. Also, the overall cap-and-trade program includes accepting offset projects from outside California, so a geographic limitation on linkage would not result in a substantial environmental advantage on its own.

A linkage program with comprehensive environmental protection standards adopted as conditions of approval would create the opportunity to gain GHG reduction benefits while avoiding or minimizing the potential for other environmental impacts. Protocols could be established to require achievement of environmental standards, including definition of the standards, monitoring procedures, regular reporting of monitoring results to California, and adaptive environmental management for refining the standards and approaches for their achievement over time." FED at 387.

The FED offers a list of reasons it fails to provide a good-faith, reasoned analysis of the regulation's environmental impacts as required by CEQA, *see* CEQA Guidelines16 sections 15144, 15151. None are valid.

Response: As explained in the prior response, the current proposal is to link with Québec only, which is not currently proposing to develop or adopt a forest protocol. The CEQA Functional Equivalent Document (FED) prepared for California Cap-and-Trade Regulation (Regulation) was certified and adopted by the Board when the Regulation was adopted in October 2011. The proposal to link with Québec involves amendments to the Cap-and-Trade Regulation, so the environmental analysis (EA) for the proposed amendments focuses only on the potential environmental impacts associated with the proposed changes and potential impacts not analyzed in the prior certified FED. The EA references the FED to the degree that analysis is relevant to the amendments currently under consideration. Since staff's analysis of Québec's regulation found it to be largely similar and as stringent as ARB's regulation, the EA concluded there would be no change in the compliance responses of California covered entities as analyzed in the certified FED prepared for the Regulation. The EA concluded that the only change that warranted further environmental review was the potential for California entities to seek offset credits from projects in Québec (see EA pages 49-50). Although it is unclear whether ARB is required under CEQA to analyze potential indirect impacts outside of California or the United Stated, the EA provided a good faith effort to disclose, to the degree feasible, potential impacts associated with offset projects in Québec based on Québec's approved offset protocols. Since Québec's ODS and Livestock Offset Protocols are very similar to ARB's ODS and Livestock Offset Protocols analyzed in the FED, that FED analysis was referenced and incorporated for the discussion of potentially similar impacts from California covered entities acquiring offset credits from very similar projects in Québec. Since Québec is not currently proposing to develop or adopt a forest protocol, the FED analysis for ARB's Forestry Protocol was not referenced and is not applicable to the proposed amendments currently under

consideration. To the degree that the commenter is critiquing the certified FED prepared for the Regulation, that document is final and has not been reopened for comment.

Comment: First, the FED seeks to rely on the environmental document prepared for the overall cap-and-trade regulation. Such reliance ("tiering" in CEQA parlance) is appropriate, however, only to the extent that the specific environmental impacts associated with the linkage regulation were already identified, analyzed, and mitigated to the extent feasible in the FED for the cap-and-trade regulation. The current FED makes no real attempt to demonstrate whether, or to what extent, this is the case. Indeed, the linking regulation may have a number of impacts not identified in the prior FED simply because it anticipates acceptance of credits under protocols developed—or, in many cases, not even developed yet—by partner jurisdictions. To the extent that these protocols incent activities that may have environmental impacts, those impacts could not have been discussed in the cap-and-trade FED. Therefore, they must be disclosed and analyzed here.

Response: See the prior response for the discussion of the relationship between the current EA and the FED prepared for the Regulation and the one below that discusses the scope of the EA analysis. Because a FED was certified and adopted for the Cap-and-Trade Regulation, the environmental analysis (called an EA for this action) focuses only on the potential environmental impacts associated with the proposed changes to the regulation and potential impacts not previously examined in the certified FED. As explained in the EA at pages 49-50, the further environmental analysis provided in the EA focuses on the potential indirect environmental impacts resulting from offset projects in Québec based on Québec's offset protocols because it is possible that California entities may purchase offset credits from such projects in Québec. This analysis is provided in the EA because it was not provided in the FED prepared for the Regulation. This is because there was no specific proposal to link at that time and no specific information about offset protocols to analyze.

Comment: Second, however, the FED claims that it need not analyze these impacts because they cannot be determined with any specificity. ISOR at 45 ("The FED relied on the agencies with local permitting authority to analyze site- or project-specific impacts because the programmatic FED could not determine with any specificity the project-level impacts . . . ."). Again, this is incorrect. ARB, must make a good-faith effort to disclose all it reasonably can about these projects. Where protocols exist, and underlying environmental standards are ascertainable, ARB must do its best to forecast the reasonably foreseeable environmental consequences of offset projects. These are not projects that would happen anyway; indeed, if any of these projects are truly additional—which the linking regulation ostensibly requires—they would not happen but for the incentives created by the linking regulation. Accordingly, the environmental consequences of these projects are, if not direct, then at least indirect effects of the regulation. Nor may the FED simply state that all projects are expected to comply with legal standards applicable in the host jurisdiction. The fact that a project may comply

with legal standards alone does not relieve a lead agency of its obligation to determine whether its environmental impacts are significant. *See, e.g., Californians for Alternatives to Toxics v. Dept. of Food & Ag.* (2005) 136 Cal. App. 4th 1.

Response: The section of the EA that the commenter quotes (ISOR page 45) provides a summary of the analysis and conclusions of the FED certified and adopted for the Regulation. To the degree that the commenter is critiquing the certified FED prepared for the Regulation, that document is final and has not been reopened for comment.

As explained in the prior response, the additional environmental analysis provided in the EA focuses on the potential environmental impacts associated with the proposed changes to the regulation that were not previously examined in the certified FED. Staff's analysis found that Québec's regulation is largely similar and essentially as stringent as ARB's regulation. The proposal to link with Québec allows California entities to purchase offset credits from approved offset projects in Québec, but does not require them to do so. An entity's decision to purchase credits available on the market from Québec projects depends on the relative price and availability of such credits. Although CEQA discourages forecasting and speculation, drafting an environmental document necessarily involves some degree of forecasting. For the EA, ARB used its best efforts to find out and disclose all that it reasonably can about the potential environmental impacts associated with linking with Québec. The EA analysis provides as much information as is currently available, without being speculative, about the potential indirect impacts associated with California entities potentially incentivizing offset projects in Québec. Because Québec's protocols are similar to already approved California protocols analyzed in the certified FED, the FED analysis was referenced and incorporated for the discussion of impacts from the similar California protocols. The degree of specificity required in an environmental analysis corresponds to the degree of specificity involved in the underlying activity being proposed. The analysis of the indirect effects of Québec's protocols cannot be, and need not be, as detailed as an environmental analysis that would occur at the local level for actual offset projects undertaken in accordance with the protocols. Since it is not possible to ascertain how or where particular offset projects may occur in Québec, a more detailed analysis of offset project level impacts, and potential mitigation, is not reasonably feasible as part of this proposal to link California's cap-and-trade market to Québec's.

The EA provided as much information as was feasible with the information that is available at this time in order to inform the public and the decision makers about the potential environmental consequences of linking with Québec. ARB does not have any land-use authority in Québec and cannot require project-level mitigation for offset projects in Québec as part of ARB's action to link with Québec. As discussed in the EA (e.g. odor impact associated with Québec's Livestock Protocol) the authority to determine project-level impacts and require project level mitigation lies with the permitting agencies in Québec. It is infeasible as part of

this proposal to link with Québec to identify specific feasible mitigation measures to reduce or eliminate identified potentially significant impacts (e.g. odors) associated with potential Québec offset projects. Because ARB is not responsible for mitigation at the local level, the EA took a very conservative approach in its post-mitigation significance conclusion by finding potentially significant indirect impacts as remaining significant after mitigation.

It is worth noting that Québec needs offset protocols for its own cap-and-trade program and that linking does not add an additional need for offset protocols in Québec.

Comment: Third, the FED argues that it is a "program" document and thus lacks specificity. Again, the argument fails. Under CEQA, a program environmental document still must disclose all reasonably available information, and is most helpful if "it deals with the effects of the program as specifically and comprehensively as possible." CEQA Guidelines § 15168(c)(5). Indeed, a program document can provide "an occasion for a more exhaustive consideration of effects and alternatives that would be practical" in analyzing individual actions. *Id.*, § 15168(b)(1). This is especially the case here, where *only* at the programmatic level can all of the incentives governing underlying project activities be disclosed and considered. Rather than prepare a program-level document in accordance with these CEQA principles, ARB has largely declined to offer any meaningful analysis at all. This is improper.

Response: Please refer to the prior response.

Comment: Finally, ARB claims it has no authority to require mitigation. ISOR at 45 ("ARB does not have the authority to require project-level mitigation for specific projects carried out to comply with California's cap-and-trade regulation or protocols.") Again, the claim is patently false. Program-level review specifically allows agencies to "consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." *Id.*, § 15168(b)(4). ARB cannot plausibly claim that it has no role in mitigating the environmental harm potentially caused by offset projects that would not occur absent the linking regulation. ARB is designing the regulation and has ultimate responsibility under AB 32 for adopting methodologies and protocols governing these projects. ARB therefore has both legal and practical authority to condition the acceptance of offsets in a way that minimizes minimize and avoid environmental impacts. ARB has not shown that its own mitigation measures are legally infeasible. It cannot simply abdicate its responsibility to consider feasible mitigation measures for projects *entirely* subject to its own design, authority, and control.

CEQA requires that ARB act with full knowledge of the environmental consequences of its actions. Because of the extraordinary nature of this regulation—seeking to commit California to accepting offset credits from protocols that do not yet exist—the review of environmental impacts will need to be extraordinarily conservative and circumspect. If linking to a partner jurisdiction commits California to accepting offset credits even when

the offset protocols lack even the insufficient environmental safeguards of protocols adopted by ARB, it will not be possible to dismiss the effects of future offset projects in those jurisdictions as too speculative for analysis.

Response: As explained in the prior responses, the analysis of the indirect impacts of potential offset projects in Québec based on the protocols that Québec currently has, was examined to the degree reasonably feasible without being speculative. In terms of the recommendation that ARB design the regulation to restrict offset credits from a linked jurisdiction, alternative (d) in the EA examined linkage with restrictions on Québec offsets as did Alternative 4 in chapter VI of the ISOR. As described in Alternative 4, under this alternative Québec could still allow for the use of the resulting offset credits, but California entities would not be able to use them. Staff analysis of this alternative found since allowances and offset credits are fungible, only allowing certain offsets from a linked jurisdiction could result in a greater demand for "non-California-approved" offsets in the linked jurisdiction, whose entities would just use more offsets, maximizing their offset usage limit, for compliance and sell their allowances to California's covered entities. If California entities could not take advantage of a broader liquid market that provides cost containment benefits there could be increased compliance costs for California entities. For these same reasons, alternative (d) in the EA was found to not meet one of the basic project objectives (cost containment) as well as the proposed amendments. The same is true for the variation that the commenter appears to be suggesting.

Comment: In conclusion, the regulation fails to ensure that carbon offsets generated in other jurisdictions will not result in negative impacts to forest ecosystems, will not undermine the integrity of California's cap-and-trade program, and will not contradict the mandate of AB 32 to maximize environmental co-benefits. The regulation should include environmentally rigorous standards and require affirmative determination by ARB that offset protocols in other jurisdictions—and in California—will not result in negative environmental impacts.

Response: Please see prior responses. As a general matter, it is difficult to respond to situations that have not yet occurred and whose potential impact on the California program cannot be determined at this time. Staff is committed to a transparent review process of the linked jurisdiction's programs and will work with stakeholders in providing recommendations to the Board. Staff would brief the Board prior to adoption of new protocols by linked jurisdictions and will pursue the Board's direction. Staff believes that changes in a linked jurisdiction would not threaten the environmental integrity of California's cap-and-trade program and will serve to achieve greater environmental benefits than if California did not link to the jurisdiction. Furthermore, any offset protocol adopted within another jurisdiction must go through the regulatory and stakeholder review processes as required within that jurisdiction before it can be formally adopted.

EDF3

Name, Affiliation: Tim O'connor, Environmental Defense Fund; Erica Morehouse, Environmental Defense Fund; Kristin G. Eberhard , Natural Resources Defense Council
Written Testimony: 06/26/2012
45-Day Linkage Comment #: 15

Comment: Environmental Defense Fund (EDF) and the Natural Resources Defense Council (NRDC) support CARB's efforts to consider linking California's cap-and-trade program to Québec's through a formal rulemaking process that has the potential to lead to a mutual recognition of compliance instruments issued by either program, should CARB determine upon thorough evaluation, that Québec's program meets California's rigorous standards for environmental integrity. EDF and NRDC's paramount interest is to preserve the integrity of California's cap-and-trade program. That said, linking, or mutual recognition between strong programs, can, in principle, provide additional flexibility and cost-saving opportunities for regulated entities in both California and Québec. It was clear from the linkage workshop that CARB's decision on whether to recognize the validity, for compliance purposes, of compliance instruments in the Québec program will be based on CARB's thorough consideration, and continuing assessment, of what will provide the strongest and most effective means of reducing greenhouse gas (GHG) emissions and protecting California from the impacts of climate change. We strongly encourage CARB to maintain that perspective throughout the rulemaking process. (EDF3)

Response: Thank you for your support.

Comment: We support the current proposal to amend the cap-and-trade regulation to allow California to accept compliance instruments from linked jurisdictions and specifically to link with Québec. Showing that two separate governments, in two separate countries, with two separate economies, can effectively partner to put a price on carbon and reduce greenhouse gas emissions is a transformative step for North America; a step that can jumpstart a regional effort to join the growing international movement that is desperately needed to combat the threat of climate change.

In general, expanding California's carbon market will provide both economic and environmental benefits for the state in the form of greater market liquidity and an expanded base of emission reduction opportunities. Based on the analysis provided in the staff report, linkage with Québec will also help drive capital flows into the state to buttress California's clean energy sectors and capture in-state reductions, offering even greater benefits.

Our primary interest in this rulemaking has been and remains ensuring the environmental integrity of California's cap-and-trade program. Because California and Québec have been part of the Western Climate Initiative, they have been on parallel tracks towards designing cap-and-trade programs with substantially similar core programmatic elements such as: the stringency of the cap, the reliability of mandatory

reporting requirements, the stringency of offset protocols, limits on borrowing, and the adequacy of penalty and enforcement mechanisms. This provides a critical layer of certainty about the equivalency and environmental integrity of Québec's program. CARB's efforts through this rulemaking to identify the programmatic elements such as joint auctions, a shared compliance instrument tracking system, and equivalent holding limits that require harmonization will also enhance the integrity of both programs.

Response: Thank you for your support.

EDF2

Name, Affiliation: Erica Morehouse, Environmental Defense Fund; Michelle Passero, The Nature Conservancy; Alex Jackson, Natural Resources Defense Council; Jennifer Martin, Center for Resources Solutions
Written Testimony: 06/27/2012
45-Day Linkage Comment #: 16

Comment: We appreciate CARB's ongoing commitment to develop the cap-and-trade program in an open and public process and we urge CARB to continue this practice with stakeholders and other branches of government as linkage with Québec and other jurisdictions progresses. Specifically, we urge the Board to direct staff to establish a clear process that will provide the public with notice and opportunity to comment on any significant changes that may occur within a linked jurisdiction. The Board, in conjunction with any staff, public or legislative input, should explicitly retain the authority to make regulatory changes affecting linkage if future adjustments are necessary. California must ensure that any changes made within a linked jurisdiction do not threaten the environmental integrity or overall benefits that California seeks to achieve through linkage.

> **Response:** California has been coordinating with WCI Partner jurisdictions for five years and will continue to do so to ensure there is consistency throughout a regional market program. Staff will provide the Board with an update prior to any changes in a linked jurisdiction's program, including proposal of future protocols. This will provide an open and public process through which stakeholders can comment on proposed changes.
>
> Any offset protocol adopted within a jurisdiction must go through the regulatory and stakeholder review processes as required within the jurisdiction before it can be formally adopted. In California, the review and adoption process for changes to California's program includes an environmental review under ARB's certified regulatory program.

Comment: In considering whether to link California's program with Québec's, the primary question and the ultimate driver behind CARB's action should be what is best for the integrity of California's cap-and-trade program and for California in its efforts to protect its citizens from the threats of climate change. While we await the final proposed regulatory language and full rulemaking package, we are encouraged by CARB's direction as evidenced in the discussion draft and workshop to remain focused on maintaining the high standards of California's program and that the iterative process of harmonizing certain provisions with Québec's has been undertaken with any eye towards clarifying and strengthening those provisions. As we noted in our initial comments, EDF and NRDC see many potential benefits to California from linking into a broader market, including providing additional flexibility and cost-effective reduction opportunities for regulated entities and building broader support for actions to combat climate change. We look forward to receiving further information from the documents

that CARB will release when the formal comment period begins such as the initial statement of reasons, the economic impacts analysis and the CEQA analysis.

Response: Thank you for your support.

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EDF4

Name: Erica Morehouse
Affiliation: Environmental Defense Fund
Oral Testimony: 06/28/2012
Hearing Witness #: 3

Comment: And the main thing with other jurisdictions that meet California's rigorous environmental standards can provide both economic and environmental benefits, including increasing market liquidity and broaden the emission reductions that are possible and also expanding the demand for emission reduction technology, many of which are made here in California.

Response: Thank you for your support.

PFT1

Name: Paul Mason
Affiliation: Pacific Forest Trust
Written Testimony: 06/27/2012
45-Day Cap-and-Trade Amendment Comment #: 18

Comment: Establish a public process to evaluate offset protocols adopted by other linked jurisdictions in order to evaluate whether the offsets that will generate compliance instruments used in California are fully consistent with California standards and requirements. Such an evaluation should happen prior to those compliance instruments being accepted into the system and used by a covered entity to meet a compliance obligation. (PFT1)

> **Response:** California has been coordinating with WCI Partner jurisdictions for five years and will continue to do so to ensure there is consistency throughout a regional market program. Staff will provide the Board with an update prior to any changes in a linked jurisdiction's program, including proposal of future protocols. This will provide an open and public process through which stakeholders can comment on proposed changes. Please also refer to the responses to comments from CBD (Comment #: 17) above regarding restrictions on offsets from linked jurisdictions.

TWS1

Name: Ann Chan
Affiliation: The Wilderness Society
Written Testimony: 06/27/2012
45-Day Linkage Comment #: 7

Comment: TWS seeks specific clarification regarding the process and any remedies for addressing findings that proposed or amended protocols for offsets available in linked jurisdictions either: (1) fail to meet the WCI Offset System Essential Elements Recommendations for ensuring that offsets are real, quantifiable, permanent, enforceable, additional and verifiable, and/or (2) have the potential for generating significant adverse, environmental impacts that are not adequately avoided or mitigated including, but not limited to, any transboundary environmental impacts or environmental impacts not otherwise subject to a NEPA-equivalent environmental impact assessment. TWS commends and supports ARB's long-standing approach to program implementation that incorporates transparency, public engagement, and on-going evaluation and adaptive management of implementation of programs and regulations, including any needed updates and adjustments. (TWS1)

Response: AB32 is clear what criteria an offset must meet in order to be eligible for use for compliance by California entities. Staff will continue to monitor and coordinate closely with any jurisdiction to which the California market program is linked to ensure any changes to existing protocols or new protocols would result in offsets that meet the AB32 criteria of real, quantifiable, permanent, enforceable, additional and verifiable. Staff will provide the Board with updates prior to the actual revision to existing or adoption of new offset protocols or linkage to another jurisdiction. This will provide stakeholders and the Board an opportunity to discuss and evaluate the proposed changes to a linked jurisdiction's program. It is difficult to respond to situations that have not yet occurred and whose potential impact on the California program cannot be determined at this time. Staff is committed to a transparent review process of the linked jurisdiction's programs and will work with stakeholders in providing recommendations to the Board. If staff identifies that potential changes to the jurisdiction's program could harm attainment of the program goals, California regulated parties or California, staff would brief the Board and pursue the Boards direction.

Please also refer to the response to comments from CBD (Comment #: 17) above related to restriction of offsets from other jurisdictions.

TWS2

Ann Chan
Affiliation: The Wilderness Society
Oral Testimony: 06/27/2012
Hearing Witness #: 14

Comment: We'd also like to see additional clarification regarding any remedies that might be available pursuant to a finding that any after-adopted protocols or amended protocols or not in compliance with the WCI offset essential elements recommendations for additionality, verifiability, and additionality. And also any remedies that might be available for findings that after adopted protocols or modifications are in violation or inconsistent with other relevant environmental laws. (TWS2)

Response: Please refer to prior response. Staff will continue to monitor and coordinate closely with any jurisdiction to which the California market program is linked. Staff will provide Board updates prior to the actual revision to existing or adoption of new offset protocols, or linkage to another jurisdiction. This will provide stakeholders and the Board an opportunity to discuss and evaluate the proposed changes to a linked jurisdiction's program. This process should ensure any adopted protocols are in compliance with the WCI offset criteria, but also the AB 32 offset criteria. Each jurisdiction is responsible for monitoring its own regulatory programs. As is the usual practice, ARB staff will monitor the cap-and-trade program and will not issue offsets or will invalidate ARB offsets post-issuance if the offset project does not meet environmental regulations. Any new or additional ARB protocols would be subject to environmental review under ARB's certified regulatory program.

WSPA1

Name: Catherine Reheis Boyd
Affiliation: Western States Petroleum Association
Written Testimony: 06/27/2012
45-Day Linkage Comment #: 8

Comment: Relationship of CEQA to Cap-and-Trade

WSPA continues to have significant concerns regarding the interplay between the requirements of CEQA and the AB32 C/T program. For example, one could envision emission reductions from a C/T program as mitigation for project-related impacts if the reductions exceed project emissions. In other words, allowances purchased under the C/T program that are in excess of project-related emissions should be considered as valid mitigation under CEQA. Yet, ARB staff stated during the presentation that actions under the C/T program are not intended to address CEQA requirements. ARB has provided no explanation for its unwillingness to address this obvious and important issue. It would be very useful to know from the outset that GHG reductions under the C/T program count for CEQA mitigation.

Recommendation: We strongly urge ARB to address the potential of GHG reductions under the CTR as mitigation for CEQA to industries working within the AB32 Cap-and-Trade market-based mechanism. (WSPA1)

> **Response:** This comment falls outside the scope of the current rulemaking. None the less, ARB rejects this recommendation because ARB does not have authority to define within the Cap-and-Trade Regulation how lead agencies conduct their CEQA analysis for any particular project. ARB cannot, as the commenter suggests, require that lead agencies count allowances purchased under the Cap-and-Trade Regulation as mitigation under CEQA. The requirements for CEQA analysis and mitigation for a project are at the discretion of the lead agency undertaking the project.

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