State of California
AIR RESOURCES BOARD

Amendments to California Cap-and-Trade Program - Linkage

Resolution 13-7

April 19, 2013

Agenda Item No.: 13-4-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the California Global Warming Solutions Act of 2006 (AB 32; Chapter 488, Statutes of 2006; Health & Safety Code section 38500 et seq.) declares that global warming poses a serious threat to the economic well-being, public health, natural resources, and environment of California and creates a comprehensive multi-year program to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020;

WHEREAS, AB 32 added section 38501 to the Health and Safety Code, which expresses the Legislature's intent that ARB coordinate with State agencies and consult with the environmental justice community, industry sectors, business groups, academic institutions, environmental organizations, and other stakeholders in implementing AB 32; and design emissions reduction measures to meet the statewide emissions limits for greenhouse gases in a manner that minimizes costs and maximizes benefits for California's economy, maximizes additional environmental and economic co-benefits for California, and complements the State's efforts to improve air quality;

WHEREAS, section 38501(c) of the Health and Safety Code declares that California has long been a national and international leader on energy conservation and environmental stewardship efforts, and the program established pursuant to AB 32 will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce GHG emissions;

WHEREAS, section 38501(d) of the Health and Safety Code confirms that national and international actions are necessary to fully address the issue of global warming, but action taken by California to reduce GHG emissions will have far reaching effects by encouraging other states, the federal government, and other countries to act;

WHEREAS, section 38501(e) of the Health and Safety Code states that by exercising a global leadership role, California will also position its economy, technology centers, financial institutions, and businesses to benefit from national and international efforts to

reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases;

WHEREAS, section 38510 of the Health and Safety Code designates ARB as the State agency charged with monitoring and regulating sources of GHG emissions in order to reduce these emissions;

WHEREAS, section 38560 of the Health and Safety Code directs ARB to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective GHG emissions reductions from sources or categories of sources;

WHEREAS, section 38562(a) of the Health and Safety Code requires ARB to adopt GHG emissions limits and emissions reduction measures by regulation to achieve the maximum technologically feasible and cost-effective reductions in GHG emissions in furtherance of achieving the statewide GHG emissions limit, to become operative beginning on January 1, 2012;

WHEREAS, section 38564 of the Health and Safety Code directs ARB to consult with other states, and the federal government, and other nations to identify the most effective strategies and methods to reduce greenhouse gases, manage greenhouse gas control programs, and to facilitate the development of integrated and cost-effective regional, national, and international greenhouse gas reduction programs;

WHEREAS, California is participating in the Western Climate Initiative (WCI), with other Partner jurisdictions considering implementation and linkage of GHG Cap-and-Trade programs;

WHEREAS, over the course of 6 years, the WCI Partner jurisdictions have coordinated on developing recommendations for greenhouse gas reporting, compliance offsets, and cap-and-trade as models for jurisdictions to develop their own programs;

WHEREAS, the WCI Partner jurisdictions developed recommendations in a public and transparent manner with over 130 public documents, 86 stakeholder meetings, webinars, and calls, and received comments on 48 occasions;

WHEREAS, by linking California's Program to WCI Partner jurisdictions, the combined Programs will result in more emission reductions, generate greater potential for lower cost emissions reductions, enhance market liquidity, and will increase opportunities for GHG emissions reductions for covered sources more than could be realized through a California-only program;

WHEREAS, establishing and implementing a California and regional GHG Cap-and-Trade Program requires ARB and WCI Partner jurisdictions to harmonize specific

regulatory and operational provisions, including, but not limited to, sources subject to compliance obligations, emissions reporting requirements, cost-containment mechanisms, evaluation of regulatory baselines for existing offset protocols, procedures for developing new offset protocols, compliance instrument tracking system development and operation, auction services, financial services, and market monitoring and oversight;

WHEREAS, ARB and the WCI Partner jurisdictions established a regional administrative organization in November 2011, similar to other regional Cap-and-Trade Programs, called Western Climate Initiative, Inc. to meet the goal of regionally coordinated administration of cap-and-trade services;

WHEREAS, the Board adopted the Final Regulation Order establishing a GHG Cap-and-Trade Program for California after a three-year development process that included hundreds of stakeholder meetings, workshops, and comments; the regulation became effective January 1, 2012, and includes the following elements:

Addresses emissions of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O);

Identifies the Program scope: starting in 2012, electricity, including imports, and large industrial facilities are included; starting in 2015, distributors of transportation fuels, natural gas, and other fuels are included;

Establishes a declining aggregated emissions cap on included sectors. The cap starts at 162.8 million allowances in 2013, which is equal to the emissions forecast for that year. The cap declines approximately 2 percent per year in the initial period (2013–2014). In 2015, the cap increases to 394.5 million allowances to account for the expansion in Program scope to include fuel suppliers. The cap declines at approximately 3 percent per year between 2015 and 2020. The 2020 cap is set at 334.2 million allowances;

Provides for distribution of allowances through a mix of direct allocation and auction in a system designed to reward early action and investment in energy efficiency and GHG emissions reductions; allowances will be distributed for the purposes of price containment, industry transition and assistance, and fulfillment of AB 32 statutory objectives;

Establishes a market platform for allowance auction and sale;

Establishes cost-containment mechanisms and market flexibility mechanisms, including trading of allowances and offsets, allowance banking, a two year compliance period and two 3-year compliance periods, the ability to use offsets

for up to 8 percent of an entity's compliance obligation, and an allowance reserve that provides allowances at fixed prices to those with compliance obligations;

Establishes a mechanism to link with other GHG trading programs and approve the use of compliance instruments issued by a linked external GHG trading program;

Establishes requirements and procedures for ARB to issue offset credits according to offset protocols adopted by the Board;

Includes four offset protocols adopted by the Board as part of the regulatory package;

Establishes a mechanism to include international offset programs from an entire sector within a region;

Establishes a robust enforcement mechanism that will discourage gaming of the system and deter and vigorously punish fraudulent activities; and

Provides an opt-in provision for entities whose annual GHG emissions are below the threshold to voluntarily participate in this program.

WHEREAS, staff has proposed amendments to the Cap-and-Trade Regulation set forth in Attachment A hereto that includes the following elements:

The use of allowances and compliance offsets from a linked jurisdiction by California entities for compliance in the Cap-and-Trade Program;

The use of California issued allowances and compliance offsets for compliance by entities in a linked jurisdiction;

Joint quarterly auctions that include allowances from California and its linked jurisdictions;

Adjustments to the "Annual allowance budget" used in the calculation of the holding limits to include allowances from California and its linked jurisdictions;

Mechanisms to allow for auction bidding and settlement in two currencies;

Requirements for each covered entity to register in its jurisdiction;

Requirements for all voluntary participants located in the United States to register with California and voluntarily submit themselves to the jurisdiction of the State of California; and

Requirements where only covered entities in California would be eligible to participate in the California Allowance Price Containment Reserve sales.

WHEREAS, staff held two public workshops on the linkage amendments and also participated in numerous other meetings with various stakeholders to provide additional opportunities for participation in the regulatory development process;

WHEREAS, the Board believes the success of a Cap-and-Trade Program is predicated on GHG regulations that are clear, consistent, enforceable, and transparent;

WHEREAS, staff prepared a document entitled "Staff Report: Initial Statement of Reasons 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" (ISOR), which presents the rationale and basis for the proposed regulation and identifies the data, reports, and information relied upon;

WHEREAS, the proposed regulatory language was made available to the public at least 45 days prior to the public hearing to consider the proposed regulation, with three subsequent comment periods of 15 days to add documents to the record and propose additional modifications to the regulatory text;

WHEREAS, Senate Bill 1018 (Government Code section 12894(f)) was enacted requiring state agencies to notify the Governor that the agency intends to take action to link with another greenhouse gas emissions trading program; and the Governor must make specified findings prior to the agency taking action to approve the linkage;

WHEREAS, on February 22, 2013, the Executive Officer sent a letter to the Governor requesting the Governor's consideration of the four findings that are necessary before ARB can adopt a regulation that would link the greenhouse gas emissions trading programs developed by California and the Province of Québec;

WHEREAS, on April 8, 2013, the Governor provided ARB a letter stating that the four requirements of Government Code section 12894(f) have been satisfied and describing additional steps the Board will take prior to implementing linkage with the Québec Cap-and-Trade Program;

WHEREAS, in consideration of the ISOR, written comments, and public testimony it has received to date, the Board finds that:

The goal of the Québec's 2020 greenhouse gas emissions target is at least as stringent as California's 2020 greenhouse gas emissions target;
The scope of Québec's Cap-and-Trade Program is consistent with the scope of California's Program;

Québec's greenhouse gas reporting program is rigorous and will provide accurate greenhouse gas emissions data to support a Cap-and-Trade Program;

Québec's greenhouse gas reporting program verification requirements are consistent with California's requirements;

Québec's Cap-and-Trade Program is designed with mechanisms consistent with the California Program to prevent the ability of entities to exert market power;

Québec's auction mechanics are consistent with those in California's Program and will enable the administration of joint auctions;

Québec's identity verification requirements are consistent with those in the California Program;

Québec's compliance offset program design is consistent with California's Program requirements;

Québec's offset criteria are consistent with AB 32 and California's Program;

Québec's offset verification requirements are consistent with those recommended by WCI and included in California's Program;

Québec's offset protocols for the destruction of ozone depleting substances and livestock digesters are based on and consistent with ARB's Compliance Offset Protocol Ozone Depleting Substances Projects and ARB's Compliance Offset Protocol Livestock Projects;

Québec's offset protocol for small landfills requires the capture and destruction of landfill methane similar to ARB's landfill early action measure;

Québec's offset protocol for small landfills would not give compliance offset credit to large landfills which would be subject to the landfill early action measure in California and is therefore harmonized with California's Program;

The staff's proposed regulatory text meets the statutory requirements identified in section 38562 of the Health and Safety Code including equitable and cost effective distribution of allowances to maximize total benefits to California; minimizing leakage, and cost effectiveness;

The staff's proposed regulatory text meets the statutory requirements for a market-based mechanism identified in section 38570 of the Health and Safety Code including: consideration of the potential for direct; indirect, and cumulative emission impacts; prevention of increases in emissions of toxic air contaminates or criteria pollutants and maximizing additional environmental and economic benefits for California;

The staff's proposed regulatory text was developed in an open public process, in consultation with affected parties, through public workshops, individual meetings, and other outreach efforts;

The staff's proposed regulatory text is predicated on GHG regulations that are clear, consistent, enforceable, and transparent and helps meet the goals of AB 32; and

The staff's proposed regulatory text would provide for a linked Cap-and-Trade Program between California and Québec, effective January 1, 2014, where allowances and compliance offsets issued by each jurisdiction would be fungible across both Programs.

WHEREAS, the WCI coordination process to have a linked Cap-and-Trade Program between California and any of the WCI Partner jurisdictions as described in the ISOR does not set a precedent for other mechanisms for California to accept compliance instruments from other types of programs;

WHEREAS, the California Environmental Quality Act (CEQA) requires that a public agency not approve a project as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental impacts of such a project; in the event that specific economic, social, or other conditions make infeasible the alternatives or mitigation measures, the project may be approved if it is determined that any remaining unavoidable significant impacts are acceptable due to overriding considerations;

WHEREAS, Public Resources Code section 21080.5 allows public agencies with regulatory programs to prepare a plan or other written document in lieu of an environmental impact report or negative declaration once the Secretary of the Resources Agency has certified the regulatory program;

WHEREAS, that portion of ARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary of Resources Agency (CEQA Guidelines, section 15251(d));

WHEREAS, ARB's certified regulatory program provides that prior to taking final action on any proposal for which significant environmental issues have been raised, the decision maker shall approve a written response to each such issue;

WHEREAS, in accordance with ARB's certified regulatory program at title 17, CCR, section 60005 (b), and the policy and substantive requirements of CEQA, ARB staff prepared an assessment of the potential for significant adverse and beneficial environmental impacts associated with the proposed action and a succinct analysis of those impacts in Chapter IV of the ISOR;

WHEREAS, the environmental analysis (EA) in Chapter IV of the ISOR set forth a programmatic level of analysis of broadly defined types of indirect impacts that could occur as a result of the proposed action, including potential alternatives;

WHEREAS the environmental analysis was circulated as part of the ISOR for a 45-day written public comment period from May 14, 2012, until June 27, 2012;

WHEREAS, ARB reviewed written comments on the potential for environmental impacts associated with the proposed action received during the initial 45-day comment period and subsequent 15-day comment periods and prepared written responses to these comments;

WHEREAS, on April 9, 2013, ARB posted a document called the *Response to Comments on the Environmental Analysis Prepared 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* (Response to EA Comments);

WHEREAS, at a duly noticed public hearing held on April 19, 2013, staff presented the Response to EA Comments for approval, and the Final Regulation Order for adoption; and

WHEREAS, the Board has reviewed and considered the EA and the Response to EA Comments.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby certifies that the EA was completed in compliance with CEQA under ARB's certified regulatory program, reflects the agency's independent judgment and analysis, and was presented to the Board whose members reviewed, considered and approved the information therein prior to acting on the proposed Final Regulation Order.

BE IT FURTHER RESOLVED that the Board approves the written responses to comments raising significant environmental issues included in the Response to EA Comments.

BE IT FURTHER RESOLVED that in consideration of the EA and Response to EA Comments, and in accordance with the requirements of CEQA and ARB's certified regulatory program, the Board adopts the Findings and Statement of Overriding Consideration as set forth in Attachment C to this Resolution.

BE IT FURTHER RESOLVED that the Board adopts the amendments to the California Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions set forth in Attachment A to this Resolution.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to finalize the Final Statement of Reasons and submit the rulemaking package to the Office of Administrative Law by May 8, 2013.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to report to the Board at least annually on the status of the linked Cap-and-Trade Program.

BE IT FURTHER RESOLVED that at least six months prior to any of the following taking effect in a linked jurisdiction, the Executive Officer will provide a report to the Board that includes an assessment of environmental factors and will provide a recommendation for

Board action if appropriate. The report to the Board will also include an opportunity for public review and input.

Changes to the stringency of the Program, including changes to the cap;

The adoption of a new compliance offset protocol or significant amendments to an existing compliance offset protocol;

Linkage to another Cap-and-Trade Program; and

Any other change to a linked jurisdiction's Program which would significantly affect the stringency, integrity, enforceability or successful functioning of the combined Programs.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with Québec to complete pre-linkage activities prior to the effective date of January 1, 2014. These activities should include those steps needed to ensure implementation readiness, which may include, but are not limited to, testing of the auction platform to allow for a joint auction, a practice joint auction between California and Québec, testing of the tracking system to enable transfers across program participants, and a review (and adjustments as needed) of processes, procedures and systems of California's and Québec's programs to ensure consistency and compatibility.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to coordinate with the Government of Québec to ensure both jurisdictions maintain an enforceable linked Cap-and-Trade Program, and that the implementation of the Cap-and-Trade Program in linked jurisdictions is as rigorous as California's implementation of its Cap-and-Trade Program. This coordination should include the reporting and verification of emissions, reports on implementation of offset programs, market surveillance, and updates on investigations and enforcement actions.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to coordinate with the Government of Québec to implement the linked Cap-and-Trade Program in an efficient and transparent manner, and directs the Executive Officer to document the coordination process in a written agreement with the Government of Québec and provide it to the Board and make it available to the public.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with linked jurisdictions to ensure that information is shared between the jurisdictions to ensure robust surveillance, oversight and enforcement, and that enforcement is applied in an equivalent manner in all linked jurisdictions.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to update the Board in Fall 2013 on the status of the auction platform and trading system to support linkage and progress toward implementing the linked markets prior to providing a report to the Secretary of Cal/EPA and the Governor's office by November 1, 2013, as directed in the Governor's April 8, 2013, letter to ARB.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to continue working with the non-linked WCI Partner jurisdictions to harmonize the Programs by developing appropriate regulatory amendments necessary to formally link the Programs, and by developing appropriate policy and technical protocols necessary to effectively implement the linked jurisdictions' Programs.

I hereby certify that the above is a true and correct copy of Resolution 13-7, as adopted by the Air Resources Board.

Tracy Jensen

Tracy Jensen, Clerk of the Board

Resolution 13-7

April 19, 2013

Identification of Attachments to the Board Resolution

Attachment A:	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.
Attachment B:	Response to EA Comments are found at: http://www.arb.ca.gov/board/books/2013/041913/start.pdf
Attachment C:	Findings and Statement of Overriding Consideration

State of California
Environment Protection Agency
AIR RESOURCES BOARD

Notice of Decision

Project Title:	Amendments to the California Regulation for Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions (SCH# 2010102056)
Project Location:	Statewide
Public Meeting Dates:	June 28, 2012; Agenda Item No. 12-4-5 April 19, 2013; Agenda Item No. 13-4-1
Project Description:	Amendments to the cap-and-trade regulation to establish common allowance auctions between California and Québec and allow acceptance of Québec compliance instruments for compliance with California's cap-and-trade regulation. These amendments include requirements for a linked compliance instrument registry and associated registration requirements. The amendments establish linkage with Québec under the framework included in the existing cap-and-trade regulation.
Approved By:	Air Resources Board Resolution 13-7 Dated: April 19, 2013

This notice is to advise that the Air Resource Board (ARB), as the lead agency, adopted the above described regulatory action on April 19, 2013 and has determined that implementation of the regulatory amendments has the potential to result in indirect environmental impacts on the environment (see attached Resolution 13-7).

In accordance with the California Environmental Quality Act (CEQA) and ARB's certified regulatory program, ARB prepared an environmental analysis (EA) as part of the Staff Report: Initial Statement of Reasons prepared for the proposed amendments entitled "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 for public comment on May 9, 2012.

ARB staff prepared written responses to public comments on the EA received during the comment period that raised significant environmental issues. The written responses to these comments are included in a document entitled *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. The Board reviewed and approved the written responses to comments raising significant environmental issues

prior to taking final action to adopt the amendments on April 19, 2013. These written responses are also included in the Final Statement of Reasons that includes staff's written responses to all public comments prepared for purposes of the Administrative Procedures Act.

The Board adopted findings and a statement of overriding consideration for this regulatory action.

The copy of the environmental analysis included in the Staff Report and the written responses to comments included in the Final Statement of Reasons are available at the ARB rulemaking webpage at:

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

These rulemaking documents may also be examined in person at:

California Air Resources Board
Attn: Board Administration and Regulatory Coordination Unit
1001 I Street
Sacramento, CA 95814

FILED
MAY 10 2013
Resources Agency of California

Certified: _____
ARB CEQA Unit

Date: 5/8/2013

Attachments:

- Resolution 13-7
- *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

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

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.

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.

REFERENCES

California Air Resources Board. *Functional Equivalent Document prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms.* October 28, 2010. (Appendix O of the ARB Staff Report for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms). http://www.arb.ca.gov/regact/2010/capandtrade10/capv5appo.pdf

California Air Resources Board. *Initial Statement of Reasons:* California Cap on GHG Emissions and Market-Based Compliance Mechanisms *Staff Report to the Air Resources Board.* October 28, 2010. http://www.arb.ca.gov/regact/2010/capandtrade10/capisor.pdf

California Air Resources Board. *Initial Statement of Reasons: 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. Staff Report to the Air Resources Board.* May 9, 2012. http://www.arb.ca.gov/regact/2012/capandtrade12/isormainfinal.pdf

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