

Western Climate Initiative



September 4, 2009

The Honorable Barbara Boxer, Chair
U.S. Senate
Environment and Public Works
Committee
Washington, DC 20510

The Honorable James Inhofe, Ranking Member
U.S. Senate
Environment and Public Works
Committee
Washington, DC 20510

The Honorable Jeff Bingaman, Chairman
U.S. Senate
Energy and Natural Resources Committee
Washington, DC 20510

The Honorable Lisa Murkowski, Ranking Member
U.S. Senate
Energy and Natural Resources Committee
Washington, DC 20510

The Honorable Max Baucus, Chairman
U.S. Senate
Finance Committee
Washington, DC 20510

The Honorable Charles Grassley, Ranking Member
U.S. Senate
Finance Committee
Washington, DC 20510

The Honorable John D. Rockefeller, IV
Chairman
U.S. Senate
Commerce, Science and Transportation
Committee
Washington, DC 20510

The Honorable Kay Bailey Hutchison
Ranking Member
U.S. Senate
Commerce, Science and Transportation
Committee
Washington, DC 20510

The Honorable Tom Harkin, Chairman
U.S. Senate
Agriculture, Nutrition and Forestry
Committee
Washington, DC 20510

The Honorable Saxby Chambliss, Ranking Member
U.S. Senate
Agriculture, Nutrition and Forestry
Committee
Washington, DC 20510

The Honorable John Kerry, Chairman
U.S. Senate
Foreign Relations Committee
Washington, DC 20510

The Honorable Richard Lugar, Ranking Member
U.S. Senate
Foreign Relations Committee
Washington, DC 20510

Dear Senators:

The partner jurisdictions of the Western Climate Initiative (WCI) appreciate this opportunity to provide our views to you regarding the Senate's action on clean energy and climate protection legislation. We are pleased that you and your committees are addressing this important issue at this time.

WCI is a collaboration of seven US states and four Canadian provinces that are working together to address climate change. Over the past two years, we have been and are continuing to work with stakeholders to design an economy-wide cap-and-trade program. Our framework design was completed in September, 2008 and represents the most comprehensive cap-and-trade program designed to date. By 2015 the program is expected to cover 90 percent of the emissions in our states and provinces. Since September, we have been working on the detail of the design and developing the essential elements each state and province will use to develop or adopt administrative regulations to implement the program, which is planned to begin in 2012. The process of creating this program has been an incredible educational experience for all of us, and we welcome the opportunity to share with your committee our perspectives and lessons learned.

We strongly support the enactment of an aggressive and cost-effective national cap-and-trade program that is designed to achieve national greenhouse gas (GHG) emission reductions that are consistent with the prevailing science. Consistent with the WCI program design, we support covering all sources in the cap-and-trade program that can be adequately measured, monitored, or calculated. Recognizing that compliance flexibility is a necessary and desirable part of program design, program elements that undermine the environmental integrity of the program must be avoided, including overly generous offsets provisions that undermine the objective of achieving real emission reductions at covered sources, a poorly designed “safety valve” that has the potential to significantly undermine the carbon market, and substantial delays in emissions reduction requirements.

We urge you to recognize the work that has been done throughout the states to reduce GHG emissions and expressly protect state authority to implement programs that will complement a federal cap-and-trade program. While strong federal action is necessary to address climate change, an effective national program will need to include a significant role for state and local governments. A strong local-state-federal partnership should be clearly outlined in the bill as the framework around which the national climate change strategy will be built. States and localities will provide much of the innovation needed to achieve the environmental, energy and economic goals of a national climate strategy. Further, states will play a key implementation role, consistent with that of other federal environmental programs.

- Preservation of state authority to implement GHG reduction programs strengthens the federal program and enables continued policy and technological innovation. Providing the states with the ability to retire federal allowances from the federal cap-and-trade program is essential to ensure that state emission reduction programs result in national GHG reductions, beyond those that would be achieved by the federal cap alone. The House bill’s strong protections for state authority to implement GHG reduction programs, including those directed at reducing emissions from sources covered by the federal cap, are a good model (Section 334), as are the other savings provisions including state authority to adopt or enforce renewable electricity or energy efficiency laws (Section 101); state renewable energy standards (Section 102); state demand management, demand response and regulation of load-serving entities (Section 144(e)); state regulation of electricity rates (Section 721(d)); and state unfair competition, antitrust, consumer

protection, securities and commodities laws (Section 341(a) adding a new Section 401(e) to the Federal Power Act).

- It is also essential to provide for an equitable exchange of state allowances and offsets for federal allowances to protect investments by market participants in state cap-and-trade programs. The current exchange provisions in the House bill provide a good model. All states that have taken early action and established cap-and-trade programs, including programs which fund GHG reduction activities, should be appropriately recognized. States that have taken early action should not be disadvantaged by allowance distribution strategies including those that would grandfather allowances.
- Any moratorium on state/regional cap-and-trade programs should start no sooner than the start of the federal cap-and-trade program. If, for any reason, implementation of the federal program is delayed, the moratorium should be similarly delayed.
- The statute should direct USEPA and USDA to consult with states that are participating in one of the regional initiatives when promulgating regulations, in order to take advantage of the knowledge gained and to execute a smooth transition.

Any successful GHG reduction program needs to be based on a rigorous, cost-effective system for reporting GHG emissions. The WCI Partner jurisdictions have concluded that third-party verification of emissions reports is necessary to support the national and international credibility of a GHG cap-and-trade program, including the proposed federal program. We have seen what happens in markets without rigorous and independent auditing, highlighting the importance of effective and coordinated enforcement capabilities. Third party verification is the emerging international standard for GHG reporting. Without high-quality data that third party verification helps to ensure, we risk the prospect of not achieving the ability to trade allowances for their full value in the international trading market. It is also essential that the USEPA be directed to consider state needs and state reporting requirements as it updates the national GHG reporting program to support cap-and-trade. Finally, emissions of imported electricity must also be reported. The WCI Partner jurisdictions receive imported electricity from both Canada and Mexico, and these emissions must be addressed to ensure the program is comprehensive and that all electricity providers are treated fairly.

Set a limit on offsets for compliance to ensure a majority of emission reductions occur in the capped sectors while still providing effective cost containment. The WCI Partner jurisdictions recommend that the Senate establish quantitative offset limits so that the majority of emissions reductions required under the cap-and-trade program will come from within the capped sectors. The WCI Program Design Recommendations establish an offset limit at this level, which is also consistent with the approach taken by RGGI. We believe that limiting offsets in this way helps our industries transition effectively and positions them to be competitive in the emerging low-carbon economy.

Ensure the integrity of all offsets. The integrity of offsets is critical to ensuring that the program's environmental objectives are achieved. Also, the integrity of the U.S. offsets program

is necessary to further international cooperation in efforts to reduce GHG emissions. Preserving the integrity of offsets will require wide participation in protocol development and oversight of offset programs. The statute should provide clear guidance regarding the respective roles of USEPA and USDA in crafting specific offset regulations, and must ensure that all offset credits have the same integrity and result in real and measurable reductions. It is also important that the statute specifically state that offset credits do not constitute a property right.

Reward early actions. A fundamental principle recognized by the WCI Partner jurisdictions and many others is the need to reward early actions that resulted in real, additional, and permanent GHG emission reductions. The House bill sets aside a portion of the 2012 allowances to compensate early actors and we recommend such a provision be included in the Senate bill.

We urge you to recognize the role of forestry and agricultural lands. Section 788 of the House bill creates a pool of allowances for USDA to use to provide incentives for emission reductions, carbon sequestration, and avoidance of land conversion for agricultural producers. The WCI Partner jurisdictions recommend that this approach be expanded to apply to forest landowners as well who undertake actions to sequester additional carbon and avoid emissions from land conversion. We also recommend that these allowances be available not only for *prospective* actions that will reduce or sequester carbon but also for the *early adoption* of improved agriculture and forestry practices. Many of those early actions may not be eligible to meet the extensive documentation and additionality requirements of the offset program.

We also recommend the Senate include a provision for forestry offset projects addressing variations in state forest practices so that the playing field will be level for these types of offset projects nationally. We recommend a requirement that the Secretary take into account variations in state forest practices or forest practices acts so that offset project developers in those states with more protective requirements are not disadvantaged relative to offset project developers in other states.

We urge you to ensure the proper treatment of biomass used for fuel. The WCI Partner jurisdictions understand that biomass has the potential to be an important supply of renewable energy. For biomass that is determined to be carbon neutral, the carbon dioxide emissions from the combustion of that biomass should not be included in the cap-and-trade program, except for purposes of reporting. Carbon dioxide emissions from biomass that is determined to be carbon neutral should be reported separately from other emissions.

Put allowance value to work. The value of emission allowances in the cap-and-trade program must be put to work to support a comprehensive program that transitions the U.S. to a low-carbon economy. Areas of critical investment include (not in order of priority):

- Energy efficiency and renewable energy incentives and achievement;
- Research, development, demonstrations, and deployment (RDD&D) with particular reference to carbon capture & sequestration (CCS); renewable energy generation, transmission and storage; and energy efficiency;

- Promoting emission reductions and sequestration in agriculture, forestry and other uncapped sources;
- Human and natural community adaptation to climate change impacts;
- Reducing consumer impacts, especially for low-income consumers;
- Providing for worker transition and green jobs;
- Achieving emission reductions in communities that experience disproportionate environmental impacts;
- Supporting community-wide efforts funded by local governments to reduce GHG emissions;
- Providing transition assistance to industries;
- Recognizing early actions to reduce emissions; and
- Promoting economic efficiency.

The House bill invests in many of these areas. States play a lead role in delivering many of the programs that undertake these investments. Toward that end, the WCI Partner jurisdictions support funding the State Energy and Environment Development (SEED) Funds programs with 15 percent of total allowances. Additionally, the language in the House bill should be clarified to ensure that the allowance value provided to electricity Local Distribution Companies (LDCs) for cost-effective energy efficiency programs is consistent with the requirement that allowance value be used “exclusively for the benefit of retail ratepayers”. State clean energy programs have demonstrated multiple benefits that accrue to ratepayers through such programs. This clarification would complement the provisions addressing the allocation of allowances to natural gas LDCs, which explicitly reference the use of allowance value for cost-effective energy efficiency programs as an appropriate use. We also recommend that the Senate strengthen language from the House bill to ensure that any ratepayer rebates provided using allowance value from the natural gas and electricity LDC allocations occur as “lump-sum” rebates to the fixed portion of a bill (or as a fixed credit), rather than as a percentage of the energy portion of the bill. This approach will avoid creating perverse incentives to maintain or increase energy use.

Transportation emissions are a critical issue within the WCI because these emissions are the largest or second largest source within all of our eleven jurisdictions. Achieving GHG reductions from the transportation sector under an economy-wide cap-and-trade program requires a strong and on-going complementary commitment to innovative transportation efficiency and land-use planning implementation. The WCI Partner jurisdictions support federal adoption of aggressive passenger vehicle GHG emission standards, equal to California’s standards, that was announced in June. We also strongly support the provisions that ensure:

- No preemption on California going forward with the GHG part of its Low Emission Vehicle (LEV) program.
- No revision to Clean Air Act (CAA) Section 177, which allows other states to adopt and enforce California's GHG LEV program.

Congress must help ensure that transportation planning adequately accounts for greenhouse gas emissions. Since most measures will be locality/state-specific in design, federal climate

legislation should support the efforts of states and localities to innovate and implement transportation efficiency and land-use planning measures. The federal government should provide capacity-building funds to states and localities for planning and modeling to support improved planning.

The bill should not restrict EPA's ability to use the best available science to account for the full impact of biofuels when calculating whether or not a fuel meets the renewable fuel standard of the federal Clean Air Act Section 211(o). Certain biofuels use significant amounts of land for production and that land use does contribute to greenhouse gas emissions, both directly and indirectly. While continued research into the emissions from land-use associated with biofuels will provide greater accuracy of measurement, there is no dispute that land use effects are real and should be included in a complete life-cycle analysis. The prohibition within the House ACES bill restricting EPA ability to consider international land use emissions will result in an increase in the use of high-carbon biofuels that exacerbate climate change rather than ensuring only the use of low-carbon biofuels that have both economic and environmental benefits. This prohibition also conflicts directly with other provisions in the bill to reduce or eliminate international deforestation.

Recognize the importance of adaptation. Climate change is already occurring. Its impacts are manifesting themselves according to an area's weather, ecosystems and built environment. To address these unavoidable impacts adaptation is necessary. Coordinated and pro-active adaptation planning and implementation across all levels of government are needed. As with emission mitigation, local governments, states, and regions are best positioned to develop and implement many adaptation measures. The WCI Partner jurisdictions recognize the critical role that the federal government must play especially in providing "good science", planning and engineering support, and sufficient resources to effectively address the challenge of adapting to a changing climate. Toward that end:

- Comprehensive national climate change policy must promote and fund strategic adaptation measures at all levels of government.
- The bill must promote partnerships among and between sub-national and national efforts to enable targeted and cost-effective responses.
- Federal agencies must play a central role in developing the tools needed to understand, predict and effectively address the impacts of climate change.
- Regional offices of federal agencies involved in climate adaptation planning should be encouraged and funded to support state-based regional efforts.

Again, we are pleased to share our perspectives with you and your committee. We look forward to working with you as you continue to develop a comprehensive approach to clean energy and climate change.

Sincerely,



Michael Gibbs
State of California
WCI Co-Chair



Tim Lesiuk
Province of British Columbia
WCI Co-Chair

cc: The Honorable Harry Reid, Senate Majority Leader
The Honorable Nancy Pelosi, Speaker of the House
The Honorable Henry Waxman, Chairman, House Energy and Commerce Committee
The Honorable Joe Barton, Ranking Member, House Energy and Commerce Committee
The Honorable Edward Markey, Chairman, Subcommittee on Energy and Environment
The Honorable Fred Upton, Ranking Member, Subcommittee on Energy and Environment
The Honorable Nick Rahall, Chairman, House Natural Resources Committee
The Honorable Doc Hastings, Ranking Member, House Natural Resources Committee
The Honorable Grace Napolitano, Chair, Subcommittee on Water and Power
The Honorable Cathy McMorris Rodgers, Ranking Member, Subcommittee on Water and Power
The Honorable Madeleine Bordallo, Chair, Subcommittee on Insular Affairs, Oceans and Wildlife
The Honorable Henry Brown, Ranking Member, Subcommittee on Insular Affairs, Oceans and Wildlife
The Honorable Raul Grijalva, Chairman, Subcommittee on National Parks, Forests and Public Lands
The Honorable Rob Bishop, Ranking Member, Subcommittee on National Parks, Forests and Public Lands
The Honorable Collin Peterson, Chairman, House Agriculture Committee
The Honorable Frank Lucas, Ranking Member, House Agriculture Committee