



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

November 13, 2009

Mr. Gary Collord
California Air Resources Board
1001 "I" Street
P. O. Box 2815
Sacramento, CA 95812

Dear Mr. Collord:

This letter is in response to the California Air Resources Board (CARB) request for comments on its Proposed Concept Outline for the California Renewable Electricity Standard (RES).

My comments are specifically focused on the appropriateness of including Western as a regulated party in the RES. As you know, Western is a Federal agency. While Western respects the state's initiatives to implement renewable standards, Western is bound by Federal laws and regulations. The Supremacy Clause of the United States Constitution does not allow a state to directly regulate the Federal government without its consent. Western is unaware of any waivers of sovereign immunity relating to RES. Furthermore, the RES may directly impact Western's primary mission of marketing federal power, a field regulated entirely by the federal government. Therefore, Western is opposed to being included as a regulated party in the RES.

In the past, Western has worked with state agencies, including CARB, to provide information that the state needs. For instance, Western voluntarily reports its greenhouse gas emissions to assist the state meet its goals. In the event CARB would like additional information from Western, Western is willing to evaluate the request and will work with CARB. However, Western cannot consent to direct state regulation under RES.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Koji Kawamura".

Koji Kawamura
Attorney
Office of General Counsel

cc:
S. Anderson, N6000