



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

December 15, 2010

California Air Resource Board
1001 I Street
Sacramento, California 95814
(Via Electronic Submission)

Re: California Air Resources Board (ARB) request for comments on its Rulemaking to Consider the Adoption of a Proposed California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms Regulations, Including Compliance Offset Protocols.

Dear Sir or Madam:

Western Area Power Administration (Western) is a federal agency. Western is submitting these comments in response to the California Air Resources Board (ARB) request for comments on its Rulemaking to Consider the Adoption of a Proposed California Cap on Greenhouse Gas Emissions and Market Based Compliance Mechanisms Regulations, Including Compliance Offset Protocols.

While Western respects the state's initiatives on greenhouse gases, Western complies with federal laws. Without an explicit waiver of sovereign immunity, Western is not subject to state laws or regulations. Western understands the ARB believes the Clean Air Act provides a waiver of sovereign immunity for its program. While Section 118 of the Clean Air Act, 42 U.S.C. § 7418, provides a limited waiver of sovereign immunity and requires federal facilities to comply with federal, state, interstate and local requirements for the abatement of air pollution to the same extent as any nongovernmental entity, Western understands neither the U.S. Congress nor the U.S. Environmental Protection Agency (EPA) has approved a cap and trade requirement for greenhouse gases, including California's program.¹ While Congress or EPA, in the near future, may decide to approve such programs, until such time, Western does not have authority to bind Congress, EPA or other federal agencies with jurisdiction over such matters. To avoid any potential conflicts with federal law, Western would recommend the ARB remove references to Western and other federal agencies from the draft order until such time as Congress implements (and the President signs) a green house gas law or EPA approves the states program. Including Western and other federal agencies unnecessarily raise complicated legal issues that are unnecessary for the implementation of the ARB's program.

¹ Western understands the current Congress is in the process of examining whether it should propose a cap and trade programs. However, as of this date, Congress has not submitted a bill to the President for his signature -- nor has EPA promulgated any rules on cap and trade.

As always, Western is willing to work with the ARB and will attempt to voluntarily comply with certain aspects of the state program; however, Western is not conceding or otherwise agreeing the state has any jurisdiction over Western or any other federal agency under its greenhouse regulations. Furthermore, as the state should be aware, Western markets federal hydro power generated by the U.S. Bureau of Reclamation and U.S. Army Corp of Engineers. Western does not generate power. Western markets federal power to statutorily defined preference customers under marketing plans developed through the Administrative Procedure Act. These relationships may limit Western's ability. Without specific guidance from Congress or EPA, Western must comply with federal laws irrespective if such federal laws conflict with state laws.

If you have any questions, please feel free to contact me at 720-962-7017.

A handwritten signature in black ink, appearing to read 'Koji Kawamura', with a long horizontal line extending to the right.

Koji Kawamura

cc J Courtney Olive, Bonneville Power Administration