

DISCUSSION PROPOSALS

CONCERNING

**THE HARMONIZATION AND INTEGRATION OF
STATE AND PROVINCIAL CAP-AND-TRADE PROGRAMS
FOR REDUCING GREENHOUSE GAS EMISSIONS**

THE GOVERNMENT OF QUÉBEC,

AND

THE CALIFORNIA AIR RESOURCES BOARD

hereafter referred to as “the Parties.”

WHEREAS the California Air Resources Board is a part of the California Environmental Protection Agency, an organization which reports directly to the Governor's Office in the Executive Branch of California State Government;

WHEREAS, in 2006, the State of California enacted Assembly Bill 32 (AB 32) titled “California Global Warming Solutions Act,” requiring it to reduce its greenhouse gas emissions to its 1990 level by 2020;

WHEREAS, the Government of Québec, by Order in Council 1187-2009 of November 18, 2009, adopted a greenhouse gas reduction target for 2020 of 20% below the 1990 level;

WHEREAS, California covered entities are required to report their greenhouse gas emissions under the *Regulation for the Mandatory Reporting of Greenhouse Gas Emissions* (Title 17, California Code of Regulations, Sections 95100-95157);

WHEREAS, Québec emitters are required to report their greenhouse gas emissions in accordance with the *Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere* (CQLR, chapter Q-2, r. 15);

WHEREAS, in October, 2011, the State of California adopted the *California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms* (Subchapter 10 Climate Change, Article 5, Sections 95800 to 96023, Title 17, California Code of Regulations);

WHEREAS, in December, 2011, the Government of Québec adopted the *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances* (CQLR, chapter Q-2, r. 46.1);

WHEREAS, the Government of the State of California and the Government of Québec are among the founding participants of Western Climate Initiative, Inc. (WCI, Inc.), a non-profit corporation incorporated in October 2011, providing administrative and technical services to support and facilitate the implementation of state and provincial cap-and-trade programs for reducing greenhouse gas emissions;

WHEREAS, the Parties share a common interest in working jointly and collaboratively toward the harmonization and integration of state and provincial cap-and-trade programs for reducing greenhouse gas emissions;

WHEREAS, the Parties recognize that the harmonization and integration of their respective cap-and-trade programs is to be attained by means of regulations adopted by each Party;

WHEREAS, the Parties have developed constructive working relationships among their respective staff and officials, and have demonstrated the ability to harmonize and integrate their respective program regulations and operations, including by enabling staff to work jointly through workgroups to develop proposed harmonized approaches for consideration by each Party on topics including, but not limited to, mandatory reporting, issuance of compliance instruments, program scope, compliance requirements, offset protocols, program registry, auction design and execution, auction platform, market regulations, invalidation of offset credits, enforcement, public disclosure of information, and information sharing among the Parties;

WHEREAS, the Parties further recognize that this Agreement is intended to facilitate continued consultation, using and building on existing working relationships, during the operation of the Parties' respective programs and supporting the development of any proposed program changes, new offset protocols, and new program elements, with the objective of maintaining and developing harmonized and integrated approaches that may be considered by each Party;

WHEREAS, the Parties further recognize the importance of effective and timely public consultation regarding program operations, program changes, new offset protocols, and new program elements;

WHEREAS, the Parties further recognize that the present Agreement does not, will not and cannot be interpreted to restrict, limit or otherwise prevail over each Party's sovereign right and authority to adopt, maintain, modify or repeal any such regulation;

WHEREAS, pursuant to section 46.14 of the Environment Quality Act CQLR, chapter Q-2), the Minister is required to enter into an agreement regarding the harmonization and integration of its cap-and-trade system with one of a department, agency or organization of another government before the Government of Québec is authorized to adopt regulations giving effect to such an agreement;

WHEREAS, such an agreement must also comply with the Act respecting the Ministère des Relations internationales (CQLR, chapter M-25.1.1) or the Act respecting the Ministère du Conseil exécutif (CQLR, chapter M-30);

WHEREAS, on [DATE], the Governor of the State of California, as required by SB 1018 (Senate Committee on Budget and Fiscal Review, Chapter 39, Statutes of 2012), found that [statement about the Governor's finding];

THE PARTIES AGREE TO THE FOLLOWING:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

OBJECTIVES

The objective of this Agreement is for the Parties to work jointly and collaboratively toward the harmonization and integration of the Parties' respective cap-and-trade programs for reducing greenhouse gas emissions.

The intended outcome of the harmonization and integration is to enable each Party under its own legislative or regulatory authority to:

- a) achieve the harmonization of its regulations for mandatory reporting of greenhouse gas emissions and regulations for the cap-and-trade program for reducing greenhouse gas emissions and that such regulations will be compatible between the Parties;
- b) provide for the equivalence and interchangeability of compliance instruments issued by the Parties for the purpose of compliance with the Parties respective cap-and-trade programs;
- c) permit the transfer and exchange of compliance instruments between entities registered with the Parties respective cap-and-trade programs using a common secure program registry;
- d) develop compatible market regulations that are applied and enforced for all participants in the Parties' respective cap-and-trade programs;
- e) allow for planning and holding joint auctions of emission allowances and emission units; and
- f) enable the sharing of information to support effective analysis, operation, enforcement and supervision of the market for compliance instruments.

The Parties shall report to the public annually on the status of achieving these objectives.

ARTICLE 2

DEFINITIONS

For the purposes of this Agreement:

“auction” means the process in which one Party sells a determined number of emissions allowances or emission units by offering them up for bid, taking bids, and then distributing the allowances or emission units to winning bidders;

“auction platform” means the auction system used to conduct auctions;

“compliance instruments” means an instrument, such as an emission allowance (California program regulations) or emission unit (Québec program regulations), offset credit and early reduction credit, issued by one of the Parties that can be used by a covered entity or an emitter to fulfill a compliance obligation and having a value corresponding to one metric ton of CO₂ equivalent greenhouse gas;

“covered entity” or “emitter” means an entity with an obligation to surrender compliance instruments for its greenhouse gas emissions under the regulations for the applicable cap-and-trade program for reducing greenhouse gas emissions;

“greenhouse gas” or “GHG” means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF₆) as well as nitrogen trifluoride (NF₃);

“offset protocol” means a documented set of procedures and requirements to quantify ongoing GHG reductions or GHG removal enhancements achieved by an offset project and to quantify and calculate the project baseline;

“participant” or "voluntarily associated entities and other registered participants" means a person or an entity, other than a covered entity, or an emitter who is registered and participates in the respective cap-and-trade programs for reducing greenhouse gas emissions;

“program” means California’s cap-and-trade program or Québec’s cap-and-trade system for reducing greenhouse gas emissions, and either of the Parties’ greenhouse gas emissions associated emissions reporting programs;

“program registry” means the data system (or register) in which registered entities are registered, and in which compliance instruments are recorded and tracked;

“registered entity” means a covered entity, an emitter, a participant, a voluntarily associated entity and other registered participants;

“State, province or territory” means the states of the United States of America and the provinces or territories of Canada.

CHAPTER II

HARMONIZATION AND INTEGRATION PROCESS

ARTICLE 3

CONSULTATION PROCESS

The Parties shall consult each other regularly and constructively to achieve the objectives of this harmonization and integration Agreement. Consultation shall build on existing working relationships and shall enable Parties’ staff to work constructively through workgroups under the direction of the Parties’ officials.

The procedural requirements of each Party shall be respected, including appropriate and effective openness and transparency of each Party’s public consultations.

The topics of the collaboration and the joint work shall include, but are not limited to, the articles in this chapter.

ARTICLE 4

REGULATORY HARMONIZATION

The Parties shall continue to examine their respective regulations for mandatory reporting of greenhouse gas emissions and for the cap-and-trade programs for reducing greenhouse gas emissions in order to ensure continued harmonization and integration of the Parties’ respective programs.

In the case a difference between certain elements of the Parties’ programs is identified, the Parties shall determine if such elements need to be harmonized for the proper

functioning and integration of the program. If so, the Parties shall consult each other to achieve a harmonized approach.

Either Party, or the Parties together, may consider making changes to their respective programs, including changes or additions to emissions reporting regulations, cap-and-trade program regulations, and program related operating procedures. To support the objective of maintaining the harmonization and integration of the respective programs, any proposed changes shall be discussed between the Parties. The Parties acknowledge that sufficient time is required to enable effective public review and comment prior to adoption. The Parties shall consult regarding changes that may affect the harmonization process or have other impacts on either Party. Each Party's public process for making program changes must be respected.

In the event that program or market conditions arise that indicate a need for rapid or emergency program changes or other actions by one or both Parties, the Parties shall work to harmonize such changes to maintain regulatory harmonization and to resolve the conditions.

ARTICLE 5

OFFSET PROTOCOLS

In order to achieve harmonization and integration of the Parties' respective programs, the offset protocols in each of the Parties' respective program regulations require that all offset emission reductions and enhanced sequestration achieve the essential qualities of being real, additional, quantifiable, permanent, verifiable, and enforceable.

Either Party, or the Parties together, may consider making changes to their respective offset protocols, adding additional offset protocols, or changing procedures for issuing offset credits. To support the objective of maintaining the harmonization and integration of the respective programs, any proposed changes shall be discussed between the Parties. The Parties acknowledge that sufficient time is required to enable effective public review and comment prior to adoption. The Parties shall consult regarding changes or additions that may affect the harmonization and integration process or have other impacts on either Party. Each Party's public process for making program changes must be respected.

ARTICLE 6

MUTUAL RECOGNITION OF COMPLIANCE INSTRUMENTS

In order to achieve harmonization and integration of the Parties' respective programs, mutual recognition of the Parties' compliance instruments shall occur as provided for under their respective cap-and-trade program regulations.

If a Party determines that a compliance instrument that it has issued should not have been issued or must be voided, it shall notify the other Party. Each Party recognizes and respects the authority of the other Party to take actions to recover or void compliance instruments that have been surrendered or that are held by registered entities in their respective programs.

ARTICLE 7

TRADE OF COMPLIANCE INSTRUMENTS

In order to achieve harmonization and integration of the Parties' respective programs, trading of compliance instruments among registered entities in the Parties' respective programs shall occur as provided for under their respective cap-and-trade program regulations.

The Parties shall keep each other informed of any investigation, pertaining to but not limited to acts or omissions on the part of any of its registered entities or other persons authorized to act under the program and any violation, penalty or fine, or decision rendered with respect to the latter.

ARTICLE 8

JOINT AUCTIONS

In order to achieve harmonization and integration of the Parties' respective programs, the joint auctioning of emission allowances and emission units by the Parties' respective programs shall occur as provided for under their respective cap-and-trade program regulations. The Parties shall develop harmonized procedures to perform the joint auctions as provided for under their respective cap-and-trade program regulations.

ARTICLE 9

COMMON PROGRAM REGISTRY AND AUCTION PLATFORM

The Parties shall work together to develop and use common electronic platforms in order to ensure program compatibility, integrity, and integration, including but not limited to a program registry and an auction platform.

The common program registry and auction platform shall be available in English and French and allow for recording and performing transactions in Canadian and US dollars. The program registry and auction platform shall conform to the requirements of the Parties' respective program regulations and operating procedures.

CHAPTER III

OPERATION OF THE AGREEMENT

ARTICLE 10

SUPERVISION AND ENFORCEMENT

The Parties shall work together to prevent fraud, abuse and market manipulation and to ensure the reliability of the joint auction and their respective programs. The Parties shall work together in applying the rules, laws and regulations governing the supervision of all transactions carried out among registered entities of each of the Parties and of any auction or reserve sale.

The Parties shall ensure, in accordance with the privacy legislation applicable in each of their territories and the provisions of article 14 hereunder, the sharing of information to support effective analysis, supervision and enforcement of the applicable laws and regulations.

ARTICLE 11

COORDINATED ADMINISTRATIVE SUPPORT

The Parties shall continue coordinating administrative support through the WCI, Inc., which was created to perform technical and administrative tasks for the Parties individually and collectively.

If one of the Parties wishes to consider approaches other than WCI, Inc. for coordinating administrative support, it shall consult the other Party with the objective of developing jointly a harmonized approach.

If one of the Parties wishes to contract the services of a third party for technical or administrative support, or services of another nature required for the development or the operation of common program registry and auction platform, it shall consult the other Party with the objective of developing jointly a harmonized approach.

ARTICLE 12

CONSULTATION COMMITTEE

To facilitate the harmonization and integration process and the operation of the Agreement, the Parties shall create a Consultation Committee composed of one representative from each of the Parties. This Committee shall meet as needed to ensure timely and effective consultation in support of the objectives of this Agreement.

The Québec Party designates as its Consultation Committee representative ...

The California Party designates as its Consultation Committee representative ...

The Consultation Committee shall:

- a) monitor the implementation of all measures that are required for the effective harmonization and integration of the Parties' respective cap-and-trade programs;
- b) report the results of the Agreement annually to the Parties in light of the objectives that have been set out and recommend measures to improve the joint cap-and-trade program for reducing greenhouse gas emissions; and
- c) address any other issues at the request of the Parties.

The Consultation Committee shall receive and review updates from the Parties on each area of activity as needed under this Agreement in a timely manner. If the Consultation Committee identifies or becomes aware of differences between the Parties regarding how to maintain the harmonization and integration of their respective the cap-and-trade programs, the Committee shall undertake to resolve the differences as described in Article 18.

CHAPTER IV

MISCELLANEOUS PROVISIONS

ARTICLE 13

JURISDICTION

This Agreement does not modify any existing laws and regulations, nor may any of its provisions be interpreted as amending any agreement or provision of an agreement entered into or to be entered into by either Party.

ARTICLE 14

CONFIDENTIALITY OF INFORMATION

To support and enhance the supervision and enforcement of the Parties' respective program regulations, the Parties shall jointly arrange to share information collected and developed under their respective programs. Nothing in this Agreement requires a Party to breach confidentiality obligations or requirements prohibiting disclosure to which it is bound under its own laws, nor compromise the security, nor disclose commercially sensitive or personal information.

When information is shared between the Parties, each Party shall undertake to protect the information they provide and receive, in accordance with the privacy legislation applicable in each of their jurisdiction and take all necessary measures to such end, particularly with respect to their mode of communication, control, management and destruction. Shared information is to be used solely to the purpose of the objectives of this Agreement.

If confidential information must be communicated by a Party to a non-Party to this Agreement under a law or following a court order, it shall notify the other Party as soon as possible.

ARTICLE 15

PUBLIC INFORMATION

The Parties shall keep each other informed in advance of any public announcement related to the mandatory reporting of greenhouse gas emissions and the cap-and-trade programs for reducing greenhouse gas emission.

Any announcement concerning the harmonization or integration of the Parties' respective cap-and-trade programs shall be prepared and, if possible, made public jointly.

CHAPTER V

FINAL PROVISIONS

ARTICLE 16

WITHDRAWAL PROCEDURE

A Party may withdraw from this Agreement by giving at least 12 months' prior written notice to the other Party. A Party that withdraws from this Agreement shall endeavor to provide notification of withdrawal at least 12 months prior to the end of a compliance period so that withdrawal would be effective at the end of a compliance period.

Withdrawal from this Agreement does not end a Party's obligations under article 14 regarding confidentiality of information which continue to remain in effect.

ARTICLE 17

AMENDMENTS AND THIRD PARTIES

Any amendment to this Agreement shall be in writing and requires the consent of both Parties.

When so agreed, and subsequently approved in accordance with the requisite legal procedures of each Party, the amendment shall constitute an integral part of this Agreement beginning on the date of its coming into force.

Recognizing that the Parties welcome effective, timely, and meaningful action to reduce GHG emissions by states, provinces and territories, this Agreement may be amended to include additional jurisdictions that have adopted programs that are harmonized with the Parties' respective programs. For such purposes, the requisite legal and regulatory procedures of each Party shall be respected.

ARTICLE 18

RESOLUTION OF DIFFERENCES

The Parties shall consult each other constructively to resolve differences that may arise regarding how to achieve the objective of harmonizing and integrating their respective the cap-and-trade programs for reducing greenhouse gas emissions.

The Parties shall resolve differences by using and building on established working relationships, including enabling staff to work jointly through workgroups to develop proposed harmonized and integrated approaches for consideration by each Party. If approaches for resolving differences that are acceptable to the Parties cannot be developed in a timely manner through staff workgroups, the Parties shall constructively engage through the Consultation Committee, and if needed with additional officials of the Parties, or their designees. The Parties endeavor to resolve differences in a timely manner, so that the harmonization and integration of the respective programs can be maintained.

ARTICLE 19

COMMUNICATIONS

The Parties agree to communicate on matters regarding this Agreement in writing and hand delivered or transmitted by telegram, fax, e-mail, messenger, courier or registered mail to the address of the Party concerned as indicated below.

For the Government of Québec:

[Title]

[Address]

For the California Air Resources Board:

[Title]

[Address]

Notice of any change of address of one of the Parties or representative identified in this Article must be given to the other Party.

ARTICLE 20

COMING INTO FORCE AND DURATION OF THE AGREEMENT

Each of the Parties shall notify the other once the internal procedure required for the Agreement's entry into force has been completed.

The Agreement shall enter into full force and effect on the... day following the date of receipt of notification from the last of the Parties informing the other Party that the legally required procedural measures have been completed.

The Agreement is concluded for an indefinite period of time as of the date of its entry into force. It shall be terminated pursuant to unanimous consent of the Parties given in writing to such effect. The Agreement shall terminate 12 months following such consent.

Termination of this Agreement does not end a Party's obligations under article 14 regarding confidentiality of information which continue to remain in effect.

Done at....., this day of, 2013, in duplicate, in the French and English languages, both versions being equally authentic.

**FOR THE GOVERNMENT OF
QUÉBEC**

**FOR THE CALIFORNIA AIR
RESOURCES BOARD**
