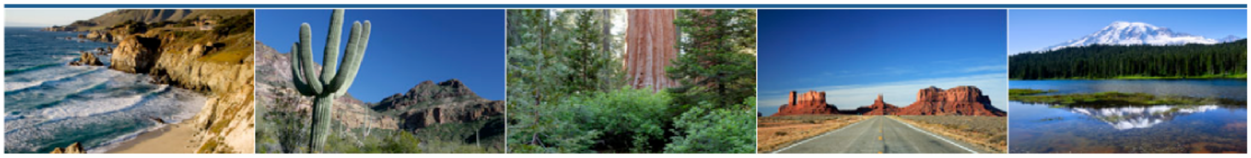
Western Climate Initiative



December 17, 2010

David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street, NW
Washington, DC 20581

Dear Mr. Stawick,

The Partner jurisdictions of the Western Climate Initiative (WCI) appreciate the opportunity to comment on the Study Regarding the Oversight of Existing and Prospective Carbon Markets, as requested in the Federal Register on November 26, 2010.

Seven western states (Arizona, California, Montana, New Mexico, Oregon, Utah and Washington) and four Canadian provinces (British Columbia, Manitoba, Ontario and Quebec) have joined together in partnership to identify, evaluate and implement ways to collectively reduce greenhouse gas emissions. Several of the WCI Partner jurisdictions are on schedule to link their jurisdictional greenhouse gas cap-and-trade programs to form a regional program beginning January 1, 2012.

Our collaboration has included development of oversight of a regional carbon market, described more fully in draft and final recommendations documents, available on the WCI website or upon request. Our comments below are ordered in response to the numbered questions asked in the Solicitation for Comments. They do not consider the operation of “voluntary” markets, but only those of instruments that can be used to comply with a regulatory cap-and-trade program.

We are encouraged by the formation of the interagency group and the solicitation of comments. We urge the interagency group to work with US states and Canadian provinces on the best approach to oversight of existing and future regional carbon markets as well as considering recommendations for a future US federal market. We believe that strong and effective oversight of carbon markets is essential to their efficient operation, protection for participants and the public, and achievement of a program’s environmental goals.

Thank you for your consideration.

Sincerely,

James Goldstene
Co-Chair, Western Climate Initiative
Executive Officer
California Air Resources Board

Robert Nöel de Tilly
Co-Chair, Western Climate Initiative
Climate Change Advisor
Québec Ministère du Développement durable, de l’Environnement et des Parcs

1) **Section 750 of the Dodd-Frank indicates that the goals of regulatory oversight should be to ensure that carbon markets are efficient, secure and transparent. What other regulatory objectives, if any, should guide the oversight of such markets?**

   Carbon markets are created to accomplish an environmental goal. Consequently, regulatory oversight objectives should align with and serve to support the environmental regulatory frameworks developed in the implementation of cap-and-trade programs.

   In addition, fairness should be added to the objectives of carbon market regulatory oversight. Carbon markets will include a wide variety of participants. Some of the participants will include entities required to surrender instruments to satisfy a regulatory requirement. Such "compliance entities" will need allowances, in contrast to other market participants who may be using them as a speculative investment option. Compliance entities will vary significantly in the expertise they bring to carbon markets, from those with no experience in similar commodity markets to those with sophisticated trading operations. The organization and oversight of carbon markets should be such that access to markets is fair and open to the variety and range of all participants. For example, capital requirements to participate in allowance auctions and reporting requirements should not be unduly burdensome for compliance entities, and if holdings limits or accountability levels are used they should be tailored if necessary to accommodate compliance entities' needs to acquire and hold allowances for compliance.

3) **Do the regulatory objectives differ with respect to the oversight of spot market trading of carbon allowances compared to the oversight of derivatives market trading in these instruments? If so, explain further.**

   The regulatory objectives for oversight of the spot and derivatives markets do not differ and the potential for one market to influence the other calls for close coordination. The principles of efficiency, security, transparency, and fairness serve the public and market participants in both markets. However, application of these principles may differ based on the characteristics of the market being considered. For example, position or holdings limits or accountability levels may be set at different levels in spot or derivatives markets, depending on analysis of market power risks. An allowance tracking system allows for collection of information on ownership and beneficial ownership of allowances and for implementation of policies that could be more challenging in derivatives markets.

5) **What regulatory methods or tools would be appropriate to achieve the desired regulatory objectives?**

   The WCI market oversight recommendations incorporate regulatory tools that should be applied in carbon markets. Intermediaries such as brokers, pool operators, and advisors in carbon spot markets should be required to register as market professionals as they now are in securities and commodity derivatives markets. Market participants and the public would be served by the screening, credentialing, and identification of professionals.

   The interagency group should consider limiting the number of allowances or offset certificates that any one entity could hold in spot markets through holdings limits, accountability levels, or other effective means to address market power concerns.

6) **What types of data or information should be required of market participants in order to allow adequate oversight of a carbon market? Should reporting requirements differ for separate types of market participants?**

For a tracking system to be a complete record of ownership, information accompanying every transfer of instruments must include originating and receiving accounts, and therefore the identities of their owners and representatives; the serial numbers of instruments being transferred; and the date and time of the transfer, which may be supplied by the tracking system. We further recommend that the price of instruments being transferred be required to be reported. Effective surveillance requires understanding transaction prices. Price information collected upon transfer of allowances permits market monitors to observe the prices of over-the-counter transactions, which especially early in market development may make up a majority of transactions.

We recommend that each account holder be required to report the beneficial owners of the account holdings, and the proportion of the holdings that each beneficial owner owns. We also recommend that account holders and those with beneficial ownership interest in compliance instruments must also disclose corporate affiliations (e.g., holding companies) to affiliates with compliance accounts or beneficial ownership interest in compliance instruments.

7) **To what extent is it desirable or not desirable to have a unified regulatory oversight program that would oversee activity in both the secondary carbon market and in the derivatives markets?**

Prices and positions in spot and derivatives transactions are interdependent. The objectives of oversight would be best served by an integrated, comprehensive oversight program with a clear view of activity in all aspects of a carbon market. The WCI regional market will be formed by US states and Canadian provinces. Integrated oversight must incorporate coordination with multiple authorities, including the provincial regulators that will oversee spot and derivatives markets in their jurisdictions, and states that need access to information to fulfill their role as environmental regulators. States must not be preempted from enforcement of state and federal laws against unlawful activity in the spot market.

8) **To what extent, if any, and how should a U.S. regulatory program interact with the regulatory programs of carbon markets in foreign jurisdictions?**

A US regulatory program should interact with the regulatory programs in other jurisdictions continually and at a high level of detail. The WCI regional cap-and-trade program will include Canadian jurisdictions and US. states. We collaborate on market oversight issues and expect to continue to enhance that collaboration as the program is launched. The agencies in the interagency group should work to partner with US states and Canadian provinces to ensure seamless, efficient, and effective oversight of a transnational carbon market. We also encourage the agencies to collaborate with the European Union and EU member state national governments to understand the successes and challenges they have had, including the risk of carousel tax fraud and phishing schemes and strategies to address them.