

September 2, 2009

The Honorable Barbara Boxer  
United States Senate  
112 Hart Senate Office Building  
Washington, DC 20510

The Honorable John F. Kerry  
United States Senate  
218 Russell Senate Office Building  
Washington, DC 20510

Dear Senators Boxer and Kerry:

The “State Voice” group is a bipartisan, regionally diverse coalition of state environmental officials interested in promoting a strong national climate change program in the U.S. The senior regulators who comprise this group have experience in designing and implementing some of the world’s most effective greenhouse gas (GHG) emission reduction programs. We offer our support and the enclosed recommendations to help the Senate craft an effective national framework for achieving the GHG reductions needed to protect against the growing threat from climate change and move our nation toward a low-carbon future that will revitalize the economy.

We support aggressive federal climate legislation that includes an economy-wide cap-and-trade program. As representatives from states active in climate change and energy initiatives, we have demonstrated the important role that states can and should play but understand that federal action is also needed. We believe that a robust local-state-federal partnership is critical to achieving the cap and to cost-effectively implementing a national climate strategy. The states look forward to establishing such a partnership with the federal government and localities to enable an effective national response to the threat posed by climate change and continue to build a clean energy future. The American Clean Energy and Security Act (the House bill) provides a solid framework upon which the Senate can build. We urge the Senate to strengthen the House bill and provide local, state and federal officials with the resources to effectively implement a coordinated, effective national response.

While we recognize the difficult challenges of reaching agreement on such sweeping legislation in a manner that balances regional interests and sets the stage for passage, we believe that the following fundamental components must be incorporated into a strong climate bill:

- The level, timing and integrity of the emissions cap. The level and timing of the cap must be consistent with what science tells us is needed. Program elements that undermine the emissions cap should be avoided, including overly generous offsets provisions that allow regulated entities to buy their way out of the cap and threaten the environmental integrity of the bill, and “safety valves” that undermine the carbon market and delay the onset of emissions reduction targets.
- The House bill’s strong protections for state authority must be maintained. Given our experience in designing and implementing GHG emission reduction programs and our long history of leadership and innovation, states must be encouraged and

empowered to pursue a menu of innovative approaches that will help achieve the cap in a timely and cost-effective manner and continue to promote an effective national response to climate change.

- Legislation should provide for consolidation of plans required of the states and better coordination with the federal agencies. States are committed to a close federal-state partnership and want to strengthen our role in the design and implementation of federal climate legislation and our work with federal agencies. Within the House bill, there are at least 11 plans due from states to various federal agencies related to mitigation and adaptation. We suggest the Senate add language that would provide for consolidation of these plans into one or two integrated state climate plans. Federal review and approval should be required for the state plan(s) to ensure coordination and efficiency in implementation.
- Congress must maximize funding for energy efficiency and support the continued growth of state energy efficiency and clean energy programs. Increased investment in energy efficiency programs represents the best way to achieve GHG reductions and contain the costs of a carbon cap-and-trade program as lower energy demand translates directly into reduced demand for allowances and lower allowance prices. Many states have comprehensive programs that accelerate the deployment of energy efficiency, renewable energy, and other clean energy technologies. These programs deliver important energy savings to electric and natural gas customers, create significant new energy service jobs, and provide broad economic benefits as reduced demand allows customers to invest those savings in other parts of the economy.

Attached are a set of specific recommendations that we ask the Senate to consider in its deliberations. We will submit more detailed comments, individually or collectively, as the Congressional legislative process moves forward. We look forward to serving as a valuable resource as the Senate develops its climate change legislation.

The time to act is now. Our states, the nation and the international community are already experiencing the adverse consequences of human-induced climate change. Our nation must take bold steps now to address this issue. The Senate has a historic opportunity to chart a new path by passing strong climate change legislation. Through this legislation, the Congress can put us on the path to achieving the needed GHG reductions, spur the development of a robust low-carbon economy, and help protect our national security. However, only a full commitment will suffice.

We ask that Congress look to what our states have done as the model for a strong national program and to develop a local-state-federal partnership to achieve our nation's goals. Republican and Democratic administrations from states in all parts of the U.S. have adopted climate action plans to address this threat. Bipartisan groups of states have voluntarily joined together to form regional partnerships to meet this challenge. Nearly all of the programs included in the House bill are already being implemented in our states and we believe can be extended to all states. While further technological advances will certainly be needed, tremendous progress has already been accomplished as a result of

these state efforts. Our states are starting to realize the tremendous potential benefits associated with promoting a low-carbon economy. Investment in low carbon technologies has created new businesses and their attendant jobs. Energy efficiency programs are already saving our consumers significant money through lower utility bills and are improving the reliability of energy services. Any delay in proactively addressing climate change will subject future generations to dramatic adverse consequences that can be avoided and ultimately result in our nation paying more to address this problem.

The members of the State Voice group stand ready to assist the Senate in any way we can as you draft your climate change bill. Please take advantage of the wealth of knowledge and experience our agencies have developed in designing and implementing effective climate change policy over the past decade.

Sincerely,

The State Voice Group



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Mary D. Nichols, Chair  
California Air Resources Board



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Amey Marrella, Acting Commissioner  
CT Department of Environmental Protection



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Douglas P. Scott, Director  
IL Environmental Protection Agency



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David P. Littell, Commissioner  
ME Department of Environmental Protection



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Laurie Burt, Commissioner  
MA Department of Environmental Protection



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Mark Mauriello, Commissioner  
NJ Department of Environmental Protection



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Pete Grannis, Commissioner  
NY Department of Environmental Conservation



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Dick Pederson, Director  
OR Department of Environmental Quality



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Jay J. Manning, Director  
Washington State Department of Ecology

Attachment

cc: Senator Mitchell McConnell  
Senator James M. Inhofe  
Senator Max Baucus  
Senator Chuck Grassley  
Senator Harry Reid  
Senator Richard G. Lugar  
Senator Jeff Bingaman  
Senator Lisa Murkowski  
Senator Tom Harkin  
Senator Saxby Chambliss  
Senator John D. Rockefeller  
Senator Kay Bailey Hutchison

## **State Voice Group Recommendations to the Senate Concerning Climate Legislation**

We support the enactment of a strong national cap-and-trade program that achieves the emission reductions necessary to address the challenges of climate change and the need for a new and sustainable clean energy economy. The following recommendations are offered to help the Senate enhance the strengths and address what we believe are the weaknesses or omissions in the House bill.

### **Greenhouse Gas Emission Reduction Targets**

#### ***Structure***

The federal cap-and-trade program must be economy-wide in coverage and include national emission reduction targets consistent with what the prevailing science suggests is needed to stabilize atmospheric concentrations of GHGs at levels adequate to forestall dangerous anthropogenic interference with the climate system. The House bill establishes a solid cap-and-trade framework.

#### ***Level and Timing of Reductions***

Congress needs to set firm emission caps and dates to promote sufficient action and provide industry with clear, long-term planning objectives to mobilize the investment and promote the innovation needed to meet these objectives. The House bill falls short of requiring the GHG reductions in the U.S. called for by the consensus opinion of the scientific community.

#### ***Recommendations***

1. The Senate should establish reduction targets of 20 percent by 2020 and 83 percent by 2050 from 2005 emission levels.
2. The level and timing of reductions required under the cap must be periodically reviewed and adjusted, as necessary, in light of new science.

#### ***Offsets***

Offsets that are real, additional, verifiable, enforceable, and permanent offer an opportunity to reduce the overall costs of achieving our climate goals while realizing cost-effective reductions from sources not covered by the cap-and-trade program. They also provide a means of achieving early progress as low carbon technologies are developed and deployed. However, overly generous offsets provisions such as those included in the House bill could undermine the fundamental GHG reduction goals and delay the nation's transition to clean energy. To ensure the integrity of the cap-and-trade program and ensure that offset providers realize their potential, all parties must be assured of the environmental integrity of offsets. Under an effective cap-and-trade program, the majority of emissions reductions should come from capped sources, not offsets.

## *Recommendations*

1. State Voice members recommend that the Senate establish quantitative offset limits that provide reasonable assurance that the majority of emissions reductions will come from within capped sectors, similar to the approach taken in deriving offset limits in the Regional Greenhouse Gas Initiative (RGGI) and as contemplated in the Western Climate Initiative (WCI).
2. The statute should require a 1.25:1 ratio when using offsets for compliance purposes to promote the necessary investment in GHG reduction strategies and technologies for capped sources.
3. Preserving the integrity of offsets will require wide participation in protocol development and oversight of offset programs, including a mandatory role for environmental agencies that have significant expertise in designing and implementing rigorous offset programs and protocols.
4. The statute should provide clear guidance regarding the respective roles of USEPA and USDA in crafting specific offset regulations and establish clear requirements that the offsets represent emission reductions or carbon sequestration that is real, additional, verifiable, enforceable, and permanent.
5. The statute should provide clear requirements that the implementing agency offset regulations address the variations in state forest and agricultural practices to ensure environmental integrity and a level playing field for offset projects, while deferring to agency expertise in developing specific regulatory requirements.
6. To the extent the Senate creates a separate program for forestry and agricultural offsets, it is critical that it have a parallel construction to the offset section in Title III of the House bill.
7. The statute should provide clear requirements that the implementing agency offset regulations require a robust independent verification component, including a requirement that all offset project eligibility applications and monitoring and verification reports are independently verified, eligibility applications include a site audit, and report verification include periodic site visits (or other mechanisms such as remote sensing) to ensure that projects are being implemented properly over time.
8. The statute should provide clear requirements that the implementing agency offset regulations include a robust independent verifier accreditation component that addresses verifier competence, protection against conflicts of interest, periodic evaluation of verifier performance, and sanctions for poor verifier performance, negligence, and fraud.
9. The statute should clearly distinguish between standardized activity baselines used to evaluate project additionality and project-specific emissions or sequestration baselines used to determine emission reductions or sequestration achieved through a specific offset project.

## **State Climate Change Programs**

Strong federal action is absolutely necessary to address climate change. However, to achieve the goals of meeting challenging GHG reduction targets and moving the nation toward a new and vital low carbon economy, an effective national program will need to include a significant role for state and local government. 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. The House bill largely protects state authority, with the exception of the moratorium imposed on regional cap-and-trade programs and transmission line siting in the Western Interconnect. 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 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.

### *Recommendations*

1. The Senate must preserve the state authority provisions from Section 334 in the House bill to allow states to implement GHG reduction programs, including those directed at reducing emissions from sources covered by the federal cap.
2. Other savings provisions from the House bill must be preserved 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).
3. If the Senate finds it necessary to impose a short moratorium on state/regional cap-and-trade programs, the duration should be consistent with the requisite compliance periods within existing programs and should not commence until an equivalent federal program is operational. If, for any reason, implementation of the federal program is delayed, the moratorium should be similarly delayed.
4. Provide for an equitable exchange of state allowances 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, but the statute should also direct USEPA to consult with states implementing cap-and-trade programs when promulgating exchange regulations, in order to execute a smooth market transition.
5. Provide for offset projects approved under state programs prior to enactment of a federal program to receive federal allowances for the remainder of their full approved crediting period that occurs after January 1, 2009. Such allowances should be

provided through an allowance set-aside, not awarded in addition to the federal cap. Any provision of federal allowances should be contingent on retirement of state offset allowances, to prevent double crediting.

6. Ensure that states with existing cap-and-trade programs are sufficiently compensated for lost auction revenue in order to continue state programs and plans to fund energy efficiency and renewable programs that are keys to achieving our national climate goals.
7. Require that federal agencies consult with the states participating in the three regional cap-and-trade initiatives when developing rules and implementing the federal cap-and-trade program.
8. More explicitly address the local-state-federal partnership model in the Senate bill to provide clear direction regarding the need for participation at all levels of government.

Provide incentives for the development and implementation of cost-effective state and local programs through performance-based funding.

### **Consolidation of Required State Plans**

To ensure efficient implementation of national climate policy, Congress must clarify and strengthen the role of the states and the participating federal agencies and provide for effective coordination among these entities. Based on our analysis of the House bill, there are at least 11 plans due from states to several different federal agencies on a number of important topics ranging from energy efficiency goals to adaptation planning. The subject matter of the plans makes sense, the lack of coordination at the state and federal level does not. Clarification of roles and coordination among the federal agencies that will approve and oversee these state climate plans is critical. The Senate has an opportunity to avoid creating regulatory silos that can undermine early and successful implementation of our national climate goals. Such provisions would ensure greater efficiency and coordination by and within each state, and improved coordination by and among the lead federal agencies.

This proposed consolidation is also an opportunity to formalize the federal-state partnership we have been advocating. States have been leaders in spearheading and implementing many new and effective climate action programs. We have learned that coordination among our state agencies, especially energy and environment, is critically important to the success of such programs.

#### *Recommendations*

1. Language should be added to the legislation to promote consolidation of these plans (or “sub-plans”) into one or two integrated state climate plans and ensure alignment with state climate action plans.
2. The states should have an active and distinct role in the development of federal regulations and programs.

3. The legislation should recognize the unique role of the states in helping the federal government craft the regulations and programs and plans under a federal cap-and-trade regime.

### **Allowance Allocation and Investment**

To date, state programs have constituted U.S. climate action. Existing state programs such as energy efficiency and renewable energy standards are critical to achieving emission goals at the lowest cost and to creating green jobs and a sustainable energy and economic future. The RGGI participating states have demonstrated that use of allowance value to support energy efficiency and other clean energy measures is a powerful tool for reducing the cost of a cap-and-trade program and promoting a vibrant clean energy economy. States and local government are best positioned to develop approaches to increase transportation system efficiencies and reduce the number of vehicle miles traveled. These state and local-based programs will be keys to addressing the demand inelasticity of the transportation sector and will be critical to lowering the burden on the electricity sector for achieving the emissions reductions required by the cap. States should receive substantial allowance value under the federal program for investment in energy efficiency, clean energy, transportation efficiency, and other programs. As the Senate develops the provisions for the distribution of emissions allowances, it should ensure that these state-run clean energy and transportation programs are adequately funded. All states that have taken early action and established cap-and-trade programs, including programs that fund GHG reduction activities, should be appropriately recognized and should not be disadvantaged by allowance distribution strategies.

### *Recommendations*

#### *Energy efficiency and clean energy*

1. The State Energy and Environment Development (SEED) Funds programs should receive 15 percent of total allowances.
2. This increase should come from eliminating the “excess” free allowances provided in the House bill to industries that can pass through allowance costs to consumers.
3. Energy efficiency and renewable energy allocations should not diminish over time.
4. The language in the House bill should be clarified to ensure that the allowance value provided to electricity 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.
5. Maintain the 50 percent emissions/50 percent energy deliveries-base LDC distribution formula in the House bill for the electricity LDC allocation.
6. 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 utility bills (or as a fixed credit), rather

than as a percentage of the energy portion of the bill. This will avoid creating perverse incentives to maintain or increase energy use, which would undermine the impact of a carbon price signal.

7. Preserve the funding for “clean energy hubs” provided in the House bill.

#### State carbon sequestration program funding

1. Allocate allowances to support state efforts to maximize carbon sequestration by forests and wetlands. Direct support to states will be more efficient for achieving this goal than through offset projects, which entail significant transaction costs.

#### Set-aside pool for state allowance retirement

States should be authorized and encouraged to achieve reductions in GHG emissions beyond what is required by federal regulations. We propose creating an allowance set-aside from within the total allowance budget, which can be drawn from and retired by states. These allowances could be retired through demonstrated state policy-driven-reductions. This approach would provide an incentive for creative state action and reduce overall emissions in the system. Allowance retirements would be allowed for reductions from within the capped sectors that have resulted primarily from a specific state program that goes beyond the federal program.

1. An allowances set-aside program should be established to provide an incentive for states to voluntarily implement jurisdictional programs that achieve GHG reductions beyond those expected under a federal program.
2. States would compete to earn allowances that could be retired from the federal system.
3. Allowances from this allocation should flow back into the auction pool if the set-aside is under-subscribed.

#### Transportation

1. Significant allowance funding is needed to support efforts to reduce GHG emissions through innovative transportation efficiency and land-use planning and implementation.
2. Sufficient on-going funding from the cap-and-trade program will be needed in addition to transportation bill appropriations.

#### Adaptation

1. Preserve the level of allowance funding in the House bill for local, state and regional climate adaptation planning and implementation to enhance ecological and human environmental resilience and adaptive capacity.
2. Provide federal investment in climate impact assessment tools to assist in effective adaptation planning and implementation.

### **Transportation Planning**

Achieving the requisite GHG reductions from the transportation sector under an economy-wide cap-and-trade program is a challenge that will require a strong and on-

going complementary commitment to innovative transportation efficiency and land-use planning and implementation. 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.

#### *Recommendations*

1. The Senate should clearly spell-out the requirements for interagency cooperation in the bill, including that environmental agencies at the local, state, and federal level should have concurrence roles in reviewing transportation/land-use emission reduction goals, certifying emission reduction plans, and developing modeling methodologies.
2. Reinstate the provisions of Section 222 in the *Energy and Commerce Committee draft* of the House bill requiring Metropolitan Planning Organizations and states to establish strategies and goals for GHG reductions.
3. Promote stronger incentives for transportation funding, including funding for mass transit, based on a formula that rewards areas according to the stringency of their GHG reduction goals and the viability of strategies for achieving them.
4. Provide allowance value for state mass transit investment along the lines of the provisions in the CLEAN TEA proposal introduced by Senator Carper.
5. The federal government should provide capacity-building funds to states and localities for planning and modeling in the early years of the program.
6. Additional resources, either from allowance value or other sources, should be provided to regions and communities to implement the most cost-effective transportation/land-use emission-reducing projects.

#### **Clean Air Act Authority for Stationary Sources under the Cap**

History has shown the Clean Air Act (CAA) to be an effective framework for achieving national environmental and public health goals. Specifically, emission performance standards have proven critically important in promoting the application of clean technologies and strategies to new sources and existing sources undergoing major modifications, and ensuring equitable compliance with federal requirements. Congress should guarantee that these well-established tools remain available to assist in achieving the nation's GHG reduction goals.

#### *Recommendation*

1. Eliminate the provisions in the House bill that exempt USEPA from regulating capped sources under CAA authority.

## **Renewable Energy Standards**

Thirty states currently have renewable energy standards (RES) to promote the development and deployment of low carbon technologies for electricity generation. These programs have led to a national surge in investment in and deployment of renewable sources of energy. Much of this new capacity is indigenous to our states and regions, which provides jobs and promotes energy security.

### *Recommendations*

1. Support at least a 20 percent national RES by 2020.
2. Support authority for states to set more stringent RES minimum standards and stipulate that federal renewable energy credits are allowed to count toward compliance with state RES goals only if they meet corresponding state requirements.
3. Protect state authority to require that all, or a portion of the state standard be met by resources located in and/or physically delivered into that jurisdiction or relevant control area.
4. The eastern states that are part of State Voice group have gone on record opposing a role for FERC in transmission line siting. The western states have gone on record as saying that FERC preemptive authority may be helpful under certain circumstances for transmission lines in the Western Interconnect, however there must be limitations on use of such authority. Although a good start, the House bill does not fully meet the interests of the western states and further modification to section 216 with regard to the Western Interconnect would be necessary to enlist the support of western states.

## **Adaptation**

The science is convincing that the onset of climate change-related threats is already affecting the globe, our nation and our states and that adaptation will be necessary to address impacts that are unavoidable due to past emissions. Coordinated and pro-active adaptation planning and implementation across all levels of government will be needed to address this threat. Sufficient funding will be needed to implement these strategies.

The current and projected impacts of climate change will manifest themselves according to the nature of an area's weather, ecosystems and built environment. Localities, states, and regions need to develop and deploy adaptation measures to address these unique adverse climate change impacts that are occurring and the unavoidable impacts that will occur. As with aspects of mitigation, many adaptation measures are best developed and implemented at the sub-national level. Our agencies are involved in state climate adaptation planning efforts that make clear the tremendous challenge of addressing uncertain, but inevitable consequences and the complex inter-relationships that must be forged to design and implement effective adaptation strategies. The states recognize the critical role that the federal government must play especially with regard to providing "good science," planning and engineering support, and sufficient resources to effectively address the monumental challenge of adapting to a changing climate.

### *Recommendations*

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