



THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

October 19, 2011

Clerk of the Board
Mr. James Goldstene, Executive Officer
Ms. Mary Nichols, Chair
California Air Resources Board
1001 I Street
Sacramento, California 95814

Regarding Air Resources Board's Functional Equivalent Document Prepared for the California Cap on GHG Emissions and Market Based Compliance Mechanisms and the Response to Comments on the Functional Equivalent Document

Dear Mr. Goldstene and Ms. Nichols:

On October 10, 2011 the California Air Resources Board (ARB) released for a nine day review, its Response to Comments on the October 28, 2010 Functional Equivalent Document (FED) Prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms (FED Response). The Metropolitan Water District of Southern California (Metropolitan) has reviewed the just released FED Response against the original FED prepared for the Cap-and-Trade Program which is dated October 28, 2010 (Appendix O to the Cap-and-Trade Regulation). In reviewing these documents, Metropolitan asserts that ARB's FED Response does not cure the deficiencies in the FED and does not satisfy the requirements of ARB's certified regulatory program, 17 California Code of Regulations (CCR) sections 60000 et seq., the California Environmental Quality Act (CEQA), Public Resources Code Sections 21000 et seq. and the Guidelines for Implementation of the California Environmental Quality Act at 14 CCR Sections 15000 et seq.

ARB's Certified Regulatory Program

In the FED Response, ARB states that "no revision to the FED analysis or recirculation is required," based upon a stated conclusion that the modifications to the Regulation for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms "do not ... affect the environmental impact analysis in the FED." However, the revised Cap-and-Trade Regulation which was released on October 10, 2011, contains numerous and substantial changes to the regulation proposed in 2010, resulting in an additional 82 pages of text and potential adverse environmental impacts to water supply, and other natural resources. In fact, ARB states on page 13 of the FED Response that the revised Cap-and-Trade Regulation reflects substantial changes

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to the general offset sections of the Regulation and the Forest Offset Protocol and “some of the impacts associated with forestry operations are considered potentially *significant and may be unavoidable*.” As a means of mitigating the forestry impacts, ARB staff issued a proposed Adaptive Management Plan (Adaptive Plan) for the Cap-and-Trade Regulation the same day that the FED Response and the final Cap-and-Trade Regulation package were released. However the Adaptive Plan is not comprehensive and does not even include mitigation measures for the gamut of significant environmental impacts identified in the FED.

Numerous stakeholders have raised significant environmental issues since the FED was originally circulated in conjunction with the proposed Cap-and-Trade Regulation in October 2010. Metropolitan believes that ARB has failed to mitigate or otherwise adequately respond to these stakeholder concerns and has not considered alternatives to reduce adverse environmental impacts and the inequitable impacts in the Cap-and-Trade FED and Regulation. If ARB were to take final action to approve the FED Response, it would be in violation of ARB’s Certified Regulatory Program which prevents ARB from approving any action or proposal for which significant adverse environmental impacts have been identified during the review process, unless feasible mitigation measures or feasible alternatives were not available that would substantially reduce the adverse impacts (CCR Section 60006).

Because ARB only provided Metropolitan and other stakeholders nine days for review of the FED Response, Metropolitan did not have sufficient time to prepare detailed comments on ARB's decision not to update the FED; or to provide additional information to ensure adequate environmental analysis of the potentially significant impacts raised by others, which were summarily dismissed by ARB in their FED Response. However, Metropolitan believes that the original FED and the FED Response inadequately addressed water supply and water quality environmental impacts, such as those raised by the Department of Water Resources (DWR), the operator of the State Water Project (SWP), one of Metropolitan’s two major sources of water supply. Metropolitan is one of 29 agencies that have long-term contracts for water service from DWR. Metropolitan agrees with and incorporates DWR’s comments on the FED.

An example of the impact on water supply resources from the Cap-and-Trade Regulation would be the increased costs of water for imported Colorado River supplies which could incentivize procurement of alternative water supplies with resulting negative environmental impacts. Metropolitan’s Integrated Resources Plan reflects a comprehensive approach to managing water supplies. (Metropolitan’s Integrated Resources Plan reports are available at <http://www.mwdh2o.com/mwdh2o/pages/yourwater/irp/>.) A stable supply of imported water is an important component of the plan. A shift in resources may undermine Metropolitan’s ability to effectively manage water supply. For example, if Colorado River water becomes uneconomical due to increased energy costs, there may be environmental impacts associated with securing alternative supplies.

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Conclusion

Metropolitan believes the inadequate analysis of potential water supply and water quality impacts, including impacts to the environmentally sensitive Sacramento-San Joaquin River Delta, must be rectified before the Cap and Trade Program can be implemented. Metropolitan therefore, opposes ARB's FED Response, and its foundational FED and urges ARB to update its responses and analysis to comply with ARB's certified Regulatory Program and CEQA before proceeding with Board consideration for adoption of the FED and a Cap-and-Trade Program in their current forms.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Kightlinger". The signature is stylized and cursive.

Jeffrey Kightlinger
General Manager