CALIFORNIA
DEPARTMENT OF JUSTICE

Rob Bonta
Attorney General

455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO, CA 94102-7004

Public: (415) 510-4400
Telephone: (415) 510-3549
E-Mail: Jonathan.Wiener@doj.ca.gov

September 18, 2026

Brian Goldman
Chief Deputy Legal Affairs Secretary
Office of the Governor
1021 O St., Suite 9000
Sacramento, CA 95814

RE: **Attorney General's Advice to the Governor Concerning Linkage of California and Washington Cap-and-Invest Programs**

Dear Mr. Goldman:

By letter dated September 2, 2026, the California Air Resources Board ("CARB") provided notice to Governor Newsom that it is proposing to link its greenhouse gas emissions trading program ("California's Cap-and-Invest Program" or "California's Program") with the Cap-and-Invest Program developed by the State of Washington ("Washington's Cap-and-Invest Program" or "Washington Program"). Pursuant to Government Code section 12894(f) and at the request of the Governor, we are providing advice and analysis to you about the four findings the Governor must make prior to any linkage between the two programs. Based on our review of the two programs, the statutory requirements of Division 25.5 of the Health and Safety Code, and CARB's discussion of the findings required by Government Code section 12894(f) ("CARB's Discussion of Findings"), and for the reasons described below, we conclude that an adequate basis exists to make each of the four findings.

BACKGROUND

A. Statutory Background

Government Code section 12894(f) prohibits CARB from linking its market-based compliance mechanisms for the reduction of greenhouse gases, such as the Cap-and-Invest Program, with comparable mechanisms from any other jurisdiction unless the Governor has first made all of the following four findings:

> 1. The jurisdiction with which the state agency proposes to link has adopted program requirements for greenhouse gas reductions, including, but not limited to, requirements for offsets, that are equivalent to or stricter than those required by Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

2. Under the proposed linkage, California is able to enforce Division 25.5 (commencing with Section 38500) of the Health and Safety Code and related statutes against any entity subject to regulation under those statutes, and against any entity located within the linking jurisdiction to the maximum extent permitted under the United States and California Constitutions.

3. The proposed linkage provides for enforcement of applicable laws by the state agency or by the linking jurisdiction of program requirements that are equivalent to or stricter than those required by Division 25.5 (commencing with Section 38500) of the Health and Safety Code.

4. The proposed linkage and any related participation of the State of California in the Western Climate Initiative, Incorporated, shall not impose any significant liability on the state or any state agency for any failure associated with the linkage.

B. Regulatory Background

Beginning in 2007, California and the states of Arizona, New Mexico, Oregon, and Washington created the Western Climate Initiative (WCI) as a forum to discuss and set an overall regional goal to reduce greenhouse gas emissions consistent with each state's goal. The WCI served as the incubator for ideas for establishing a multi-jurisdictional, multi-sectoral greenhouse gas emissions reduction program, consisting of linked programs. Over time, four Canadian Provinces joined the WCI (British Columbia, Manitoba, Ontario, and Quebec), and some states and provinces withdrew. Currently, the participating jurisdictions are California, Washington, and Quebec.

After a multiyear effort, including public consultations, WCI produced a series of documents that set forth the consensus among the jurisdictions about the recommended regulations for a sub-national cap-and-trade market as well as other important components, such as offsets, mandatory reporting of greenhouse gas emissions, infrastructure, and linking.

WCI's work contributed heavily to CARB's development of California's Program, for which WCI continues to provide administrative and technical support. California's Program is designed to be environmentally rigorous and to facilitate linkage with similarly rigorous programs in other jurisdictions. Other jurisdictions have likewise developed regulations based on the work of WCI, and California has previously linked its Cap-and-Invest Program with two of them. California and Quebec linked their programs (then referred to as Cap-and-Trade) in 2013, after then-Governor Brown made the four findings required by Government Code section 12894(f). California and Quebec then linked their programs with Ontario's program in 2018, before subsequently delinking them.

ANALYSIS

Finding 1: Stringency of program requirements for greenhouse gas reductions

The first required finding, set out in Government Code section 12894(f)(1), calls for a comparison of Washington's "program requirements for greenhouse gas reductions"—including but not limited to its requirements for offsets—with California's statutory requirements set forth in Division 25.5 of the Health and Safety Code. This statute requires, among other things, emissions reporting regulations, the reduction of emissions to specified levels, and provisions to ensure that the reductions achieved through market-based mechanisms like the Cap-and-Invest Program are real, permanent, quantifiable, verifiable, and "in addition to … any reduction required by law or regulation … [or] that would otherwise occur."[1] Washington's requirements need not be identical to these requirements, merely "equivalent" or "stricter."[2]

We agree with CARB that Washington's requirements are equivalent to or stricter than those required by Division 25.5 of the Health and Safety Code. (See CARB's Discussion of Findings, pp. 4-12). Our analysis is based on the stringency of each jurisdiction's overall emission-reduction goals, each jurisdiction's implementation of these goals through their cap-and-invest programs and reporting requirements, and each jurisdiction's treatment of offsets. As discussed below, to the extent Washington's requirements in these areas differ from California's, those differences do not change our conclusion.

<u>Emission-reduction goals</u>

Washington's emission-reduction goals from all programs apply to all seven greenhouse gases listed in Division 25.5 of the Health and Safety Code.[3] As noted in CARB's Discussion of Findings, Washington's Program itself applies more broadly than CARB's, as CARB addresses certain greenhouse-gas pollutants outside of the Cap-and-Invest Program.[4]

The numeric goals for reductions of these emissions from all programs (including cap-and-invest) are, like those in the Health & Safety Code, based on a 1990 emissions baseline. By that measure, as shown in the chart below, Washington's goals are slightly stricter than California's target for 2030, and its stricter 2050 target compares favorably to California's earlier 2045 target.

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[1] (Cal. Health & Safety Code §§ 38530 [requirements for reporting], 38562(d) [requirements for market-based mechanisms], 38566 [emissions target for 2030].)

[2] (Cal. Government Code § 12894(f)(1).)

[3] (*Compare* Cal. Health & Safety Code § 38505(g) *with* RCW § 70A.45.010(7) [listing six greenhouse gases covered by statute] *and* WAC 173-441-040 [listing, inter alia, nitrogen fluoride].) All citations to Washington's Administrative Code are to the amended regulation ordered adopted September 17, 2026 (see WAC 173-441-446 Linkage - Washington State Department of Ecology).

[4] (Discussion of Findings, 9).

Economywide greenhouse gas reduction goals: Percent below 1990 baseline

Year	Washington	California
2030	45%[5]	40%[6]
2040	70%[7]	N/A
2045	N/A	85%[8]
2050	95%[9]	N/A

In addition, both jurisdictions have net-zero emissions goals, with California's set for 2045 and Washington's set for 2050.[10]

In our view, Washington's goals are, overall, equivalent to or stricter than those in Division 25.5 of the Health and Safety Code. Relative to the 1990 baseline, Washington's 2030 goal is stricter than California's 2030 goal, and represents significantly greater per-capita reductions than California's does, as a result of Washington's higher per-capita emissions in 1990 and its faster population growth since. And Washington's 2040 and 2050 goals are, collectively, comparable to California's 2045 requirement.

Cap-and-Invest Program and reporting requirements

Washington's Program[11] and reporting requirements[12] are likewise equivalent to or stricter than what Division 25.5 of the Health & Safety Code requires. Washington's Program satisfies the statutory requirements (including, among other things, that reductions be real, permanent, quantifiable, verifiable, and additional) in materially the same way California's Program does.[13] In each jurisdiction, the Cap-and-Invest Program covers a supermajority of greenhouse gas emissions, with Washington's applying to some emissions that California covers in other ways.[14] The annual cap on emissions in each jurisdiction is set at a level designed to

[5] (RCW § 70A.45.020(1)(a)(ii))

[6] (Cal. Health & Safety Code § 38566.)

[7] (RCW § 70A.45.020(1)(a)(iii).)

[8] (Cal. Health & Safety Code § 38562.2.)

[9] (RCW § 70A.45.020(1)(a)(iv).)

[10] (Cal. Health & Safety Code § 38562.2; RCW § 70A.45.020(1)(c).)

[11] (WAC § 173-446.)

[12] (WAC § 173-441.)

[13] California's Cap-and-Invest Program is found in CARB regulations, rather than in Division 25.5 of the Health & Safety Code. (17 Cal. Code Regs. §§ 95801-96022.) California's Cap-and-Invest Program as designed represents CARB's implementation of the relevant statutory requirements. The similarity of Washington's Program demonstrates that its requirements are "equivalent to or stricter than those required by Division 25.5."

[14] (CARB's Discussion of Findings, p. 9.)

achieve additional reductions beyond those that would occur in a business-as-usual scenario. Covered entities comply in similar fashions in each jurisdiction,[15] and allowances are tracked and allocated similarly.[16] Both jurisdictions have similar reporting and verification requirements.[17] Each jurisdiction also has similar protections against fraud,[18] market manipulation,[19] and price spikes.[20]

Offsets

Washington's requirements for the use of offsets in its Cap-and-Invest Program are also equivalent to or stricter than what Division 25.5 of the Health & Safety Code requires. With respect to those statutory requirements, Washington's offset provisions are materially the same as CARB's.

Like California, Washington limits the use of offsets towards an entity's compliance obligation, and requires that any offset projects obtain government approval and satisfy any applicable eligibility criteria before they can generate credits.[21] In California, eligibility criteria are set forth in protocols governing specific types of offset projects, and offset projects cannot generate credits unless they satisfy the criteria in a given protocol.[22] Each of the six protocols CARB has promulgated incorporate the requirements of Division 25.5 of the Health and Safety Code, and require that emission reductions from offset projects receive credits only if they are real, permanent, quantifiable, verifiable, enforceable, and additional.[23] In the context of offsets, CARB has interpreted this last "additionality" requirement as requiring that reductions would not otherwise have occurred in a "conservative business-as-usual scenario,"[24] and has calibrated its six offset protocols to ensure that they only credit reductions that meet that test.[25] This interpretation and method of implementing the statute was upheld by the Court of Appeal in *Our Children's Earth Foundation v. ARB* (2014) 234 Cal. App. 4th 870.

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[15] (*Compare* WAC § 173-446-600 *with* 17 Cal. Code Regs. § 95850-95858; *see also* CARB's Discussion of Findings, p. 10.)

[16] (Compare, *e.g*, WAC §§ 173-446-200, -220, -230, -240, -300 *with* 17 Cal. Code Regs. §§ 95890-95915; see also CARB's Discussion of Findings, p. 10.)

[17] (CARB's Discussion of Findings, pp. 8-9.)

[18] (WAC §, 173-446-440; 17 Cal. Code Regs. § 95921.)

[19] (WAC § 173-446-150; 17 Cal. Code Regs. § 95920.)

[20] (WAC §§ 173-446-370, 173-446-380; 17 Cal. Code Regs. §§ 95910-95914; *see also* CARB's Discussion of Findings, pp. 10-11.))

[21] (WAC § 173-446-600(7); 17 Cal. Code Regs. §§ 95970.)

[22] (*Our Children's Earth Foundation v. ARB* (2014) 234 Cal. App. 4th 870, 878-79.)

[23] (17 Cal. Code Regs. § 95970(a)(1).)

[24] (17 Cal. Code Regs. § 95802(a)(4).)

[25] (See *Our Children's Earth Foundation*, 234 Cal. App. 4th at 880-81; 17 Cal. Code Regs. § 95973(a)(2)(A).)

Washington has a similar regulatory framework for offsets as CARB,[26] and currently has four offset protocols in place, effectively identical to protocols adopted by CARB for the same project types.[27] Washington regulations also include the same additionality requirement upheld in *Our Children's Earth Foundation*.[28] And Washington deals with invalidated offsets similarly to California, generally placing responsibility on the entity that surrendered the offset credit and occasionally employing a buffer account, ensuring that invalidated offsets do not undermine the integrity of the Program's cap.[29] We thus conclude that Washington's Program's use of offsets satisfies the applicable requirements in Division 25.5 of the Health and Safety Code, ensuring that the reductions represented are real, permanent, quantifiable, verifiable, enforceable, and additional.

Accordingly, there is an adequate basis for the Governor to issue Finding 1 in the affirmative.

Finding 2: Enforceability of California requirements

The second required finding, set out in Government Code section 12894(f)(2), concerns whether California will retain its existing legal authority to enforce Division 25.5 of the Health and Safety Code against two sets of entities: (1) those subject to California' Program, and (2) to the extent permitted by the U.S. and California Constitutions, those located in Washington.

We agree with CARB's analysis of this criterion in its Discussion of Findings (pp. 13-14), and we believe an adequate basis exists to make this finding. Like the linkage with Quebec, the proposed linkage with Washington does not create any apparent limitation on California's legal authority to bring enforcement actions against either set of entities. With respect to the first category, entities with compliance obligations under California's program will remain subject to enforcement of California law in California courts, even though they will be able to satisfy their compliance obligations by surrendering Washington compliance instruments (i.e., allowances or offset credits). This is because all entities with California compliance obligations must register with CARB and consent to the jurisdiction of California courts.[30] Likewise, offset providers that generate credits under a California protocol will remain subject to jurisdiction in California courts, and the offset credits they generate will be subject to invalidation by California, even though those credits may be surrendered by a Washington (or Quebec) entity to satisfy a compliance obligation under Washington's (or Quebec's) program.[31]

Second, a small number of Washington-based entities may have to register with CARB and expressly consent to jurisdiction in California (because, for example, they own facilities in

[26] (WAC § 173-446-600(e).)
[27] (WAC § 173-446-505(d).)
[28] (WAC § 173-446-510(d).)
[29] (WAC § 173-446-580; 17 Cal. Code Regs. §§ 95983, 95985(g-i).)
[30] (17 Cal. Code Regs. §§ 95830(b)(3), 95832(d).)
[31] (*Id.*)

California that are subject to California's Program, or they seek offset credits for projects under a CARB protocol).[32] Even some Washington-based entities that do not have to register with CARB may still be subject to jurisdiction in California if they have the Constitutionally required "minimum contacts" with California.[33] Examples of entities that could have such minimum contacts include entities doing business in California, a hypothetical entity knowingly selling fraudulent compliance instruments to a California entity with a California compliance obligation, and any other entities with conduct "expressly aim[ed]" at California.[34]

Any limits on California's enforcement authority over Washington entities will result not from the linkage but from preexisting Constitutional limitations on California jurisdiction. For example, California may be unable to assert jurisdiction over Washington entities whose unlawful activities are not "expressly aimed" at California and do not create a "substantial connection" with California.[35] Thus, if a hypothetical entity were to generate fraudulent offset credits and sell them to a Washington entity that sells them to a California entity, that hypothetical entity may have to be held responsible in courts in Washington rather than in California.[36] In any event, while these existing Constitutional limitations may affect the ability of California to enforce its laws against Washington entities, the linkage itself will not limit California's ability to enforce Division 25.5 of the Health and Safety Code.

Thus, there is an adequate basis for the Governor to issue Finding 2 in the affirmative.

Finding 3: Enforceability of Washington requirements

The third required finding, set forth in Section 12894(f)(3), calls for a determination that Washington's requirements will be enforceable, either by California or Washington.

For reasons discussed above, California likely does not have jurisdiction to enforce Washington laws. However, as described in CARB's Discussion of Findings (pp. 14-17), Washington has full authority to enforce its program requirements, and will retain this authority under the proposed linkage. Washington's enforcement authority includes the ability to impose civil, criminal, and administrative penalties, as well as information collection and other tools to

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32 (See *J. McIntyre Machinery, LTD. v. Nicastro* (2011) 564 U.S 873 [holding Constitutional requirements for jurisdiction satisfied when defendant expressly consented to jurisdiction].)

33 (*See International Shoe Co. v. Washington* (1945) 326 U.S. 310.)

34 (*Calder v. Jones* (1984) 465 U.S. 783.)

35 (*See Walden v. Fiore* (2014) 517 U.S. 277, 285, 288 fn. 7.)

36 (*Id.* at 289-90 [holding that defendant's actions must be aimed at forum state itself, not just at victim that happens to reside in forum state]; *see also Picot v. Weston* (9th Cir. 2015) 780 F.3d 1206, 1213 ["[T]he fact that a contract envisions one party discharging his obligations in the forum state cannot, standing alone, justify the exercise of jurisdiction over another party to the contract."].)

make such enforcement tools.[37] In general, Washington's authority to enforce the requirements of its program is equivalent to, and potentially greater than, California's authority to enforce the requirements of Division 25.5 of the Health and Safety Code and implementing regulations like the Cap-and-Invest Program.

Moreover, Washington has mechanisms designed to ensure that violations of its Cap-and-Invest Program do not endanger the Program's emission-reduction goals. Like in California, regulated entities in Washington that fail to surrender sufficient compliance instruments face an additional compliance obligation of three allowances for each one they failed to surrender.[38] Washington's Program also provides for adjustments to the allowance budget and the use of a buffer account when needed to ensure the Program continues to support emissions reductions.[39] And, as described earlier, Washington has provisions to protect against fraud or manipulation in the market for compliance instruments.

Accordingly, there is an adequate basis for the Governor to make Finding 3 in the affirmative.

Finding 4: Liability for failure associated with the linkage

The fourth required finding, set forth in Section 12894(f)(4), calls for a determination that, in the event of a problem related to the linkage or California's participation in the Western Climate Initiative, the State of California and CARB will not face any "significant liability."

As we advised with respect to the Quebec and Ontario linkages, the state and its employees would be immune from liability from CARB's discretionary policy decision to adopt a regulation linking California's Program with Washington's.[40] The same would be true for the adoption of any regulation *de*linking the programs, should the need arise.

Even if California or CARB could be liable for "any failure associated with the linkage," the proposed linkage will not lead to the type of "failure" (e.g., theft of allowances, tax fraud) that initially plagued the European Union's multi-jurisdictional trading system.[41] Those problems arose from conditions—uneven security measures among participating jurisdictions,

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[37] (*See* CARB's Discussion of Findings, pp. 14-17 [Comparing Washington's enforcement authority with California's].)

[38] (WAC § 173-446-610; 17 Cal. Code Regs. § 95857.)

[39] (*See, e.g.,* WAC §§ 173-446-250, 173-446-570.)

[40] (*See, e.g.*, Gov. Code, §§ 815(a), (b), 818.2, 820.2, 821; *see also Barner v. Leeds* (2000) 24 Cal.4th 676, 684-685; *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 981; *Johnson v. State of California* (1968) 69 Cal.2d 782, 793,794; CARB's Discussion of Findings, p. 13.)

[41] (*See* Will Bierbower, *A Brief History of Fraudulent Activity on the EU-ETS*, ReVolt, Feb. 21, 2011.)

tax treatment of compliance mechanisms[42]—that are not present in the proposed linkage with Washington.

Any jurisdiction that wishes to link with the California Program, such as Washington, will need to be a member of WCI, Inc. and will use the WCI-developed infrastructure for the combined Programs. As we previously noted, the creation of a single-market infrastructure for any California-linked program is intended, in part, to remove the possibility of one jurisdiction providing a weak link in the security of the linked program. WCI's administration of the linked market thus enhances the security of the market, making failure less likely.[43] And even if some failure were to occur, WCI's corporate protections and insurance policies provide a further layer of protection from liability.[44]

In sum, there is an adequate basis for the Governor to issue Finding 4 in the affirmative.

CONCLUSION

We believe the Governor has an adequate basis to make each of the four findings required by Government Code section 12894(f), thereby permitting CARB to move forward with the proposed linkage with Washington.

Please contact us if you have any questions.

Sincerely,

JONATHAN WIENER
Deputy Attorney General

For ROB BONTA
Attorney General

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[42] (See *id.*)

[43] (*See* CARB's Discussion of Findings, pp. 18-19.)

[44] (*Id.* p. 19.)