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March 23, 2015

Senate President Pro Tempore Kevin De León
California State Senate
State Capitol Room 205
Sacramento, CA 95814

RE: Assembly Bill 32 - The Global Warming Solutions Act of 2006

Dear Senators:

Thank you for your joint letter dated January 8, 2015, requesting our office monitor and investigate as appropriate any potential manipulation of gas prices by oil companies as transportation fuels have recently come under the cap-and-trade market established pursuant to Assembly Bill 32, the Global Warming Solutions Act of 2006.

As California's leading policymakers, you well know our state, like the nation, is experiencing tremendous environmental challenges. In the face of record heat, drought, and wildfires, there is solid evidence that many of these phenomena are a result of man-made climate change. Climate change is endangering the public health of our citizens, the vibrancy of our economy and the sustainability of our precious natural resources.

This is why the Attorney General's office has long acted aggressively to support and protect California's innovative policies to reduce greenhouse gases emissions. At least since 1970, California has specifically enacted new rules designed to curtail automobile-caused pollution. Parts of the automobile and oil industries have fought these rules at every possible juncture, and the Attorney General's office has taken the lead in defending these policies whenever challenged. Once successfully implemented, however, the results of these policies have been clear: substantially cleaner and clearer skies, many fewer premature deaths due to airborne toxins, and a thriving green economy built by innovation.

This work to reduce greenhouse gas emissions continues, and the centerpiece of Assembly Bill 32 is the cap-and-trade program that limits greenhouse gas emissions from California's major emitters and requires emitters to obtain permits for emissions. By putting a price on pollution, the program creates additional incentives for companies to adopt cleaner technologies and move the California economy away from high greenhouse gas emitting activities. Fostering competition to produce energy as cleanly and efficiently as possible drives innovation, and draws investment and new companies to California.

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As with earlier efforts to curtail pollution, there have been significant objections to Assembly Bill 32 from powerful industries. The Attorney General's office has been defending in court the implementation of Assembly Bill 32 against these numerous challenges, and we anticipate this battle will intensify now that emissions from the consumption of transportation fuels were made subject to the cap as of January 1, 2015. We will continue to devote significant litigation resources to implement Assembly Bill 32 until it is fully executed.

The office's work on greenhouse gas emissions is not limited to defensive litigation. We are playing a leading role in ensuring that the U.S. Environmental Protection Agency fully carries out its duties under the federal Clean Air Act. And, as requested in your joint letter, we have been and will continue to actively monitor and investigate as appropriate any evidence of market manipulation by fuel companies in response to Assembly Bill 32's implementation.

Recognizing the legitimate concerns you and others have expressed about how fuel prices might be manipulated to undermine public support for the cap-and-trade system and other environmental regulations, in November 2014 the Attorney General's office's most senior antitrust specialist, Senior Assistant Attorney General Kathleen Foote, was placed on the California Energy Commission's Petroleum Market Advisory Committee ("Committee"). The California Energy Commission has lead responsibility for monitoring California's gasoline supply and pricing, and, in her role as the leader of the Attorney General office's Antitrust Section, Senior Assistant Attorney General Foote has years of experience investigating the oil industry's California operations.

The Committee is charged with monitoring how the cap-and-trade system and other environmental regulations affect fuel prices and includes several prominent energy economists. The Committee began its work in December 2014 and will be looking closely at key petroleum pricing indicators such as: fuel exports; unused refinery capacity; price differentials between the Petroleum Administration for Defense Districts (PADD) 5 (which encompasses the western United States) and non-California PADDs; crack spread (the differential between the price of crude oil and petroleum products extracted from it – that is, the profit margin that an oil refinery can expect to make by "cracking" crude oil); stock levels; and gas price changes immediately pre- and post-January 1, 2015.

Critically, the Committee has access to the substantial amount of data that the Energy Commission routinely collects from California refineries about their output, operations, and reserves. And while the Committee does not have subpoena power, the Attorney General's office has at its disposal a host of investigative tools should the Committee identify any evidence of market manipulation or other basis for enforcement.

In addition to Senior Assistant Attorney General Foote's work with the Committee, she chairs the National Association of Attorneys General Antitrust Task Force, which is separately monitoring markets nationwide for evidence of gas price manipulation. Senior Assistant Attorney General Foote, as well as the lawyers in our office's Environment Law Section and Natural Resources Law Section, are also coordinating closely with the Energy Commission as

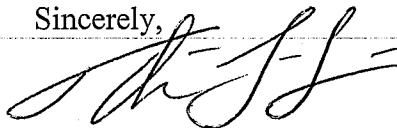
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well as the California Air Resources Board (CARB) to monitor and protect the cap-and-trade market itself from price manipulation. CARB is primarily responsible for Assembly Bill 32's implementation, and it is a client of this office.

The Attorney General strongly shares your belief that by executing on innovative policies while limiting abuses, we can show the country and the world the path to growing our economy while preserving our natural resources and making it possible for everyone to live in a healthy environment. With these principles in mind, we are devoting all necessary resources to protecting Assembly Bill 32 and ensuring its enforcement.

Thank you for consulting our office on this matter; please contact us if you have any further questions.

Sincerely,



THOMAS LAWSON
Director
Office of Legislative Affairs

For KAMALA D. HARRIS
Attorney General

CC:

The Honorable Bill Monning

The Honorable Lois Wolk

The Honorable Marty Block

The Honorable Bob Wieckowski

The Honorable Mike McGuire

The Honorable Fran Pavley

The Honorable Ben Hueso

The Honorable Dr. Richard Pan

The Honorable Tony Mendoza

The Honorable Jerry Hill

Enclosure:

Appendix A

The Honorable Ben Allen

The Honorable Hannah-Beth Jackson

The Honorable Ricardo Lara

The Honorable Loni Hancock

The Honorable Carol Liu

The Honorable Connie Leyva

The Honorable Jim Beall

The Honorable Ed Hernandez

The Honorable Isadore Hall

Appendix A

Protecting and Defending Assembly Bill 32

The Attorney General's Office has been defending the implementation of Assembly Bill 32 in court against numerous challenges.

- The California Chamber of Commerce and Morning Star Packing Company have challenged California Air Resources Board's (CARB's) authority to auction greenhouse gas emission allowances and that the auctions impose a tax, violating Proposition 13's requirement of a two-thirds vote.
 - The Sacramento Superior Court upheld CARB's authority to auction and ruled the auction is not a tax. CalChamber and Morning Star have appealed to the Third District Court of Appeal.
- Citizens Climate Lobby and Our Children's Earth Foundation challenged the use of offset credits (issued by CARB for reductions in GHG emissions by non-regulated entities).
 - Without the offset credits, there would be a significant increase in the costs of compliance.
 - The Attorney General's Office prevailed in trial court but the two groups filed an appeal.

The Attorney General's Office is actively monitoring for any market manipulation by fuel companies in response to Assembly Bill 32's implementation through several measures.

- Senior Assistant Attorney General Kathleen Foote was placed on the California Energy Commission's Petroleum Market Advisory Committee ("Committee").
 - Senior Assistant Attorney General Foote is the most senior antitrust specialist in the Attorney General's office.
 - The California Energy Commission is in charge of monitoring California's gasoline supply and pricing.
- The Petroleum Market Advisory Committee is charged with monitoring how the cap-and-trade system and other environmental regulations affect fuel prices.
 - The Committee looks closely at key petroleum pricing indicators such as: fuel exports, unused refinery capacity, price differentials between the Petroleum Administration for Defense Districts (PADD) 5 and non-California PADDs, crack spread, and gas price changes immediately pre- and post- January 1, 2015.
- Senior Assistant Attorney General Foote chairs the National Association of Attorneys General Antitrust Task Force.
 - The National Association of Attorneys General Antitrust Task Force monitors the markets nationwide for evidence of gas price manipulation.
- Senior Assistant Attorney General Foote, our Environment Law Section, and Natural Resources Law Section coordinate closely with the CARB to monitor and protect the cap-and-trade market from price manipulation.