

Submitted electronically

November 8, 2023

Director Laura Watson
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

RE: 2024 Agency Request Legislation Related to Carbon Market Linkage

Dear Director Watson,

The Nature Conservancy in Washington (TNC) played a key role in developing and passing the Climate Commitment Act (CCA). On behalf of our over 300,000 supporters in the state we continue to advocate for a strong cap and invest program that draws down greenhouse gasses and lowers air pollution in overburdened communities. We appreciate the opportunity to provide feedback on the proposed topics and public engagement process of the Department of Ecology's agency request legislation on CCA linkage.

After reviewing the materials provided by the Department of Ecology, we are concerned that there has been no stated or demonstrated need for this legislation to be put forward in the 2024 legislative session, especially just as conversations with California and Quebec are just beginning and will influence the policy details of legislation that may be needed to execute linkage. Many of these topics being proposed can and should be an early component of negotiations with California and Quebec. Some of the topics—such as the use and scale of offsets—are active discussions in California, where their legislature will be considering making their cap and invest system permanent and addressing issues that have arisen since their program's implementation.

As Department of Ecology says in their email with details on this proposed legislation, "California and Québec are both reassessing their cap-and-trade programs and may not finalize changes until after Washington's 2024 legislative session has concluded. At that point, we may need to make additional changes to the cap-and-invest program." As such, we believe it would be prudent and more efficient to wait until at least the 2025 session to bring forward comprehensive legislation that would encapsulate all needed changes to the CCA in order to implement linkage, as determined through completed negotiations.

Our recommendation is for the Department of Ecology to bring forward agency request legislation after completed negotiations with California and Quebec and an adequate Environmental Justice Assessment is able to inform the proposal. As we state in our May 15th, 2023 comment letter on potential linkage, negotiations between Washington, California, and Quebec should ensure linkage agreements and needed policy amendments maintain the integrity the Climate Commitment Act. We have serious concerns that agency request linkage legislation this upcoming legislative session has the potential to preemptively set Washington on

a path to weaken or undermine the integrity of the Climate Commitment Act.

An additional concern we'd like raise relates to Department of Ecology's obligation under the HEAL Act to conduct an Environmental Justice Assessment of agency request linkage legislation. This current public comment period is too brief and the proposals are too vague to adequately inform an Environmental Justice Assessment.

Environmental Justice Assessments, in part, rely on public input (RCW 70A.02.060(4)(d)). However, for that public input to be meaningful, there must be enough information, time, and opportunity for engagement to allow overburdened communities and vulnerable populations to have the ability to offer informed opinions about the proposed legislation.

In this circumstance, the description of the proposed legislation provided is too abstract to be able to fairly determine what impact proposed linkage legislation could have on overburdened communities and vulnerable populations. The Department of Ecology's materials even note that what materials have been provided is not a complete description of the full range of issues that may be addressed with the legislation—that the list of topics shared “reflects [Department of Ecology's] best current thinking of the topics to include in legislation, but it is not exhaustive” and, similarly, “an item's inclusion on this list is not a guarantee that it will be included in any potential future legislation.”

We recommend the Department of Ecology provide draft legislation text well in advance of a legislative session followed by an opportunity for robust public engagement to ensure the public input necessary to develop an adequate Environmental Justice Assessment able to inform agency request legislation before it becomes law.

As to specific feedback on the potential statutory amendments the Department of Ecology provided:

- We support clarifying that a covered entity may purchase all allowable offsets from projects on tribal land in Washington, not only the additional 3% after 5% of non-tribal offsets.
- We object to weakening CCA's market management provisions, as proposed by modifying the annual holding limits for general market participants. If linkage is intended to create market stability, this provision may weaken stability by allowing for market manipulation by general market participants. We would be remiss to simply modify this protection without any analysis or attempt to negotiate with California and Quebec.
- We believe existing CCA statute already requires that offset credits not providing direct environmental benefits in Washington “be located in a jurisdiction with which Washington has entered into a linkage agreement” and that need not be revised to facilitate linkage agreement. We would, however, encourage linkage negotiation with California and Quebec seek that those entities revise their programs to align with Washington's by assuring offset credits are generated on Tribal lands in those jurisdictions and also look to be consistent with the recommendations coming out of AB 398.
- We object to usurping the legislature's role in shaping the Climate Commitment Act, especially without the Department of Ecology providing any insight on what provisions they wish to change or justification on why this expanded authority is needed.

Thank you for considering our feedback. Please feel free to contact me at (703) 340-7553 or justin.allegro@tnc.org if you have any further questions on our comments.

Sincerely,

Justin Allegro
Policy Director
The Nature Conservancy in Washington