

Senate Environmental Quality Committee
1021 O Street, Room 3230
Sacramento, CA 95814

12 June 2024

Re: AB 2331 – Letter of Support

Dear Chairman Allen and Esteemed Members of the Committee:

The International Emissions Trading Association (IETA) is writing to express support for AB 2331. Our position has been updated in response to the amendments proposed on 6 June.

On behalf of IETA's over 300 business members with clean assets, investments and workforces across California and globally, we want to acknowledge the **significant efforts that have gone into improving AB 2331 to bringing much-needed clarifications to AB 1305**. We would like to express our gratitude for the author's receptiveness to our concerns, which have been expressed numerous times since the publication of AB 1305 last year.

IETA is particularly encouraged by the recent amendments introduced on June 6th. The amended bill addresses the majority of our priority concerns while taking aboard or finding compromise across numerous provisions. While we explicitly support the latest version AB 2331, we believe that **two (2) additional amendments** would further improve AB 2331 to ensure the legislation best achieves its stated intention while not penalizing actors operating in good faith. IETA's two recommended amendments are summarized below.

Safe Harbor Provision: We believe that AB 2331 should be amended to include the following safe harbor provision: "A person who is in full compliance with the provisions of AB2331 is exempt from liability under Cal. Bus.& Prof. §§ 17200, 17500-17509 and 17580-17581." We note that safe harbor provisions are common in California consumer protection laws. Additionally, California courts have been known to read a safe harbor provision into statute when the Legislature has not expressly included one¹. Including a safe harbor provision in the legislation will protect the regulated community and California's court system from

¹ A good example of this is the Ninth Circuit Court of Appeals decision in *Hodsdon v. Mars, Inc.*, 891 F.3d 857 (9th Cir. 2018), in which the Court found that the Mars' compliance with the disclosure requirements of California's Transparency in Supply Chains Act protected it from lawsuits under California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq., and the Consumer Legal Remedies Act, Cal. Civ. Code § 1750 et seq.

unnecessary and costly litigation, while providing critical guidance to the district attorneys that will be charged with enforcing AB 2331.

Further Clarification on Renewable Energy Certificates: Regarding the treatment of renewable energy certificates (RECs), our concern is that this language may not actually exclude RECs due to its mischaracterization of the REC issuance process. We're unclear on what it means for a REC to be issued "through an accounting system of a governmental regulatory body," as North American RECs are generally issued through independent tracking systems and not governmental regulatory bodies. We fear that this new language could actually implicate voluntary RECs under the bill's requirements rather than exclude them. Instead of introducing a new definition, we recommend referencing existing general statutory law. In particular, we recommend adopting the definition from the California Public Utilities Code (PUC) section 399.12(h), which defines RECs as "certificate[s] of proof associated with the generation of electricity from an eligible renewable energy resource."

Again, IETA sincerely appreciates all the work that has gone into improving AB 2331 to address concerns raised by the broader business community. **We respectfully view that the two amendments outlined above align with the intent of the other proposed amendments and would best enable AB 2331 to achieve its stated objectives.** IETA's positions and these valid concerns are shared in good faith, and we welcome the opportunity to share additional insights to support increased transparency and accountability in the voluntary carbon market.

Sincerely,



Dirk Forrister
President and CEO
IETA