

PRIVILEGED & CONFIDENTIAL

**COMMON INTEREST AGREEMENT REGARDING THE SHARING OF
INFORMATION IN CONNECTION WITH ISSUES RELATING TO *UNITED
STATES v. CALIFORNIA, et al.*, No. 2:19-cv-02142-WBS-EFB, EASTERN
DISTRICT OF CALIFORNIA**

The parties to this common interest agreement (the “Agreement”), specifically the States of California¹, Colorado, Illinois, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Vermont, and Washington, the Commonwealth of Massachusetts, the Commonwealth of Pennsylvania, and any other State, municipality, or other governmental entity that completes the attached Addendum (each “Party” or collectively “Parties”), are or anticipate participating in the matter *United States v. California et al.*, No. 2:19-cv-02142-WBS-EFB, Eastern District of California, and any successor proceedings or related actions (together, “the Litigation”).

The Parties to this Agreement have a common interest in states’ lawful implementation and enforcement of policies, rules, agreements, and other actions to reduce greenhouse gas emissions and address the adverse impacts of climate change within their respective jurisdictions; the preservation of the Parties’ regulatory authority to promote, among other things, the health and safety of our residents, and protect our environment and natural resources; and the preservation of the Parties’ rights to enter into voluntary and cooperative agreements with other jurisdictions. The Parties thus have a common interest in advocating the Parties’ interests in administrative proceedings or judicial litigation that affect the Parties’ interests set forth above, including without limitation the Litigation. This work has required and will continue to require the sharing of information, legal analyses, draft briefs, and other documents among the Parties. The Parties wish to pursue their common interest throughout the preparations for, and the course of, any administrative and judicial proceedings involving these issues by exchanging privileged materials, while avoiding any waiver of the confidentiality of those privileged materials. The Parties agree to share information for the purpose of advancing their common interest, to keep such information and materials confidential, and to protect any privileges attaching to such information and materials to the extent authorized by law. The Parties also agree that the sharing of information, both written and oral, among their governing boards, staff, management, consultants, experts, clients, and counsel will further their common objectives.

Both federal and state law provide for the sharing of confidential and/or privileged information² among those with common interests during the course of and in anticipation of litigation, without a waiver of any otherwise applicable privileges, protections, immunities, and exemptions from disclosure, so that the claims and defenses of the parties may be thoroughly investigated and prepared without giving undue

¹ For purposes of the Agreement, the “State of California” is defined to include: the State of California, Gavin Newsom, in his capacity as Governor of California, the California Air Resources Board (CARB), Mary D. Nichols, in her official capacity as Chair of CARB, and Jared Blumenfeld, in his official capacity as California Secretary of Environmental Protection.

² “Information,” as used in this Agreement, is defined below.

advantage to the opposing side. Maintaining such confidentiality is necessary for the accomplishment of the Parties' objectives with respect to the Litigation. This document sets forth the Agreement under which the Parties and their respective governing boards, staff, management, consultants, experts, clients, and counsel will manage and protect confidential and/or privileged information shared and exchanged in preparing for, and during the course of, the Litigation.

THEREFORE, the Parties agree as follows:

1. **Parties.** The Parties to this Agreement are the States of California, Illinois, Maryland, Michigan, Minnesota, New Jersey, New Mexico, New York, Oregon, Vermont, and Washington, the Commonwealth of Massachusetts, Gavin Newsom, in his capacity as Governor of California, the California Air Resources Board (CARB), Mary D. Nichols, in her official capacity as Chair of CARB, and Jared Blumenfeld, in his official capacity as California Secretary of Environmental Protection, and any other State, municipality, or other governmental entity that completes the attached Addendum and circulating a copy to all Parties, as set forth in paragraph 11.

2. **Purpose.** The Parties share the common interests and goals described above, and their work in connection with the Litigation presents common issues of fact and law. The Parties recognize that the sharing and disclosure of confidential and/or privileged information among them, both in preparation for and during litigation in the United States District Court for the Eastern District of California and any other courts, including other United States Courts of Appeals and the U.S. Supreme Court, is essential to the pursuit of their common interest in this matter. The purpose of this Agreement is to ensure that the confidential and/or privileged information shared will be used in preparing for and developing effective legal positions (which may be joint but may not always involve all Parties), including development of litigation strategy and the preparation of legal briefs and other court filings, and other documents among the Parties, and that this confidential and/or privileged information will not be disclosed to third parties or otherwise disclosed such that any privileges or other basis for confidentiality attached to these communications and documents are waived.

3. **"Information,"** as used in this Agreement, refers to any and all documents, materials, information, and communications, whether oral or written, electronic or paper, or otherwise. "Information" includes, but is not limited to, documents, materials, information, and communications exchanged among the Parties' governing boards, staff, management, consultants, experts, clients, and/or counsel.

4. **"Confidential and/or privileged information"** is information provided by or exchanged between one Party and another with the expectation of confidentiality and which is subject to one or more applicable privileges, protections, immunities, or exemptions from disclosure, including but not limited to, the attorney-client, attorney work product, deliberative process, and official information privileges and protections. "Confidential and/or privileged information" shall include information provided by or exchanged between the Parties prior to the execution of this Agreement. The signing of this Agreement shall not waive any applicable privilege, protection, immunity or

exemption from disclosure or otherwise affect the status of “confidential and/or privileged information” exchanged prior to the signing of this Agreement by the Parties.

5. **“Common Interest Privilege,”** as used in this Agreement means the privilege arising from the common interests of the Parties in preparing for, participating in, and conducting the Litigation, including but not limited to the common interest privilege recognized in cases such as *Schaeffler v. United States*, 806 F.3d 34, 40 (2d Cir. 2015); *Waller v. Financial Corp. of America*, 828 F.2d 579, 583, n.7 (9th Cir. 1987); *Hunydee v. United States*, 355 F.2d 183 (9th Cir. 1965); *Continental Oil Company v. United States*, 330 F.2d 347 (9th Cir. 1964); *Minebea Co. v. Pabst*, 228 F.R.D. 13, 15 (D.D.C. 2005); *Ken’s Foods, Inc. v. Ken’s Steak House, Inc.*, 213 F.R.D. 89, 93-94 (D. Mass. 2002); *Hanover Ins. Co. v. Rapo & Jepsen Ins. Serv., Inc.*, 870 N.E.2d 1105, 1109 (Mass. 2007); and in Federal Rule of Evidence 501.

To avoid misunderstandings or inadvertent disclosure, all documents exchanged pursuant to this Agreement should bear the legend **“Confidential – Protected by Common Interest Privilege”** or words to that effect. However, the absence of such a legend shall not waive any privilege or protection available under this Agreement or otherwise. In addition, any Party may, where appropriate, also label documents exchanged pursuant to this Agreement with other appropriate legends, such as, for example, “Attorney-Client Privileged” or “Attorney Work Product.” Oral communications among the Parties regarding the matters covered by this Agreement shall be deemed confidential and/or privileged information and protected under this Agreement.

6. **Non-Disclosure.** The Parties agree to protect all information exchanged among them regarding the matters covered by the Agreement, regardless of whether such communications or document exchanges occurred before or after the effective date of this Agreement, as confidential and privileged to the maximum extent allowable under applicable law, based upon all applicable privileges including, but not limited to, the attorney-client privilege, attorney work-product protections, joint defense privilege, and governmental privileges including, but not limited to, the deliberative process privilege where applicable (hereinafter “Protected Information”). Subject to the terms in this Agreement, including paragraphs 7 and 8, any Party who becomes aware of any inadvertent, improper, or unauthorized disclosure of materials or information exchanged pursuant to this Agreement shall immediately notify the other Parties to the Agreement and demand the return of the materials or information from the non-party to whom it was disclosed. Pursuant to this Agreement, rights in the confidentiality of Protected Information, and the confidences attached thereto, have not and will not be waived except as provided in paragraph 7 of the Agreement. Any inadvertent disclosure of Protected Information that is inconsistent with this Agreement shall not waive any privilege applicable to such Protected Information.

7. **Use of Protected Information.** Protected Information is to be used by the recipient of the information solely in connection with preparing, discussing and presenting the Parties’ positions regarding the Litigation. Protected Information may not be shared by a recipient with any non-party to this Agreement without prior written waiver from all Parties to this Agreement, unless the relevant Party determines that disclosure is: (i) required by applicable

law, and (ii) not otherwise covered by paragraph 8 concerning Requests for Release and/or Disclosure. If the relevant Party determines the disclosure is required by applicable law and not otherwise covered by paragraph 8, then it agrees to use its best efforts, as permitted by applicable law, to provide notice at least seven calendar days in advance to all Parties to this Agreement prior to disclosure. Notwithstanding the foregoing, any Party may release, disclose, discuss, or make available Protected Information to or with its governing body, staff, management, consultants, experts, clients, and/or counsel who have a need for such information as part of their responsibilities associated with the Litigation, provided that any such persons are notified of their obligation to keep such Protected Information confidential pursuant to this Agreement.

8. **Requests for Release and/or Disclosure.** The Parties agree and acknowledge that each Party is subject to freedom of information or public records laws, and that nothing in this Agreement is intended to alter or limit the disclosure requirements of such laws. A Party who receives a request from a nonparty to release, disclose, discuss, or obtain access to any information, including this Agreement and Protected Information under this Agreement (whether by way of a subpoena, discovery request, or request under any federal or state statute) shall use its best efforts, as permitted by applicable law, to provide notice, at least five calendar days prior to the date on which response to such request is due, to all Parties to this Agreement. Unless the other Parties consent to disclosure or release of Protected Information, the Party receiving the request for disclosure shall assert, to the extent authorized by law, and subject to any mandatory disclosure laws or court orders, all relevant and applicable privileges and other objections that the Party receiving the request determines are relevant and applicable to the disclosure of such information.

9. **No Agency or Additional Attorney-Client Relationships.** This Agreement shall not create any agency or similar relationship among the Parties. Nor shall this Agreement alter the existing attorney-client relationships among the Parties or create any new attorney-client relationships. No Party shall have authority to waive any applicable privilege or other confidentiality protection on behalf of any other Party; nor shall any waiver of an applicable privilege or protection by the conduct of any Party be construed to apply to any other Party. Nothing in this Agreement is intended or shall be construed to obligate any of the Parties to disclose or share any information or material relating to the Litigation.

10. **Enforcement.** The Parties agree that a breach of a provision of this Agreement by a Party may cause irreparable harm to the other Parties and therefore agree that injunctive relief is the appropriate means to enforce this Agreement and that money damages would be inadequate. No Party shall be subject to any claim for damages as a result of a breach of this Agreement.

11. **Modification.** It is agreed that any modifications to this Agreement shall be in writing and signed by all Parties. The inclusion of other entities to this Agreement shall not be considered a modification and shall be accomplished by having the new Party execute the attached Addendum and distribute a copy to all Parties; provided, however, that if any existing Party to this agreement provides written notice of its objection within five business days of receipt of notice of the prospective party's execution of such

Addendum, the execution of the Addendum by the prospective party shall be considered a Modification requiring the signature of all Parties in order to become effective.

12. **Integration.** This written Agreement memorializes the entirety of the Parties' pre-existing oral agreement regarding the confidentiality of their communications. It is agreed that this Agreement itself, any amendments thereto, and all discussions among the Parties related to the Agreement are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine.

13. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, in whole or in part, such determination shall not affect the validity of any other provision of this Agreement.

14. **Termination.** Any Party to the Agreement may terminate its participation in this Agreement upon written notice to the other Parties. In such instance, the terminating Party and its counsel will continue to be bound by this Agreement with regard to any Protected Information received prior to the termination.

15. **Nondisqualification Agreement.** The Parties agree that no Party or attorney for a Party to this Agreement may attempt to use, in any other legal matter or proceeding which is not related to the subject matter of this Agreement, either the fact of the Agreement or any information learned as a result of this Agreement as a reason to disqualify any other lawyer or law firm acting as counsel in such other legal matter or proceeding.

16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall constitute an original hereof, and all counterparts so executed shall collectively constitute one binding agreement of the Parties, notwithstanding that all Parties are not signatory to the same counterpart.

17. **Effective Date.** This Agreement becomes effective on the last date of execution by the Parties. This Agreement becomes effective as to each subsequently signing Party as of the date that each subsequently signing Party executes the attached Addendum. However, the Parties agree that all privileged, protected, or immune information previously disclosed by one Party to another Party in connection with the covered matters is fully subject to this Agreement.

It is so AGREED.

Addendum, the execution of the Addendum by the prospective party shall be considered a Modification requiring the signature of all Parties in order to become effective.

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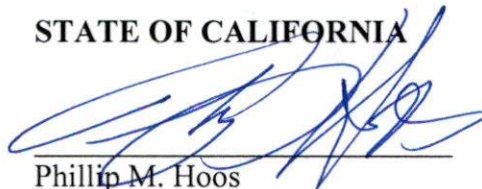
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It is so AGREED.

Dated: January 7, 2020

STATE OF CALIFORNIA



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For the State of California

Dated: January __, 2020

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Dated: January 2, 2020

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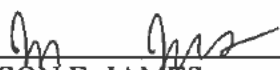
Dated: January 6, 2020

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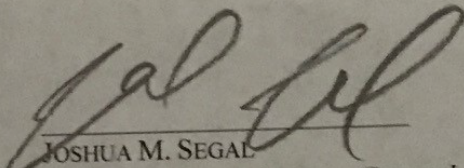
Dated: January 10, 2020

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STATE OF MINNESOTA

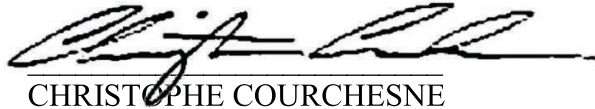
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Dated: January __, 2020

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Dated: January 2, 2020

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Dated: January __, 2020

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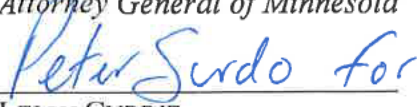
Dated: January __, 2020

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Dated: January 3, 2020

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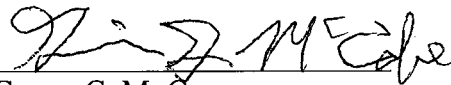
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STATE OF NORTH CAROLINA

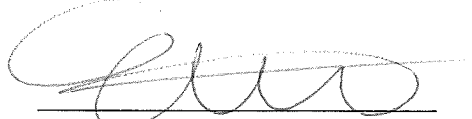
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STATE OF NEW MEXICO

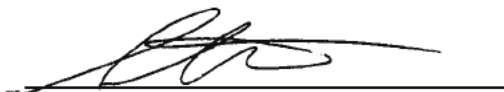
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Dated: January 10, 2020

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Dated: January 28, 2020

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Dated: December __, 2019

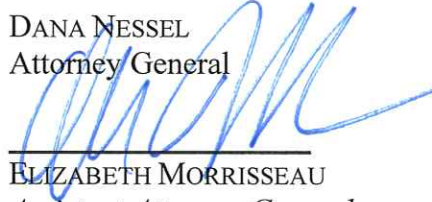
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**PEOPLE OF THE STATE OF
MICHIGAN**

Dated: January 2, 2020

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**COMMONWEALTH OF
PENNSYLVANIA**

Dated: January __, 2020

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**PEOPLE OF THE STATE OF
MICHIGAN**

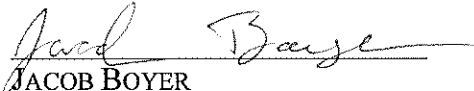
Dated: January __, 2020

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**COMMONWEALTH OF
PENNSYLVANIA**

Dated: January 8 2020


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Dated: January 6, 2020

STATE OF VERMONT



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Assistant Attorney General
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ADDENDUM

**TO COMMON INTEREST AGREEMENT REGARDING THE SHARING
OF INFORMATION RELATING TO *U.S. v. CALIFORNIA*, EASTERN
DISTRICT OF CALIFORNIA, No. 2:19-cv-02142-WBS-EFB**

_____, by and through _____, desires to become a Party to the attached Agreement.

Now, therefore, counsel for _____, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: _____

NAME OF PARTY:

By: _____

Name:

Title:

Address:

ADDENDUM

**TO COMMON INTEREST AGREEMENT REGARDING THE SHARING
OF INFORMATION RELATING TO *U.S. v. CALIFORNIA*, EASTERN
DISTRICT OF CALIFORNIA, No. 2:19-cv-02142-WBS-EFB**

The State of Delaware, by and through Kathleen Jennings, Attorney General of the State of Delaware, desires to become a Party to the attached Agreement.

Now, therefore, counsel for The State of Delaware, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: January 15, 2020

NAME OF PARTY: State of Delaware

By: 
Name: Jameson A.L. Tweedie
Title: Special Assistant Deputy Attorney General
Address: 391 Lukens Drive
New Castle, DE 19803
302-395-2521
Jameson.tweedie@delaware.gov

ADDENDUM

**TO COMMON INTEREST AGREEMENT REGARDING THE SHARING
OF INFORMATION RELATING TO *U.S. v. CALIFORNIA*, EASTERN
DISTRICT OF CALIFORNIA, No. 2:19-cv-02142-WBS-EFB**

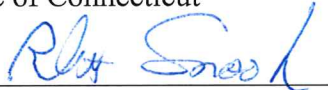
The State of Connecticut, by and through the Office of the Attorney General,
desires to become a Party to the attached Agreement.

Now, therefore, counsel for State of Connecticut, agrees to the terms of the
Agreement and to deliver copies of this executed Addendum to all Parties to the
Agreement within five business days.

DATED: 1/14/2020

NAME OF PARTY:

State of Connecticut

By: 

Name: Robert Snook

Title: Assistant Attorney General

Address: 165 Capitol Ave.
Hartford, CT 06106

ADDENDUM

TO COMMON INTEREST AGREEMENT REGARDING THE SHARING
OF INFORMATION RELATING TO *U.S. v. CALIFORNIA*, EASTERN
DISTRICT OF CALIFORNIA, No. 2:19-cv-02142-WBS-EFB

The State of Wisconsin, by and through the Wisconsin Attorney General, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Wisconsin, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: January 22, 2020

NAME OF PARTY:

STATE OF WISCONSIN
Joshua L. Kaul
Wisconsin Attorney General

By: 

Gabe Johnson-Karp
Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
P: (608) 267-8904
F: (608) 267-2223
johnsonkarp@doj.state.wi.us

ADDENDUM

**TO COMMON INTEREST AGREEMENT REGARDING THE SHARING
OF INFORMATION RELATING TO *U.S. v. CALIFORNIA*, EASTERN
DISTRICT OF CALIFORNIA, No. 2:19-cv-02142-WBS-EFB**

The State of Rhode Island, by and through Attorney General Peter F. Neronha, desires to become a Party to the attached Agreement.

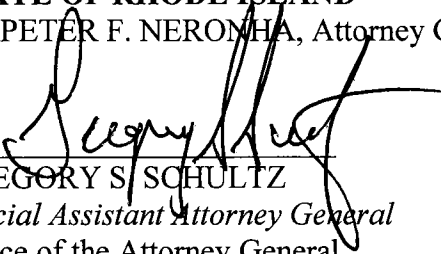
Now, therefore, counsel for the State of Rhode Island, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: 1/28/2020

NAME OF PARTY:

STATE OF RHODE ISLAND

By: PETER F. NERONHA, Attorney General

By: 
GREGORY S. SCHULTZ
Special Assistant Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400
gschultz@riag.ri.gov

ADDENDUM

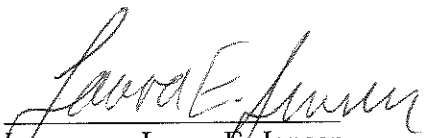
**TO COMMON INTEREST AGREEMENT REGARDING THE SHARING
OF INFORMATION RELATING TO *U.S. v. CALIFORNIA*, EASTERN
DISTRICT OF CALIFORNIA, No. 2:19-cv-02142-WBS-EFB**

The State of Maine, by and through the Office of the Attorney General, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the State of Maine agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: February 3, 2020

NAME OF PARTY: State of Maine

By: 
Name: Laura E. Jensen
Title: Assistant Attorney General
Address: 6 State House Station
Augusta, ME 04333
(207) 626-8868
Laura.Jensen@maine.gov

ADDENDUM

**TO COMMON INTEREST AGREEMENT REGARDING THE SHARING
OF INFORMATION RELATING TO *U.S. v. CALIFORNIA*, EASTERN
DISTRICT OF CALIFORNIA, No. 2:19-cv-02142-WBS-EFB**

The District of Columbia, by and through the Office of the Attorney General for the District of Columbia, desires to become a Party to the attached Agreement.

Now, therefore, counsel for the District of Columbia, agrees to the terms of the Agreement and to deliver copies of this executed Addendum to all Parties to the Agreement within five business days.

DATED: 2/6/20

NAME OF PARTY: Karl A. Racine, Attorney General for the District of Columbia

By: 

Name: Sarah Kogel-Smucker

Title: Special Assistant Attorney General

Address: 441 4th Street, NW, Washington DC 20008

PRIVILEGED & CONFIDENTIAL

COMMON INTEREST AGREEMENT REGARDING SHARING OF INFORMATION FOR ADMINISTRATIVE PROCEEDINGS AND ANTICIPATED LITIGATION OPPOSING GUIDANCE AND RULEMAKING OF THE COUNCIL ON ENVIRONMENTAL QUALITY REGARDING THE NATIONAL ENVIRONMENTAL POLICY ACT

The parties to this common interest agreement (the “Agreement”), specifically the States of California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, the Commonwealth of Massachusetts, the Commonwealth of Pennsylvania, and the District of Columbia, and any other State, municipality, or other governmental entity that completes the attached Addendum (collectively “Parties”), anticipate being involved as participants and/or litigants, or counsel for participants and/or litigants, in administrative and/or judicial proceedings and/or challenges that have been brought or are expected to be brought addressing actions by the Council on Environmental Quality (“CEQ”) to propose or promulgate a rule, propose or issue guidance or take other action revising National Environmental Policy Act (“NEPA”) regulations or guidance. The CEQ actions include, but are not limited to, the advance notice of proposed rulemaking entitled “Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act,” 83 Fed. Reg. 28591 (June 20, 2018) (“Advance Notice”), and “Draft [NEPA] Guidance on Consideration of Greenhouse Gas Emissions,” 84 Fed. Reg. 30,097 (June 26, 2019) (“Draft GHG Guidance”). The current and future actions taken by the Parties in commenting on and/or challenging CEQ’s guidance, regulations and related agency actions are referred to herein as the “Covered Matters.”

The Parties to this Agreement have a common interest in the Covered Matters to ensure CEQ does not weaken environmental protections for the Parties and their citizens, or impair other sovereign, quasi-sovereign and proprietary interests. The Parties therefore have a common interest in the Covered Matters, including critiquing and opposing CEQ’s regulations or guidance regarding NEPA, which the Parties believe could weaken the environmental protectiveness of the statute. The Covered Matters have required and will continue to require the sharing of information, legal analyses, draft documents, draft administrative comments, draft briefs, draft court filings, correspondence and/or other documents among the Parties. The Parties have previously agreed to hold confidential all of their oral and written communications regarding the Covered Matters and hereby reduce that agreement to writing. In so doing, the Parties intend that all prior written or oral communications on Covered Matters remain confidential and subject to their common interest privilege and other applicable privileges and protections from disclosure. The Parties wish to continue pursuing their common interest throughout the preparations for, and the course of, the Covered Matters by exchanging privileged materials, while avoiding any waiver of the privileged nature of those privileged materials. The Parties agree to share information for the purpose of advancing their common interest, to keep such information and materials confidential, and to protect any privileges attaching to such information and materials to the extent authorized by law. The Parties also agree that the sharing of information, both written and oral, among their governing boards, staff, management, consultants, experts, clients, and counsel will further their common objectives.

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Both federal and state law provide for the sharing of confidential and/or privileged information¹ among those with common interests during the course of and in anticipation of litigation, without a waiver of any otherwise applicable privileges, protections, immunities, and exemptions from disclosure, so that the claims and defenses of the parties may be thoroughly investigated and prepared without giving undue advantage to the opposing side. Maintaining such confidentiality is necessary for the accomplishment of the Parties' objectives with respect to the Covered Matters. This document sets forth the agreement under which the Parties and their respective governing boards, staff, management, consultants, experts, clients, and counsel will manage and protect confidential and/or privileged information shared and exchanged in preparation for, and during the course of, the Covered Matters.

THEREFORE, the Parties to this Agreement, through their duly authorized undersigned counsel, hereby agree to the following, effective as of the date below, regardless of when signed.

1. **Parties.** The Parties to this Agreement are the States of California, Colorado, Delaware, Illinois, Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Vermont, Washington, the Commonwealth of Massachusetts, the Commonwealth of Pennsylvania, the District of Columbia and the Pennsylvania Department of Environmental Protection, and any other State, municipality, or other governmental entity that joins this Agreement by executing the attached Addendum and circulating a copy to all Parties, as set forth in paragraph 11.

2. **Purpose.** The Parties share common interests and goals in commenting on, critiquing and opposing the Advance Notice, which, if eventually resulting in a final agency action, the Parties believe could weaken the environmental protectiveness of numerous federal agency rulemakings and other actions. The Parties have a common interest in the Covered Matters, which may include commenting on and opposing CEQ's regulations and/or guidance regarding NEPA, via administrative regulatory actions or legal challenges before the United States Court of Appeals for the D.C. Circuit and any other courts, including the United States Supreme Court. The Parties' comment upon and/or challenge of CEQ's actions present common issues of fact and law. The Parties recognize that the sharing and disclosure of privileged and confidential information among them is essential in the Covered Matters. The purpose of this Agreement is to ensure that the privileged and/or confidential information shared will be used for developing efficient joint comments and oppositions, including development of substantive comments and other administrative filings, litigation strategy and the preparation of legal briefs, other court filings, and other documents among the Parties, and that this privileged and/or confidential information will not be disclosed to third parties or otherwise disclosed such that any privileges or other basis for confidentiality attached to these communications and documents are waived.

3. **"Information,"** as used in this Agreement, refers to any and all documents, materials, information, and communications, whether oral or written, electronic or paper. "Information" includes, but is not limited to, documents, materials, information, and

¹ "Confidential and/or privileged information" as used in this Agreement, is defined below.

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communications exchanged among the Parties' governing boards, staff, management, consultants, experts, clients, and/or counsel.

4. **"Confidential and/or privileged information"** is information provided by or exchanged between one Party and another with the expectation of confidentiality and which is subject to one or more applicable privileges, protections, immunities, or exemptions from disclosure, including but not limited to, the attorney-client, attorney work product, deliberative process, and official information privileges and protections. "Confidential and/or privileged information" shall include information provided by or exchanged between the Parties prior to the execution of this agreement. The signing of this Agreement shall not waive any applicable privilege, protection, immunity or exemption from disclosure or otherwise affect the status of "confidential and/or privileged information" exchanged prior to the signing of this Agreement by the Parties.

5. **"Common Interest Privilege,"** as used in this agreement means the privilege arising from the common interests of the Parties in preparing for and conducting the Covered Matters, including but not limited to the common interest privilege recognized in cases such as *Schaeffler v. United States*, 806 F.3d 34, 40 (2d Cir. 2015); *Waller v. Financial Corp. of America*, 828 F.2d 579, 583 n.7 (9th Cir. 1987); *Hunydee v. United States*, 355 F.2d 183 (9th Cir. 1965); *Continental Oil Company v. United States*, 330 F.2d 347 (9th Cir. 1964); *Loustalet v. Refco, Inc.*, 154 F.R.D. 243 (C.D. Cal. 1993); *Minebea Co. v. Papst*, 228 F.R.D. 13, 15 (D.D.C. 2005); *Ken's Foods, Inc. v. Ken's Steak House, Inc.*, 213 F.R.D. 89, 93-94 (D. Mass. 2002); *Hanover Ins. Co. v. Rapo & Jepsen Ins. Servs., Inc.*, 870 N.E.2d 1105, 1109 (Mass. 2007); *Raytheon Company v. Superior Court*, 208 Cal. App. 3d 683 (1989); *Ins. Co. of N. Am. v. Superior Court*, 108 Cal.App.3d 758, 765, n.1 (1980); *O'Boyle v. Borough of Longport*, 218 N.J. 168 (2014); Fed. R. Evid. 501.

To avoid misunderstandings or inadvertent disclosure, all documents exchanged pursuant to this agreement should bear the legend **"Confidential – Protected by Common Interest Privilege"** or words to that effect. However, the failure to include such a legend, including on documents or correspondence exchanged between Parties prior to the execution of this Agreement, shall not waive any privilege or protection available under this agreement or otherwise. In addition, any Party may, where appropriate, also label documents exchanged pursuant to this Agreement with other appropriate legends, such as, for example, "Attorney-Client Privileged" or "Attorney Work Product." Oral communications among the Parties regarding the Litigation shall also be deemed confidential and protected under this Agreement.

6. **Non-Disclosure.** The Parties agree to protect all communications and documents exchanged among them regarding the Covered Matters (hereinafter "Protected Information"), regardless of whether such communications or document exchanges occurred before or after the effective date of this Agreement, as confidential and privileged to the maximum extent allowable under applicable law, based upon all applicable privileges including, but not limited to, the attorney-client privilege, attorney work-product protections, joint defense privilege, and governmental privileges including, but not limited to, the deliberative process privilege where applicable. Pursuant to this Agreement, rights in the confidentiality of Protected Information, and the confidences attached thereto, have not and will not be waived except as provided in paragraph

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7 of the Agreement. Any inadvertent disclosure of Protected Information that is inconsistent with this Agreement shall not waive any privilege applicable to such Protected Information.

7. **Use of Protected Information.** Protected Information is to be used by the recipient of the information solely in connection with preparing and presenting the Parties' positions related to the Covered Matters, including but not limited to commenting upon CEQ's Advance Notice and any subsequent related rulemaking, commenting on the Draft GHG Guidance or other administrative documents, and challenging any final rule, guidance, or other administrative policy document that is thereafter promulgated. Protected Information may not be shared by a recipient with any non-party to this Agreement without prior written waiver by all Parties to this Agreement, unless the relevant Party determines that disclosure is (i) required by applicable law, and (ii) not otherwise covered by paragraph 8, *infra*, concerning Requests for Release and/or Disclosure. If the relevant Party determines the disclosure is required by applicable law and not otherwise covered by paragraph 8, *infra*, then it agrees to use its best efforts, as permitted by applicable law, to provide notice at least seven calendar days in advance, to all Parties to this Agreement prior to disclosure.

8. **Requests for Release and/or Disclosure.** The Parties agree and acknowledge that each Party is subject to freedom of information or public records laws, and that nothing in this Agreement is intended to alter or limit the disclosure requirements of such laws. A Party who receives a request from a non-party to release, disclose, discuss, or obtain access to any information, including Protected Information (whether by way of a subpoena, discovery request, or request under any federal or state statute) shall use its best efforts to, as permitted by applicable law, to provide notice, at least seven calendar days prior to the date on which response to such a request is due, to all Parties to the Agreement. Unless the other Parties consent to disclosure or release of Protected Information, the Party receiving the request for disclosure shall assert, to the extent authorized by law, and subject to any mandatory disclosure laws or court orders, all relevant and applicable privileges and other objections that the Party receiving the request determines are relevant and applicable to the disclosure of such information.

9. **No Agency or Additional Attorney-Client Relationships.** This Agreement shall not create any agency or similar relationship among the Parties. Nor shall this Agreement alter the existing attorney-client relationships among the Parties or create any new attorney-client relationships. No Party shall have authority to waive any applicable privilege or other confidentiality protection on behalf of any other Party; nor shall any waiver of an applicable privilege or protection by the conduct of any Party be construed to apply to any other Party. Nothing in this Agreement is intended or shall be construed to obligate any of the Parties to disclose or share any information or material relating to the Covered Matters.

10. **Enforcement.** The Parties agree that a breach of a provision of this Agreement by a Party may cause irreparable harm to the other Parties and therefore agree that injunctive relief is the appropriate means to enforce this Agreement. No Party shall be subject to any claim for damages as a result of a breach of this Agreement.

11. **Modification.** It is agreed that any modifications to this Agreement shall be in writing and signed by all Parties. The inclusion of additional states, municipalities, or other

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governmental entities to this Agreement shall not be considered a modification and shall be accomplished by having the new party execute the attached Addendum and distribute a copy to all Parties.

12. **Integration.** This written Agreement memorializes the entirety of the Parties' pre-existing oral agreement regarding the confidentiality of their communications. It is agreed that this Agreement itself, any amendments thereto, and all discussions among the Parties related to the Agreement are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine.

13. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, in whole or in part, such determination shall not affect the validity of any other provision of this Agreement.

14. **Termination.** Any Party to the Agreement may terminate this Agreement upon written notice to the other Parties. In such instance, the terminating Party and its counsel will continue to be bound by this Agreement with regard to any Protected Information received prior to the termination.

15. **Nondisqualification Agreement.** The Parties agree that no Party or attorney for a Party to this Agreement may attempt to use, in any other legal proceeding or cause, either the fact of the Agreement or any information learned as a result of the Covered Matters as a reason to disqualify any other lawyer or law firm acting as counsel in the above-captioned case from acting as legal counsel in any other legal matter or proceeding.

16. **Counterparts.** This Agreement may be executed in counterparts.

17. **Effective Date.** This Agreement becomes effective on the last date of execution by the Parties. This Agreement becomes effective as to any additional party on the date such party executes the attached Addendum. All of the Parties' communications with each other concerning the Covered Matters made prior to execution of this Agreement are fully subject to this Agreement.

It is so AGREED.

EXECUTION COPY

Dated: August 20, 2019

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General

By:



SARAH MORRISON
Supervising Deputy Attorney General
JAMIE JEFFERSON
JULIA FORGIE
Deputy Attorneys General
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel. (213) 269-6328
Sarah.Morrison@doj.ca.gov
Jamie.Jefferson@doj.ca.gov
Julia.Forgie@doj.ca.gov

Dated: August _____, 2019

FOR THE STATE OF COLORADO

PHILIP J. WEISER
Attorney General

By:

Assistant Attorney General
Colorado Department of Law
1300 Broadway
Denver, CO 80203

EXECUTION COPY

Dated: August _____, 2019

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General

By:


SARAH MORRISON
Supervising Deputy Attorney General
JAMIE JEFFERSON
JULIA FORGIE
Deputy Attorneys General
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Tel. (213) 269-6328
Sarah.Morrison@doj.ca.gov
Jamie.Jefferson@doj.ca.gov
Julia.Forgie@doj.ca.gov

Dated: August 23, 2019

FOR THE STATE OF COLORADO

PHILIP J. WEISER
Attorney General

By:



Amy W. Beatie
Deputy Attorney General
Natural Resources and Environment Section
Colorado Department of Law
1300 Broadway, 7th Floor Denver, CO 80203
Tel: (720) 508-6295
Email: amy.beatie@coag.gov

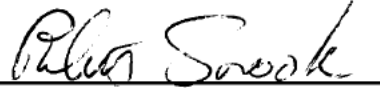
EXECUTION COPY

Dated: August 23, 2019

FOR THE STATE OF CONNECTICUT

WILLIAM TONG
Attorney General

By:



Robert Snook
Robert Snook
Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, Connecticut 06141-0120
(860) 808-5250
Robert.Snook@ct.gov


EXECUTION COPY

Dated: August 21, 2019

FOR THE STATE OF DELAWARE

Kathleen Jennings
Attorney General

By:



Jameson Tweedie
Special Assistant Deputy Attorney General
Delaware Department of Justice
391 Lukens Drive
New Castle, DE 19720
Email: Jameson.tweedie@delaware.gov
Phone: 302-395-2521

Dated: August _____, 2019

FOR THE DISTRICT OF COLUMBIA

KARL RACINE
Attorney General for the District of
Columbia

By:

SARAH KOGEL-SMUCKER
Special Assistant Attorney General
Office of the Attorney General
441 4th Street, N.W., Suite 630 South
Washington, D.C. 20001
(202) 724-9727
sarah.kogel-smucker@dc.gov

EXECUTION COPY

Dated: August _____, 2019

FOR THE STATE OF DELAWARE

Attorney General

By:


VALERIE EDGE
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904
Email: Valerie.edge@state.de.us
Phone: 302-739-4636
Direct: 302-257-3219

Dated: August 14, 2019

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General for the District of
Columbia

By:



SARAH KOGEL-SMUCKER
Special Assistant Attorney General
Office of the Attorney General
441 4th Street, N.W., Suite 630 South
Washington, D.C. 20001
(202) 724-9727
sarah.kogel-smucker@dc.gov

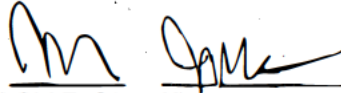
EXECUTION COPY

Dated: August 12, 2019

FOR THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General

By:



JASON E. JAMES
Assistant Attorney General
Office of the Attorney General
69 W. Washington St., Ste. 1800
Chicago, IL 60602

Dated: August _____, 2019

FOR THE STATE OF MARYLAND

BRIAN E. FROSH
Attorney General

By:

JOSHUA M. SEGAL
Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202
jsegal@oag.state.md.us
(410) 576-6300

EXECUTION COPY

Dated: August____, 2019

FOR THE STATE OF ILLINOIS

KWANE RAOUL
Attorney General

By: _____

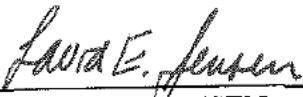
JASON E. JAMES
Assistant Attorney General
Office of the Attorney General
69 W. Washington St., Ste. 1800
Chicago, IL 60602

Dated: September 17, 2019

FOR THE STATE OF MAINE

AARON M. FREY
Attorney General

By: _____


LAURA E. JENSEN
Assistant Attorney General
Office of the Maine Attorney General
6 State House Station
Augusta, ME 04333
(207) 626-8868
laura.jensen@maine.gov

EXECUTION COPY

Dated: August _____, 2019

FOR THE STATE OF ILLINOIS

Attorney General

By:


DANIEL I. ROTTENBERG
Assistant Attorney General
Office of the Attorney General
69 W. Washington St., Ste. 1800
Chicago, IL 60602

Dated: ~~August~~ ^{Sept} 9, 2019

FOR THE STATE OF MARYLAND

BRIAN E. FROSH
Attorney General

By:



STEVEN J. GOLDSTEIN
JOSHUA M. SEGAL
Special Assistant Attorneys General
Office of the Attorney General
200 Saint Paul Place
Baltimore, MD 21202
sgoldstein@oag.state.md.us
jsegal@oag.state.md.us
(410) 576-6300