

Final – Approved May 8, 2013

# Minutes of the Annual Meeting of the Board of Directors

## December 11, 2012

The Western Climate Initiative, Inc. Board of Directors (the “Board”) held their annual meeting on December 11, 2012 in Quebec City, QC.

The meeting was called to order by the Chair, James Goldstene, at approximately 11:20 a.m. Eastern Time. Since he was participating by phone, Mr. Goldstene asked Director Matt Rodriguez to chair the meeting. Lydia Dobrovolny kept the minutes of the meeting.

### Attendance

The following Directors were present, constituting a quorum pursuant to the By-Laws:

- James Goldstene (Chair, by phone)
- Jean-Yves Benoit (Treasurer)
- Tim Lesiuk, Secretary (by phone)
- Charles Larochelle
- Matthew Rodriguez
- Jessica Verhagen (alternate for James Mack, by phone)

Also present were:

- Mary Nichols and Michael Gibbs, State of California
- Edie Chang, Chuck Seidler and Matthew Botill, State of California (by phone)
- Nancy Skinner and Michael Bedard, California State Assembly (by phone)
- Kip Lipper, California State Senate Staff (by phone)
- Dave Tiffin, Province of Ontario
- Geneviève Moisan, Sophie Auger-Giroux and Julie Côté, Province of Quebec
- Cliff Case, Carter Ledyard & Milburn LLP
- Patrick Cummins, WCI, Inc. Executive Director
- Lee Alter, WCI, Inc. Project Manager
- Bob Flemington, WCI, Inc. Project Manager (by phone)
- Lydia Dobrovolny, Ross Strategic

## 1. Board Meeting Minutes

Mr. Goldstene made a motion to approve the October 30 Board meeting minutes and Mr. Benoit seconded the motion. Directors unanimously approved the minutes.

## 2. By-Laws Revisions and Confirm New Directors and Alternates

The Directors received a copy of proposed revisions to the bylaws to address requirements of legislation enacted in California (Senate Bill 1018 and Assembly Bill 1532), modifying the naming of directors from the State of California, and providing each Participating Jurisdiction with the opportunity to appoint two non-voting, "Class B" Directors to the Board, in addition to their two "Class A" (voting) Directors. In anticipation that WCI, Inc. may adopt a policy of holding open meetings, Section 4.12 (Action without a Meeting) was deleted. A French translation of the By-Laws was also prepared.

Directors clarified that these proposed revisions do not preclude additional changes in the future, such as amendments to add additional jurisdictions to the Board (with the exception of Ontario, which is already named in the By-Laws). Mr. Benoit asked for clarification about Section 6.2, which states that the membership of the Executive Committee should include at least one class A Director from each Participating Jurisdiction; Mr. Case stated that this provision does not preclude an additional Director from a Participating jurisdiction from being appointed to the Executive Committee.

There being no other comments, Mr. Rodriguez invited a motion to approve the revised By-Laws. Upon a motion made by Mr. Benoit and seconded by Mr. Goldstene, the Board unanimously adopted the following resolution:

***RESOLVED** that the English and French versions of By-laws, as presented and attached to the minutes of this meeting, are hereby ratified, approved and adopted as the revised By-laws of the Corporation. Where there is any inconsistency between the different versions the English version shall be the authoritative version.*

Mr. Cummins confirmed receipt by the Chair of the following documentation qualifying new Class A Directors for the State of California and appointing new alternates pursuant to the By-Laws:

- a letter from Mr. Rodriguez, California's Secretary for Environmental Protection, naming Mr. Rodriguez and Ms. Nichols as Class A Directors in accordance with the statutory requirements for the Directors from California.
- letters from Mr. Rodriguez and Ms. Nichols accepting their positions as Directors.
- a letter from Ms. Nichols designating Mr. Gibbs as her alternate.

Mr. Cummins confirmed receipt by the Chair of the following documentation qualifying new Class B Directors for the State of California pursuant to the By-Laws:

- letters from the Speaker of the Assembly naming Assemblymember Ms. Skinner, and the Senate Rules Committee naming Mr. Lipper.
- a letter from Assemblymember Skinner accepting her position as a non-voting Director.

Upon receipt of his written acceptance letter, Mr. Lipper will take his seat as a non-voting Director.

Mr. Larochelle noted that Quebec intends to name Class B Directors in the near future. Mr. Case noted that the only actions required for Quebec to name its Class B Directors, and for those Directors to be seated, is receipt by the Chair of a writing naming the Class B Directors, in accordance with the By-Laws, and receipt by the Chair of written acceptance letters from these Directors.

Mr. Rodriguez noted that the continuing and newly seated Directors and alternates, present both in person and participating by phone, constituted a quorum pursuant to the By-Laws:

- Charles Larochelle (Quebec)
- Jean-Yves Benoit (Quebec)
- Matthew Rodriguez (California)
- Mary Nichols (California)
- Tim Lesiuk (British Columbia, by phone)
- Jessica Verhagen for James Mack (British Columbia, by phone)
- Nancy Skinner (California, by phone, non-voting)

Directors thanked outgoing Director James Goldstene for his work in the formation of WCI, Inc. and his service as the first Chair of the Board.

### 3. Elect Officers and Standing Committee Members

As provided for in the By-Laws, the newly formed Board of Directors nominated candidates to serve as officers for the Corporation. After discussion, Mr. Rodriguez proposed a slate and the following resolution, which was unanimously approved by the Board:

***RESOLVED** that the following-named persons are elected to the offices set forth beside their respective names, to serve until the next annual meeting of the Directors and until their successors are duly elected and qualified:*

- Chair: Matthew Rodriguez
- Vice Chair: Charles Larochelle
- Treasurer: Mary Nichols
- Secretary: Tim Lesiuk

The membership of the Executive Committee is established in the By-Laws, and consists of the four officers and at least one Class A Director from each Participating Jurisdiction. The Chair of the Board serves as chairperson of the Executive Committee. Mr. Larochelle requested that Mr. Benoit be appointed as an additional member to the Executive Committee.

Mr. Cummins provided a review for the Board of the member requirements, purpose and responsibilities of the Finance and Audit Committees as discussed in the By-Laws, the Funds Management Policy, and the Audit Committee Charter. The Finance Committee advises the Treasurer and the Board as to funds management, budget, tax filings, and general fiscal policy of the Corporation.

The Treasurer serves as chair of the Finance Committee. The Audit Committee consists of no fewer than two and no more than six Directors who oversee the auditor and ensure that the audit is conducted in accordance with any federal or contractual requirements. The Audit Committee is responsible for addressing any issues affecting the quality and integrity of the Corporation's accounting, auditing and reporting practices. The Audit Committee elects its own chair. Appointment to these standing committees is accomplished by Board action.

Following discussion, upon a motion made by Ms. Nichols and seconded by Mr. Larochelle, the Board unanimously adopted the following resolutions:

***RESOLVED*** that the Executive Committee shall be comprised of the four officers and Jean-Yves Benoit.

***RESOLVED*** that the Finance Committee will be chaired by the Treasurer and shall comprise the following Directors: Mary Nichols (Treasurer), James Mack, Jean-Yves Benoit, and Nancy Skinner (non-voting).

***RESOLVED*** that the Audit Committee shall comprise the following Directors: Charles Larochelle, Matthew Rodriguez, and Tim Lesiuk.

#### 4. Board Discussion of Director Responsibilities

WCI, Inc.'s corporate counsel provided a verbal overview of the roles and responsibilities of the Directors. In general, Directors of non-profit corporations are responsible for understanding the objectives of their organization, and serving those objectives with loyalty. This duty of loyalty includes being sensitive to potential conflicts of interest; if there is ever a conflict between the policy or program of a Director's jurisdiction and that of WCI, Inc. as a corporation, the affected Director should abstain from voting on the issue. A subset to the duty of loyalty is the responsibility of the Directors to maintain the confidence of sensitive information, and to not use the information obtained through service on the Board for either individual or jurisdictional benefit.

Counsel observed that when WCI, Inc. was established, Canadian counsel was consulted to determine if there were any differences that Directors would need to observe in relation to the cross-border nature of WCI, Inc. So far, none have been identified.

Directors discussed that although WCI, Inc. is a private non-profit corporation, it has been formed and funded by public entities to provide administrative and technical services to support public interests. The Board may therefore decide to enact and follow policies that apply to public bodies that are not otherwise required of a private corporation, such as taking steps to further enhance the openness and transparency of operations.

Directors asked and received further clarification that the approach to establishing contractual obligations through WCI, Inc. to deliver technical services to the jurisdictions does not preclude any jurisdiction from taking individual enforcement action to protect its interests if needed in the future. Counsel noted that if needed, the ultimate remedy for a participating jurisdiction to disassociate itself

from the actions of WCI, Inc. would be to have its Class A Directors resign, and to withdraw financial support. Directors noted that the issues related to protecting the interests of individual jurisdictions were carefully considered as part of the process of establishing the Corporation, which intentionally has been granted a limited technical focus. One Board member expressed interest in reexamining the bylaws to ensure they precisely define the purpose of the Corporation.

Counsel described the different responsibilities of the Class A and Class B Directors as established in the newly adopted revised By-Laws. Class A Directors have the powers and responsibilities provided under Delaware state law to directors of nonprofit corporations. Class B Directors are able to attend meetings, receive materials, and make comment, but are not counted for purposes of establishing a quorum of the Board, and do not have the right to vote. Counsel is not aware of instances in which the liability of Class A and Class B directors is different, and noted that in general, liability is limited under Delaware law if Directors have acted in good faith.

WCI, Inc. staff reminded Directors that arrangements can be made for further training or additional information to be shared if there is further interest.

Mr. Rodriguez adjourned the meeting for a lunch break at 1:00 pm and reconvened the meeting at 2:15 p.m. All Directors were present except Ms. Skinner.

#### **5. Executive Session to Discuss Contracts and Banking Matters**

Upon a motion by Mr. Benoit and seconded by Ms. Nichols, the Board convened an executive session at 2:15 pm to discuss contracts and banking matters.

With a motion by Mr. Benoit seconded by Ms. Verhagen, the Board unanimously passed a resolution to update the signatories on the WCI, Inc. account with Bank of the West.

With a motion by Ms. Nichols seconded by Mr. Lesiuk, the Board unanimously adjourned the executive session at 3:45 pm. Mr. Lesiuk left the meeting at this time.

Following a break, Mr. Rodriguez reconvened the meeting at 4:15 pm. Ms. Skinner rejoined the meeting at this time.

#### **6. 2013 Budget and Finance Committee Report**

The Board adopted a budget for calendar years 2012 and 2013 at its 2011 Annual Meeting. Mr. Cummins presented a comparison of the 2012 budget to actual expenses for the year. 2012 expenses came in under budget because WCI, Inc. did not engage staff until later in 2012 than planned, and did not enter into some contracts as quickly as planned. Proposed revisions to the 2013 budget reflect refined estimates for cap-and-trade service contract expenditures, and had been reviewed prior to the meeting by the Finance Committee. The revised expenditures anticipated in 2013 are on target with the original 2013 budget and overall, expenditures for both 2012 and 2013 are anticipated to be below the total amount originally budgeted for the two years.

With a motion by Ms. Nichols seconded by Mr. Benoit, the Board unanimously approved the following resolution:

***RESOLVED*** that the updated budget for the fiscal year of the Corporation ending December 31, 2013, as presented and attached to the minutes of this meeting, is hereby ratified, approved and adopted.

The Board directed WCI, Inc. staff to prepare a narrative description to accompany the budget, and to submit the narrative to the Executive Committee for approval prior to posting the budget materials on the WCI, Inc. website.

## **7. Audit Committee Report**

Mr. Cummins reported that the Audit Committee has selected Crowe Horwath as the WCI, Inc. auditor through a competitive process. Counsel has reviewed the letter of engagement with Crowe. The Audit Committee will convene in early 2013 to approve the letter of engagement and to receive a briefing on the audit process, which is expected to get underway in first quarter 2013.

## **8. WCI, Inc. Corporate Policies**

### **a. Open Meeting Policy**

Mr. Gibbs briefed Directors on the draft WCI, Inc. Open Meeting Policy. The purpose of the policy is to ensure WCI, Inc. conducts its operations in a manner that is transparent and open. Representatives of the WCI, Inc. participating jurisdictions have provided comments, which have been incorporated into the current draft. The draft is still undergoing discussion, and will be presented for Board adoption as soon as possible.

### **b. Conflicts of Interest Policy and Questionnaire**

Mr. Cummins reminded the Board that every Director, officer, employee and committee member of the Corporation has an annual responsibility to read and sign a statement agreeing to be bound by the principles and provisions of the WCI, Inc. Ethical Guidelines and Conflict of Interest Policy. Copies of the policy and questionnaire were made available at the meeting for the covered persons to sign and submit.

### **c. Emergency Operations and Management Procedures**

The purpose of this item was to bring to the attention of the Board the need to establish procedures for WCI, Inc. to manage technical systems and operations in the event of an emergency. The procedures will formalize what actions WCI, Inc. should take in response to potential situations, and who should be informed. The Board directed Mr. Cummins to begin working with jurisdictional staff to establish the procedures.

Ms. Skinner and Ms. Verhagen left the meeting at 5:00 pm.

## 9. Executive Directors Report

Mr. Cummins briefed the Board on other operational matters, including:

- *Staffing and Organization of Workgroups:* A draft chart depicting the staffing and organization of WCI, Inc. was included in the briefing book for initial review by the Board. Project management and business management services have been procured on a part-time basis, and it is anticipated that an assistant Executive Director will be hired in the first half of 2013. Working groups comprised of lead technical staff from each jurisdiction have been formed to support the tracking system development, and a new working group designated to support auction and monitoring activities will be formed soon.
- *Credit Card:* As approved by the Board, Bank of the West has issued a credit card to the Corporation. The credit card will serve as a financial tool to manage operations, and will take the place of the debit card that was previously issued.
- *FDIC Coverage:* FDIC coverage of funds in non-interest bearing accounts will return to the \$250,000 limit on January 1, 2013. To comply with the WCI, Inc. Funds Management Policy, the amount of money in the WCI, Inc. checking account above this limit will be moved. Following an evaluation of available options that comply with the Funds Management Policy, the recommendation is to move the funds into a US Treasuries account at Bank of the West prior to January 1, 2013. The US Treasuries account complies with the Funds Management Policy, and provides WCI, Inc. the flexibility it needs in the short term to manage cash flow.
- *Office Lease Renewal:* The current lease for office space at 990 9th Street in Sacramento expires March 31, 2013. The Board agreed with the Executive Director's recommendation to extend the lease to March 31, 2014.
- *Employee Handbook:* Mr. Cummins is working with the Human Resources specialist at Paychex to prepare an employee handbook. The handbook will be presented for Board review, discussion, and approval in early 2013.
- *Application for Tax Exempt Status:* Corporate counsel recently responded to a request from the U.S. IRS for additional information.
- *Board Emails and Document Sharing:* Directors are continuing to discuss whether additional steps need to be taken to ensure that Board materials and corporate documents are made available publicly except to the extent that certain materials are maintained as confidential for valid business reasons. A next step will be to review and possibly further develop the WCI, Inc. Retention of Business Records policy.
- *Board and Committee Meeting Schedule for 2013:* The Board agreed to establish a regular schedule of quarterly meetings in 2013 that can be augmented by Executive Committee meetings as needed.

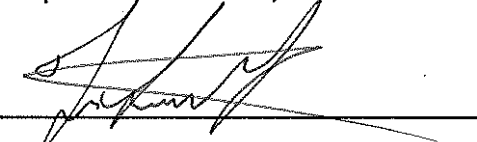
Mr. Bedard left the meeting at 5:15 pm.

## 10. Executive Session to Discuss Personnel Matters and Adjournment

At 5:15 pm, Mr. Rodriguez requested all staff to leave the meeting and only Directors and alternates to remain in the room for an Executive Session to discuss the plan and process for hiring a permanent

Executive Director. There being no other business, upon unanimous consent, the Executive session and Board meeting were adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tim Lesiuk', is written over a solid horizontal line.

Tim Lesiuk, Secretary