Consumer Watchdog

March 21, 2019

VIA EMAIL AND OVERNIGHT MAIL

The Honorable Ricardo Lara
Insurance Commissioner
State of California
300 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: Protect Consumers and Insurance Companies from Climate Change
Petition for Rulemaking Pursuant to Government Code section 11340.6

Dear Commissioner Lara:

We write to you because insurance companies in California are facing unprecedented threats to their solvency and ability to write insurance policies throughout California due to the increase in frequency and severity of wildfires, exacerbated by climate change. The potential impacts on the insurance industry are myriad, and may be grouped into underwriting risks (property and casualty) and risks to the assets that insurers develop to fund losses and provide a return to investors. In the core business of insurance, weather and climate-related losses can affect physical assets such as buildings, business, vehicles, crops, life, and health. On the investment side of the business of insurance, the risks to the values of fossil fuel-related assets constitute transition risks. Transition risks of insurers' investments in fossil fuel-related entities are the financial risks, including investment losses, to insurers as the world drastically reduces the use of fossil fuels. A tertiary impact on the business of insurance relates to increased loss related to litigation. The results of actions of those responsible for greenhouse-gas pollution are increasingly leading to litigation, the costs of which are often borne by insurers. The significance of this latter trend is reinforced by the ability to causally attribute climate events to human activity (Marjanac and Patton 2018).

California is the fifth largest economy in the world, and is already experiencing natural hazards that are arising from climate change. With a GDP of $2.7 trillion and a population of almost 40 million residents, much is at stake. California is the nation's largest insurance market, with over 1,300 insurance companies collecting $310 billion in premiums annually and holding $5 trillion in assets under management (CDI September 2018). In California, as in much of the world, insurance is the grease in the wheels of the broader economy. Insurance serves an essential role of spreading risk, helping homeowners and businesses manage losses that would otherwise be crippling.

The increased frequency and severity of wildfires are caused by climate change. The investment and underwriting of fossil fuel-related entities and projects by the insurance industry are causally related to the exacerbation of climate change. As a result, insurance companies, and consumers face substantial fiscal and physical damages.

To ensure the solvency of the insurance industry and protect consumers in California, we request that you immediately initiate a rulemaking proceeding and promulgate emergency regulations to require all insurance companies licensed to conduct business in California to fully disclose: (1) all their investments in fossil fuel-related entities, and (2) all the fossil fuel-related companies and projects that they underwrite or otherwise insure. Acquiring this information is necessary for regulatory transparency. Transparency is the first and most important weapon in a financial regulator's arsenal to help protect the financial solvency of insurers and the interests of consumers.

California law recognizes instances where the Commissioner may act with urgency to protect the health, safety and welfare of consumers, and the financial health and solvency of insurance companies, by authorizing the promulgation of emergency regulations (Ins. Code § 12921.7; Gov. Code § 11346.1).

I. Background – Scope of the Problem

<u>Impact of Climate Change on Weather-related Events</u>

Weather-related events cause approximately 90% of natural disasters and their costs in an average year (Munich re). In 2017, record-breaking global cost records for such events were $320 billion, of which $133 billion (42%) were insured. The vast majority of these impacts (93% of total insured losses) were in North America (Aon Benfield 2018). The Tubbs Fire in the Napa Valley was the costliest wildfire in the global insurance industry's history and the largest urban conflagration (Aon Benfield 2018). These trends also establish a nexus between intensifying hazards and consumers who continue to move into wildland urban interface areas (WUI). The results are material for property insurers: global losses in 2017 reduced industry-estimated return on equity from a healthy 11% the year before to negative 4% (Swiss Re 2017).

Climate change will increase the frequency and intensity of extreme weather events (USGCRP 2017). The *World Economics Forum* equates the risks from climate change to those of weapons of mass destruction (WEF 2018). The failure of climate change mitigation and adaptation is ranked the fifth highest risk, pursuant to the insurance industry own information (Marsh & McLennan Companies and Zurich Insurance Group). Recent assessments have concluded that the multiplicity of simultaneous and correlated climate risks is expected to magnify current volatility levels and adversely impact credit within the insurance industry (Moody's 2018).

Major U.S. insurers note that climate change is a risk to the property and casualty industry, as well as the life and health insurance business (Chubb 2016). "Climate-related losses could materially and adversely affect our results of operations, our financial position and/or liquidity, and could adversely impact our ratings, our ability to raise capital and the availability and cost of reinsurance." (Travelers Insurance Annual Report, SEC Form 10-K, 2014).

Wildfire damages of $16.5 billion, resulting from California's Camp wildfire alone, accounted for the costliest catastrophe in 2018. Substantially fueled by the state's recent droughts, the Camp wildfire graphically exposed the risks that climate change poses to the insurance industry (CDI 2018).

California wildfires coupled with the massive mudslide and debris flows that followed resulted in 56,000 insurance claims and $13.3 billion in losses in 2018, including 7,384 complete losses of insured structures, and 9,978 claims for vehicles and other miscellaneous damages. While mud slides are usually exempted from insurance coverage, where the "efficient proximate cause" is an insured hazard, such as a wildfire, then the resulting losses are insured (CDI 2018).

Counting up the insured losses from the wildfires, $12.6 billion in claims were filed as of May 2018. Over 39,000 insured homes were damaged, of which 6,885 were complete losses. About 5,000 insured non-residential buildings were damaged – of which 343 were complete losses – representing $1.6 billion in claims. In addition, claims for cars, boats, planes, and other miscellaneous equipment and structures amounted to about $350 million. In Santa Rosa alone, 3,000 homes (5% of the city's housing stock) were lost.

There are also additional damages to public facilities, infrastructure, and crops, including 57 wineries (Hodgins 2017; Orlin and Steade 2017). The 2017 wildfires resulted in damage to a total of more than 10,800 structures, a third of which were not insured (Tierney 2018). Uninsured agricultural losses are estimated at $189 million, and diverse damages to publicly owned structures, such as schools and county office buildings, infrastructure, plus first responder and clean-up costs were absorbed by the taxpayers (Bloch 2018).

It is estimated that two million homes in California are categorized as being in a "High" or "Extreme" wildfire risk area (Verisk). Of the weather-related disasters in California in 2017, there were 43 fatalities from the wildfires, and 21 fatalities from the mudslides that followed (Dolan 2018). It is important to note that these numbers do not include the Paradise Fire.

Ancillary risk factors result from air pollution, disease transmission, increasing allergens, extreme heat, food and water supply, water quality, and environmental degradation. The World Health Organization projects 250,000 extra deaths each year due to climate change between 2030 and 2050, increasing significantly thereafter (WHO 2014). Far more cases of non-fatal illness are expected as well, and will affect insurers doing business in California. Of particular relevance in California are the consequences of heavy rains, floods, mud slides, heatwaves (CEHTP 2018; Guirguis et al. 2014), kidney disease related to increased temperatures and dehydration (Brikowski et al. 2008), and spiking hospital admissions related to respiratory health that accompanies major wildfires (UC Irvine 2008; UCSF 2017).

Risk to Value of Insurer Investment and Assets

Risks to the values of assets constitute transition risks and, ultimately, stranded assets. Transition risks and stranded assets will result in investment losses to insurers as the world drastically reduces the use of fossil fuels. Transition risks reflect the uncertainty of financial markets in the evolving, carbon-constrained world. "[Transition risks are] the financial risks which could result from the process of adjustment towards a lower-carbon economy. Changes in policy, technology and physical risks could prompt a reassessment of the value of a large range of assets as costs and opportunities become apparent." (Bank of England Governor, Mark Carney, Remarks, Lloyd's of London, September 29, 2015.)

Of particular concern to the California Department of Insurance (CDI) is whether insurers are recognizing the transitions risks their investments in fossil fuel-related entities present. Transition, and its resultant stranded assets (assets that become obsolete, nonperforming, or suffer from unanticipated or pre-mature write-downs, devaluations or conversion to liabilities), is the significant potential risk of loss that insurers and their investors will incur when nations, states, local governments, private companies, consumers, and markets sufficiently restrict or reduce the use of fossil fuels, or that market forces alone will cause the devaluation of fossil fuel-related entities. This obviously presents a risk to insurer investments linked to those entities. Insurance companies need to recognize and address potentially significant climate-related risks facing their investments in vulnerable fossil fuel-related entities.

Significant national, state, and local government efforts are also pushing a transition to a low carbon-intensive economy. This effort includes the various commitments made by nearly all national governments in the world as a part of the United Nations COP 21 Agreement, and state and local commitments made in association with COP 21. It has been projected that in order for countries to meet the COP 21 targets of not exceeding a two degrees Celsius temperature rise, more than 80% of coal reserves, a third of oil reserves, and half of gas reserves cannot be used between 2010 and 2050 (McGlade and Ekins 2015).

The fact that California's admitted insurers hold $5 trillion in investments under management, including a significant amount of fossil fuel-related investments, is one of the reasons that in 2016, the CDI conducted a voluntary survey of insurers doing business in California to find out which insurers had investments in fossil fuel-related entities. The survey found that the insurers who responded had $528 billion in fossil fuel-related investments, which included investments in coal, oil, gas, and in utilities that rely on fossil fuels to generate electricity. The responding insurers reported holding a total of $105 billion in investments in thermal-coal enterprises (CDI 2017).

The current decreasing cost of renewable energy threatens the value of the insurance industry's carbon investments.

- Renewable energy has become more competitive, with solar costs dropping 85% from 2008 to 2016 (Houser et al. 2018) and wind costs falling 36% in that same period (ClimateNexus 2017). Solar is already at least as cheap as coal in the United States, Germany, Australia, Spain, and Italy, and is expected to drop another 66% by 2040. By 2021, solar is projected to be cheaper than coal in China, India, Mexico, the U.K., and Brazil as well. The cost is expected to continue to decline as technology improves (BNEF 2017).

- Over the last decade, demand for coal has dropped dramatically. Coal has gone from generating nearly half of U.S. electricity to approximately 30%, a share that continues to decline. This downturn in demand has directly affected companies mining and selling coal. Three dozen U.S. coal companies went bankrupt in three years (SNL 2015).
- Utilities in the United States are shutting down thermal coal power plants before the end of their economic lifetimes, and none are building any new ones.
- Major banks have ceased or reduced lending to fund new coal infrastructure (i.e., Citigroup, Bank of America, Wells Fargo & Company, and Morgan Stanley) (Nussbaum 2015).
- Global insurers such as AXA, Allianz, Aegon, and Swiss Re announced that they are divesting or not making new investments in thermal coal (Ferguson 2017; Insurance Journal 2018).
- After the California State Teachers Retirement System and the California Public Employees' Retirement System, the largest pension funds in terms of assets in the United States, lost a combined $5.1 billion in oil, gas, and coal investments in 2014-2015 (Trillium 2015), the state Legislature directed them to consider divesting from thermal coal.
- The Dow Jones U.S. Coal Index decreased 92.9% from April 1, 2011 through June 20, 2017.
- Some European insurers have ceased to write policies for companies whose profits depend on coal. Allianz plans to no longer underwrite individual coal-fired power plants or coal mines, and plans to phase out all underwriting to coal interests by 2040 (Jergler 2018). Swiss Re no longer underwrites mining companies that derive more than 30% of revenues from thermal coal or utilities that generate 30% of their electricity from thermal coal (Insurance Journal 2018).

These and other developments create risk that investments in coal and other fossil fuels may become "stranded assets" of diminishing value. Some experts have stated that life and annuity insurers have the largest exposures, given their "buy-and-hold" philosophies (Messervy and McHale 2016).

Insurer Underwriting Risk from Fossil Fuel Projects

The insurance industry has declined to disclose to what extent they are underwriting/ insuring, or investing in fossil fuel-related projects, claiming that information regarding their coverages are trade secrets. So, the information available regarding this area of financial exposure related to the financial health and solvency of insurance companies doing business in California remains unknown. This is yet another reason for the urgent need for regulations requiring insurers to disclose such investments or activities to the CDI and the public. Transparency is critical to ensure the solvency of an insurance company and protect consumers in our evolving climate-changing environment.

The energy firm Enbridge's situation is just one example of the downside risk to the solvency of insurers underwriting fossil fuel-related projects; as well as the great risk to the health, safety and welfare of the state's citizens and consumers.

The Minnesota Department of Commerce reviewed Enbridge's insurance policies and determined that Enbridge does not have adequate insurance to protect the public from damages related to accidents, such as crude oil spills. This would make taxpayers responsible for paying for the cleanup of any pipeline accidents. Upon review of their August 31, 2018 Supplemental Filing to the Minnesota Public Utilities Commission, the department concluded that the policies do not cover damages from crude oil spills to any significant degree, if at all. The agency said Enbridge's insurance includes significant exclusions related to damages caused by crude oil spills (Associated Press December 21, 2018).

Dane County, Minnesota, had pursued special insurance upon the recommendations of an independent consultant, which were due in part to Enbridge's legal battle with an insurer that refused to pay cleanup costs from a 2010 Kalamazoo River oil spill in Marshall, Michigan. The climate change action group 350 Madison argued that Enbridge may not be as financially sound in the future as it is now. If the fossil fuel industry and the oil sector start going bankrupt, they will not have the money even if they voluntarily wanted to clean up the mess that they cause in these kinds of major accidents. (Peter Andersen, 350 Madison.)

Anderson also called for transparency on Enbridge's insurance policies, noting that information about its coverage had been heavily redacted. Enbridge designated portions of its coverage as trade secrets in its response to the Minnesota regulator. As insurers have claimed to the CDI, Enbridge argued that it would be "detrimental" to the company because it would provide "proprietary" information to competitors. Thus, as in California, insurer and insured both claim that their insurance coverage information is privileged and disclosure would negatively impact their ability to compete, and hamper their future negotiations or claims (Associated Press December 21, 2018).

However, disclosure provides the necessary transparency that would allow the Insurance Commissioner to properly review, regulate, guide, advise and ensure that insurance companies are solvent and consumers are adequately protected in the new reality of a climate-changing environment. Timely regulatory oversight activities are also critical in protecting consumers from foreseeable and avoidable harm, as evidenced by the recent Enbridge event in Ohio.

"On January 28, 2019, an explosion of an Enbridge natural gas pipeline in Ohio created a fireball of flame and damaged homes, prompting the evacuation of nearby residents." (Reuters, January 28, 2019.)

Solvency Issues and Financial Risks for Insurance Companies

In November of 2018, the CDI was forced to take over Merced Property and Casualty (Merced), and place it under the conservancy of the California Insurance Guarantee Association (CIGA), because Merced was insolvent, being unable to pay all outstanding claims related to wildfire losses in 2018. (http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/ci/index.cfm)

According to CDI information, insurers doing business in California have approximately $528 billion in fossil-fuel-related investments in various sectors and asset classes. Adverse impacts on the climate and resultant competitive risks from clean energy technologies in combination with an adverse economic and regulatory environment can present financial uncertainties for these investments. (http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/ci/index.cfm)

Given the unprecedented scale of recent wildfires, and the insolvency of Merced, the CDI is currently conducting additional detailed reviews of every property insurer domiciled in California to make sure they are properly managing their exposures. (http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/ci/index.cfm.)

Underscoring the many ways that the Insurance Commissioner needs specific insurance investment and underwriting information relating to climate change from insurance companies, in early January of 2019, three insurers filed lawsuits against Pacific Gas & Electric (PG&E), whose power lines have been cited as the cause of the Camp wildfire. PG&E's potential wildfire liabilities from 2017 and 2018 are estimated at more than $30 billion. On January 14, 2019, PG&E announced that it would file bankruptcy.

Insurers who hold $4.1 billion of PG&E's $18 billion debt will pay a heavy price for the PG&E bankruptcy. Clearly, the PG&E example further evidences the urgent need for insurers to realign their risk management and underwriting strategies, in order to address escalating climate risks. Such a realignment requires guidance from you, the state insurance regulator, to reconcile insurance investments and underwriting strategies for the future.

Potential Legal Costs to Insurers

Climate changes also precipitate a diversity of litigation risks, including claims for damages against producers of fossil fuels, other business interests found to be inadequately prepared to avert the impacts of climate change, or insurers themselves over disputed contractual and liability obligations.

Individuals and local governments in the United States have sued fossil fuel companies, electricity generators, and automobile manufacturers seeking compensation for the damages caused by climate change-induced sea-level rise, extreme storms, and more that are linked to emissions they generate.

The acts of those responsible for greenhouse-gas pollution are increasingly leading to litigation, which, inevitably, involves insurers. The significance of this latter trend is reinforced by the ability to show the causal relationship between climate events and human activity (Marjanac and Patton 2018).

A number of new lawsuits have been filed in the United States between 2017 and 2018. In this new litigation, the plaintiffs are all local governments, while the defendants are all fossil fuel companies and their liability insurers. While not uniform in underlying facts or legal theories, these cases share a common thread of public-scale property and infrastructure damages and claims made under state law. All of these cases are in-progress, and dismissal, removal, appeal, or other developments may take place. In California alone:

• ***People of State of California v. BP*** (N.D. Cal., Docket No. 3:17-cv-06011). The cities of San Francisco and Oakland sued five oil and gas companies based on state nuisance law. The federal district court dismissed the suit in late June 2018, on grounds that the plaintiffs' claims were displaced by the Clean Air Act as well as separation- of-powers and foreign policy concerns.

• ***County of Santa Cruz v. Chevron*** (N.D. Cal., Docket No. 5:18-cv-00450). The City and County of Santa Cruz sued 29 fossil fuel companies for damages related to nuisance, trespass, failure to warn, and negligence.

• ***County of San Mateo v. Chevron*** (N.D. Cal., Docket No. 3:17-cv-04929-MEJ). The counties of San Mateo and Marin and the City of Imperial Beach have sued fossil fuel companies under nuisance, negligence, strict liability, and trespass standards. Insurers may not only experience transition losses on their investments in these fossil fuel entities, they may also become liable for unanticipated legal payouts.

II. Regulations Are Urgently Needed to Protect the Public and Insurer Solvency

The rationale behind insurance regulation is to promote beneficial conduct and competition, and to prevent destructive or harmful conduct and competition in various areas that may lead to insurer insolvency and consumer harm. One of the key reasons for insurance regulation of the financial and investment side of the business of insurance is to prevent conduct, business practices, and competition that may cause insurers to go out of business, leaving consumers unable to collect on their claims.

Insolvency regulation has historically been a primary focus of insurance regulation. After many insolvencies in the 1980s, state regulators and the National Association of Insurance Commissioners (NAIC) enacted risk-based capital standards and implemented an accreditation program to help identify and prevent future insolvencies (Consumer Federation of America November 14, 2005). In 1988, California voters enacted Proposition 103, erecting a system of strict rate regulation infused with transparency to ensure a stable and reliable insurance marketplace aimed at protecting consumers and taxpayers.

Climate change threatens the basic functioning of insurance markets (CDI Report: *Trial by Fire*.) "Increasing transparency makes markets more efficient, and economics more stable and resilient." (Michael Bloomberg, Final Report, Task Force on Climate-related Financial Disclosures, 2017.)

The continued investing in climate altering fossil fuel-related entities are unnecessary risks to the values of U.S. insurance company assets constituting transition risks and stranded assets. These transaction risks and stranded assets will result in investment losses to insurers as the world drastically reduces the use of fossil fuels. Transition risks also reflect the uncertainty of financial markets in the evolving, carbon-constrained world.

Immediate, imminent, and quantifiable harm to consumers and insurers from the impact of climate change makes clear the urgent need for the California Insurance Commissioner to help insurers address fossil fuel-related climate risks to their investments and solvency.

The CDI has previously sought to acquire fossil fuel-related investment and underwriting information from insurance companies through the Climate Risk Carbon Initiative (http://www.insurance.ca.gov/0250-insurers/0300-insurers/0100-applications/ci/index.cfm). However, CDI met with substantial opposition. The insurance industry's main argument was that the Insurance Commissioner had exceeded his authority to ask for such information, no matter how imperative the reason, because there was no regulation authorizing the Commissioner to specifically request such information.

The CDI launched the Climate Risk Carbon Initiative in January 2016, to evaluate the degree to which the investments of California insurers might be impacted by the financial risks of climate change. The Initiative includes two parts. First, all insurance companies doing business in California are asked to voluntarily divest from thermal coal. Second, CDI asked 672 insurers with over $100 million in annual premiums (out of over 1300 insurers) doing business in California to disclose their investments in coal, oil, and natural gas companies. This request for information related to fossil fuel investments met with fierce legal and legislative threats from insurers, and Oil, Gas, and Coal Interests, intent on calling a halt to the Climate Risk Carbon Initiative (Center for International Environmental Law August 7, 2017).

The threats of legal action began in June 2017, in a letter from Oklahoma Attorney General Mike Hunter, eleven co-signing state Attorneys' General from Alabama, Arkansas, Indiana, Louisiana, Missouri, Montana, North Dakota, Texas, Utah, West Virginia and Wyoming, and Kentucky Governor Matt Bevin. The letter alluded to Commissioner Jones acting beyond his portfolio, publicly shaming insurance companies, targeting energy companies with a significant presence in their states, and violating the Commerce Clause of the U.S. Constitution (Center for International Environmental Law August 7, 2017). "They sent their [threatening] missive [that] closed with an almost Trumpian threat to sue: 'If you continue to call for divestment and require discriminatory disclosures of fossil fuel investments,' they wrote, 'we will be forced to consider the legal areas of relief available.'" (Michael Hiltzik, Los Angeles Times June 21, 2017).

Oklahoma Attorney General Mike Hunter also said California's policies, which require insurance companies to annually disclose their carbon-based investments as part of the National Association of Insurance Commissioners (NAIC) Climate Disclosure Survey that's been ongoing since 2011, including investments in oil, gas and coal, will harm the energy industry (Insurance Journal May 8, 2018). Regardless, beginning in 2019, the NAIC is considering whether to discontinue this voluntary activity, effectively allowing insurance companies to not disclose any fossil fuel-related information.

In addition to threats of legal action, there have been recent legislative efforts to limit the California Insurance Commissioners' discretion to regulate insurance markets. At the same time that the Oklahoma AG's letter threatened legal action over the Climate Risk Carbon Initiative, Senate Bill 488 (Bradford 2018), which died on the suspense file in the appropriations committee, was amended with language to limit the Commissioner's ability to issue the data calls for the disclosures that would populate the insurers' investment database (Center for International Environmental Law August 7, 2017).

Corporate fossil fuel special interests have been emboldened by the Trump administration's intent on reversing environmental protections and climate action. Senate Bill 488 was originally intended to add veteran and lesbian, gay, bisexual, and transgender (LGBT) business enterprises to the entities for which reporting by insurance companies would be required (Center for International Environmental Law August 7, 2017). Thus, those who intend to stymie action on climate disclosure inserted highly contentious language into an otherwise admirable bill. Not only does this effort seek to roll back progress on climate action to appease corporate interests, it does so by inserting poison pill language into a bill otherwise worth passing.

This effort to legally restrict the Commissioner's power to regulate is persistent and insidious. Similar language had been added to two earlier bills (Assembly Bill 566 Ridley-Thomas and Assembly Bill 601 Ridley-Thomas), which also died on the suspense file in the appropriations committee (Center for International Environmental Law August 7, 2017).

The promulgation of specific mandatory regulations authorizing the CDI to require all 1300 insurance companies doing business in California to disclose all fossil fuel-related investments and underwriting of fossil fuel-related projects, instead of a periodic data call, is needed: (1) to prevent any potential institutional, administrative, legal or legislative opposition; (2) to prevent unnecessary and dangerous delays in receipt of such information; and (3) to ensure that the Insurance Commissioner may enquire, follow-up, and effectively regulate the insurance industry in this evolving, climate-changing environment for all consumers.

We believe that to protect consumers against the insolvency of insurance companies conducting business in California, insurers must disclose their interest in, and underwriting of, fossil fuel-related entities, in order to recognize and be able to address potentially significant climate-related risks facing their investments and insured risks in fossil fuel-related entities and projects.

In order to provide insurers with the necessary guidance related to investments in fossil fuel-related entities and projects, and to what extent those investments may impact their ability to protect consumers and their access to insurance, and to ensure the solvency of insurance companies, CDI will first need to acquire specific information from insurance companies to know which companies, and to what extent those companies invest in, and underwrite the projects of, fossil fuel-related entities.

For all these reasons, it is important for insurance companies, insurance regulators, and the public to better understand the scope of insurer investments in fossil fuels, the scope of their transition risk and their underwriting of fossil fuel-related projects.

III. Authority for Promulgating Emergency Regulations

We believe that it is imperative that the Insurance Commissioner adopt regulations as soon as possible, authorizing him to acquire comprehensive fossil fuel-related investment and underwriting information from insurance companies. As stated above, the Commissioner has the authority to adopt emergency regulations to protect the health, safety and welfare of consumers, and the financial health and solvency of insurance companies. (Ins. Code § 12921.7; Gov. Code § 11346.1.)

IV. Authority for Petition and Rulemaking

The undersigned organizations submit this Petition pursuant to Government Code section 11340.6, which provides that "any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation."

Last year, as a California state senator, you recognized the myriad of problems that climate change presents to the insurance industry and consumers, and sponsored legislation (SB 30 (Lara) 2018) that requires the Insurance Commissioner to convene a working group to identify, assess, and recommend regulations to reduce the risks of climate change related to catastrophic events, create incentives for investments, and provide mitigation incentives to lessen exposure and reduce climate risks to public safety, property, utilities, and infrastructure. Your legislative measure also contained specific legislative findings and declarations noting that much of California has increasing exposure to climate-related events; that mechanisms exist to mitigate damage from climate-related events; and innovative insurance opportunities may exist to reduce the exposure to insurers and consumers. (Ins. Code § 12922.5.)

It is clear that the Insurance Commissioner has substantial and broad authority under a myriad of provisions of the Insurance Code to require insurance companies doing business in California to submit to the Commissioner and the public any information the Commissioner deems necessary to know, comprehend, analyze, and make recommendations, judgments and orders to ensure the financial stability and solvency of insurers, and may promulgate regulations he deems necessary to accomplish his statutory responsibilities. The Commissioner's broad-ranging statutory authority to adopt the proposed regulations includes, but is not limited to, the following sections of the Insurance Code.[1]

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[1] Note this is not a comprehensive list of every specific section of the Code that affords the Commissioner authority to regulate and obtain information from insurance companies regarding their financial and underwriting risks in each of the lines impacted by climate change, including personal and commercial property-casualty, life and health, surplus lines, workers' compensation, and title, among others. Consumer Watchdog is happy to provide further legal

As Insurance Commissioner, you have both the authority and the responsibility to take such actions as are necessary to protect California consumers and to obtain full compliance with the Insurance Code and other California laws regulating the business of insurance. (Ins. Code § 12921(a).)

Prior to admission to conduct business in California, every insurer is required to "file with the commissioner a certified copy of its last annual statement or a verified financial statement exhibiting its condition and affairs." (Ins. Code § 706.)

All insurers engaged in the business of insurance in California are required to make and file annually with the Commissioner, "***in the number, form, and by the methods prescribed by the commissioner***, statements exhibiting [their] condition and affairs", as well as, any supplemental statements "covering such matters dealt with in such annual statements as the commissioner designates", and "at such intervals as may be prescribed by the commissioner prescribes." (Ins. Code §§ 900, 902, emphasis added.)

The Commissioner has broad authority to conduct examinations of the business and affairs any admitted insurer (Ins. Code § 730), and persons and entities providing health coverage (Ins. Code § 740).

The Commissioner is required to make an annual report to the Governor of California, the Legislature, and to the Senate and Assembly insurance committees that contains a statement and synopsis of the reports which have been filed in CDI and "showing, generally, the condition of the insurance business and interests in this state, and other matters concerning insurance." (Ins. Code § 12922.) The Commissioner necessarily may have access to any information deemed necessary to complete this annual report.

Workers' compensation insurers are required to file annual reports "in a form and manner prescribed by the commissioner" and the Commissioner may take pre-emptive action when he "determine[s] that there has been a material change in the insurer's ultimate liability for future payments" to fix the deposit amounts the insurers are required to make to provide protection for the payment of claims to workers at an amount he "deems sufficient to secure the payment of the insurer's ultimate obligations." (Ins. Code § 11694.)

Underwritten title companies must file quarterly financial statements on forms prescribed by the Commissioner, and any "supplemental accounting and financial information when the commissioner deems it to be necessary" (Ins. Code § 12389.4), and the Commissioner has the authority to adopt rules and regulations to maintain the solvency of title insurance companies. (Ins. Code § 12389(h).)

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authority for the adoption of the proposed regulations once a rulemaking proceeding is commenced.

As to property casualty insurance, California courts have long recognized that the Commissioner has the broad and necessary authority to adopt regulations to implement and enforce the requirements of voter enacted Proposition 103 (Ins. Code § 1861.01 et seq.) relating to insurers' rates and underwriting practices. (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 824.) Given the impact of insurers' investment and underwriting practices on insurance rates, and the Commissioner's duty to ensure that rates are neither excessive nor inadequate (Ins. Code § 1861.05(a)), it is imperative that the Commissioner and the public have the necessary information to evaluate insurers' fossil fuel-related investments and underwriting risks. Indeed, the Commissioner is empowered to require insurers to provide "such other information" as he may need to evaluate insurers' rates (Ins. Code § 1861.05(b)).[2] And in order to carry out the fundamental goals of Proposition 103 to foster public participation in the ratemaking process (*State Farm v. Garamendi*, (2004) 32 Cal.4th 1029, 1045; Ins. Code §§ 1861.05(c), 1861.10(a)), ensure that insurance is fair, available, and affordable for all Californians, and hold the insurance commissioner accountable (Prop. 103, § 2 [uncodified]), section 1861.07 requires all information submitted to the Commissioner pursuant to the initiative to be made available to the public.

V. Conclusion

As California's newly elected Insurance Commissioner, you have the ability and responsibility to take immediate action to ensure the solvency of the insurance industry and to protect consumers in California from the exacerbation of climate change risks linked to insurers' investment in and underwriting of fossil fuel-related entities and projects. We look forward to your response to this Petition within thirty days, as required by Government Code section 11340.7, and to working with you on these regulations.

Sincerely,

Pamela Pressley
Consumer Watchdog

Michael Mattoch
Consumer Watchdog

1000 Grandmothers for Future Generations
350 Bay Area
350 Chico
350 Conejo/San Fernando Valley
350 Maine
350 Silicon Valley
350 South Bay Los Angeles
350.org
350 Marin

Avaaz
Azul
Bay Area-System Change not Climate Change
Beyond Extreme Energy
Bold Alliance
California Environmental Justice Alliance
Californians Against Fracking and Dangerous Drilling

[2] More broadly, Proposition 103 subjects the business of insurance "to the laws of California applicable to any other business." (Ins. Code § 1861.03.)

Alameda County Interfaith Climate Action Network
Amazon Watch
Asian Pacific Environmental Network
Climate Resolve
Coalition for Clean Air
Communities for a Better Environment (CBE)
Connecticut Citizens Action Group
Courage Campaign
Divest Invest
Earthworks
Filipino/American Coalition for Environmental Solidarity (FACES)
Food & Water Watch
Fossil Free California
Fox Valley Citizens for Peace & Justice
Friends of the Earth U.S.
Fundacja “Rozwój TAK - Odkrywki NIE”
Greenaction for Health and Environmental Justice
Greenpeace
Indivisible South Bay LA
Market Forces
Movement for a People’s Party
Center for Biological Diversity
Center for International Environmental Law
ClientEarth
Climate Hawks Vote
No Coal Alliance
No Coal in Oakland
No Coal in Richmond
No Coal Vallejo
Oil Change International
Presente.org
Public Citizen
Rainforest Action Network
Rootskeeper
San Francisco Baykeeper
Sierra Club California
SoCal 350 Climate Action
Stand.earth
SumOfUs.org
Sunflower Alliance
Sunrise Project
Sustainable Energy & Economy Network
urgewald
Waterkeeper Alliance