

**From:** Persampieri, Nick  
**Sent:** Tuesday, June 9, 2020 1:52 PM  
**To:** [ncornettlaw@gmail.com](mailto:ncornettlaw@gmail.com)  
**Subject:** Vermont Public Records Act Request

Attorney Cornett,

Please see the attached letter. Thank you.

Nick

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June 9, 2020

Neal Cornett  
Attorney at Law

By e-mail to: [ncornettlaw@gmail.com](mailto:ncornettlaw@gmail.com)

Re: Vermont Public Records Act Request

Dear Mr. Cornett:

I write in response to your Vermont Access to Public Records Act request dated June 4, 2020. In that request, on behalf of Energy Policy Advocates, you sought:

all electronic correspondence, and any accompanying information (see discussion of SEC Data Delivery Standards, *infra*), including also any attachments, a) sent to or from or copying (whether as cc: or bcc:) Nick Persampieri, that b) includes "GHG Emissions Affirmative Litigation" in the subject field, and c) is dated from June 17, 2019 through June 3, 2020, inclusive.

In response to the request, please be advised that we are withholding 6 records because they are exempt from disclosure pursuant to 1 V.S.A. § 371(c)(4) (attorney-client communications, attorney work product) and 1 V.S.A. § 317(c)(14) (relevant to litigation). The records consist of communications among the Vermont Attorney General's Office and the Attorney Generals Offices of one or more other states regarding the states' review and comment on drafts of a common interest agreement, and Vermont's agreement to join the common interest agreement. The communications relate to an issue of common interest among the states, and were made in anticipation of litigation. The common interest agreement at issue was ultimately signed by a number of states and is described in Exhibit 1 to Defendant's

Answer and Affirmative Defenses to Plaintiff's Complaint for Declaratory and Injunctive Relief, Defendant's Index of Withheld Documents as Exempt from Public Inspection and Copying Pursuant to 1 V.S.A. § 317(c), filed May 20, 2020 in *Energy Policy Advocates v. Attorney General's Office*, Docket No. 173-4-20 Wncv, a copy of which is attached. Please see the description for Bates Number Range AGO0001-AGO0030. We do not have any other records responsive to the request.

If you feel any information or records have been withheld in error, you may appeal to Deputy Attorney General Joshua Diamond at the following email address: [Joshua.Diamond@vermont.gov](mailto:Joshua.Diamond@vermont.gov).

Sincerely,

/s/Nicholas F. Persampieri

Nicholas F. Persampieri  
Assistant Attorney General

*Energy Policy Advocates v. Attorney General's Office*

Docket No. 173-4-20 Wncv

# EXHIBIT 1

TO

DEFENDANT'S ANSWER  
AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF

DEFENDANT'S INDEX OF WITHHELD DOCUMENTS  
AS EXEMPT FROM PUBLIC INSPECTION AND COPYING  
PURSUANT TO 1 V.S.A. § 317(c)

May 20, 2020

*Energy Policy Advocates v. Attorney General's Office, Docket No. 173-4-20 Wncv*

**DEFENDANT'S INDEX OF WITHHELD DOCUMENTS\***  
**AS EXEMPT FROM PUBLIC INSPECTION AND COPYING PURSUANT TO 1 V.S.A. § 317(c)**  
**May 20, 2020**

**\*The 6 withheld documents are responsive to Item No. 4 in Plaintiff's March 27, 2020 public records request to the Vermont Attorney General's Office, a copy of which is attached as Exhibit A to Plaintiff's Complaint in the above-referenced action, reading:**

***"4. any common interest agreements concerning i) carbon dioxide or CO<sub>2</sub>, ii) greenhouse gas emissions or GHG, and/or iii) National Ambient Air Quality Standards or NAAQS entered into by the Office of the Attorney General at any time in 2019 and/or 2020."***

**The 6 withheld documents are bates numbered for purposes of this Index and the above-referenced action as AGO0001 through AGO0132.**

<b>Bates Number Range of Withheld Document</b>	<b>Description of Withheld Document</b>	<b>Exemption/Reason for Withholding/Redacting</b>
<b>AGO0001- AGO0030</b>	A 30-page document consisting of a 5-page Common Interest Agreement and 25 signature pages, effective July 3, 2019 and last dated October 17, 2019, entered into by the State of Vermont on June 25, 2019 by Assistant Attorney General Nicholas F. Persampieri, other States, and other State governmental entities by their respective legal counsel on various dates between June and October 2019.  The subject matter of the Common Interest Agreement concerns the sharing of information in anticipation of the parties participating as litigants or counsel for litigants in as-yet unfiled judicial or administrative actions under state or federal law involving common questions of fact and law regarding greenhouse gas emissions (hereinafter "the GHG	1 V.S.A. § 317(c)(4)  "Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege . . . ."

	<p>Litigation”).</p> <p>The Common Interest Agreement (hereinafter “the GHG Litigation CIA”) describes the parties’ common legal interest relating to protecting the public health, public welfare, and the environment from the dangers posed by climate change and in pursuing the GHG Litigation to that end.</p> <p>The GHG Litigation CIA discusses how pursuit and advancement of this common legal interest requires and has required the sharing of certain documents, materials, information and communications between and among the parties’ governing boards, staff, management, consultants, experts, clients, and/or counsel that are privileged, protected, confidential, immune, or otherwise exempt from disclosure, such as under the attorney-client, attorney work product, common interest, joint defense, and other privileges and protections.</p> <p>The GHG Litigation CIA recites that the parties wish to pursue their common legal interest in the preparation for and conduct of the GHG Litigation by continuing to exchange such documents, information, and communications without waiving or affecting their privileged or confidential status.</p> <p>The GHG Litigation CIA memorializes that the parties’ sharing and disclosure of certain documents, materials, information, and communications that are privileged and confidential, without waiving or affecting their privileged or confidential status, is necessary and essential to the preparation, pursuit, and accomplishment of the parties’ common interests and objectives in the GHG Litigation. The GHG Litigation CIA notes that such privileged and confidential exchange will allow for the parties’ claims and defenses to be thoroughly investigated and prepared, an effective litigation strategy and joint legal positions to be developed, as well as legal briefs and other court filings efficiently prepared without giving undue advantage to the opposing side.</p>	<p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or for that other party’s representative . . . .”</p> <p>V.R.E. 502(b) / Lawyer-Client Privilege / Common Interest Privilege</p> <p>“A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative . . . (3) by him or his representative or his lawyer, or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of</p>
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	<p>The GHG Litigation CIA then details the agreed processes, procedures, and defined terms whereby the parties will receive, use, share, manage, and protect from non-parties such privileged or confidential documents, information, and communications exchanged in preparation for, and during the course of, the GHG Litigation and which will otherwise govern the GHG Litigation CIA’s enforcement, modification, termination, joinder, execution, and effective date.</p> <p>The GHG Litigation CIA explicitly states the parties’ shared understanding and expectation that the GHG Litigation CIA itself, any amendments thereto, and all discussions among the parties related to the GHG Litigation CIA are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine.</p>	<p>common interest therein . . . .”</p>
<p><b>AGO0031-AGO0046</b></p>	<p>A 16-page document consisting of a 6-page Common Interest Agreement and 10 signature pages, effective February 7, 2019 and last dated October 31, 2019, entered into by the State of Vermont on February 11, 2019 by Assistant Attorney General Nicholas F. Persampieri, other States by their respective legal counsel on various dates between February and October 2019.</p> <p>The subject matter of the Common Interest Agreement concerns the sharing of information in anticipation of the parties participating as litigants or counsel for litigants in ongoing administrative proceedings and as yet unfiled subsequent judicial challenges involving common questions of fact and law relating to oil and gas leasing (hereinafter “Oil and Gas Matters”).</p> <p>The Common Interest Agreement (hereinafter “the Oil and Gas CIA”) describes the parties’ common legal interest relating to advocating for the parties’ interests in the anticipated Oil and Gas Matters and, in particular, preventing any unlawful, improper, or imprudent assessment of the</p>	<p>1 V.S.A. § 317(c)(4)</p> <p>“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege . . . .”</p> <p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or for that other party’s</p>

	<p>environmental impacts of oil and gas development that would adversely affect the parties’ natural resources, environment, and economies through a number of impacts, including climate change.</p> <p>The Oil and Gas CIA discusses how pursuit and advancement of this common legal interest requires and has required the sharing of certain documents, materials, information, and communications between and among the parties’ governing boards, staff, management, consultants, experts, clients, and/or counsel that are privileged, protected, confidential, immune, or otherwise exempt from disclosure, such as under the attorney-client, attorney work product, common interest, joint defense, and other privileges and protections.</p> <p>The Oil and Gas CIA recites that the parties wish to pursue their common legal interest in the preparation for and conduct of the Oil and Gas Matters by continuing to exchange such documents, information, and communications without waiving or affecting their privileged or confidential status.</p> <p>The Oil and Gas CIA memorializes that the parties’ sharing and disclosure of certain documents, materials, information, and communications that are privileged and confidential, without waiving or affecting their privileged or confidential status, is necessary and essential to the preparation, pursuit, and accomplishment of the parties’ common interests and objectives in the Oil and Gas Matters. The Oil and Gas CIA notes that such privileged and confidential exchange will allow for the parties’ claims and defenses to be thoroughly investigated and prepared, an effective litigation strategy and joint legal positions to be developed, as well as legal briefs and other court or administrative filings efficiently prepared without giving undue advantage to the opposing side.</p> <p>The Oil and Gas CIA then details the agreed processes, procedures, and defined terms whereby the parties will receive, use, share, manage, and</p>	<p>representative . . . .”</p> <p>V.R.E. 502(b) / Lawyer-Client Privilege / Common Interest Privilege</p> <p>“A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative . . . (3) by him or his representative or his lawyer, or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein . . . .”</p>
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	<p>protect from non-parties such privileged or confidential documents, information, and communications exchanged in preparation for, and during the course of, the Oil and Gas Matters and which will otherwise govern the Oil and Gas CIA’s enforcement, modification, termination, joinder, execution, and effective date.</p> <p>The Oil and Gas CIA explicitly states the parties’ shared understanding and expectation that the Oil and Gas CIA itself, any amendments thereto, and all discussions among the parties related to the Oil and Gas CIA are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine.</p>	
<p><b>AGO0047- AGO0065</b></p>	<p>A 19-page document consisting of a 5-page Confidentiality Agreement and 14 signature pages, effective July 16, 2019 and last dated April 7, 2020, entered into by the State of Vermont on March 23, 2020 by Assistant Attorney General Nicholas F. Persampieri, other States and/or State governmental entities, and certain automakers by their respective legal counsel on various dates between July 2019 and April 2020.</p> <p>The subject matter of the Confidentiality Agreement concerns the sharing of information in anticipation of litigation and administrative proceedings arising out of the ongoing revision of federal motor vehicle greenhouse gas standards and fuel economy standards, including on-going administrative proceedings and litigation in which a number of States, including Vermont, and other parties are challenging the federal government’s purported revocation of a preemption waiver for California motor vehicle greenhouse gas standards and requested declaration that state motor vehicle greenhouse gas standards are preempted by federal law (hereinafter “Auto GHG Standards Litigation”).</p> <p>In addition, the subject matter of the Confidentiality Agreement also concerns the related sharing of information between the State and automaker parties meant to facilitate agreement resolving the rights and</p>	<p>1 V.S.A. § 317(c)(4)</p> <p>“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege . . . .”</p> <p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or for that other party’s representative . . . .”</p>

	<p>obligations of the parties with respect to State enforcement of greenhouse gas standards for motor vehicles (hereinafter “Auto GHG Standards Agreement”).</p> <p>The Confidentiality Agreement (hereinafter “the Auto GHG Standards CA”) describes the parties’ common legal interest in the continued implementation of a comprehensive state and federal program of harmonized motor vehicle greenhouse gas and fuel economy standards and to resolve the parties’ respective rights, obligations, legal risks, and uncertainties under the same through the Auto GHG Standards Litigation and/or an Auto GHG Standards Agreement.</p> <p>The Auto GHG Standards CA discusses how pursuit and advancement of this common legal interest may require the sharing of certain documents, materials, information, and communications between and among the parties’ corporate affiliates, governing boards, staff, management, consultants, experts, clients, and/ or counsel that may be confidential, privileged, protected, immune, or otherwise exempt from disclosure.</p> <p>The Auto GHG Standards CA recites that the parties wish to pursue their common legal interest in the preparation for and conduct of the Auto GHG Standards Litigation and/or achievement of an Auto GHG Standards Agreement by exchanging such documents, information, and communications without waiving or affecting their confidential and/or privileged status.</p> <p>The Auto GHG Standards CA memorializes that the parties’ sharing and disclosure of certain documents, materials, information, and communications that are confidential and/or privileged, without waiving or affecting their privileged or confidential status, is necessary to facilitate productive discussions aimed at a potential agreement resolving of the parties’ respective rights and obligations with respect to motor vehicle greenhouse gas regulations.</p>	<p>V.R.E. 502(b) / Lawyer-Client Privilege / Common Interest Privilege</p> <p>“A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative . . . (3) by him or his representative or his lawyer, or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein . . . .”</p>
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	<p>The Auto GHG Standards CA then details the agreed processes, procedures, and defined terms whereby the parties will receive, use, share, manage, and protect from non-parties such confidential and/or privileged documents, information, and communications exchanged in the preparation for and conduct of the Auto GHG Standards Litigation and/or achievement of an Auto GHG Standards Agreement and which will otherwise govern the Auto GHG Standards CA’s enforcement, modification, termination, joinder, execution, and effective date.</p> <p>The Auto GHG Standards CA explicitly states the parties’ shared understanding and expectation that the Auto GHG Standards CA itself, any amendments thereto, and all discussions among the parties related to the Auto GHG Standards CA are themselves confidential information.</p>	
<p><b>AGO0066- AGO0084</b></p>	<p>A 19-page document consisting of a 5-page Common Interest Agreement and 14 signature pages, effective and last dated January 22, 2020, entered into by the State of Vermont on January 22, 2020 by Assistant Attorney General Nicholas F. Persampieri and other States by their respective legal counsel on various dates in January 2020.</p> <p>The subject matter of the Common Interest Agreement concerns the sharing of information in anticipation of the parties participating as litigants or counsel for litigants in ongoing administrative proceedings and as-yet unfiled subsequent judicial challenges involving common questions of fact and law relating to petroleum development (hereinafter “Petroleum Development Matters”).</p> <p>The Common Interest Agreement (hereinafter “the Petroleum Development CIA”) describes the parties’ common legal interest relating to advocating for the parties’ interests in the anticipated Petroleum Development Matters and, in particular, preventing any unlawful, improper, or imprudent assessment of the environmental impacts of oil and</p>	<p>1 V.S.A. § 317(c)(4)</p> <p>“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege . . . .”</p> <p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another</p>

	<p>gas development that would adversely affect the parties' natural resources, environment, and economies.</p> <p>The Petroleum Development CIA discusses how pursuit and advancement of this common legal interest requires and has required the sharing of certain documents, materials, information, and communications between and among the parties' governing boards, staff, management, consultants, experts, clients, and/or counsel that are privileged, protected, confidential, immune, or otherwise exempt from disclosure, such as under the attorney-client, attorney work product, common interest, joint defense, and other privileges and protections.</p> <p>The Petroleum Development CIA recites that the parties wish to pursue their common legal interest in the preparation for and conduct of the Petroleum Development Matters by continuing to exchange such documents, information, and communications without waiving or affecting their privileged or confidential status.</p> <p>The Petroleum Development CIA memorializes that the parties' sharing and disclosure of certain documents, materials, information, and communications that are privileged and confidential, without waiving or affecting their privileged or confidential status, is necessary and essential to the preparation, pursuit, and accomplishment of the parties' common interests and objectives in the Petroleum Development Matters. The Petroleum Development CIA notes that such privileged and confidential exchange will allow for the parties' claims and defenses to be thoroughly investigated and prepared, including the drafting of public comments and development of litigation strategy, without giving undue advantage to the opposing side.</p> <p>The Petroleum Development CIA then details the agreed processes, procedures, and defined terms whereby the parties will receive, use, share, manage, and protect from non-parties such privileged or confidential</p>	<p>party or for that other party's representative . . . .”</p> <p>V.R.E. 502(b) / Lawyer-Client Privilege / Common Interest Privilege</p> <p>“A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative . . . (3) by him or his representative or his lawyer, or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein . . . .”</p>
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	<p>documents, information, and communications exchanged in preparation for, and during the course of, the Petroleum Development Matters and which will otherwise govern the Petroleum Development CIA’s enforcement, modification, termination, joinder, execution, and effective date.</p> <p>The Petroleum Development CIA explicitly states the parties’ shared understanding and expectation that the Petroleum Development CIA itself, any amendments thereto, and all discussions among the parties related to the Petroleum Development CIA are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine.</p>	
<p><b>AGO0085-AGO0119</b></p>	<p>A 35-page document consisting of a 5-page Confidentiality Agreement and 17 signature pages, effective April 27, 2018 and last dated December 11, 2019, entered into by the State of Vermont on April 30, 2018 by Assistant Attorney General Nicholas F. Persampieri and other States by their respective legal counsel on various dates from April 2018 to December 2019, as well as a 2-page Amendment to the same with 11 signature pages, effective and last dated December 11, 2019, entered into by the State of Vermont on December 9, 2019 by Assistant Attorney General Nicolas F. Persampieri and other States by their respective legal counsel on various dates from November to December 2019.</p> <p>The subject matter of the Confidentiality Agreement, as amended, concerns the sharing of information by the parties having an interest in or who are counsel for entities having an interest in filed and as-yet unfiled lawsuits under state or federal law involving common questions of fact and law relating to climate change (hereinafter “Climate Change Litigation”). The Climate Change Litigation includes, but may not be limited to: <i>City of Oakland, et al. v. BP P.L. C., et al.</i> (N.D. Cal. 17-cv-06011), <i>City and County of San Francisco, et al. v. BP P.L.C., et al.</i> (N.D. Cal. 17-cv-06012), <i>San Mateo v. Chevron Corp.</i> (N.D. Cal. 17-cv-04929), <i>Rhode Island v. Chevron Corp.</i> (R.I. Super. Ct. PC-2018-4716, and D. R.I. 18-00395), <i>Mayor &amp; City Council of Baltimore v. BP p.l.c.</i> (Md. Cir.</p>	<p>1 V.S.A. § 317(c)(4)</p> <p>“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege . . . .”</p> <p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in anticipation of litigation or for trial by or for another party or for that other party’s representative . . . .”</p>

	<p>Ct. 24-C-18-004219 and D. Md. 18-02357), <i>City of New York v. BP p.l.c.</i> (S.D.N.Y 18- 00182), <i>King County v. BP p.l.c.</i> (Wash. Super. Ct. 18-2-11859-0 and W.D. Wash. 18-00758), and <i>Board of County Commissioners of Boulder County, et al., v. Suncor Energy, et al.</i>, No. 19-1330 (10th Cir.), and any appeals arising from those matters.</p> <p>The Confidentiality Agreement (hereinafter “the Climate Change CA”) describes the parties’ common legal interest relating to the proper application of law related to climate change impacts.</p> <p>The Climate Change CA discusses how pursuit and advancement of this common legal interest requires and has required the sharing of certain documents, materials, information, and communications between and among the parties’ governing boards, staff, management, consultants, experts, clients, and/or counsel that are privileged, protected, confidential, immune, or otherwise exempt from disclosure, such as under the attorney-client, attorney work product, common interest, joint defense, and other privileges and protections.</p> <p>The Climate Change CA recites that the parties wish to pursue their common legal interest in the preparation for and conduct of the Climate Change Litigation by continuing to exchange such documents, information, and communications without waiving or affecting their privileged or confidential status.</p> <p>The Climate Change CA memorializes that the parties’ sharing and disclosure of certain documents, materials, information, and communications that are privileged and confidential, without waiving or affecting their privileged or confidential status, is necessary and essential to the preparation, pursuit, and accomplishment of the parties’ common interests and objectives in the Climate Change Litigation. The Climate Change CA notes that such privileged and confidential exchange will allow for the parties’ claims and defenses to be thoroughly investigated</p>	<p>V.R.E. 502(b) / Lawyer-Client Privilege / Common Interest Privilege</p> <p>“A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative . . . (3) by him or his representative or his lawyer, or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein . . . .”</p>
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	<p>and prepared and efficient joint participation in the Climate Change Litigation to be developed, including the development of litigation strategy and the preparation of legal briefs, without giving undue advantage to the opposing side.</p> <p>The Climate Change CA then details the agreed processes, procedures, and defined terms whereby the parties will receive, use, share, manage, and protect from non-parties such privileged or confidential documents, information, and communications exchanged in preparation for, and during the course of, the Climate Change Litigation and which will otherwise govern the Climate Change CA’s enforcement, modification, termination, joinder, execution, and effective date.</p> <p>The Climate Change CA explicitly states the parties’ shared understanding and expectation that the Climate Change CA itself, any amendments thereto, and all discussions among the parties related to the Climate Change CA are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine.</p>	
<p><b>AGO00120-AGO0132</b></p>	<p>A 13-page document consisting of a 5-page Common Interest Agreement and 8 signature pages, effective and last dated December 2019, entered into by the State of Vermont in December 2019 by Assistant Attorney General Alison Stone and other States by their respective legal counsel on various dates in December 2019.</p> <p>The subject matter of the Common Interest Agreement concerns the sharing of information by the parties who are or anticipate participating in proceedings relating to <i>United States v. California et al.</i>, No. 2:19-cv-02142-WBS-EFB, Eastern District of California, involving the federal government’s challenge to the State of California’s greenhouse gas emissions cap-and-trade agreement with the provincial government of Quebec, Canada (hereinafter “Calif. Cap-and-Trade Litigation”).</p> <p>The Common Interest Agreement (hereinafter “the Calif. Cap-and-Trade</p>	<p>1 V.S.A. § 317(c)(4)</p> <p>“Records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege . . . .”</p> <p>V.R.C.P. 26(b)(4) / Work Product Protection</p> <p>“[D]ocuments and tangible things otherwise discoverable . . . and prepared in</p>

	<p>CIA”) describes the parties’ common legal interest related to the parties’ lawful implementation and enforcement of actions to address greenhouse gas emissions and the adverse impacts of climate change within their jurisdictions.</p> <p>The Calif. Cap-and-Trade CIA discusses how pursuit and advancement of this common legal interest requires and has required the sharing of certain documents, materials, information, and communications between and among the parties’ governing boards, staff, management, consultants, experts, clients, and counsel that are privileged, protected, confidential, immune, or otherwise exempt from disclosure, such as under the attorney-client, attorney work product, common interest, joint defense, and other privileges and protections.</p> <p>The Calif. Cap-and-Trade CIA recites that the parties wish to pursue their common legal interest in the preparation for and conduct of the Calif. Cap-and-Trade Litigation by continuing to exchange such documents, information, and communications without waiving or affecting their privileged or confidential status.</p> <p>The Calif. Cap-and-Trade CIA memorializes that the parties’ sharing and disclosure of certain documents, materials, information, and communications that are privileged and confidential, without waiving or affecting their privileged or confidential status, is necessary and essential to the preparation, pursuit, and accomplishment of the parties’ common interests and objectives in the Calif. Cap-and-Trade Litigation. The Calif. Cap-and-Trade CIA notes that such privileged and confidential exchange will allow for the parties’ claims and defenses to be thoroughly investigated and prepared, effective joint legal positions and legal strategy to be developed, as well as legal briefs and other court filings prepared without giving undue advantage to the opposing side.</p> <p>The Calif. Cap-and-Trade CIA then details the agreed processes,</p>	<p>anticipation of litigation or for trial by or for another party or for that other party’s representative . . . .”</p> <p>V.R.E. 502(b) / Lawyer-Client Privilege / Common Interest Privilege</p> <p>“A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between himself or his representative and his lawyer or his lawyer's representative . . . (3) by him or his representative or his lawyer, or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein . . . .”</p>
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	<p>procedures, and defined terms whereby the parties will receive, use, share, manage, and protect from non-parties such privileged or confidential documents, information and communications exchanged in preparation for, and during the course of, the Calif. Cap-and-Trade Litigation and which will otherwise govern the Calif. Cap-and-Trade CIA's enforcement, modification, termination, joinder, execution, and effective date.</p> <p>The Calif. Cap-and-Trade CIA explicitly states the parties' shared understanding and expectation that the Calif. Cap-and-Trade CIA itself, any amendments thereto, and all discussions among the parties related to the Calif. Cap-and-Trade CIA are themselves subject to the attorney-client privilege, common interest privilege, and work product doctrine.</p>	
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