

# THE CONSERVATION FUND

*America's Partner in Conservation*

September 27, 2011

California Air Resources Board  
Kevin M. Kennedy  
Assistant Executive Officer – Climate Change  
1001 I Street  
Sacramento, CA 95812

*Comments on Subchapter 10 Climate Change, Article 5, Sections 95800 to 96022, Title 17, California Code of Regulations – September 2011 ( Rules ), 2<sup>nd</sup> 15 day review*

Dear Mr. Kennedy:

The Conservation Fund has been an active supporter of the Air Resources Board's efforts to implement AB 32. We appreciate the hard work that is evident in the most recent draft of the Rules and the opportunity to offer the following comments, all of which relate to changes made to the Rules following the initial 15 day review period.

1. "Forest Owner". Deleting the clause "does not include the holder of a conservation easement" from the definition of "Forest Owner" inadvertently and unilaterally exposes holders of conservation easements to the various liabilities imposed on Forest Owners in the Rules. We recommend that this exclusion be re-instated.
2. Bases for Determining Offset Invalidation are too broad.

Section 95985(c)(2) invalidates offsets if the project activity "was not in accordance with all local, state, or national environmental and health and safety regulations...." This is very broad and vague. There should be some nexus between the failure to accord and the goals and objectives of the Rules. Given the thousands of health and safety regulations, there may be technical violations that have no material effect on health and safety, much less ARB's air quality objectives. In addition, there should be some definition of what constitutes a "determination" that results in an invalidation. Will ARB or a verifier determine what may ultimately be regulatory or judicial facts and circumstances as to whether the project activity or its implementation is in "accord" with a regulation? We recommend that the Rules be changed to provide that offsets are invalidated only if the appropriate agency or court has finally and definitively found the project activity to not be in accord with a regulation.

Section 95985(c)(3) invalidates offsets if ARB determines that “offset credits have been issued in any other voluntary or mandatory program with the same offset project boundary....” This puts the burden on the Offset Project Operator to determine what its various holders may have done with their offset credits, which is infeasible. ARB should require holders of offset credits to attest that they have not used the offset in any other voluntary or mandatory program and hold them liable, not the Offset Project Operator, if they have.

3. Desk Review Requirements. For clarity, revise Section 95990(f)(1)(B) as follows:

“Review of the data checks conducted by the offset verification body for the Early Action Program to ensure they were *calculated in accordance with the applicable offset quantification methodology*.

4. Holder Listing of Offset Credits. The registration, listing and issuance requirements in sections 95990(d), (e) and (h) seem to allow for a holder of early action offset credits to list, register and be issued ARB offset credits for a forestry project if the Early Action Project Developer does not list or register the project. This seems inconsistent with the summary accompanying the Rules which states that:

“New sections 95990(d)(1), (e)(1)(A), and (h)(5)(A) were added to clarify that Offset Project Operators or Authorized Project Designees for forest and urban forest offset projects that do not transition their early action offset projects to Compliance Offset Protocols must register with ARB for issuance of ARB offset credits. For these projects, the holders of the early action offset credits may not register, list, meet the attestation requirements, and seek issuance of ARB offset credits. Staff is requiring the project proponents to register in these cases to ensure that the CO<sub>2</sub> sequestered and credited by ARB remains sequestered and ARB has enforcement authority in the case of reversals from these projects.”

Holders of early action offsets from forestry projects should not independently be allowed to register or list an early action project or seek issuance of ARB offset credits. We recommend that the Rules be clarified to conform to the statement in the summary.

5. Issuance of Early Action Offset Credits. Section 95990(i)(1)(D) 3 states that ARB offset credits will be issued to the Offset Project Operator. This procedure creates three problems, as follows:

A. The Offset Project Operator cannot definitively establish which of its early action offsets are ineligible for ARB offset credits because they have been “retired, canceled... or used to meet any GHG mitigation requirements in any voluntary or regulatory system” as specified in Section 95990(h)(7).

B. It puts the Offset Project Operator in the position of receiving and then transferring the ARB offset credits to the various holders of the early action offsets. Not only does this raise the issue of ownership and possession of the ARB offset credit, it also assumes that project developers are capable of competently and fairly administering the transfer.

C. For early action projects developed under CAR Forest Project Protocol version 2.1, this section assesses the buffer contribution against the Offset Project Operator, thereby imposing a cost on the Offset Project Operator that should rightly be imposed on the holder if they want to receive an ARB offset credit. The holder of the early action offset got what it paid for - a CRT issued by CAR. If they want an ARB offset credit, they should cover the additional cost attendant to the buffer pool requirement.

These concerns can be readily addressed by having the “issuance” of an ARB offset credit consist of ARB posting the serial numbers of the accepted early action offsets in exchange for which ARB is prepared to issue an ARB offset credit. That way, each holder could then present their early action offsets and received its ARB offset credits after ARB deducts the appropriate buffer amount AND the holder attests that the early action offset has not been retired or used in another program.

6. Baseline Transition for Climate Action Reserve Forest Project Protocol version 2.1 Projects. The rules for recalculating baselines for projects under CAR Forest Project Protocol v.2.1 upon transition to the ARB Offset Protocol are difficult to follow. For example, section 95990(k)(1)(D) states that “....Registry offset credits and ARB offset credits issued for the first Reporting Period after the early action offset project is listed pursuant to section 95975 using the Compliance Offset Protocol U.S. Forest Projects, [DATE], will only be for the increased carbon stocks beyond what was already issued early action offset credits in the last year before the early action offset project transitioned to a Compliance Offset Protocol pursuant to this section.” It is unclear what happens to a project transitioning to a Compliance Offset Protocol pursuant to this section if there are fewer ARB credits available upon transition than were already issued as early action credits under the early action project baseline. Clarification of this and other baseline calculation issues are essential to enable Offset Project Operators to accurately evaluate the consequences of listing and/or transitioning their projects.

Once again, thank you for the opportunity to comment. We look forward to working with you to implement the Rules upon final adoption and launch of the Cap and Trade program.

Sincerely,

A handwritten signature in black ink, appearing to read "CKelly", with a long horizontal flourish extending to the right.

Chris Kelly  
California Program Director

