



TURLOCK IRRIGATION DISTRICT

COMMENTS ON MARCH 21, 2014 CAP-AND-TRADE AMENDMENTS

Turlock Irrigation District (“TID”) submits the following comments regarding the California Air Resources Board (“ARB”) March 21, 2014 Cap-and-Trade Regulatory Amendments (“amendments”). In these comments, TID focuses on the following proposed amendments:

- (1) TID supports the proposed revisions related to the allowance retirement order and restrictions on future allowance transfers. TID appreciates that the ARB staff addressed the specific comments of TID and other stakeholders regarding these issues. (Sections 95856(h)(4) and 95921.)
- (2) The ARB should initiate a public process to discuss informational requirements under the Cap-and-Trade, discuss mechanisms for streamlining the collection of such information, and discuss how this sensitive information will be protected. It remains unclear in the proposed revisions how the collection of additional allowance transfer information, new restrictions on allowance transfers, and certain informational disclosures assist the ARB in implementing and enforcing the Cap-and-Trade Regulation or fulfill its role as a “Market Monitor,” hence the need for additional public processes to clarify these issues. (Sections 95830(c), 95912(d)(4)(E), 95921, and 95923 and other provisions expanding the informational requirements/disclosures of the Cap-and-Trade.)
- (3) The responsibilities of a regulated entity to notify and ensure that a Contractor or Advisor does not share certain information with other entities should be clarified. (Section 95914(c)(3)(B).)

DISCUSSION

1. TID Supports Additional Flexibility Provided in the Allowance Retirement Order and the Removal of Restrictions on Future Allowance Transfers.

Under Section 95856(h)(4), the ARB will exempt utilities from the allowance retirement order for allowances other than those allocated by the ARB. TID continues to believe that there should be no mandated retirement order for the triennial compliance obligation, and that a retirement order will tend to result in higher compliance costs for covered entities. Covered entities are in the best position to determine how to meet their compliance obligation in the most cost effective manner. However, TID appreciates the flexibility the ARB will provide to utilities.

In addition, Section 95921(a)(4) would be revised to allow additional flexibility in conducting future allowance transactions. Specifically, the prohibition against future transactions would

apply as of the “termination date” of the transaction agreement. TID supports this change and appreciates the ARB’s receptiveness to TID and other parties’ comments on this issue.

2. The ARB Should Conduct a New Public Process To Discuss Informational Requirements Under the Cap-and-Trade Regulation and the Role of the Market Monitor.

As a general matter, the reporting and Cap-and-Trade programs should be designed to minimize the administrative burdens and transactional costs of regulated entities. TID is concerned that every time the ARB amends its regulations, it adds new informational and administrative requirements that on the whole make AB 32 program compliance increasingly burdensome. These incremental additions expose covered entities to new risks of releasing confidential information and increase compliance costs, particularly for small and medium-sized publicly owned utilities. TID has particular concerns about proposed revisions to Sections 95830(c), 95912(d)(4)(E), 95921, and 95923.

The most recent set of amendments would revise several Sections of the Cap-and-Trade Regulation to expand the informational requirements, create new obligations for allowance transfers, and apparently expand the role of the market monitor. Specifically, as proposed, Sections 95830(c) and 95923 require disclosure of certain employees, contractors and advisors. Section 95912(d)(4)(E) as revised would require disclosure of the existence and status of certain investigations within the last ten years. Section 95921(b) would require the submission of detailed information about an allowance transfer before the ARB will approve a transfer. The information requested includes, among other things, detailed transaction-specific information and copies of contracts. These new informational requirements go beyond the scope of information that was originally intended to be collected by the ARB. Significantly, it is not clear what the ARB plans to do with this information or how confidential information related to allowance transfers would be protected.

According to the ARB, “the market monitor will monitor allowance holding and transfer activity to detect design flaws in the market operating rules, standards, procedures or practices, or to detect structural problems in the market.”¹ The systematic collection of detailed transaction-specific information (in particular, copies of contracts) does not further the function of detecting design flaws in the Cap-and-Trade market. The existing reporting requirements (e.g., reporting on transfer prices and ensuring that transfers do not violate the holding limitations) provide more than enough information for the ARB to monitor markets and detect any design flaws. The ARB should not revise Section 95921(b) as proposed. Similarly, the systematic collection of employee, contractor and advisor information regarding past investigations is outside the role of the market monitor as described above.

These new informational requirements create new administrative burdens for regulated entities, especially since the ARB requires that this information be updated on a quarterly basis. To address these issues, the ARB should hold a public workshop where it discusses the information it plans to collect and how that information will be used. The ARB should also consider ways of

¹ See *Facts About Cap and Trade: Market Oversight and Enforcement*, available at: http://www.arb.ca.gov/cc/capandtrade/market_oversight.pdf

streamlining these informational requirements (e.g., consolidating the informational requirements into the MRR Reporting Tool and require updating only when the annual report is due).

3. The ARB Should Clarify in Revised Language or, in the Alternative, the Final Statement of Reasons That a Covered Entity's Only Responsibility Is to Obtain a Signed Acknowledgement of the Prohibition From Its Consultants And Advisors.

The proposed amendments to Section 95914(c)(3)(B) would require covered entities to disclose Consultants and Advisors that provide a broad list of enumerated services relating to the Cap-and-Trade or the Mandatory Reporting Regulation. Beyond the disclosure requirement, covered entities would also be required to ensure that the Consultant or Advisor does not transfer information to other auction participants or coordinate a bidding strategy with other auction participants.

Section 95914(c)(3)(B) would specifically require a covered entity to inform its Consultants and Advisors of the prohibition of sharing information to other auction participants and ensure the Consultants and Advisors have read and acknowledged the prohibition under penalty of perjury. It is not clear whether the ARB expects that a covered entity would enforce this prohibition by imposition of an acknowledgement under penalty of perjury or whether the ARB would hold the covered entity responsible for a prohibited disclosure.

The ARB should clarify in revised language, or, in the alternative, in the Final Statement of Reasons that a covered entity's only responsibility is to obtain a signed acknowledgement of the prohibition from its Consultants and Advisors. The covered entity should not be held responsible for a disclosure of their confidential information that is outside of the covered entity's control and outside the scope of work and authority for the Consultant or Advisor. Moreover, the covered entity should not be required to police the activities of its Consultants and Advisors when the Consultants and Advisors are working for other customers or clients.

CONCLUSION

In sum, TID appreciates your consideration of our comments on the March 21, 2014, Proposed Amendments. As discussed above, TID requests clarification regarding the Contractor and Advisor disclosure requirements. TID also requests that the ARB conduct a public process to consider the new informational requirements set forth in these and past amendments and discuss ways that the administrative burdens of these requirements can be minimized. Finally, TID appreciates the additional flexibility related to allowance retirement order and the removal of restrictions on future allowance transfers.

If you have any questions about these comments, please do not hesitate to contact Ken Nold at knold@tid.org. We look forward to continuing to work with staff and the ARB towards achieving California's greenhouse gas emission reduction goals.