



TURLOCK IRRIGATION DISTRICT

August 2, 2013

Dr. Steve Cliff
Assistant Division Chief – Climate Program
California Air Resources Board
1001 “I” Street
Sacramento CA, 95814

Filed Electronically

RE: TID Comments on July 18th Public Workshop to Discuss Proposed Amendments to the California Cap-and-Trade Program

Dear Dr. Cliff:

Turlock Irrigation District (“TID”) submits the following comments regarding the California Air Resources Board (“ARB”) July 18th *Proposed Amendments to the California Cap-and-trade Program* (“July 18th Amendments”). In these comments, TID expresses concerns with the expanded informational requirements proposed in the July 18th Amendments. It is not clear how the collection of additional allowance transfer information, contractor information and information about a regulated entity’s employees aids the ARB in implementing and enforcing the cap-and-trade regulation. TID also believes that the cost containment mechanism should be revisited to include additional provisions that will remove restrictions on offset usage and not draw on future vintage allowances. TID submits these comments in conjunction with specific comments in the “Comment Form” provided by the ARB staff.

1) The Collection Of Pricing And Contract Information In CITSS Is Beyond The Scope Of ARB’s Market Monitoring Responsibilities.

The July 18th Amendments would revise Section 95921(b) of the Cap-and-trade regulation to require the submission of detailed information about an allowance transfer before the ARB will approve a transfer. TID is concerned that these new informational requirements (combined) with other new informational requirements go beyond the scope of information that was originally intended to be collected by the ARB. Originally, the reporting and cap-and-trade programs were intended to minimize the administrative burdens on regulated entities. The new informational requirements under Section 95921(b) would include: the type of transfer, dates for execution of the transfer agreement and settlement, price of the compliance instruments, and exchange information (among many other information requirements). In addition, the ARB regularly collects contracts for allowance transfers. The ARB has not specified why this information is needed or how the information furthers the ARB’s Market Monitoring responsibilities.

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 ARB should not require additional reporting requirements under Section 95921(b). The existing reporting requirements (e.g., reporting on transfer prices and ensuring that transfers don’t violate the holding limitations) provide more than enough information for the ARB to detect design flaws.

2) The ARB Should Amend The Cap-and-trade Regulations To Provide For A More Robust Cost Containment Proposal.

The July 18th Amendments would revise Section 95913(f)(5) to create a new cost-containment mechanism, wherein the ARB would draw on the latest vintage of allowances in the event that the highest price tier of the Allowance Price Containment Reserve is exhausted. While TID supports the integration of new cost-containment mechanisms, we do not believe that the proposed revisions to Section 95913(f)(5) satisfy the Board’s directive in Resolution 12-51.

Resolution 12-51 requires staff to develop a cost containment proposal that meets the following objectives: (1) The proposal must achieve the policy objective of ensuring that allowance prices will not exceed the highest price tier of the APCR; (2) the proposal must minimize the impact on existing allowances; (3) the proposal must maintain the environmental objectives of the program; and (4) the proposal must demonstrate that the proposed mechanisms are effective in a reasonable range of plausible combinations of conditions as needed to assure their effectiveness during the period of 2013 to 2020.²

The proposal does not meet most of the requirements in Resolution 12-51 because it does not account for the conditions where the mechanism in Section 95913(f)(5) is needed in more than one year. If prices get to \$50, they will likely remain at that level for a sustained period. At the July 18th workshop, staff explained that if the highest price tier is depleted in more than one year, then the ARB would pull allowances from the previous compliance period (i.e., 2020 allowances would be used first, then 2019, and finally 2018). Consequently, the mechanism in Section 95913(f)(5) could not be used for more than three years because in 2018 there would be no future compliance period from which the ARB could borrow allowances. This mechanism therefore does not “minimize the impact on existing allowances” because future allowances would be depleted, which would in turn put further upward pressure on allowance prices. The proposed mechanism also does not “ensure effectiveness during the period of 2013 to 2020” under a reasonable range of plausible combinations. The mechanism addresses the need for price

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

² See Air Resources Board Resolution 12-51, available at: <http://www.arb.ca.gov/cc/capandtrade/final-resolution-october-2012.pdf>

containment for a limited period, but exacerbates the price conditions in the later years of the program.

In addition, TID is concerned that if the ARB borrows allowances from the future to keep the prices down, then in the future we will have higher prices. Anyone can buy allowances in the forward market for future vintage allowances. If the ARB pulls allowances from the future, that will immediately drive up the prices for future vintage allowances. If such a mechanism were used, then the ARB would penalize an entity that seeks to plan ahead.

In order to best satisfy the direction of Resolution 12-51, TID believes that staff should propose a mechanism that does not deplete future allowance year budgets. Alternatively, the ARB staff should simply create an unlimited number of allowances at the \$50 price, which would be available only through the Allowance Price Containment Reserve. In addition, TID requests that the ARB release the modeling results referenced at the July 18th workshop so stakeholders can better understand how staff evaluated a “reasonable range of plausible combinations.”

3) The ARB Should Encourage A Robust Offset Market By Allowing Regulated Entities To Bank Any Unused Portion Of Their Offset Limitations And Trade That Right With Other Regulated Entities.

TID supports the changes to the offset provisions to include two new offset protocols and streamlining of the offset project review process. However, TID believes that more should be done to increase demand for offset projects. Reducing offset use restrictions will not only help contain costs, but also help create a more robust offset market with greater opportunities for new, economic growth. As noted in Dr. Brian Murray’s presentation at the June 25th workshop, the ARB should take into account both time and space considerations of GHG emissions when evaluating the environmental integrity objectives in Board Resolution 12-51. Dr. Murray asserts that for GHG emissions, time (when the emissions occur) matters, but not that much within a ten year period.³ Dr. Murray also asserts that space does not matter because GHG emissions produced in California have the same impact on the overall concentration of GHG emissions as the same amount of emissions produced elsewhere in the world.⁴

When evaluating cost-containment mechanisms, TID encourages the ARB to consider reducing restrictions related to the use of offsets in instances where the ARB has placed limitations on time and space. Such restrictions do not further the environmental objectives of the program. However, removing offset use restrictions will bolster the existing cost containment mechanisms and also further the policy goals of AB 32. One of the legislature’s findings in adopting AB 32 was that:

³ See Dr. Murray’s June 25th presentation, at Slide 2, available at:
<http://www.arb.ca.gov/cc/capandtrade/meetings/062513/brian-murray-presentation.pdf>.

⁴ *Id.*

investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emission of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.⁵

AB 32 goes on to direct the State Air Resources Board to:

design emissions reduction measures to meet the statewide emissions limits for greenhouse gases . . . in a manner that . . . maximizes additional environmental and economic co-benefits for California . . .⁶

The development of a more robust offset market will further these AB 32 objectives. Specifically, the ARB should consider JUG's suggested revisions to offset rules, which include: (1) allowing the regulated entities to carry over all of the unused portion of the 8% offset restriction on an annual, quantitative basis; (2) exempting California-originated offset projects from the 8% limit; (3) allowing compliance grade offsets to be sourced from anywhere in North America; and (4) moving the offset project commencement to an earlier date. In addition, regulated entities should be allowed to trade any unused portion of their offset limitations with other regulated entities. The ARB should incorporate these mechanisms into the Cap-and-trade program in the near future. Offset projects can take years to develop and sending signals now that there will be higher demand for offset credits in the future will encourage near term investment in new offset projects.

4) Regulated Entities Should Have The Flexibility To Determine The Order That Their Compliance Instruments Are To Be Retired.

The July 18th Amendments would revise Section 95856 of the Cap-and-trade regulation to specify a retirement order for compliance instruments. These changes are unnecessary and will tend to result in higher compliance costs for regulated entities. Regulated entities are in the best position to determine how to meet their compliance obligation in the most cost effective manner. Moreover, the use and recognition of serial numbers in the existing CITSS software should allow for sufficient functionality to ensure that regulated entities do not violate any of the allowance usage restrictions, while at the same time, the use of serial numbers would preclude the need for a predetermined retirement order. At most, the ARB should allow regulated entities to choose a pre-determined retirement order.

⁵ See, Cal. Health and Safety Code Sec. 38501(e).

⁶ See, Cal. Health and Safety Code Sec. 38501(h).

5) The ARB Should Clarify Its Proposal To Require Names And Contact Information For All Persons That Have Access To Any Information Relating To Compliance Instruments.

The July 18th Amendments would revise Section 95830(I) to require any entity registered with ARB to provide the ARB with names and contact information for “all persons employed by the entity that will either have access to any information regarding compliance instruments, transactions, or holdings; or be involved in decisions regarding transactions or holding of compliance instruments.” This new requirement is potentially very broad, and based on the regulatory language, this new subsection could include employees that only tangentially have information about compliance instrument holdings. For example, would an administrative assistant that schedules a meeting for other employees to discuss cap-and-trade issues be included in this requirement? Accounting for employees that are not engaged in actually making decisions about compliance instruments is administratively burdensome and does not fulfill a legitimate informational need by the ARB. Section 95830(I) should therefore be revised to only include employees that “are directly involved in making decisions about purchasing, holding or transferring compliance instruments.”

6) The ARB Should Clarify The Information It Plans To Collect from Cap-and-trade Contractors.

The July 18th Amendments would add Section 95923, which would require disclosure of cap-and-trade contractors, including a brief description of the work performed by the Contractor. There also appears to be a placeholder for an additional subsection (d) that would require disclosure of specific information related to the communications between the contractor and the regulated entity. The ARB should provide more specificity as to the types of information it proposes to collect, how it plans to use the information, and why this information is needed. As with other expansions of informational requirements proposed in the July 18th Amendments, it is unclear how this information will assist the ARB in fulfilling its market monitoring responsibilities.

7) The ARB Should Specify The Deadline For The POU Allowance Designation Forms.

The ARB proposes to adjust the timeline for allocation of allowances to October 15th and the verification deadline would be moved to August 15th. TID shares the concerns of other stakeholders that moving these deadlines could make the verification and reporting process more difficult. Under the current timeframes, compiling the required data and obtaining verification services requires significant staff resources. Any delays in information collection or verification could jeopardize meeting the deadlines, which appear to be strictly enforced.⁷ Thus, the ARB should not adjust the verification deadline. If ARB moves the allowance allocation date, it should also specify when the POU allowance designation form would be due.

⁷ See July 2013 Notice of Fines for Nine Companies Under Reporting Regulation, available at: <http://www.arb.ca.gov/newsrel/newsrel.php>

Conclusion

TID appreciates your consideration of our comments on the July 18th Amendments. TID is concerned with the expanded informational requirements proposed in the July 18th Amendments. It is not clear how the collection of additional allowance transfer information, contractor information and information about employees aids the ARB in implementing and enforcing the cap-and-trade regulation. TID also believes that the cost containment provisions should be revisited to include additional cost containment provisions that will remove restrictions on offset usage and not draw on future vintage allowances. We look forward to continuing to work with staff in this year's rulemaking.

Sincerely,

A handwritten signature in blue ink, appearing to read "D B Severson".

Dan B. Severson

Turlock Irrigation District