



TURLOCK IRRIGATION DISTRICT

July 9, 2013

Filed Electronically

Dr. Steve Cliff
Chief, Climate Change Program Evaluation Branch
California Air Resources Board
1001 "I" Street
Sacramento CA, 95814

RE: TID Comments on June 28th Cap-and-trade Workshop: Compliance Retirement, Market-Related Reporting, and Cost Containment

Dear Dr. Cliff:

Turlock Irrigation District ("TID") submits the following comments regarding the California Air Resources Board ("ARB") June 28th Workshop. In these comments, TID expresses its support for additional cost containment mechanisms (particularly a more robust offset market), but also raises serious concerns with the Staff proposal to release compliance account information. This market-sensitive information should be protected from disclosure under the Public Records Act. TID also takes issue with the release of pricing information on CITSS Bilateral transfers, as proposed during the workshop. TID appreciates the opportunity to provide these comments and looks forward to working with the ARB Staff towards the successful resolution of issues in this year's cap-and-trade rulemaking.

I. Cost Containment And Allowance Retirement:

TID supports the cost containment presentation and comments filed by the Joint Utilities Group ("JUG"). In particular, TID agrees that 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, 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.¹ 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.²

¹ See Dr. Murray's June 27th presentation, at Slide 2, available at: <http://www.arb.ca.gov/cc/capandtrade/meetings/062513/brian-murray-presentation.pdf>.

² *Id.*

Thus, 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:

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.³

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 . . .⁴

The development of a more robust offset market will further these AB 32 objectives. Section 4.4 of the ARB Staff Paper, *Policy Options for Cost Containment in Response to Board Resolution 12-51* (“Staff Policy Paper”), addresses the possibility of using more offsets. The Staff Policy Paper notes that “additional emission reductions could be obtained from outside of California. Sources include: International offset credits could be obtained and retired . . . and offsets from jurisdiction-run sector crediting programs could be obtained retired.”⁵ The Staff Policy Paper goes on to note that these options appear to be infeasible solutions in the 2013 Rulemaking because the ARB lacks the authority to purchase such credits.⁶ However, the ARB *itself* does not need to procure additional offsets in order to further the cost containment objectives of Board Resolution 12-51. Such procurement can be done by covered entities, provided that they are recognized by ARB for compliance purposes. Reducing time and geographic restrictions to allow regulated entities greater flexibility in procuring offset emissions will strengthen the cost containment 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

³ See, Cal. Health and Safety Code Sec. 38501(e).

⁴ See, Cal. Health and Safety Code Sec. 38501(h).

⁵ See, ARB Staff Paper, *Policy Options for Cost Containment in Response to Board Resolution 12-51*, June 25, 2013, at p. 14, available at: <http://www.arb.ca.gov/cc/capandtrade/meetings/062513/arb-cost-containment-paper.pdf>

⁶ *Id.*

from anywhere in North America; and (4) moving the offset project commencement to an earlier date. These measures will provide additional cost containment protections, while at the same time allowing for the development of a more robust offset market.

II. Confidentiality of Compliance Account Information:

TID opposes the quarterly release of compliance account information, as proposed on Slides 23 – 33 of the June 28, 2013 Staff Presentation.⁷ TID considers the information regarding its compliance account holdings to be protected from disclosure under the Public Records Act. As discussed below, the compliance account amounts to “trade secrets” because the release of the Form would result in the loss of a business advantage that TID would otherwise have in power transactions and allowances purchases.

California Government Code Section 6254.7(d) protects against disclosure of “Trade Secrets.” The term “Trade Secrets” is defined broadly:

trade secrets, may include, *but are not limited to*, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade *or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.* (emphasis added).

In other words, to qualify as “trade secrets” the information must (1) not already be public information, (2) be used to produce a product or service with commercial value, and (3) give the user an opportunity to obtain a business advantage.

Compliance account information meets these requirements. First, the information is not otherwise available to the public. Second, the information is also used to produce a product or service (energy and allowance transactions) with commercial value. Third, retaining the confidentiality of the information provides the holder with a business advantage. If compliance account information is disclosed, regulated entities will lose their business advantage in allowance negotiations and in their compliance strategies. Release of the compliance account information will allow allowance brokers to determine exactly how many allowances a regulated entity needs in order to comply with the cap-and-trade regulation. The broker will be able to negotiate higher prices for those allowances based on a disclosed need for allowances. For these reasons, the ARB should consider compliance account information exempt from disclosure under the Public Records Act.

⁷ See June 28, 2013 ARB Staff Presentation, available at: <http://www.arb.ca.gov/cc/capandtrade/meetings/062513/arb-cr-mrr-present.pdf>

This situation could be particularly problematic for publicly owned utilities. In November preceding each emissions year, a POU must decide how many of its freely allocated allowances the POU will place in its compliance account(s). This right was specifically sought by the POU community because of the vertically integrated nature of most POU operations. California's POUs own and operate most of their own generation, and having the "POU option" was necessary for POUs to avoid the needless transaction costs of participating in the auction when the benefits of their direct application would inure to their customers. Publication of this market sensitive information would more than negate the benefit of the measure in the first place. Other regulated entities may wait to retire their allowances until the compliance obligation due date, with the allowances most likely coming from their Holding Account balance, which TID understands will not be disclosed. When a broker negotiates with a POU, the broker will be able to review reported emissions data, compare that against the Compliance Account balance, and determine how many allowances the POU needs to retire in order to meet its compliance obligation. The broker will have a better understanding of the POUs' need for allowances than it would otherwise have for other regulated entities, and thus be positioned to exercise market power. In order to avoid putting POUs and other regulated entities at a disadvantage in these transactions, the ARB should not disclose the information to the public.

TID is also very concerned about ARB's pursuit of regulatory amendments requiring the disclosure of CITSS information on Bilateral Transfers. Specifically, the pricing of transactions, regardless if there are no counterparty names listed, is unnecessary and serves no compelling regulatory purpose. Pricing, vintage and volume information is easily obtainable through a variety of brokerage and market making entities. The default for posting transfer information pricing should be zero, with perhaps a voluntary option for those entities who would like to share pricing information.

III. Conclusion

TID appreciates your consideration of our concerns regarding the sensitive nature of the information contained in the Compliance Accounts and in CITSS. We also believe that the ARB's consideration of expanded offset protocols and the removal of restrictions on the use of offsets can both achieve the Board's directive to evaluate cost containment and achieve the goals of AB 32 while incentivizing direct, local emissions reductions.

Sincerely,



Dan B. Severson

Turlock Irrigation District