

PROPOSED

State of California
AIR RESOURCES BOARD

OZONE ATTAINMENT PLAN FOR WESTERN NEVADA COUNTY

Resolution 18-36

November 15, 2018

Agenda Item No.: 18-9-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the California Air Resources Board (CARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature in Health and Safety Code section 39602 has designated CARB as the air pollution control agency for all purposes set forth in federal law;

WHEREAS, CARB is responsible for preparing the State Implementation Plan (SIP) for attaining and maintaining the National Ambient Air Quality Standards (standards) as required by the federal Clean Air Act (the Act) (42 U.S.C. section 7401 et seq.), and to this end is directed by Health and Safety Code section 39602 to coordinate the activities of all local and regional air pollution control and air quality management districts (districts) necessary to comply with the Act;

WHEREAS, section 39602 of the Health and Safety Code also provides that the SIP shall include only those provisions necessary to meet the requirements of the Act;

WHEREAS, section 41650 of the Health and Safety Code requires CARB to approve the nonattainment plan adopted by a district as part of the SIP unless the Board finds, after a public hearing, that the plan does not meet the requirements of the Act;

WHEREAS, CARB has responsibility for ensuring that the districts meet their responsibilities under the Act, pursuant to sections 39002, 39500, 39602, and 41650 of the Health and Safety Code;

WHEREAS, CARB is authorized by section 39600 of the Health and Safety Code to do such acts as may be necessary for the proper execution of its powers and duties;

WHEREAS, sections 39515 and 39516 of the Health and Safety Code provide that any power, duty, purpose, function or jurisdiction of the Board may be delegated to the CARB Executive Officer as the Board deems appropriate;

WHEREAS, the districts have primary responsibility for controlling air pollution from non-vehicular sources and for adopting control measures, rules, and regulations to attain the standard within their boundaries, pursuant to sections 39002, 40000, 40001, 40701, 40702, and 41650 of the Health and Safety Code;

WHEREAS, on March 27, 2008, the United States Environmental Protection Agency (U.S. EPA) promulgated an 8-hour ozone standard of 75 parts per billion (ppb) (75 ppb ozone standard);

WHEREAS, effective July 20, 2012, U.S. EPA designated Western Nevada County as nonattainment for the 75 ppb ozone standard with a Marginal classification and attainment date of July 20, 2015;

WHEREAS, effective June 3, 2016, U.S. EPA classified Western Nevada County as a Moderate nonattainment area with an attainment date of July 20, 2018 since the region did not meet the 75 ppb 8-hour ozone standard by July 20, 2015;

WHEREAS, Western Nevada County is overwhelmingly impacted by the transport of ozone and ozone precursors from upwind nonattainment areas;

WHEREAS, the Northern Sierra Air Quality Management District (District) is the local air district and planning agency for Western Nevada County;

WHEREAS, since Western Nevada County did not meet the 75 ppb 8-hour ozone standard by the July 20, 2018, Moderate area deadline, the District requested that Western Nevada County be classified as a Serious nonattainment area for the 75 ppm 8-hour ozone standard;

WHEREAS, a recent decision by the U.S. Court of Appeals for the Ninth Circuit, in *Bahr v. U.S. Environmental Protection Agency* (9th Cir. 2016) 836 F.3d 1218 (*Bahr*), addressed the U.S. EPA's previous interpretation of contingency measure requirements under the Act;

WHEREAS, the Act requires that a Serious nonattainment area ozone SIP include an emissions inventory, modeled attainment demonstration, reasonably available control measure (RACM) evaluation, reasonable further progress (RFP) demonstration, contingency measures for RFP and attainment, vehicle miles-traveled (VMT) growth offset, and transportation conformity budgets;

WHEREAS, the District developed the Ozone Attainment Plan for Western Nevada County (Ozone Plan) to meet the Serious ozone nonattainment area planning requirements for the 75 ppb 8-hour ozone standard;

WHEREAS, the District Board of Directors approved the Ozone Plan and the request for a Serious ozone nonattainment classification on October 22, 2018;

WHEREAS, the CARB Review of the Ozone Attainment Plan for Western Nevada County (CARB Staff Report) includes supplemental air quality analyses to support air quality modeling results, referred to in U.S. EPA modeling guidance as a “Weight of Evidence” (WOE) analysis;

WHEREAS, the CARB Staff Report also includes supplemental information on CARB contingency measures to fully address the contingency measure requirements of the Act as interpreted by U.S. EPA in response to the *Bahr* decision;

WHEREAS, CARB staff has conducted a review of the Ozone Plan together with the supplemental information in the CARB Staff Report and concluded these documents satisfy the applicable requirements of the Act;

WHEREAS, consistent with section 172(c)(3) of the Act, the Ozone Plan includes a comprehensive, accurate, and current inventory of emissions of oxides of nitrogen (NO_x), and reactive organic gases;

WHEREAS, consistent with sections 181(a) and 182(c)(2) of the Act, the Ozone Plan includes an attainment demonstration that shows attainment as expeditiously as practicable by July 20, 2021;

WHEREAS, consistent with section 172(c)(1) of the Act, the Ozone Plan demonstrates compliance with RACM requirements;

WHEREAS, consistent with sections 172(c)(2) and 182(c)(2) of the Act, the Ozone Plan identifies emission levels that demonstrate RFP through the attainment year;

WHEREAS, consistent with section 176 of the Act, the Ozone Plan establishes transportation conformity emission budgets, developed in consultation with the Nevada County Transportation Commission that are consistent with RFP and attainment year emission levels;

WHEREAS, Title 40, Code of Federal Regulations (CFR) section 93.105 requires CARB to submit transportation conformity emission budgets to certain transportation and air quality agencies;

WHEREAS, CARB staff submitted the transportation conformity emission budgets for the Ozone Plan to the U.S. EPA, Federal Highway Administration (FHWA), California Department of Transportation (Caltrans), Nevada County Transportation Commission (NCTC), and Northern Sierra Air Quality Management District (NSAQMD) on October 24, 2018;

WHEREAS, the Ozone Plan and the CARB Staff Report identify sufficient contingency measures for RFP and attainment consistent with sections 172(c)(9) and 182(c)(9) of the Act, as interpreted by U.S. EPA guidance and *Bahr*;

WHEREAS, section 110(I) of the Act and Title 40 CFR section 51.102, require that one or more public hearings, preceded by at least 30 days of notice and opportunity for public review, must be conducted before adopting and submitting any SIP revision to U.S. EPA;

WHEREAS, as required by the Act, the Ozone Plan was made available for public review at least 30 days prior to the October 22, 2018 public hearing during which the District Board of Directors approved the Ozone Plan together with the request for reclassification as a Serious ozone nonattainment area;

WHEREAS, the CARB Staff Report was made available for public review at least 30 days prior to the Board's public hearing;

WHEREAS, the California Environmental Quality Act (CEQA) requires that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, to meet its obligations under CEQA, the District determined that the Ozone Plan is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) (the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment) and under California Code of Regulations, title 14, section 15308 (actions taken by a regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment) and the Ozone Plan will not result in any potentially significant adverse effects on the environment;

WHEREAS, CARB has determined that its subsequent approval of the District's Ozone Plan is a "ministerial" approval for purposes of CEQA (California Code of Regulations, title 14, section 15268) because CARB's review is limited to determining if the plan meets the requirements of the Act, and CARB lacks authority to modify or not approve the Plan in response to environmental concerns, as described in the CARB Staff Report;

WHEREAS, CARB has determined that approval of the WOE and supplemental information on CARB contingency measures is exempt from CEQA under California Code of Regulations, title 14, section 15061(b)(3) (the general rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment) and under California Code of Regulations, title 14, section 15308 (actions taken by a regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment) and the WOE will not result in any potentially significant adverse effects on the environment;

WHEREAS, CARB's regulatory program that involves the adoption, approval, amendment, or repeal of standards, rules, regulations, or plans has been certified by the Secretary for Natural Resources under Public Resources Code section 21080.5 of the California

Environmental Quality Act (CEQA; California Code of Regulations, title 14, section 15251(d)), and CARB conducts its CEQA review according to this certified program (California Code of Regulations, title 17, sections 60000-60007); and

WHEREAS, no comments were received during the 30-day comment period that raise significant environmental issues associated with the proposal and no approval of written responses to environmental comments is required under California Code of Regulations, title 17, section 60007.

NOW, THEREFORE, BASED ON THE FOREGOING, the Board finds that:

1. The Serious classification is appropriate for Western Nevada County due to the impact of transport from upwind nonattainment areas;
2. The Ozone Plan together with the CARB Staff Report supplementation information satisfies the requirements of the Act for a Serious ozone nonattainment area.
3. The Ozone Plan together with the CARB Staff Report supplemental information includes the required air quality and emissions data, modeled attainment demonstration, RACM demonstration, RFP demonstration, contingency measures for RFP and attainment, and transportation conformity budgets.
4. Ongoing implementation of CARB's and District control programs provides the emission reductions needed for meeting the 75 ppb 8-hour ozone standard by the attainment deadline.
5. CARB's review and approval of the Ozone Plan submitted by the District for inclusion in the California SIP is a ministerial activity for purposes of CEQA; and
6. CARB's approval of the CARB Staff Report WOE and supplemental information on contingency measures for inclusion in the California SIP is a regulatory act to protect the environment for the purposes of CEQA.
7. The consultation requirements of Title 40 CFR section 93.105 were satisfied by CARB staff's submittal of the Ozone Plan's transportation conformity emission budgets to U.S. EPA, FHWA, Caltrans, NCTC, and the District on October 24, 2018.

BE IT FURTHER RESOLVED that the Board hereby adopts the Ozone Plan for Western Nevada County and the CARB Staff Report WOE and supplementation information on contingency measures as a revision to the California SIP.

BE IT FURTHER RESOLVED that the Board hereby approves the District's request that Western Nevada County be classified as a Serious ozone nonattainment area.

BE IT FURTHER RESOLVED that the Board hereby directs the Executive Officer to submit the Ozone Plan as adopted by the District together with the CARB Staff Report

WOE and supplemental information on contingency measures to U.S. EPA for inclusion in the California SIP to be effective, for purposes of federal law, upon approval by U.S. EPA.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to work with the District and U.S. EPA and take appropriate action to resolve any completeness or approvability issues that may arise regarding the SIP submission.

BE IT FURTHER RESOLVED that the Board authorizes the Executive Officer to include in the SIP submittal any technical corrections, clarifications, or additions that may be necessary to secure U.S. EPA approval.

BE IT FURTHER RESOLVED that the Board hereby certifies that the Ozone Plan and CARB Staff Report WOE and supplemental information on contingency measures were adopted after notice and public hearing as required by Section 110(l) of the Act and 40 CFR section 51.102.