

Compliance Offsets Protocol Task Force Meeting #1

MEETING SUMMARY

March 2nd, 2020

California Environmental Protection Agency Building | Byron Sher Room, 1001 I Street

Opening Remarks by Richard W. Corey, Executive Officer

Richard Corey welcomed participants to this kick-off meeting of the Compliance Offsets Protocol Task Force (Task Force). Mr. Corey thanked the Task Force members for all the work they have already done and all the work they are going to do over this year-long process.

Introduction of Compliance Offsets Protocol Task Force Members

Gavin McCabe, Chair, introduced himself as one of the two public members on the Task Force and as a former attorney with the California Attorney General's office who worked with the California Air Resources Board (CARB) to successfully defend the Compliance Offset Program, as well as many other CARB programs.

The Task Force members introduced themselves. For a full list of the thirteen Task Force members, please refer to the Task Force webpage at <https://ww3.arb.ca.gov/cc/capandtrade/offsets/taskforce.htm>.

Discussion of Bagley-Keene Open Meeting Act and Public Records Act Requests

David Hults, CARB Assistant Chief Counsel, oriented the Task Force to key ground rules. The Task Force is governed by the Bagley-Keene Open Meeting Act and Public Records Act, which require that State bodies be transparent to the public. The Task Force must have a quorum of seven members participating to hold a meeting. Information given to the Task Force as a group must also be provided to the public. If Task Force members have resources that they feel would be beneficial to other Task Force members, they need to make sure it is also provided to the public. The Public Records Act does not require disclosure of all records. It does not require disclosure of privileged information, employment or business information. The Public Records Act is limited to documents that the Task Force utilizes in its role.

Clarifying Questions from the Task Force

Q: May we have a discussion between meetings through email?

A: The Task Force may not have an email discussion involving a quorum of seven members. Task Force members could send an email to a sub-quorum of six or less. Task Force members need to be careful to avoid a serial meeting, so must not forward the email or discuss the email with other members of the Task Force outside those original six.

Q: Can Task Force members serve on multiple informal subgroups?

A: As long as they are careful not to act as an intermediary by sharing information between the two subgroups.

Q: What about ex-parte communications?

A: This body is not serving a judicial function. Bagley Keene does not restrict ex-parte communications. Task Force members will hear from stakeholders and don't need to report those communications. If Task Force members feel that it is important to inform other Task Force members, Task Force members must consider the prohibition against serial meetings when sharing information. The Task Force can come up with its own rules regarding ex-parte communications.

Q: Can Task Force members and informal subgroups seek out information from experts outside of meetings?

A: Yes.

Review of Task Force Charter

Prior to the meeting, Task Force members received a packet including:

- The Task Force Charter approved by the CARB Board - <https://ww3.arb.ca.gov/board/books/2020/012320/res20-5.pdf>
- And a background document, at <https://ww3.arb.ca.gov/cc/capandtrade/protocols/livestock/task.force.member.me.sources.final.pdf>, that includes information and links on:
 - AB 398, the statute creating the Task Force
 - AB 293, which set additional legislative requirements for the Task Force
 - CARB's process to review and approve Compliance Offset Protocols
 - Cap-and-Trade Regulation (specifically Subarticle 13 and Section 95802)
 - AB 32, the Global Warming Solutions Act of 2006
 - An example of CARB Board adoption of new protocols: Mine Methane Capture Projects Staff Report
 - A spreadsheet of CARB-issued offsets and
 - Potential discussion topics and questions for the Task Force to consider.

Paul Cheng of CARB briefly described the Task Force charter that outlines the roles and responsibilities of the advisory body. As outlined in AB 398, the Task Force is charged with providing guidance to CARB in approving new offset protocols for the purpose of increasing offset projects with direct environmental benefits in California, while prioritizing disadvantaged communities, Native American or tribal lands, and rural and agricultural regions. AB 293 expanded the scope of the Task Force to include new protocols for the enhanced management or conservation of agricultural and natural lands, and for the enhancement and restoration of wetlands. And the development of recommendations for the state board on the inclusion of methodologies to allow groups of landowners to jointly develop natural and working lands offset projects under the approved offset protocols. The recommendations shall address how to lower project transaction costs for participants and enable a greater number of landowners to participate in those projects while protecting the integrity and transparency of those projects.

Discussion of Schedule

Mr. Cheng reviewed the Task Force's timeline. Per the charter, the Task Force has one year to complete its work. The bulk of work will be done in informal subgroups which will be organized around topic areas to be decided in the afternoon session. Each subgroup will submit a subgroup report to CARB staff to compile into a draft Task Force report. CARB will publish the draft report for public comment. Task Force members will then have time to review comments prior to their second meeting and last meeting, when they will discuss and finalize the report. After the report is approved it will be presented at the CARB Board in early 2021.

Background and History of the Compliance Offset Program and Considerations in Identifying New Project Types

Mr. Cheng provided the background on the Cap-and-Trade and Compliance Offset Programs including the role of offsets, criteria for offsets, how protocols are developed, eligible sectors for offset generation, existing Compliance Offset Protocols and credits, litigation history, and considerations for new protocols. The limited offsets are an essential part of Cap-and-Trade, providing a mechanism for those under the program to control costs. Offsets identify reductions that must meet the AB 32 criteria of being real, additional, quantifiable, permanent, verifiable, and enforceable. Credits cannot be issued for emission reductions that are already included under the cap. Protocols must go through a regulatory process, including stakeholder and environmental review and Board approval. The Board has adopted six project types to date. CARB is asking the Task Force to not only consider new protocols, but also what updates to existing protocols would support AB 398 or AB 293 requirements. The full presentation, which includes graphs and maps, can be found on the Task Force website at https://ww3.arb.ca.gov/cc/capandtrade/offsets/compliance_offset_protocol_task_force_meeting_3-2-2020.pdf. It includes an email address for public inquiries and comments regarding the Task Force: OffsetTaskForce@arb.ca.gov.

Clarifying Questions on Background Presentation

Q: Clarification on Slide 20 (Protocol Development) regarding sectors and activities: you would not have two different types of forestry protocols. You should merge them into one protocol.

A: Yes, each protocol can have multiple similar activity types within it.

Q: Would an enteric methane emissions protocol be different enough to be its own protocol, even though it would happen at a dairy operation with an existing digester protocol?

A: When you have distinct activities, then you have separate protocols. Enteric fermentation versus dairy digester, urban forestry versus non-urban forestry, each would be separate protocols. A different activity at the same location or different locations would result in different protocols.

Q: If a non-digester protocol was developed that addressed manure management, would that be added to the existing protocol or be a new one?

A: CARB will look for guidance from the Task Force on that issue.

Q: Can you confirm that the Task Force is not constrained from suggesting adding areas to currently existing protocols?

A: Yes.

Q: Is there a “business as usual” primer?

A: A good example is the Mine Methane Capture Staff Report we provided. We analyzed the percentage of mines adopting the proposed practices, and if they were being done by a large or significant percentage of existing mines. The Task Force can provide input on how to address business-as-usual.

Q: Does the Task Force have discretion to look at the effectiveness of mitigation measures? Some are very effective and could be missed by “business as usual” – they are an “above and beyond” performance.

A: Yes, the Mine Methane Capture protocol is like that. You could look at newest and best techniques that are not being adopted.

Comment: The plaintiffs argued that if offsets are illusory, there is no gain. We agree – they need to be real.

Q: What is a direct environmental benefit to the state?

A: We refer to that as DEBS. Aside from the definition on Slide 16, it is anything that is physically in the State. Projects not located in the State can provide documentation of DEBS. We look forward to hearing any Task Force recommendations on this.

Public Comment on Background Presentation

Jon Costantino, VERA

- The Verified Emissions Reduction Association (VERA) has been working to inform lawmakers on this issue and supported including real, permanent and rigorous offsets in AB 398. Regarding the map on Slide 24, a clarification: Ozone Depleting Substances (ODS) work is also being done in California including collection and jobs in disadvantaged communities. Our website, californiaoffsets.com, is a resource. Regarding your charge: it’s more than just new protocols, it’s about ways to improve in-state production, more utilization of offsets.
- Q: If an email is sent to the Task Force email address, will it get to the Task Force members?
A: CARB staffs the email. If the email is for the Task Force, CARB staff will forward it to the Task Force members within Bagley-Keene rules. If it is a question for CARB staff, then CARB staff will respond to it.

Susan Wood, Dentons

- Dentons Law Firm authored the advanced refrigeration methodology in the voluntary offset credits. We are working on three projects on swapping out refrigerants. Dentons wants to offer its expertise on refrigerants or other gases to the Task Force.

Barbara Haya, UC Berkeley

- Regarding additionality, about 85% of the Kyoto protocols don't reduce emissions. The CARB standardized approach provides the opportunity to look at the protocol as a whole. It should include not just business-as-usual, but by law, something that hasn't otherwise occurred. I encourage you to focus on project types that are not going forward to a substantial degree on their own, or where income from offsets is expected to dramatically increase reductions, so we can see a large increase afterwards. Additionality is really important, but it could mean we are crediting more than we are achieving.

Kevin Townsend, Bluesource

- Look at the existing body of protocols, and at other elements of the offset program, to reduce obstacles and increase investment in projects.

Katelyn Roedner Sutter, Environmental Defense Fund

- I am thrilled to see this group come together. The Environmental Defense Fund has been supportive of really high-integrity offsets. California has been a leader in this area. Look to protocols that can uphold those stringent environmental standards, and look to how these protocols can further benefit tribal and disadvantaged communities.

Adam Livingston, Sequoia Riverlands Trust

- The Task Force has a strong background in forestry, but please make sure that soil carbon and conservation and restoration more broadly are part of the discussion.

Discussion: Operating Procedures

Facilitator Ariel Ambruster from the CSU Sacramento Consensus and Collaboration Program (CCP) led a discussion on Task Force internal operating procedures, presenting a draft set of operating procedures for the Task Force to consider. After discussion, the Task Force agreed to the Internal Operating Procedures with the following changes:

- Change the last sentence of the first paragraph to clarify that the sentence refers to the Operating Procedures rather than the Charter.
- Refer to the Operating Procedures as **Internal** Operating Procedures to further differentiate them from the CARB Board-approved Charter.

Discussion: Task Force Process

Ms. Ambruster and the Task Force discussed the expected process for the Task Force to consider and develop its recommendations via internal subgroups, and finalize that work in full Task Force meetings. Several members of the Task Force raised concerns about being restricted to only two plenary meetings, concerned that this might not allow sufficient iterative work, time to resolve differences between subgroups and the full task force, or full consideration of public and Task Force thinking on subgroup draft products.

In addition, there was concern that process objections not affect the reception of the Task Force's final product.

The Task Force asked CARB if a third meeting would be possible. Staff noted that the Task Force Charter had no language prohibiting the group from meeting a third time. CARB management later in the day announced agreement to a third meeting.

In addition, Task Force members discussed the preferred approach to the work of the informal subgroups and full Task Force production of its final report. During the day's discussions, the Task Force agreed on the following guidance:

- Getting to consensus will not be done at the expense of laying out the range of perspectives and concerns.
- Include minority viewpoints, and characterize the weight of viewpoints (i.e., an even split, or five out of six members).
- Subgroup members need to keep in mind that their group may not represent all interests and attempt to consider diverse perspectives.
- Subgroup discussion should stay sufficiently high-level and within guardrails so that time is not used up delving into the weeds, while being specific enough to inform. Avoid mission creep. Capture nuances where they are relevant. Focusing recommendations on priorities will be most impactful – a 5-page report may be more effective than a 500-page report.
- It will be important not to reopen debates that have already been fleshed out, or rehash or rewrite existing protocols.
- The report should cast a broad net, laying out all options, risks/challenges and benefits/promises.
- All comments and original submissions will be documented.
- The Task Force is recommending, not writing, new protocols.

Discussion: Key Topic Areas and Informal Subgroups

The Task Force was asked to brainstorm the major topic areas it envisions for its report to CARB. The plan is for the Task Force to divide into informal subgroups, with each subgroup taking on a topic or set of topics and develop those into discreet sections or chapters of the draft report for the full Task Force to review and consider at its second meeting. That way, informal discussion can occur outside Task Force meetings in a way that is in keeping with Bagley-Keene.

The Task Force brainstormed approaches to organizing its work. Some Task Force members expressed concern that new topics may emerge after initial discussions begin, but the group recognized that under the constraints of the timeline provided by CARB, work in the informal subgroups needed to begin immediately. It was agreed that each informal subgroup would consider both new protocols as well as existing protocols – issues and opportunities – within its topic area. In addition, the Task Force discussed and agreed on a set of “screening” metrics or guidelines that each informal subgroup will use when considering those new or existing protocols. These screens or filters can serve as a way to organize the work product, so that each subgroup's work is similarly

organized. In addition, to help in the standardization, CARB staff committed to circulating an example report that can be used as a template.

Highlights from the Task Force Discussion on Key Topic Areas

- Look not only at the supply of offsets but also demand for offsets. Utilizing demand-side mechanisms can increase the participation of small entities. Look at market issues and gaps.
- Consider co-benefits.
- Voluntary operations that are additional can be a good starting point for new protocol ideas. The Task Force can look at what the barriers are, and how those can be resolved.
- Whether sequestration can be permanent is an interest of CARB. Soil-based sequestration such as biochar, compost and geologic enhanced weathering are also potential project areas.
- Urban forestry is not being utilized because it is too expensive.
- An area that tribes are particularly interested in is restoring diverse wildlife habitats, such as coastal prairies in currently forested areas. How would that fit into the current topic areas?
- There was discussion of creating a subgroup focused specifically on *Aggregation*. The Task Force agreed that aggregation will be handled mainly by the *Forestry* informal subgroup, but may be addressed in all topic areas, without rehashing debates. There needs to be a common standard and uniformity.
- After debate, the Task Force agreed to combine *Grasslands* with the *Croplands* subgroup, as there are more commonalities in management techniques than with *Livestock Agriculture*.
- One Task Force member requested that CARB staff provide more input on what protocols they believe the Task Force should focus on.
- Task Force members can sit on more than one informal subgroup, but must be careful not to cross-pollinate discussions between groups.
- Aggregation can be both a topic and a screen.

Highlights from the Task Force Discussion on Screens

- It will be important for each of the subgroups to apply the same metrics and guidelines.
- There was concern expressed about reliance on models. In response, it was suggested that this would be mitigated through analysis of uncertainty in the evidence-supported science screen.
- Prioritize benefits to tribal communities and to DACs, or to decreasing pollution burdens to DACs. A concern was expressed that DACs were not sufficiently represented in the process.
- The Task Force urged members of the public to send any additional thoughts or feedback to the Task Force ASAP, as it would be helpful earlier rather than later in informal subgroup discussions.

- Barriers for tribes include cost, availability of lands (with much land in federal hands), and ways to increase ecological diversity within this approach, including introducing prairies and oak lands into forested areas.

Public Comments

Katelyn Roedner Sutter, Environmental Defense Fund

- I suggest three categories: Sequester, Destroy, and Avoid. Aim for more protocols and more variety. Regarding DEBS, there are AB 32 and disadvantaged community advantages to out-of-state credits that will hit the oil and gas industries in other states.

Kevin Townsend, Bluesource

- The *Grasslands* and *Urban Forestry* subgroups might find good ideas in the voluntary market. Mangrove habitat should be looked at under the *Blue Carbon* topic. Many projects, like motor oil recycling, are not going to fit into these categories, so a subgroup that looks at newer emerging technologies would be helpful. Regarding *Aggregation*, look at programmatic changes to help small covered facilities use this.

Jon Costantino, VERA

- *Aggregation* as a subgroup is very policy-centric, which is a good thing. Q: Is this Task Force a one-year effort or will you be able to undertake more reviews in the future? The Task Force should seek to inform CARB's work over the next five years, and recommend issues they should study, such as why rice is not working.
 - A: Task Force members responded that they could let CARB know if an issue needs more study or has potential that CARB should explore.

Erika Anderson, Anderson Law Firm

- It was recommended that *Aggregation* be dealt with within each category, as a project type level, looking at how small entities would get in and out of a program.
 - A Task Force member agreed, but saw some crosscutting aspects, such as the monitoring, reporting and verification (MRV) burden on smaller participants.
 - Ms. Anderson noted that verification is a bigger problem in soil sequestration, where permanence of project offsets is a huge issue.

Barbara Haya, UC Berkeley

- Regarding *Additionality*, look to research to assess under- and over- crediting. The best way to assure additionality is to look at the projects that are not going forward currently, and if there is an uptick after credits increase. After the fact, you should be able to trace back the effects to the program.

Tony Brunello, California Forests Coalition

- I am excited for new protocols. Review protocols that are not being used. The *Forestry* protocol needs to be updated with new information – a deep dive is required. How do we open up the existing protocols?

The California Council of Land Trusts submitted a letter (available at https://ww3.arb.ca.gov/cc/capandtrade/protocols/livestock/cclt_cwg_paper_qualified.ces_carbon.projects.final.112219.pdf), which was referred to the *Forestry* informal subgroup.

Decision: Task Force Informal Subgroups and Topic Areas

See

https://ww3.arb.ca.gov/cc/capandtrade/offsets/compliance_offset_protocol_task_force_subgroups.pdf for Informal Subgroup members and chairs

- **A: Wetlands/Blue Carbon**
- **B: Forestry**
- **C: Livestock Agriculture**
- **D: Crop Agriculture/Grasslands**
- **E: Other: High-GWP Gases (ODS)/Mine Methane Capture/Urban Forestry**
- **F: Overarching Programmatic Issues**

Decision: Screens

- AB32 Criteria: real, additional, quantifiable, permanent, verifiable, enforceable
- Environmental Justice (EJ); reducing pollution burdens in disadvantaged communities (DAC); Tribes; Rural-Agricultural; DEBS
- Reductions in cost barriers
- Market/demand implications
- Quantification, Evidence-supported science, Analysis of risk and uncertainty
- Aggregation
- Leakage – potential negative impacts to emissions in other jurisdictions
- Perverse Incentives
- Jobs

The Task Force agreed that each informal subgroup will look at both:

- New protocols
- Changes to existing protocols, including
 - Updating for new science and other changes
 - Ways to increase participation

Discussion: Timeline

CARB staff confirmed that the Task Force needs to complete its work by one year from its first meeting, by March 2, 2021. Staff and Task Force members agreed that their third meeting would be held in early 2021, with the draft final report needing to be completed by January 2021. The Task Force will aim to hold its second meeting in early- to mid-October 2020. This would mean that informal subgroups would look to complete their draft products by late summer. Timing needs to include:

- Two weeks for CARB staff and CCP to review and combine subgroup draft content into a draft report and post it for public and full Task Force review.
 - The Task Force asked that CARB and CCP remove redundancies and flag common substantive themes and contradictions
- 30 days for the public to review and provide comments on draft report content.
- One week for Task Force members to review public comments prior to their meeting.

Next Steps and Action Items

- Use the dedicated Task Force email for communication.
- Second meeting in early- to mid-October 2020.
- CARB will circulate a Doodle poll to Task Force members for the second meeting.
- CCP will provide the updated Internal Operating Procedures.
- CARB will publish public comments on the website.
- Informal subgroup leads will reach out to their subgroups to arrange meetings.
- CARB and CCP will provide some staff support for the informal subgroups.
- CARB staff will circulate an example report to Task Force members as a potential template for their work products.