



April 13, 2012

Steven Cliff, Chief of Climate Change Markets Branch
California Air Resources Board
1001 I Street, Sacramento, California

Submitted via weblink at: <http://www.arb.ca.gov/cc/capandtrade/comments.htm>

Re: Comments on the discussion draft of a regulation to link the California greenhouse gas cap-and-trade program to Québec and other partner jurisdictions

Dear Mr. Cliff and the California Air Resources Board:

These comments are submitted on behalf of the Center for Biological Diversity regarding the March 30, 2012, Discussion Draft of Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms to Allow for the Use of Compliance Instruments Issued by Linked Jurisdictions (“discussion draft”).¹

Our primary concern is that the regulation linking California’s greenhouse gas cap-and-trade program with Québec’s program will force California to accept carbon offset credits from projects with low or no environmental standards, with a potential for substantial negative environmental impacts. This is the overarching concern presented in our comment letter dated February 29, 2012, in response to the announcement of the development of the regulation.² Our review of the discussion draft continues to identify this as a critical shortcoming in the regulation.

1. The regulation would force California to accept offset credits with low or no environmental standards.

The discussion draft includes a provision that directly requires California to accept any offset credit accepted by any linking partner. **“Once a linkage is approved, a compliance instrument issued by the linked jurisdiction may be used to meet a compliance obligation in California.”** § 95942 (e) at page 175.

There is no mention in the discussion draft of any review of offset protocols adopted by other jurisdictions, any consideration of the environmental impacts of offset projects, or any mechanism for reducing California’s reliance on offset credits generated by projects with

¹ available at <http://www.arb.ca.gov/cc/capandtrade/draftregquebeclink.pdf>

² I incorporate here by reference the Center for Biological Diversity letter dated February 29, 2012.

negative environmental impacts. Similarly, Québec’s cap-and-trade regulation contains no environmental criteria for offsets or the adoption of offset protocols.³

Under this provision California would be forced to accept offset credits generated under offset protocols with lesser environmental standards than the offset protocols adopted by California for the same project types (e.g. forest projects), even when the offset projects in other jurisdictions result in significant negative environmental impacts. Also, this regulation would commit us now to accepting in the future those offset credits from protocols that have not even been developed yet by partner jurisdictions, as well as any offset credits issued by any other jurisdictions to which we link our cap-and-trade program in the future.

The only potential remedy indicated in the discussion draft would be for California to de-link with a partner jurisdiction. This seems a very coarse response to a comparatively specific problem, and is likely to be extremely complicated both politically and in terms of separating linked markets. At the same time, without specific criteria for what constitutes an unacceptable offset project, it seems highly probable that ARB will have tremendous difficulty in the future determining whether and when environmental impacts of offset credits would make it necessary to de-link from a partner jurisdiction, or even whether ARB has the authority to de-link on the basis of negative environmental impacts alone.

The regulation should include provisions that explicitly require that all offsets used for compliance in California maximize environmental co-benefits, and that all offset projects in linked jurisdictions meet or exceed the standards of protocols adopted by ARB for similar offset types. The Center for Biological Diversity has repeatedly expressed concerns over the potential for offset projects to result in negative environmental impacts. This is of particular concern with forest offset projects, which can result in substantial impacts to forest ecosystems, wildlife habitat, and water quality. In order to ensure that California’s cap-and-trade program does not rely on or result in the degradation of forests and ecosystems elsewhere, the regulation should not allow credits from forest protocols adopted by any linked jurisdictions to be sold into California’s cap-and-trade system absent meaningful minimum protections (e.g. provisions to ensure maintenance of native species, diverse age classes, structural diversity, wildlife habitat, water quality, and other natural resources).

2. The regulation could undermine California’s authority to achieve the mandate of AB 32 to maximize environmental co-benefits.

Although the draft regulation includes no specific mention of the Western Climate Initiative (“WCI”), it appears specifically intended to comply with the WCI agreements and provide the template for linking with future WCI partners. However, it is still not clear to what extent linking with Quebec or other WCI partners commits California to specific requirements of WCI agreements, and the implications of the various WCI agreements.

³ “The following emission allowances may be traded through the system and used for compliance purposes: (1) every emission unit and early reduction credit referred to in this Title; (2) every offset credit issued by the Minister pursuant to subparagraph 2 of the first paragraph of section 46.8 of the Environment Quality Act; (3) every emission allowance issued by a government other than the Gouvernement du Québec, with which an agreement has been entered into in accordance with section 46.14 of the Act.” Québec cap-and-trade regulation § 37.

The WCI agreements, to which ARB is a party but which have not been adopted under any California regulation, contain no environmental criteria for offset projects or the approval of offset protocols except for the practically meaningless requirement that “projects must meet all applicable local environmental regulations and be in compliance with all applicable laws.”⁴ The WCI agreements acknowledge that offset projects have “the potential to impact the environment or social environment in which the project is located,”⁵ but sets neither standards for ensuring that offset projects do not result in negative environmental impacts nor thresholds for allowable levels of environmental impacts.⁶ Furthermore, the WCI agreements explicitly reject the notion of setting standards to achieve environmental or social benefits: “WCI Partners recognize the environmental, social, economic and health benefits that may arise from an offset project and the offset system will focus on those benefits directly related to mitigating climate change. A WCI offset project is required only to result in a greenhouse gas emission reduction or removal.”⁷ AB 32, in contrast, requires more from California’s cap-and-trade system.

In December 2011, WCI adopted a process for the approval of offset protocols by WCI partner jurisdictions.⁸ Under that process, if a protocol is found to be consistent with WCI principles (which do not include environmental criteria or standards) the protocol would be available for use by any of the WCI partners.⁹ The WCI process appears to require California to accept any offset credits accepted by a WCI partner, and it does not appear to allow California to object to a protocol used by a WCI partner based on the potential for negative environmental

⁴ “WCI offset projects must meet all applicable local environmental regulations and be in compliance with all applicable laws in the jurisdiction where the project is located. If environmental or socioeconomic assessments of the proposed project have been done, the project’s registration application should reference this work and include a summary of the findings. WCI offset protocols for specific offset project types may require analysis of environmental and socioeconomic impacts beyond what the local jurisdiction would otherwise require and may require additional mitigation of potential negative impacts.” WCI *Offset System Essential Elements Final Recommendations Paper* § 8.3, Assessment of Environmental or Social Impacts.

⁵ “Offset projects are intended to reduce or remove greenhouse gas emissions. However, any project activity has the potential to impact the environment or social environment in which the project is located.” WCI *Offsets Committee White Paper, Task 1: Offset System Essential Elements, Offset Definition (Task 1.1) and Eligibility Criteria (Task 1.2) white paper*, July 2009, at 42.

⁶ WCI encourages offset projects to reference environmental impact reviews required under local laws and acknowledges that offset protocols could potentially require analysis and mitigation of environmental impacts beyond what the local jurisdiction would otherwise require. “WCI offset projects must meet all applicable local environmental regulations and be in compliance with all applicable laws in the jurisdiction where the project is located. If environmental or socioeconomic assessments of the proposed project have been done, the project’s registration application should reference this work and include a summary of the findings. WCI offset protocols for specific offset project types may require analysis of environmental and socioeconomic impacts beyond what the local jurisdiction would otherwise require and may require additional mitigation of potential negative impacts.” WCI *Offset System Essential Elements Final Recommendations Paper* § 8.3, Assessment of Environmental or Social Impacts. <http://www.westernclimateinitiative.org/document-archives/Offsets-Committee-Documents/Offsets-System-Essential-Elements-Final-Recommendations/>

⁷ WCI *Offset System Essential Elements Final Recommendations Paper* § 3.2.3, underline added.

⁸ WCI *Final Offset Protocol Review and Recommendation Process*, December 19, 2011.

⁹ *Id.* at 3. “The candidate protocol will initially be evaluated against the WCI criteria as defined in the WCI *Offset System Essential Elements Final Recommendations Paper* and the WCI *Detailed Design: Definition of project scope; Eligibility/additionality requirements; GHG quantification method; GHG emissions reduction method; Monitoring and verification method; Permanence; Leakage.*”

impacts.¹⁰ Furthermore, WCI explicitly acknowledges that there may be multiple, competing protocols for an offset type.¹¹

This raises the concern that a WCI partner could propose a forest offset protocol with lower environmental standards than the protocol adopted by ARB, other WCI partners would be able to adopt the protocol with lower standards, and California would be forced to accept offset credits generated under those less stringent protocols in other jurisdictions. This scenario could place California in a position that violates the letter and intent of AB 32, which gives ARB the sole authority to adopt offset protocols, and specifically requires ARB to verify and enforce the quality of offsets used for compliance in California.¹² Also, even if California were to reject credits generated under less stringent protocols—in fact, even if WCI were to reject a protocol, and a protocol was acknowledged only within a single partner jurisdiction—the fungible nature of offset credits in an auction system means that those credits still would effectively become part of California’s compliance market.

Furthermore, the regulation raises the concern that offset projects located in U.S. states outside of California might have the option of choosing among offset protocols to select the option that offers them the lowest standards. The discussion draft states that “[an] entity located in the United States may only register with California,” including “[an] entity operating an offset project.”¹³ However, it is not clear what authority ARB has to dictate the registration of projects in other U.S. states, and this appears to directly contradict WCI agreements that specifically allow any WCI partner to “issue offset certificates for projects located...outside the WCI Partner Jurisdictions within North America.”¹⁴ This includes U.S. states outside of California. Also, there is nothing in the regulation to indicate how ARB would exclude offset credits registered with partner jurisdictions from projects in other U.S. states. Lastly, it is not clear whether an entity located in one state can operate an offset project in another.

3. The environmental impacts of projects that will generate offset credits that become part of the California market must be fully analyzed.

¹⁰ “Once a Partner jurisdiction determines that another program meets the criteria in section 9.1, the Partner jurisdiction and the other jurisdiction will mutually acknowledge that their programs are compatible and will ...Allow the mutual recognition of compliance instruments issued to meet compliance obligations;” *WCI Design for the WCI Regional Program*, July 2010, at 45.

<http://www.westernclimateinitiative.org/component/remository/general/program-design/Detailed-Design/>

¹¹ “The preference of the WCI Partner jurisdictions is to recommend a single protocol for each project type and the WCI Partner Jurisdictions recognize this may not be feasible or practical in all applications.” *WCI Final Offset Protocol Review and Recommendation Process*, at 1.

¹² “The state board [ARB] shall adopt methodologies for the quantification of voluntary greenhouse gas emission reductions. The state board [ARB] shall adopt regulations to verify and enforce any voluntary greenhouse gas emission reductions that are authorized by the state board for use to comply with greenhouse gas emission limits established by the state board.” Calif. H.S.C. § 38571.

¹³ Discussion draft § 95830 (h) (1) at 57, and § 95814 (a) (2) at 51.

¹⁴ “A WCI Partner jurisdiction may issue offset certificates for projects located within its own jurisdiction as well as jurisdictions outside the WCI Partner Jurisdictions within North America. A WCI Partner jurisdiction will accept offset certificates issued by other WCI Partner jurisdictions. As described in section 9.8 of WCI’s design document, WCI Partner jurisdictions may also accept offset certificates from outside North America.” *WCI Offset System Essential Elements Final Recommendations Paper* S 3.2.3. Geographic limits. *WCI Offset System Essential Elements Final Recommendations Paper* S 3.2.3. Co-benefits.

CEQA requires that ARB act with full knowledge of the environmental consequences of its actions. Because of the extraordinary nature of this regulation—seeking to commit California to accepting offset credits from protocols that do not yet exist—the review of environmental impacts will need to be extraordinarily conservative and circumspect. If linking to a partner jurisdiction commits California to accepting offset credits even when the offset protocols lack even the insufficient environmental safeguards of protocols adopted by ARB, it will not be possible to dismiss the effects of future offset projects in those jurisdictions as too speculative for analysis.

Thank you for considering these comments.

In conclusion, the discussion draft raises significant concerns, including some issues identified in our previous letter. These issues include conflicts with AB 32 and threats to the integrity of California's cap-and-trade system. We hope these comments help ARB address these issues in the development of the proposed regulation. Please contact me if you have any questions.

Sincerely,



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