December 13, 2010

Via Electronic Submission

The Honorable Mary Nichols, Chair
California Air Resources Board
attn: Clerk of the Board
1001 I Street
Sacramento, CA 95814
http://www.arb.ca.gov/lispub/comm/bclist/php

Re: Comments on Forestry Provisions of Proposed Regulations to Implement the Cap-and-Trade Program Under AB32

Dear Chairman Nichols and Members of the Board:

On behalf of Blue Source I would like to thank you for the hard work and leadership in keeping AB32 moving ahead and for giving us the opportunity to comment on the greenhouse gas market rules and U.S. Forest Projects Compliance Offset Protocol released for public comment on October 28, 2010. Blue Source is a leading project developer in the U.S. having been actively engaged in project finance, credit development and marketing of offset projects for the past 10 years. We have sold millions of tonnes in the voluntary market and were an early mover on the development of forest carbon projects, having listed the first project outside of California on the Climate Action Reserve.

Our on-the-ground experience in putting capital to work and seeing projects through inception to delivery of 3rd party verified tonnes provides us with a perspective that we hope is valuable to you and your staff as this ground-breaking Regulation is amended and implemented. We have worked collaboratively over the past several weeks with other leading forest carbon developers and our collective comments are attached for your consideration.

Thank you for reviewing these comments and please let me know if Blue Source can provide additional clarification or assistance to you or your staff in the months ahead.

Sincerely,

Roger Williams
Vice President
Blue Source
415.399.9101
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Re: Comments on Forestry Provisions of Proposed Regulations to Implement the Cap-and-Trade Program Under AB32

Introduction

The undersigned companies ("Forest Carbon Developers") are the leading investors in forestry conservation projects in California and across the United States for the purpose of sequestering greenhouse gases and generating carbon offset credits for use in voluntary and compliance carbon markets. Our companies have developed or invested in the majority of forest carbon projects developed to date in the United States. We are pleased to submit the following comments on the California Air Resources Board ("ARB") greenhouse gas market rules and U.S. Forest Projects Compliance Offset Protocol ("Forest Protocol"), released for public comment on October 28, 2010.[1]

The Forest Carbon Developers applaud the State of California and ARB for its invaluable leadership and ground-breaking commitment to market-based incentives for carbon offsets from forest conservation projects. Since well before the passage of the California Global Warming Solutions Act (AB32), our companies and others have led the way in implementing greenhouse gas reduction projects, including afforestation/reforestation, forestry conservation and improved forest management projects, in order to remove global warming pollutants from the atmosphere by enhancing the uptake and sequestration of carbon dioxide by forests and woodlands in California, the United States, North America, and developing countries such as Brazil and Indonesia. The California Legislature recognized our efforts upon passage of AB 32 when it mandated recognition of early action efforts. We are eager to invest additional capital in the millions of dollars,

[1] California Air Resources Board, Notice of Public Hearing to Consider the Adoption of a Proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance mechanisms Regulation, Including Compliance Offset Protocols (Oct. 19, 2010).

create more green jobs, and inject even more economic stimulus by investing in projects under the ARB Forest Protocol − provided ARB adopts workable rules that support economically feasible projects. By investing in cost-effective emissions reductions, these projects will help California attain its goals under AB32 for less cost, and provide more environmental and economic benefit to California, than under a non-market approach.

Each of the undersigned companies has submitted detailed, individual comments on behalf of their respective organizations. In addition, the companies submit these joint comments to emphasize that the issues raised herein affect all investors in forest carbon sequestration projects, and that there is consensus across the sector that the market rules for forestry need further considered revision before they will be workable market mechanisms.

The Forest Carbon Developers support ARB's draft market rules and the forest project protocol in general. In some critical respects, however, we view the proposed rules as improperly restrictive in ways that make them arbitrary or unnecessarily burdensome and expensive. In these instances, the proposed regulation does not constitute a "reasonable and rational choice",[2] and therefore should be revised consistent with the comments below in order to be legally valid and consistent with the mandate of AB32 under the California Administrative Procedure Act ("APA")[3] and/or the California Environmental Quality Act ("CEQA").[4] Our specific comments appear below.

Specific Comments on Market Rules

Crediting Early Action. The undersigned companies agree with ARB that forestry projects begun prior to 2014 should qualify as "early action" reductions pursuant to Proposed Regulation Order ("PRO") 95990(a). Crediting of early action is consistent with the mandate in AB32 to encourage and provide "appropriate credit for early voluntary reductions" of greenhouse gases. *See, e.g.*, Health & Safety Code 38562(b)(1) and (3). However, ARB's decision to limit the start date for early action forestry projects, as well as its decision to cut off crediting in 2014, is inconsistent with AB32, is unsupported by the record or environmental review, and therefore would be illegal if adopted as written.

Early Action Start Date. The restriction in PRO 95990(b)(1) of early action credit to removals that occurred between January 1, 2005 and December 31, 2014 and the requirement in PRO 95973(a)(2)(B) that forest projects under the ARB compliance offset protocol begin after December 21, 2006, are arbitrary to the extent that such a policy fails to credit forest sequestration accomplished prior to 2005. The rationale provided by ARB − that 2005 is the date that "offset projects began verifying their GHG reductions . . .

[2] Office of Administrative Law, How to Participate in the Rulemaking Process ("APA Guidance") at 25, available at http://www.oal.ca.gov/res/docs/pdf/HowToParticipate.pdf.
[3] Cal. Gov't Code § 11340 *et seq.*
[4] Cal. Pub. Resources Code § 21000 *et seq.*; ARB environmental analysis under its CEQA certified regulatory program appears at Appendix O to the proposed market rules, Functional Equivalent Document Prepared for the California Cap on GHG Emissions and Market-Based Compliance Mechanisms 4.0(F) (Oct. 28, 2010) ("FED").

based on the protocols approved in this section," ISOR at IX-171 − is insufficient and illogical for several reasons. First, the Climate Action Reserve ("CAR") forest protocol, upon which the ARB Forest Protocol is based,[5] itself credits reductions from 2001. Indeed, of the 46 forest carbon projects listed on CAR, 18 have pre-2005 start dates. Second, as discussed below, numerous meritorious forest projects have been started under other protocols such as the American Carbon Registry ("ACR") and Voluntary Carbon Standard ("VCS") which credit reductions prior to 2005 (moreover, as discussed below, ARB's decision to credit only CAR protocols is itself arbitrary, unjustified and discriminatory). Third, as ARB acknowledges, California Senate Bill 812 expressed the intent of the California legislature to promote and credit early action in forestry projects at least as early as 2003,[6] and as early as 2001, Senate Bill 527 expanded the functions of the already-existing California Climate Action Registry to recognize emissions reductions stemming back to 1990. Similarly, ARB's statement that forest projects must switch to ARB protocols by December 31, 2014, a date which corresponds to the end of the first market compliance period, ISOR IX-171, fails to discuss the penalty imposed on early action forest projects commenced prior to that date.

Further, as a matter of environmental policy and review, ARB has failed to consider that disqualifying early-mover projects will likely result in the abandonment of those projects, thus not only increasing greenhouse gas emissions but also losing the other societal benefits provided by forest conservation projects, such as habitat and watershed protection. Although ARB recognizes its duty under AB32 to consider "overall societal benefits, including reductions in other air pollutants . . . and other benefits to the economy, environment and public health," ISOR at II-51 (citing Health & Safety Code 38562(b)(6)), the Agency has failed to justify why its arbitrary date restriction is defensible in light of AB32's mandate or why an earlier start date is not an acceptable alternative.[7]

Early Action Crediting Periods. Similarly, the requirement in PRO 95990(b)(3) that early action forest projects be commenced before 2012 and the restriction in PRO 95990(b)(1)

[5] *See* California Air Resource Board, Proposed Regulation to Implement the California Cap-and-Trade Program, Part V, Staff Report and Compliance Offset Protocol, U.S. Forest Projects, Preamble ("Forest Protocol") at 5 ("ARB used CAR's Forest Project Protocol Version 3.2 as the basis for transitioning to a compliance program").

[6] Forest Protocol at 4.

[7] The APA requires ARB to prepare a "description of reasonable alternatives to the [proposed] regulation and the agency's reasons for rejecting those alternatives," Cal. Gov't Code § 11346.2(b)(3)(A), and to determine in its final statement of reasons that "no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation." Gov't Code § 11346.9(a)(4). Similarly, Health & Safety Code § 57005 requires ARB to "evaluate the alternatives" and "consider whether there is a less costly alternative or combination of alternatives which would be equally as effective in achieving increments of environmental protection in a manner that ensures full compliance with statutory mandates within the same amount of time as the proposed regulatory requirements." The APA also requires consideration of alternatives for reducing impact on small businesses such as the Forest Carbon Developers. Gov't Code § 11346.2(b)(3)(B); 11346.9(a)(5). Although quantification protocols are exempt from the APA pursuant to AB32, Health & Safety Code 38571, the issues raised herein related to non-quantification eligibility criteria, which are subject to APA strictures. ARB also failed to consider these alternatives in its CEQA Functional Equivalent Document.

denying credit for reductions achieved after December 31, 2014 artificially limit the crediting period of early action forest projects and fail to provide early action credit for legitimate reductions. Most early action forest projects were commenced on the expectation that they would receive credit for greenhouse gas removals through the end of an established crediting period (typically 30 years) under the eligibility rules applicable at that time. ARB's proposed cut-off in 2014 would make sense only if ARB provided a procedure to transition existing projects verified under early-action protocols (such as the CAR protocol as well as ACR and VCS) to an ARB protocol without significant additional cost and without changing the eligibility rules under which the forest project was started, since the financial value (and economic viability) of early action projects depends on the crediting period and eligibility rules under which the project was commenced.

ARB has not yet provided a procedure for such a transition, and without such a procedure, the value given to early action forest projects would be severely diminished since most forest projects do not generate significant carbon reductions until up to ten years into the project and would have relatively little carbon credit accumulated by 2014 despite significant financial investment. Moreover, such a policy would perversely disincentivize projects using hardwood species, which deliver comparatively more co-benefits due to the longer maturation of those carbon stocks. In short, any cut-off deadlines for early action must be linked to the availability of a procedure for transitioning existing early action projects to the ARB Forest Protocol. And, as discussed below, such transition rules cannot impose significant new costs or change eligibility criteria in a manner that would undermine the early action nature of the project as a practical matter. Any contrary rule would be inconsistent with AB32 and has not been justified either under the APA or CEQA.

Re-verification and Transition to ARB Protocol. The requirement in PRO 95990(b)(2) that early action forest projects be verified pursuant to section 95990(f) (which requires verification by ARB-accredited verification bodies) is ambiguous, and to the extent interpreted to require re-verification of projects, is unreasonably onerous and imposes an additional expense that has not been justified in the Initial Statement of Reasons. The inherent nature of early action is that well-meaning actors are "out ahead" of regulatory agencies in terms of solving environmental challenges. Many beneficial forest projects were started well before ARB had itself acted on its mandate in AB32 to issue rules and regulations. These early projects were verified under programs such as CAR, ACR and VCS, that are legitimate and widely recognized sources of early reductions. Each of these programs requires strict verification and conflict-of-interest procedures.

It is unclear whether ARB is requiring early action projects to re-verify all aspects of its project in order to transition to the ARB Forest Protocol or whether ARB will allow a more sensible approach of conducting a "gap analysis" by ARB staff or accredited verifiers to ensure that the verification under the previous program was consistent with ARB's verification process. In fact, it is highly likely that most of the verifiers that are currently accredited by other programs such as CAR, VCS and ACR are already, or will quickly be, approved under the ARB accreditation program. It would be unreasonable

for ARB to retroactively require forest projects to incur additional expense, which in many cases may undermine the economic viability of the projects, or to duplicate auditing functions already done and approved by third-party auditors under strict criteria recognized in the market as rigorous. The ISOR correctly identifies "rigor and validity of offset credits" as the goal of the verification requirements, ISOR at II-45, but ARB provides no justification for the apparent burden of requiring re-verification of projects that have already been approved under early action protocols. ARB acknowledges that it has a duty under AB32 to "minimize the cost of implementation and compliance and to maximize the overall benefits" of AB32, ISOR at II-50, but fails to discuss these requirements in the context of early action projects.[8]

If ARB does intend to require full re-verification, the additional expense and unintended consequences will thwart the goals of AB32 by unnecessarily increasing the cost of greenhouse gas reductions. For example, it is unclear whether transitioning to the ARB protocol for already existing projects will require re-calculating the project baseline, resulting, in some cases in different crediting results, which could raise questions about validity of past credits sold from those projects. In other cases, recalculating the baseline could make projects suddenly ineligible, or unable to generate credits; for example, if they have signed a conservation easement, HCP or SHA since their original project registration. In short, early action projects should be grandfathered into the protocol under which they were initially registered.

The ISOR does not discuss the reasons for requiring re-verification, nor is there any indication that the ARB accreditation program is any more stringent, or produces a higher level of integrity, than the verification processes already in place for existing early action projects. Accordingly, rather than re-verification, we suggest that ARB accept forest projects that have been validated and verified under early action protocols (including CAR, ACR and VCS) to transition to the ARB Forest Protocol without further verification, or at the most, undertake a gap analysis to minimize any verification that is demonstrated to be necessary based on established auditing principles.

Favoring CAR Protocols. The limitation in PRO 95990(b)(4) restricting forest projects to those developed under the Climate Action Reserve Forest Protocol is likewise improperly restrictive and anti-competitive. Although significant investment has been directed at CAR projects, the CAR forestry protocol was only made available relatively recently, and many worthy projects were initiated under other protocols, such as administered by ACR and VCS. The ISOR appropriately recognizes the "rigor" of the CAR program and notes that the CAR program began in 2005, ISOR at III-21, but gives no justification for failing to consider other rigorous programs under which forest offset projects have already been approved and issued credits.

Moreover, discriminating in favor of CAR, a private California non-profit organization, and disadvantaging other registries and forest offset programs raises a host of equal

[8] Health & Safety Code 38562(b)(5) directs ARB to "consider the cost-effectiveness" of its market rules. Similarly Health & Safety Code 38562(b)(7) requires ARB to "minimize the administrative burden" of its market rules.

protection and constitutional commerce clause concerns, such that the restriction to CAR-only projects is arguably illegal. In a scant reference, ARB states that it is "aware" that other voluntary offset programs have protocols, but fails to provide any discussion of its rejection of these programs or other existing protocols. Although PRO 95990(c) appears to authorize other "third-party offset programs" to administer early action credits, it does not appear that credits issued under protocols other than the CAR Forest Protocol will be recognized, thus presumably disqualifying forest projects that would be otherwise legitimate but for the fact that the project developer sought registration under a competing protocol. Nor can ARB impose eligibility criteria that would have the effect of disqualifying early action projects started under other programs unless ARB can demonstrate that such criteria are mandated by AB32. Because ARB has not shown that forest projects registered under ACR, VCS, or other programs are not legitimate early action projects, it must provide a mechanism for crediting those projects.

Forest Owner Definition. The definition of "forest owner" in PRO 95802(75) states that both the holder of timber rights and the landowner are accountable for project reversals. *See also* Forest Protocol at 6 (stating that "all Forest Owner(s) are ultimately responsible for all forest project commitments"). Land ownership is composed of a "bundle of sticks" and each stick can be separated from the bundle and held by a different person or entity. Accordingly, not all fee title owners of forest land or woodlots will own the timber and/or carbon rights. Since timber rights and carbon rights can be held as a separate property right from fee title to land, the landowner without timber or carbon rights has no legal ability to control forest project activities, and therefore should not be held accountable for forest project commitments associated with timber or carbon rights. This is consistent with ARB's decision, which we support, to forgo landowner agreements such as the Project Implementation Agreement required under the CAR protocol. However, ARB does not address these issues in its rulemaking materials. *See, e.g.*, ISOR IX-1. Any contractual relationship with ARB should be with the party that owns the carbon and/or timber rights. Similarly, liability for reversals should lie clearly with the holder of the carbon and/or timber rights and not extend to a fee owner without such rights. Accordingly we recommend that the definition of forest owner be amended so that the entity holding carbon rights can be defined as a forest owner where ownership is separated.

Intentional Reversals. The definition of "intentional reversal" in PRO 95802(99) is overbroad to the extent that it attempts to penalize landowners for "negligent" loss of carbon stocks. This standard is extremely subjective and difficult to define. For instance, if a landowner maintains a highly stocked stand in order to maximize carbon and this increases fire risk which causes a reversal, is this negligence? Or if a landowner chooses not to preemptively thin a stand which is vulnerable to disease in order to maximize carbon and the entire stand is affected by disease causing a reversal, is this negligence? We recommend the definition be amended to reflect the current CAR Forest Carbon Protocol language that an intentional reversal is a result of "intentional or grossly negligent acts of the forest owner."

In addition, the proposed rules as drafted may have the unintended consequence of double counting reversals (*i.e.*, penalizing forest owners twice) for losses in carbon stocks, as forest reversals appear to be compensated by owner or through buffer as well as having reversal credits canceled in account of buyer.

Conflict-of-Interest Procedures. Section 95979 of the proposed market rules contain detailed rules for preventing conflict of interest among verifiers of forest projects. We fully support rigorous conflict-of-interest rules, but have concerns that the rules may impose unnecessary costs and overly restrict a limited pool of available accredited verification bodies. In particular, the requirements for "rotation" of verification bodies in PRO 95977(e)(1) appears unnecessary to the extent that each of the concerns raised by ARB should be adequately addressed by the accreditation process rather than placing additional burdens on project developers that would increase verification costs and undermine efficiencies. *See* ISOR at IX-136 (stating that rotation is necessary to avoid bias, familiarity or complacency). We support and incorporate by reference the comments submitted by other project developers and verification bodies concerning these rules.

Project-based Forest REDD. ARB considers but does not adopt a program for REDD-based projects. We enthusiastically support the development of a program for REDD and other forestry projects in linked jurisdictions (such as Brazilian states and other partners under Governor Schwarzenegger's Governors' Climate and Forests Task Force), but we are concerned with ARB's apparent rejection of project-based emissions reduction for REDD in favor of a sector-only approach. ISOR at III-22. ARB's conclusions that a sector approach reduces risk of emissions leakage and alleviates competitiveness concerns among trade-exposed sectors, ISOR at III.23, is not sufficiently developed in the proposal and does not support rejection of project-based crediting. Nonetheless, we encourage ARB to act promptly to outline a process for developing REDD crediting rules, with central participation of stakeholders from the private sector, and to commit to a timetable to complete this process in 2011 such that additional forest credits can be available prior to the inception of the market program in 2012. We also ask that ARB provide clarity regarding how ARB's rulemaking process with intersect with the GCF process, including the recent memorandum of understanding signed in November 2010, which applaud.

Specific Comments on Forest Protocol

The Forest Protocol is adopted by cross-reference into the ARB's market rules at PRO 95973(a)(2)(C)(iv). Our comments below refer to ARB's Part V appendix.[9]

Crediting Period. The proposed market rules provide only a 25-year crediting period for forestry projects, which is too short from a commercial perspective, particularly in light of the requirement for a 100-year maintenance period following the last credit issuance. *See* PRO 95972; Forest Protocol § 3.3. Although ARB indicates that it will provide an

[9] California Air Resource Board, Proposed Regulation to Implement the California Cap-and-Trade Program, Part V, Staff Report and Compliance Offset Protocol, U.S. Forest Projects ("Forest Protocol").

opportunity for renewing crediting periods, it is uncertain whether the eligibility or qualification requirements would change after the initial crediting period. The justification asserted by ARB for the restricted crediting, that it needs to preserve flexibility, is insufficient. ISOR at IX-120. It makes no sense to impose arbitrary restrictions that will make forest projects uneconomical simply to preserve flexibility for ARB to change its mind in the future for unspecified reasons. Indeed, ARB recognizes that "project developers need a guarantee of return on their investment," ISOR at IX-120, but fails to assess the effect of its arbitrary crediting restrictions on investment in forest projects and resulting loss of environmental benefits.[10]

At a minimum, the crediting period for forest projects should be commensurate with the permanence requirement, such that forest projects are not forced to continue to accumulate carbon removals without any opportunity to be compensated for the additional sequestration. Under ARB's current rules, a project that is commenced in 2010 will only be credited for carbon stocks through 2035, and will have no guaranteed ability to sell carbon credits after 2050 upon expiration of California's market program,[11] but will be forced to continue its forest management program for another 100 years possibly through the year 2140. This creates an unfair and arbitrary burden, and raises a barrier to meritorious forest projects and environmental benefits. We recommend that the crediting period for all forest projects be at least through 2050, *i.e.*, the anticipated end of the current AB32 market program.

In addition, we request that ARB adopt a crediting mechanism that will provide compensation for additional sequestration anticipated from forest projects after 2050 (but within the 100-year permanence period that ARB mandates) such that the forest project owner can be credited during the AB32 compliance period for the full value of the environmental benefits guaranteed by the project.[12] For example, because the term of the regulated market extends only to 2050 and ARB's Forest Protocol requires that forest owners guarantee permanence of the carbon at least 68 to 100 years past 2050, we propose that ARB allow some significant percentage of the projected carbon sequestration outside the term of the regulated market to be carried forward and credited during the first ten years of each offset project.

100-Year Permanence. ARB's requirement that forest owners commit to restricting land-use for 100 years following the issuance of the last offset credit has not been justified by ARB either as a matter of policy or science. Forest Protocol §§ 3.4 and 7. Criteria ensuring permanence of GHG reductions are certainly appropriate, but must be consonant with scientific fact such as the United Nations IPCC analyses. As noted above, because the AB32 market program is not anticipated to extend beyond 2050 at this time, it is unfair to forest project investors to impose continuing obligations to provide

[10] ARB also recognizes that forestry projects "require long-term investment and commitment by project developers and achieve gradual GHG removals over long timescales." ISOR at IX-129.
[11] AB32 (authorizing market-based reductions through 2020); Executive Order S-3-05 (Schwarzenegger, 2005) (extending GHG reduction goals to 2050).
[12] This approach has been taken by other regulatory agencies such as the federal Department of Energy's 1605(b) program.

environmental benefits if there will be no corresponding obligation on industrial emitters and no market to compensate forest owners for climate benefits. Because AB32 program essentially serves as a bridging strategy for decarbonizing industrial and power sectors, it is unnecessary to impose a long tail of legal liability on forest project owners.[13]

In our experience, this arbitrary requirement has become in practice a major obstacle to implementing forest projects, since few landowners are willing to commit land to a certain use for such an extended period for uncertain economic returns. Thus, ARB's policy is deterring beneficial projects and reducing potential environmental and social benefits. Other forest protocols, such as those developed by ACR and VCS do not impose such an unjustified temporal restriction. ARB fails to adequately examine the scientific, policy and environmental bases for this extended requirement, and thus this requirement is contrary to the APA and CEQA. Rather than demanding that land use be restricted for 100-years, the landowner commitment should be commensurate with the length of the regulatory program, and any adjustment for early withdrawal from a commitment should be proportional to the remaining atmospheric benefit of sequestered carbon. We look forward to working with ARB to refine the rules in this respect.

Forest Buffer Account. The Forest Carbon Developers support the use of a buffer pool to insure against unintentional reversals. Forest Protocol § 7.2. In addition, we encourage ARB to provide flexibility to approve alternative insurance mechanisms that provide equivalent certainty, such as those may be developed by the marketplace or proposed by project sponsors.

Project Reports. The commenters support the prompt submission of all data and reports required under ARB market rules; however, ARB should provide a mechanism for requesting extensions in appropriate circumstances. For instance, then penalty of disqualification for missing the April 1 deadline for project performance reports in PRO 95975(d)(7) is draconian and not compelled by the program needs.

Technical Comments. The undersigned companies and other commenters have submitted detailed assessments of various technical requirements in the market rules and Forest Protocol which should be revised or amended, relating to topics such as monitoring, reporting and verification (MRV), accounting for and compensation for reversals, frequency of site visits, and buffer account rules. We adopt those comments by reference here, and encourage ARB to give them full and adequate consideration.

Administrative Law Considerations

As ARB has recognized, offset projects play a critical role in providing compliance flexibility, stimulating innovation and technology advances, and are central to containing the costs of the AB32 cap-and-trade program. ISOR at II-44. In general, the Forest Carbon Developers enthusiastically support ARB's efforts to create a market-based

[13] Other proposed climate regulatory programs have recognized this unfairness, and have proposed to suspend obligations at the termination of the market-based greenhouse gas program. *See, e.g.*, Clean Energy Partnerships Act of 2009, 111th Cong., 1st Sess. (Stabenow) (S. 2729) (Nov. 4, 2009).

system to allow forests and woodlots to contribute to California's global warming reduction goals. However, as noted above, a number of ARB's proposals appear to be inconsistent with AB32 or arbitrary and unworkable, and have not been fully examined or justified under the APA and/or the CEQA functional equivalent document. Accordingly, the Forest Carbon Developers request that ARB revise the market rules and Forest Protocol consistent with the recommendations outlined above.

The California Administrative Procedure Act requires each rulemaking agency to "consider all relevant matter presented to it during a comment period before adopting . . . any regulation."[14] The undersigned companies have substantial doubt whether ARB has left itself adequate time to consider each of these comments and to revise the rule accordingly. It is our understanding that a Board vote is scheduled for December 16, with the close of public comment on December 15. That timing leaves little room for the agency's duty under the Administrative Procedure Act to consider each relevant, timely public comment. However, it is our understanding that ARB will undertake appropriate revisions to the proposed rules, and we look forward to working with ARB to work through these important issues and implement appropriate revisions to the market rules and Forest Protocol where necessitated by law and good policy.

* * * * *

Thank you for the opportunity to express these views. For further information and resources, please contact any of the undersigned companies through their respective representatives.

Sincerely,

Greg Arnold, CE2 Capital Partners, LLC

Chandler Van Voorhis, C2I, LLC

Roger Williams, Blue Source LLC

Eron Bloomgarten, Equator, LLC

cc: Governor Arnold Schwarzenegger (www.govmail.ca.gov)
Mary D. Nichols, Chair, ARB (mnichols@arb.ca.gov)
Kevin Kennedy, Ph.D, Chief, Office of Climate Change (kkennedy@arb.ca.gov)
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[14] APA Guidance at 9.

About the Forest Carbon Developers

About CE2 Carbon Capital, LLC

Formed in 2008 by CE2 Capital Partners and Energy Capital Partners, CE2 Carbon Capital (CE2) is dedicated to building a portfolio of carbon offsets and other assets focused on reducing emissions of greenhouse gases and other harmful pollutants such as sulfur dioxide and nitrogen oxide through renewable energy and carbon market investments. As a major market participant with 95 years of cumulative experience in the energy, emissions and capital markets, CE2 has become one of the largest U.S. based investors focused on global environmental markets, including the largest U.S. carbon market transaction in 2009. CE2 invests in projects and long-term off-take agreements in sectors such as renewable energy generation, landfill methane destruction, forestry carbon sequestration, coal mine methane destruction, agricultural methane capture and agricultural sequestration.

About Blue Source, LLC

Blue Source offers multiple approaches for reducing, sequestering and, where practical, beneficially using greenhouse gas emissions to create environmental and economic value. The company provides experience and access to capital for project development across all industries, including the technical resources to produce high quality carbon offsets for North America's voluntary and compliance markets. Blue Source has projects listed on all of North America's leading public registries, including the Climate Action Reserve, the Voluntary Carbon Standard, the American Carbon Registry, and the Alberta Emissions Offset Registry. For more than 10 years, Blue Source has been providing innovative climate change solutions for leading businesses in North America.

About C2I, LLC

GreenTrees®, created and managed by C2I, is the nation's largest reforestation carbon program. The program's aim is to restore 1 million acres of marginal farmland in America's Ark of Biodiversity - the Mississippi Alluvial Valley. In 2009, Duke Energy became the lead investor in GreenTrees. Since then, GreenTrees was the first forest carbon project approved and registered by American Carbon Registry and has planted over 3 million new hardwood trees in the Mississippi Alluvial Valley. Along the way, GreenTrees has received multiple endorsements and innovation awards, including endorsements from the National Wildlife Federation and Wildlife Mississippi.

About Equator, LLC

Equator LLC (www.equatorllc.com), headquartered in New York, is a leading asset management firm focused on investments in forest carbon, sustainable timberland and ecosystem services instruments. Equator specializes in the generation and management of high quality carbon credits and environmental assets derived from reforestation, forest conservation, sustainable land management and other emission reduction projects.