

THE CONSERVATION FUND

America's Partner in Conservation

August 4, 2011

California Air Resources Board
Kevin M. Kennedy
Assistant Executive Officer – Climate Change
1001 I Street
Sacramento, CA 95812

Comments on Subchapter 10 Climate Change, Article 5, Sections 95800 to 96022, Title 17, California Code of Regulations – July 2011 (Cap and Trade Rules)

Dear Mr. Kennedy:

The Conservation Fund has been an active supporter of the Air Resources Board's efforts to implement AB 32. We appreciate the opportunity to offer the following comments on the Cap and Trade Rules.

Background. The Conservation Fund has two forest projects registered under the Climate Action Reserve's (CAR) Forest Project Protocol v.2.1 (FPPv.2.1). To date more than 2,000,000 Climate Reserve Tonnes (CRTs) have been issued to these two projects. Aside from a self-imposed reserve, these CRTs have been sold to a variety of buyers. Many of these CRTs have been retired in connection with voluntary programs, but many remain in circulation. We also have contracted to deliver approximately 90% of our anticipated CRT production through 2014 under "forward" contracts. These contracts require only that we deliver voluntary CRTs verified and issued pursuant to FPP v.2.1. We are not obligated to deliver CRTs into a compliance program.

The Conservation Fund is interested in exploring the feasibility of listing and registering our projects with ARB for the purpose of establishing their eligibility as early action offset projects under the Cap and Trade Rules. To that end, we have

reviewed the Cap and Trade Rules and offer the following observations and comments.

1. Transition of Early Action Projects to the ARB Offset Compliance Protocol U.S Forest Projects (ARB FPP). Transitioning an early action project to the ARB FPP, Section 95990(k)(3)(C) requires that the project be listed with ARB or an Offset Project Registry by February 28, 2015. Early action forestry projects will most likely not have completed the verification of their 2014 offsets by that date. To eliminate potential inconsistencies between the listing requirements for transition to the ARB FPP and the requirements for verifying early action project offsets under FPPv.2.1, we recommend that Section 9599(k)(3)(C) be revised to provide that “early action projects must be listed with ARB or an Offset Project Registry by June 30, 2015”.

2. Re-verification of early action projects. The regulatory verification requirements provided in 95990(f) impose a vague and inconsistent standard for determining whether the early action offset credits were adequately verified. For example, Section 95990(f)(3)(A) requires that the review “ensure that the previously provided offset verification services were sufficient to render a reasonable assurance to support the issuance of the early action offset credits...”. There is no guidance as to what is “sufficient” to meet the “reasonable assurance” standard. Is the standard of sufficiency that which was required by the applicable early action protocol? If not, a requirement that holds a project to a standard not applicable at the time of its original verification would seem to undercut the “early action” principle by introducing standards inapplicable and unavailable at the time the project first registered with the early action program.¹

Finally, there are only three early action projects verified under the Climate Action Reserve Forest Project Protocol version 2.1. All have been verified by Scientific Certification Systems. Given that there will not be any more projects registered and

¹ Further, the threshold of the lesser of 3% or 25,000 metric tons of CO₂e for a finding of “offset material misstatement” for early action projects set forth in 95990(f)(4) is inexplicably lower than the 5% threshold required of projects verified under the ARB Protocols (see Section 95802(167)).

verified under this protocol, it will be very difficult to find a ARB-approved verifier who can cost effectively re-verify these projects in accordance with a standard no longer available to other projects.

We would be happy to work with you to develop an alternative approach to achieving regulatory verification of projects verified under FPP v.2.1.

3. Invalidation. The standard for invalidation of ARB offset credits provided in Section 95985 is too broad, and in the case of forestry projects, the locus of responsibility for replacement is too narrow. As written, this rule will significantly deter forestry offset project development. A preferred approach would mirror the approach used to replace offsets lost to reversals.

For example, Section 95985(b) provides that offsets may be invalidated if “information provided to ARB for an Offset Project Data Report or Offset Verification Statement by offset verifiers, verification bodies, Offset Project Operators, Authorized Project Designees or Offset Project Registries related to an offset project was not true, accurate, or complete.” Our experience with the verification process is that good faith errors may occur in the course of a given verification. These errors may occur at any point in the course of project development, verification or registration. While our experience also indicates that these errors are identified and rectified in subsequent verifications, the penalties in the proposed invalidation procedure would already have been levied. This outcome is particularly onerous in the case of a forest project because Section 95985(g) imposes the obligation for replacement solely on the forest project developer irrespective of where in the chain of production the error occurred.

ARB should consider an approach to invalidation similar to that used for replacement of offsets lost to a reversal. Specifically, ARB should distinguish between an “unintentional invalidation” and an “intentional invalidation”. An intentional invalidation would be any offset invalidated due to negligence, gross negligence or fraud. In such a case, responsibility for replacement would be similar to that required for intentional reversals in connection with forestry projects (Section 95983(c)).

To cover unintentional invalidations, ARB should consider requiring offset projects to contribute to a buffer pool in a percentage appropriate to the type of project and potential for good faith errors. The buffer pool would be used to retire the number of tons deemed to be invalid. Alternatively, in the case of unintentional invalidations, ARB could consider allowing a project developer to replace the invalidated offsets by making contributions from offsets issued in future verifications of the project.

4. Certainty for transition of early action projects. Early action projects have an effective crediting period of ten years (2005 through 2014). For forest sequestration projects, this relatively short crediting period may be insufficient to induce an early action forest project developer to submit to ARB's jurisdiction and enforcement authority for 100 years. The transition of an early action project to the ARB FPP pursuant to Section 95990 provides an opportunity for an early action project to establish the longer crediting period contemplated in Section 95972 (b) (as well as the opportunity for unlimited renewals as set forth in 95975(k)(1)). The opportunity to transition to the ARB FPP and gain a longer crediting period is a powerful incentive for early action projects to participate in the compliance program. However, we are concerned that the ARB FPP may change in material respects after we enter our projects into the compliance program but before we complete the transition, most likely in early 2015.

This uncertainty can be addressed by adding the italicized language to Section 95990(k)(1)(D) as follows:

“Early action offset projects using Climate Action Reserve Forest Project Protocol version 2.1 must use and meet all the requirements in Compliance Offset Project U.S. Forest Projects in effect on the date ARB offset credits are issued to the project pursuant to 95990(i).”

This certainty is important to our evaluation of the costs and benefits of bringing our projects into the cap and trade program.

5. Typographical error. It appears that the word “based” in the second sentence of Section 95990(k)(1)(D) should be replaced with the word “baseline”.

Again, thank you for the opportunity to comment. We look forward to working with you and your staff to finalize the Cap and Trade Rules in a form that encourages early action projects to participate in the compliance program.

Sincerely,

A handwritten signature in black ink, appearing to read "CKelly", with a long horizontal flourish extending to the right.

Chris Kelly
California Program Director