



Blue SourceTM
A Leading Climate Change Portfolio

**Comments on Proposed Cap and Trade Regulation
and Compliance Offset Protocol for U.S. Forest Projects**

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

August 11, 2011

Dear Mr. Kennedy:

We appreciate the opportunity to comment on the California Air Resources Board's proposed Cap and Trade Regulation and Protocol for U.S. Forest Projects under AB32. This effort is extremely important given the state's and ARB's leadership in climate policy design and implementation.

Moreover, the need for sufficient supply of offsets to "bridge the gap" while low-carbon energy and industrial solutions are further deployed makes a well-designed regulatory framework that fosters market development and implementation of multiple project types even more critical. We believe the attached comments, which focus on the provisions surrounding the use of forest-based offsets, help further that broadly shared goal.

Established in 2001, Blue Source has developed the largest portfolio of carbon credits and projects in North America, and transacted over 20 million tonnes in voluntary and compliance carbon markets. We are developing forest projects under multiple protocols and registries, and have registered and sold CRTs from the first CAR forest project outside California, verified under Forest Project Protocol 3.1.

We look forward to providing ongoing support to the Air Resources Board on forestry and other project types, as well as broader cap and trade initiatives. Please contact us if there is any clarification or additional information we can provide.

Sincerely,

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Cap and Trade Regulation Comments

§ 95802. Definitions.

Page A-18 (103) “Forest Owner.” The definition of Forest Owner is too broad, as it includes many parties lacking control over timber management and land conversion. Requiring parties such as recreation and mineral right holders, as well as easement-holding public and non-profit agencies, to take on liability for future reversals and offset credit ineligibility for which they are not responsible, will prevent many projects from transitioning to ARB. **We recommend the definition be amended to “parties with ownership interest in timber holdings and control of harvest or conversion decisions.”**

We also request ARB clarify that mineral rights holders do not qualify as forest owners and that reversals associated with mineral extraction are categorized as unintentional reversals and included in buffer risk calculation.

Page A-22 (133) “intentional reversal.” The current simple “negligence” is too broad and exposes landowners to liability for factors beyond their control. **We recommend the definition be amended to reflect the current Climate Action Reserve Forest Carbon Protocol language that an intentional reversal is a result of “intentional or grossly negligent acts of the forest owner.”**

Authorized Project Designee. The Regulation assigns significant liabilities to Authorized Project Designees, who do not have control over forest management or project standing, and may lack the financial upside or resources to bear such liabilities. **We recommend that default liabilities for reversals and invalidation therefore exclude the Authorized Project Designee.** This would not preclude the Offset Project Operator from assigning these liabilities to Designees who have the financial resources to bear them via contracts or reduce ARBs ability to regulate the project itself.

§ 95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols.

Page A-170 (c) Early Action Offset Project Commencement Date. Projects with pre-2005 start dates will be unable to transfer 2001-2004 offsets to ARB as the Regulation currently stands. However, in order to transfer credits into the ARB program a landowner would need to terminate its PIA with CAR. They would therefore need to purchase and return to CAR a number of 2001-2004 credits equivalent to the number that has previously been sold in the market. **We recommend that ARB remove this obstacle by allowing landowners to transfer 2001-2004 offsets to the ARB program for buffer or other purposes.** Approximately 40% of current CAR-listed forestry projects face this obstacle.

§ 95977.1. Requirements for Offset Verification Services.

Page A-205 (b)(3)(D) Site Visits for Offset Projects. It is unclear whether projects can register ARB credits based on less intensive verification opinions occurring between 6-year

site visits. **We request that it be clarified that credits can be issued based on optional Less Intensive Verifications occurring in intervening years when no site verification occurs.**

§ 95985. Invalidation of ARB Offset Credits.

The Regulation places the liability for invalidation due to errors and omissions made by unrelated third parties, such as verifiers, registries and software providers, on Forest Owners (including easement holders with no control over the project). This unknowable liability for multiple parties for incidents beyond their control will prevent many forestry projects from participating in the ARB program, especially those operated by small landowners.

We therefore recommend ARB adopt a buffer pool approach to manage the risk of invalidation. If the current approach is maintained, Owner liability should be restricted to errors and omissions under their control, but leave liability for unintentional good-faith errors to a buffer pool or contributions from future verifications.

§ 95990. Recognition of Early Action Offset Credits.

Page A-264 (c)(1) Compliance Vintages. The Regulation limits early-action compliance vintages to 2005-2014. The justification for the earliest vintage to be 2005 is that it was the first year Climate Action Reserve offset protocols were available for verification. **We recommend that ARB revise the early action vintage date to 2001, which corresponds to the signature of California Senate Bill No. 527. This would justify start date based on a landmark California legislative precedent (not a private administrative procedure) as well as align with CARs own rationale for allowing projects to 2001.**

Page A-265 (1) Transfer of Early Action Offset Credits to ARB by Credit Holders vs. Project Operators. While we support the ability of Holders of Early Action Offset Credits to submit credits for listing, pay for verification and receive issued ARB offsets independently of the Forest Project Operator, the Operator's immediate and long term roles remain unclear in the current draft of the Regulation. **We request that it be made clear that Project Operators who have sold Early Action Offset Credits under CAR that are subsequently independently submitted to ARB by third party Holders, are not subject to any associated liabilities for Reversal and Invalidation.**

Page A-274 (k)(1) Transition of Early Action Projects to Compliance Program. Early Action Projects' inability to transition to ARB before 1/1/13 seems arbitrary and problematic. This unnecessary restriction will limit the supply of offsets to the ARB program at its outset and impose unnecessary costs on landowners who must verify 2011-12 credits under both CAR and ARB programs. **We therefore recommend ARB allow projects to transition to the ARB Compliance Offset Protocols as soon as these protocols and associated verification infrastructure are available.**

Page A-271 (D)(2) Potential Double Buffer. If CAR or another registry is unwilling to transfer buffer pool credits to ARB, the project or credit owner would need to submit an equivalent number of credits to the ARB buffer pool. This has no scientific basis as the risk is

unchanged. It imposes an unfair burden on the landowner when the maintenance of a buffer mechanism equivalent to that of ARB should be the responsibility of the ARB Early Action Offset Program.

Page A—184 (c) and (d) Annual Verification Required. While (c) grants sequestration projects the ability to verify every six years, (d) states that credits which are not verified within 9 months of the end of each (yearly) Reporting Period cannot ever be registered, and are thereby lost. Such an annual verification requirement would impose an unnecessary burden on smaller projects that do not generate sufficient carbon volume to justify annual verification expenses.

We recommend these sections be clarified to require verification within 9 months of end of the last Reporting Period being verified, with the ability to include multiple Reporting Periods in one verification report.

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Page 10 – 2.1.2 Improved Forest Management (4). This section eliminates the opportunity for forest carbon projects that had previously been verified under earlier voluntary programs to participate in the ARB program. Once a project has cancelled prior credits and is free of all liens and encumbrances associated with the earlier registry, it is free to operate as it chooses. **We therefore recommend that ARB modify this provision so that projects that have properly satisfied the terms of replacement and cancellation of prior registries can register under ARB.**

Page 12 – 3.1 Additionality. We recommend that ARB explicitly state that State tax abatement programs are not considered legal constraints as they can be voluntarily entered and exited at any time.

Page 17 – 3.5 Use of Qualified Conservation Easements. This section does not provide an adequate description of what easement language is required for ARB to recognize it as a “Qualified conservation Easement.” **We request the specific language ARB is seeking.**

Moreover, at the conclusion of carbon commitments to ARB the Forest Owner should be allowed to terminate ARB’s standing in any easement, as well as the underlying easement itself, if allowed under that easement’s terms.

Finally, many early action projects will be unable to successfully petition easement holders to bear the administrative and legal costs of evaluating potential new liabilities to ARB established by adding Qualification language, then re-drafting, executing and registering the modified easement. **We request that ARB waive this requirement for early action projects or otherwise address this barrier to small landowner participation.**