

September 27, 2011

California Air Resources Board
1001 I Street
Sacramento, CA 95814
Submitted electronically

Dear Chair Nichols and Members of the Board:

The Nature Conservancy (TNC) appreciates the opportunity to submit comments on the September 12th 15-day rule modification to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, including Compliance Offset Protocols (cap-and-trade program). As stated in previous public comments, TNC believes the cap and trade program is an important tool to ensure that California meets its greenhouse gas emissions reduction goal. We appreciate the tremendous work of the California Air Resources Board (CARB) staff, and in the spirit of encouraging the most robust cap and trade program possible, we offer the following recommendations related to the liability and U.S. Forest Protocol provisions.

TNC recommends that ARB identify the offset project operator as the party initially liable for invalidation and forest offset reversals, as the OPO is, by definition, a forest owner

TNC commends staff's recent improvements to the forest owner definition that help clarify that only entities with an interest in real property would qualify as a forest owner. While clear, this broad definition coupled with the liability provisions still casts a brought net of liability without specifically establishing a chain of liability to provide greater certainty to transactions. The forest owner is identified as the liable party for replacing forest offsets in instances of intentional reversals and invalidation (see §§ 95983 (c)(3) and 95985(i)(1)and(2)). This means that at any given time, the fee owner, the easement holder, the timber rights holder and/or the carbon rights holder could be liable for replacing forest offsets. This uncertainty could discourage transactions and the development of offset projects.

Rather than leave this liability open-ended, TNC recommends that CARB staff identify that the offset project operator (OPO) would initially be held responsible for replacement of offsets in the events of invalidation or intentional reversals. Since the regulations state that only one forest owner can be the OPO, a forest owner would still be liable for replacement of offsets. This approach would provide more certainty by identifying up front who would be initially responsible (i.e., the OPO). Furthermore, it would not preclude other parties from ultimately being responsible for offset replacement.

The language in §95985(c)(2) regarding invalidation due to the project activity or its implementation not being “in accordance with all local, state or national environmental and health and safety regulations...” should have additional specificity.

TNC agrees that credits should not be awarded or should be invalidated under circumstances where the project violates local, state or national environmental and health laws. To provide additional certainty to this provision and those relying on it, we recommend that CARB provide additional guidance regarding how such a determination would be made. For example, such determinations could be based on agency enforcement actions or court decisions.

The crediting period for forest offset projects must be clarified as there is a discrepancy between the cap and trade rules and the protocol rules

The Compliance Offset Protocol for U.S. Forest Projects states in section 3.3 (page 15) that the crediting period for forest projects is twenty-five years. However, §95972(b) states that the crediting period for a sequestration offset project shall be no less than 10 years and no more than 30 years. Presumably sequestration offset projects include forest offset projects. At a minimum, the discrepancy in the language is confusing. We recommend that the language in the cap and trade rules replace the language in the Forest Protocol as a thirty year timeframe would provide the greater timeframe necessary to allow meaningful changes in carbon stocks (i.e., forest growth and carbon sequestration) to occur.

The U.S. Forest Protocol rules should be refined to clarify under what circumstances a project would automatically terminate when timber rights are sold or leased to another entity

Section 3.4 of the Forest Protocols was amended to include automatic termination of a forest project when “timber rights are sold to an entity that does not elect to take over the Forest Project responsibilities and commitments.” This statement is very broad and does not take into consideration that timber rights may be leased for a term (i.e., not sold) and the lease or sale of timber rights may be compatible with a forest project that remains under the control of the fee owner. We recommend qualifications to this provision that: 1) identify that the project would terminate where the transfer (lease or sale) are inconsistent with the forest project activity and the maintenance of offsets, and the timber rights holder does not elect to adhere to the responsibilities of the Forest Project responsibilities and commitments; and 2) explain the relationship of this provision to the offset project operator language in the cap and trade rules.

Thank you for considering our comments. Again, we remain supportive of the overall cap and trade program and would be happy to provide additional input. If you have any questions, please contact Michelle Passero at MPassero@tnc.org.