

Tuesday, September 27, 2011

Chairman Mary Nichols and ARB Staff  
Air Resources Board, California Environmental Protection Agency  
1001 I Street  
Sacramento, CA 95812

RE: 15-day changes to Cap and Trade Regulation

Dear Chairman Nichols:

Finite Carbon is a forest carbon offset project developer with extensive experience within California and throughout the United States. We have actively participated through public comments during the evolution of the Cap and Trade Regulation and are pleased with the attentiveness of Air Resources Board staff in addresses outstanding issues. We feel ARB has made extraordinary progress in the development of this document and that many of the prior issues related to forest carbon offsets have been resolved. Included in this letter are a few additional recommendations that have emerged as a result of the latest round of revisions which we feel warrant staff attention.

We thank you for your consideration and would be happy to answer any questions you may have.

Sincerely,

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## Comments on the September 12, 2011 Draft Regulation

### § 95802. Definitions.

Page A-21 (109) “forest owner.” The definition of forest owner has been amended between the July 25<sup>th</sup> and September 12<sup>th</sup> drafts to reflect concerns that several entities with interests in a property may be held responsible for reversals. ARB therefore now only allows one “Forest Owner” to be designated as the Offset Project Operator. While this change goes a long way to address prior concerns, a further change is needed. While only one owner can be the Offset Project Operator and only the Offset Project Operator is required to sign the attestation, the “forest owner” is responsible for replacement. Section 95983(c)(3) requires the forest owner to replace in the event of an intentional reversal. Section 95985 Page 290 (i)(1)(D) states that in the event of invalidation the “Forest Owner(s)” is responsible for replacing the invalidated offset in a retirement account.

**We recommend the term “forest owner” and “Forest Owner(s)” in sections 95983(c)(3), 95985(e)(2), and 95985(i)(1)(D) be clarified so that the Offset Project Operator is responsible for the replacement of intentionally reversed and invalidated offsets.**

### § 95985. Invalidation of ARB Offset Credits.

Page A-279 (b)(1)(B) Three-year Invalidation. This section allows forestry projects to be subject to invalidation for a maximum period of 3 years if a subsequent project data report is verified by a different verifier within 3 years of the first. This would require a one-year period between the time of project registration and when a project owner could reduce its invalidation exposure to 3 years. Since a shorter invalidation period will be more valuable in the market and the risk can be managed more easily, it would be beneficial to forest owners to eliminate the one-year wait. This is possible for ODS offsets per Section 95985(b)(1)(A) if they re-verify the project with a different verifier, likely because an ODS project does not require subsequent verifications. However, forestry projects, unlike Ag methane projects, do not require a subsequent site verification for another six years and are eligible for less-intensive verification in the interim years which should afford them the same treatment as ODS projects.

**We recommend that in addition to the current language, forestry offset projects should be able to utilize the same re-verification process as ODS projects which would allow a forestry project to issue offsets with a three-year invalidation period at the time of registration.**

Page A-279 (b)(1)(B) Three-year Invalidation. This section limits the option for three year invalidation to projects registered under the Compliance Protocols. This excludes offsets from projects which have already registered with an Early Action Offset Program from the possibility

of reducing their invalidation exposure to 3 years regardless of the number of times they have been verified.

**We recommend that ARB include protocols from Early Action Offset Programs in this section.**

Page A-283 (g) Removal of Invalidated ARB Offset Credits from Holding Account. This section allows ARB to remove invalidated offsets from any account prior to retirement of the offsets. However, once retired, according to section 95985(i) forest owners are required to replace offsets that are invalidated once they are retired. While it is in the interest of forest owners to reduce liability, in this particular situation it is beneficial to require that landowners also be responsible for replacement of invalidated offsets removed from holding accounts. For each offset sold, a forest owner must assume that the offset will be retired and he will therefore be liable for replacement in the event of invalidation. This extra liability will result in a premium price for forestry offsets. However, due to the fact that any offset sold will be subject to invalidation risk where the offset could disappear at any time prior to retirement, forestry offsets will still face a discount. Therefore, the forest owner must be prepared to take on the invalidation risk of every offset sold, but will not be able to realize the full value of that offset because of the interim risk for the buyer prior to retirement.

**We recommend that ARB amend this section so that forest owners are liable for the replacement of invalidated offsets removed from holding accounts other than the forest owner's holding account.**

#### **§ 95990. Recognition of Early Action Offset Credits.**

Page A-317 (h)(5)(A) Attestations. This section removes the ability for a holder of forestry EAOs to submit these to ARB to receive ARB offsets. There have been numerous transactions where forest owners have sold offsets to intermediaries that can no longer be used for compliance unless the forest owner signs the attestation. Since the transaction has already taken place, the forest owners are under no obligation to sign the attestation and the buyer cannot receive credit for early action which is one of the principles of the ARB process.

**We recommend that ARB allow holders of forestry EAOs to submit these to ARB and receive ARB offsets without the forest owner signing the attestation. The holder should be held liable for replacing invalidated offsets.**

#### **Comments on Compliance Offset Protocol U.S. Forest Projects**

Page 17 – 3.5 Use of Qualified Conservation Easements. This section requires that while an IFM project may have a Qualified Conservation Easement, it is not required. However, Qualified Conservation Easements are required for avoided conversion projects. We assume there will be

no landowners who will adopt a Qualified Conservation Easement under ARB due to the requirements. This is a minor issue for IFM projects since they will still be eligible for ARB offsets (although they will suffer a discount due to increased buffer pool contributions). However, the requirement for a QCE for an avoided conversion project will be a significant obstacle since projects without one will be ineligible. While it may be possible to include a QCE in a new conservation easement, it will be nearly impossible to have any historical easement modified to include the language required by ARB to be considered a Qualified Conservation Easement.

**We request that ARB allow avoided conversion projects with easements prior to February 28, 2015 to be allowed to register with ARB without a QCE and that any project already registered or listed be allowed to continue without amending its current easement.**