

THE CONSERVATION FUND

America's Partner in Conservation

December 11, 2010

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

Comments on the Air Resources Board's October 28, 2010 Proposed Regulation to Implement the Cap-and-Trade Program under AB 32

Dear Mr. Kennedy:

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

In general, The Conservation Fund applauds the careful thought and hard work that are evident in the Proposed Regulation Order ("PRO") and related materials and wholeheartedly supports its adoption when it comes before ARB next week.

Specifically, we are very pleased to see that the PRO includes forest-based carbon offsets within the broader cap and trade program, and recognizes early action offset credits issued by Climate Action Reserve ("CAR") pursuant to Forest Protocol versions 2.1 and 3.0 through 3.2.

Our comments are focused on the treatment of "early action offsets" under Subarticle 14 and what appear to be unintended outcomes when the proposed requirements for ARB offsets are applied to the specifics of the early action offset credits. We also offer comments regarding the proposed treatment of offsets invalidated due to error and seek clarification of the treatment of offsets derived

from projects initiated on private land that are subsequently transferred to federal ownership.

Unclear or unintended treatment of Early Action Offsets.

1. Section 95973 states that for an offset project to be eligible under the ARB Forest Protocol it must have a project commencement date after 12/31/06. There are many projects registered with CAR, including our Garcia River Forest project, that have commencement dates prior to 12/31/06. As written, this provision suggests that while these projects will qualify for early action under Subarticle 14, they will not be eligible for eventual registration (and a renewed crediting period) under the ARB Forest Protocol. It seems unlikely that this is what staff intends and it would likely discourage early action projects from participating in the compliance program. One way this can be corrected is to add the following italicized language to 95973(a)(2)(B) at page A-113:

“(B) the Offset Project commencement date occurs after December 31, 2006 *or the Offset Project meets the requirements of Section 95990(b)...*”.

2. Section 95975(g) states that a project cannot seek a renewed crediting period earlier than 18 months prior to the expiration of its initial crediting period. (See also 95980(c)). Assuming that early action projects are eligible to re-verify under the ARB Forest Protocol, then it appears that early action offset projects will have to wait until June 2013 to do so. We would prefer to register our early action projects under the ARB Forest Protocol sooner than June 2013. More generally, it would seem to be in ARB’s interest to allow projects to re-verify under a new protocol at any time rather than only upon expiration of its prior crediting period (on the theory that more projects will be using the most current, and presumably the best, quantification methodology).

3. Section 95990(c) sets out criteria that an offset project registry must meet to issue early action offsets. One of the criteria is that the registry has the capability to track prices (Section 95990(c)(2)(C)). CAR currently does not have that capability. If CAR is not eligible to issue early action offsets then there likely won’t be any. We are not opposed to price disclosure and tracking per se, but we urge ARB to reconsider this requirement if it will result in disqualifying early action projects from issuing offset credits under Subarticle 14.

Proposed treatment of offsets invalidated due to error.

1. Section 95985(b) of the PRO states that an offset credit may be invalid if ARB determines that errors by “Offset Project Developers... or others involved in producing the documentation used to support the issuance of offset credits are sufficient to warrant a reversal”. Section 95985(d) goes on to provide that if an offset credit is found to be invalid it must be replaced with another approved compliance instrument within 30 calendar days.

Given the complexity of the project and verification protocols, there will undoubtedly be good faith errors involved in the documentation used to support the issuance of an offset credit. Consequently, the vague standard for determining whether errors are “sufficient to warrant reversal,” and the harsh remedy proposed where such a determination is made, will likely discourage offset project development. We therefore recommend that ARB consider adopting a gross negligence or intent threshold for the imposition of the 95985(d) remedy. We further recommend that ARB consider allowing offsets that are invalidated as a result of a good faith error to be replaced pro rata over the remainder of the project’s crediting period rather than within 30 days.

Clarify the status of private projects transferred to federal ownership under ARB’s Forest Project Protocol.

Section 2.1.1 of the proposed Forest Project Protocol states that “Reforestation Projects on both private and public lands, *excluding federal lands*, are eligible” (emphasis added). The Conservation Fund and other non-profit organizations have developed reforestation projects that commence on private lands with the intent of eventual transfer to federal ownership. In the past several years, The Conservation Fund has used donations from individuals and corporations seeking to address climate change to acquire and reforest more than 20,000 acres of private land that had been cleared for agriculture prior to 1990. These properties were subsequently transferred to the U.S. Fish and Wildlife Service for long term stewardship and monitoring. Many more tens of thousands of acres could be similarly acquired, reforested and managed if they were eligible to provide offset credits under the ARB Forest Project Protocol. We therefore recommend that projects that

commence on private land for the eventual transfer to federal ownership be allowed under ARB's Forest Offset Protocol.

Again, thank you for the opportunity to comment on the PRO and related materials. We hope these comments are helpful to your deliberations and decisions to be taken next week.

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