CLIMATE ACTION RESERVE

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Via Electronic Submission

Re: Comments on the April 26 Workshop to Discuss Potential Changes to the Cap-and-Trade Regulation

Dear Chairwoman Nichols and Members of the California Air Resources Board:

The Climate Action Reserve commends the California Air Resources Board and its staff for the achievements of the state's pioneering cap-and-trade program and the work being done to expand and strengthen the program. The Reserve is the largest Offset Project Registry (OPR) serving California's Compliance Offset Program and has issued over 33 million registry offset credits to 148 projects under the current Cap-and-Trade Regulation. Supporting these offset projects over the last five years has given us significant insight into the processes and requirements codified in the Cap-and-Trade Regulation. Our comments below are based on this experience working with ARB staff and offset project developers, and our desire to improve the efficient implementation of the Compliance Offset Program. These comments are intended to expand on the comment letter we submitted on March 16, 2018.

The Reserve would like to provide comments on two issues, the first is "regulatory compliance," and the second is "aggregation."

Regulatory Compliance:

During the April 26 workshop, ARB staff indicated that they would be willing to consider suggestions around how to modify the regulatory compliance requirements for offset projects, with an eye to supporting future investments into offset project development while maintaining the integrity of the program. The Reserve has operated a voluntary offset program since 2008, and regulatory compliance has always been a key component in ensuring the quality and rigor of the credits we issue. Central to this eligibility rule is a desire to protect environmental integrity and ensure that offset projects do not undermine progress on any other environmental issues. As such, the Reserve has implemented the following criteria to determine whether a violation is "material," or has the potential to impact the environmental integrity of a project:

1. Was the violation considered to be "caused" by a project or project activities? Violations that are unrelated to project activities, or caused by "acts of nature," are not thought to impact the environmental integrity of a project, and therefore do not affect crediting.
2. Was the violation administrative in nature? Administrative or reporting issues (such as tardiness in filing documentation, or expired permits that have not generated any associated violations) similarly do not impact the environmental integrity of a project, and therefore do not affect crediting.

The Reserve suggests that ARB consider similar criteria for the regulatory compliance requirements under the Compliance Offset Program. We would like to reiterate our comment submitted on March 16, 2018 in regard to the need for further clarity around the types of violations that are considered to be relevant to a forest offset project. There have been fewer real world examples under the forest offset protocol to provide insight as to which violations will impact project eligibility. As a result, there is currently a large amount of uncertainty in the Compliance Offset Program related to this topic. Similarly, we would implore ARB staff to consider a filter for violations that do not impact the environmental integrity of projects. Penalizing projects for administrative violations is unnecessarily punitive and does not serve to further the integrity of the offset program. While the 'California ARB Offset Credit Regulatory Conformance and Invalidation Guidance' document released by ARB does include guidance such that "Issuance of a citation that cannot be withdrawn by subsequent administrative action" could be the trigger for a finding that regulatory compliance requirements were not met, further explicit guidance in the regulations with respect to when an issue can be considered 'administrative', may provide greater clarity, and flexibility.

During the previous rulemaking process, we were supportive of ARB's approach to limit the period of ineligibility for a project to the period the project was out of regulatory compliance. However, we do not agree that this change should only be applicable to livestock, ODS, and mine methane capture projects. We believe this should be expanded to apply to all project types listed in 95973(a)(2)(C). Livestock, ODS, and mine methane operations are not unique in their ability to identify and document the duration of a noncompliance event. Regulatory compliance requirements should be enforced and penalized equitably across all project types. Furthermore, this provision provides an incentive for projects out of regulatory compliance to

return to a state of compliance as quickly as possible, and we believe this would be a beneficial rule to apply to all offset project types.

In addition, we suggest reconsideration of the current treatment of regulatory compliance for centralized anaerobic digester projects. The current approach taken by ARB is that if a single farm contributing to a centralized digester has a regulatory violation for a period of time, they have two options: either 1) the entire project is ineligible to receive credits during that period; or 2) the offending farm may be left out of the project for the entire reporting period, never to be allowed to return to the project. Regarding the first option, it is entirely feasible and reasonable to remove the baseline crediting for manure from the offending farm without affecting baseline crediting for the entire project. All project emissions would still be counted and deducted. Regarding option 2, we believe this to be overly burdensome. There is no reason the farm should not be allowed to be included in crediting for the project in future reporting periods.

Aggregation:

The Reserve notes the consensus amongst academics, policy makers, government and industry, that the economic feasibility of certain project types (e.g. rice, small dairy, future agricultural protocols, reforestation) may depend heavily on the ability to aggregate many projects together cost-effectively. Verification costs, and in particular site-visit costs, typically make up a considerable component of project development costs.

The Reserve notes that the Ontario offset credit regulations (Regulation 539/17, at Section 22(2)) allow for the combining of projects into aggregated 'groups', and for protocols to stipulate that site visits may not be necessary for each project within such a group.

In light of the above, and our direct experience on these issues, the Reserve encourages ARB to adopt similar provisions in the regulations to those in place in Ontario. The Reserve would also encourage ARB to further consider means to streamline verification requirements, and in particular the need for site visits, in existing and future compliance protocols. As described in the previous section, in cases where a regulatory compliance non-conformance is present in a project or aggregate, where multiple parties/properties are combined, the Reserve encourages ARB to adopt a position such that the offending entity/area can be removed for the duration of the non-conformance, without

affecting the rest of the project/aggregation, and that the offending entity/area can then be allowed to return to the project/aggregation, once the non-conformance has ended.

The Reserve thanks the Members of the Board as well as the ARB staff for their consideration of these comments and for their continued efforts to improve the Compliance Offset Program.

Sincerely,

Craig Ebert
President