



**Gavin Newsom**  
Governor

**Jared Blumenfeld**  
Secretary for Environmental Protection

**Mary D. Nichols**  
Chair- California Air Resources Board

June 13, 2019

The Honorable Bob Wieckowski  
Chair, Senate Budget and Fiscal Review Committee No. 2  
State Capitol, Room 4085  
Sacramento, California 95814

Dear Senator Wieckowski:

Thank you for your letter of May 8, 2019. We continue to appreciate the shared efforts of the Legislature and the Administration in developing and implementing programs – including the Cap-and-Trade Program – to achieve California's greenhouse gas (GHG) emission reduction targets and ambitious climate goals.

Your letter raises the important topic of the rigor of the Compliance Offset Protocol U.S. Forest Projects (Forest Protocol) and its conformance with statutory and regulatory requirements. We take these issues very seriously.

The compliance offset program is an important feature of the State's Cap-and-Trade Program. As you know, there are limits established in the regulation as well as in statute limiting the amount of offsets that can be used towards compliance, and offsets can only be created using California Air Resources Board (CARB) approved protocols. The Forest Protocol is one of six compliance offset protocols approved by CARB in order to incentivize emissions reductions or sequestration in sectors that are not covered by the program, provide cost-containment, and result in other co-benefits. Each protocol was developed through a robust public process over years

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prior to adoption.<sup>1</sup> The issue of conformance with statutory and regulatory requirements was the subject of a lawsuit when the Cap-and-Trade Program was first implemented. CARB prevailed, successfully demonstrating that the offset program and its protocols conform to statutory and regulatory requirements.<sup>2</sup>

CARB has reviewed the policy brief<sup>3</sup> by the UC Berkeley research fellow referenced in your letter. The policy brief contains errors and misunderstandings of the Forest Protocol related to how leakage is addressed and how offset crediting occurs. CARB has made available a detailed review<sup>4</sup> of assertions outlined in the policy brief; the findings are summarized below.

The two specific errors contained in the brief lead to inaccurate conclusions about the Forest Protocol. First, the policy brief asserts that crediting in the Forest Protocol assumes expected reductions over many decades, stating that the issuance of offsets is "front loaded" while the actual sequestration of carbon in the forest occurs over future decades. That is not correct. The crediting in the Forest Protocol is based on verified performance to date,<sup>5</sup> not expected performance in the future. Second, the policy brief relies on two studies to assert that the Forest Protocol does not appropriately account for leakage. Leakage occurs when a reduction in timber

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<sup>1</sup> See Cap-and-Trade Regulation rulemaking adoption processes:  
<https://www.arb.ca.gov/regact/2010/capandtrade10/capandtrade10.htm>;  
<https://www.arb.ca.gov/regact/2013/capandtrade13/capandtrade13.htm>;  
<https://www.arb.ca.gov/regact/2014/capandtradeprf14/capandtradeprf14.htm>; and  
<https://www.arb.ca.gov/regact/2014/capandtrade14/capandtrade14.htm>.

<sup>2</sup> *Our Children's Earth Foundation v. California Air Resources Board* (1 Dist. 2015) 234 Cal.App.4th 870 (upholding *Citizens Climate Lobby and Our Children's Earth Foundation v. California Air Resources Board* (2012) Case No. CGC-12-519554; 2013 WL 861396) (petition for review by California Supreme Court denied June 10, 2015))

<sup>3</sup> Dr. Barbara Haya, Policy Brief: The California Air Resources Board's U.S. Forest Projects offset protocol underestimates leakage. Berkeley Carbon Trading Project Policy Brief, Center for Environmental Public Policy, Goldman School of Public Policy, UC Berkeley (May 2019)

<sup>4</sup> <https://www.arb.ca.gov/cc/capandtrade/offsets/overview.pdf>

<sup>5</sup> See <https://www.arb.ca.gov/cc/capandtrade/offsets/verification/verification.htm>

harvesting at an offset project site causes an increase in timber harvesting elsewhere to meet timber demand. That is, more trees are being harvested outside the project area to compensate for the reduction of trees being harvested within the project area. The studies relied on to identify this leakage focus on conservation forestry practices, which severely restrict or prohibit any harvesting. In contrast, the Forest Protocol focuses on improved forest management activities, which prevent the loss of, or increase carbon storage, in trees. The improved forest management activities do allow for continued harvesting, subject to ensuring increased carbon storage in the forest beyond what is required by existing laws and practice.

Conservation and improved forest management activities are very different practices. To this point, Dr. Brian Murray, co-author of one of the studies relied on in the policy brief, recently sent members of the Legislature, Secretary Blumenfeld, and Chair Nichols a letter noting the misuse of his research in the policy brief (see attached letter). As expected, the leakage rate under conservation forestry should be higher as it assumes all demand for harvested wood is met through harvesting elsewhere. The leakage rate for improved forestry projects will be lower as some demand for harvested wood is met through allowed limited harvesting in the project area. As such, neither of the studies relied upon in the policy brief to assess the Forest Protocol are applicable.

We agree with you that we must continue to monitor our programs and make program adjustments as needed to ensure the program continues to deliver real GHG reductions in a cost-effective manner. Since the original adoption of the Forest Protocol in 2011, CARB has updated the protocol twice through the formal, public rulemaking process and is committed to periodic reviews to reflect the latest science, including any updates in leakage values. CARB reiterated its commitment to periodically review protocols at the April 5, 2019 Independent Emissions Advisory

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Committee meeting.<sup>6</sup> All such reviews are undertaken as part of a transparent and public process to ensure all interested stakeholders, including researchers, are able to share their views and information to inform a staff proposal. This regulatory process is completely separate from, and is not supplanted by, any updates made to voluntary offset protocols. The Compliance Offset Task Force, for which a solicitation for nominations was recently published, will also have an opportunity to engage on new or updated compliance offset protocols.<sup>7</sup>

Thank you again for your continued leadership and interest in the success of our programs. Should you have further questions, please contact Mr. Virgil Welch, Special Counsel to the Chair, CARB, or CalEPA's Deputy Secretary for Legislative Affairs and External Partnerships, Ms. Anna Ferrera.

Sincerely,



Mary D. Nichols  
Chair, California Air Resources Board



Jared Blumenfeld  
Secretary, Environmental Protection

cc: The Honorable William W. Monning  
CARB Ex Officio Member  
State Capitol, Room 4040  
Sacramento, California 95814

<sup>6</sup> [https://calepa.ca.gov/wp-content/uploads/sites/6/2019/04/CARB\\_IEMAC\\_April2019.pdf](https://calepa.ca.gov/wp-content/uploads/sites/6/2019/04/CARB_IEMAC_April2019.pdf)

<sup>7</sup> <https://www.arb.ca.gov/cc/capandtrade/offsets/taskforce.htm>