

October 19, 2018

California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

*Via electronic submission*

## **Re: Comments on the Proposed Amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation**

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

Thank you for the opportunity to comment on the California Air Resources Board (CARB or Board) Cap-and-Trade regulatory package released on September 4, 2018. This upcoming rulemaking is critically important to the continued success of the post-2020 Cap-and-Trade Program (Program). Finite Carbon (Finite) is an active participant in the California compliance offset market and is currently developing or managing 38 improved forest management projects for the Program. We strongly support California's efforts to reduce GHG emissions through a market-based program, including the use of high-quality carbon offsets. We are pleased that AB 398 codified the use of offsets in the Program and support CARB's efforts to promote the importance of well-managed forests, which were highlighted in the recently released report by the UN Intergovernmental Panel on Climate Change as critical to climate change mitigation efforts. Forests are key to limiting average global temperature rise as they provide one of the only readily available, cost-effective means of directly removing and storing GHG emissions at scale, while also providing a host of additional benefits such as shading and cooling, wildlife and pollinator habitat and water filtration and storage capacity.

We have included several comments below which we hope CARB will take into consideration as it continues its efforts to amend the Cap-and-Trade Regulation.

### **Implementation of Direct Environmental Benefit Provision of AB 398**

Finite supports the language in §95989 on Direct Environmental Benefits (DEBs) acknowledging that both projects located in and outside of California state boundaries can, and do, provide direct environmental benefits to the State of California. Science has shown that emissions of GHGs outside the state have an adverse impact on California and its waters,<sup>1</sup> and the State of California has recognized this through various policy positions,

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<sup>1</sup> U.S Environmental Protection Agency, What Climate Change Means for California, August 2016, *available at*: <https://www.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf>. The Environmental Protection Agency outlines the ways that increasing greenhouse gas levels have affected California's waters, including decreased snowpack and declining water availability due to decreased rainfall and increased evaporation rates, and notes that increasing temperatures and declining rainfall in nearby states have reduced the flow of water in the Colorado River, a key source of irrigation water in southern California.

including the State Water Board’s recently issued Comprehensive Response to Climate Change.<sup>2</sup> Finite supports CARB’s proposal to base DEBs determinations on science rather than a strictly “in-state” vs “out-of-state” paradigm that is focused exclusively on political boundaries, which would open the regulation to legal challenges.

## **Evaluation of DEBs**

Finite supports the implementation of a clear and straightforward process for project developers to demonstrate the DEBs of a project activity – this will benefit the program’s implementation and incentivize more projects with California benefits. We have serious concerns, however, about ARB’s proposal to retroactively evaluate millions of previously issued offset credits. These compliance instruments are already in the marketplace and have influenced market expectations, and they represent early actions and investments by both the offset developer and the current offset owner. Applying AB 398 to existing projects that would not qualify as DEBs projects could significantly undermine the value of issued credits for such projects and subject them to a set of rules that did not exist when investment decisions were made, causing serious market disruption. Furthermore, the implementation of the DEBs evaluation for previously issued offsets will necessitate significant expenditures of time, energy, and money from all stakeholders in the offset market including ARB staff, without providing any additional climate benefits.

If ARB does move forward with retroactive evaluation, Finite believes that rulings on the DEBs designation should be made as expeditiously as possible. The current language only indicates a deadline for DEBs applications for existing projects to be received but includes no parameters for when a decision for any application must be made. Prolonged uncertainty about the DEBs status of particular projects will contribute to the significant market uncertainty and disruption previously described. We urge ARB to include a requirement that DEBs applications will be responded to within 45 days of receipt of the DEBs materials outlined in §95989(b), and to be transparent about its DEBs decisions to create an efficient system for future DEBs applicants and ARB staff.

For the evaluation of new projects, the proposed language in §95989(c) states that the materials relevant to the DEBs designation shall be submitted along with the first reporting period Offset Project Data Report. Finite has significant concerns about this timing because these DEBs determinations will likely impact investment decisions that need to be made much earlier in the project development cycle. Finite proposes that relevant

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<sup>2</sup> State Water Resources Control Board, BOARD RESOLUTION NO. 2017-0012, Comprehensive Response to Climate Change, *available at*:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/rs2017\\_0012.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0012.pdf). The State Water Board’s resolution noted that “sharp rises in the atmospheric concentration of greenhouse gases” have caused many adverse impacts on California’s waters including “declining snowpack and more frequent and longer droughts, more frequent and more severe flooding, changes in the timing and volume of peak runoff, and consequent impacts on water quality and water availability. Vulnerabilities of water resources include, but are not limited to, changes to water supplies, subsidence, increased amounts of water pollution, erosion, flooding, and related risks to water and wastewater infrastructure and operations, degradation of watersheds, alteration of aquatic ecosystems and loss of habitat, multiple impacts in coastal areas, and ocean acidification.”

materials should be allowed to be submitted at the time of listing a new project, and ARB should be required to make its decision within 45 days of receipt of the DEBs application materials listed in §95989(b).

**§95973. Requirements for Offset Projects Using ARB Compliance Offset Protocols**

Finite strongly supports the proposed amendment to §95973(b)(1) limiting the temporal scope of regulatory compliance for eligibility for forestry projects in the same way it has already done for mine methane capture, livestock and ODS offset protocol types. Regulatory compliance requirements should be enforced equitably across all project types. Everyone in the system – including project developers, regulated entities, and offset buyers – benefits from increased consistency, uniformity and equity across the offset market.

Finite also supports the clarification on the scope of regulatory compliance in Appendix E, which allows offset projects to remain eligible for offset issuance as long as any noncompliance related to requirements regarding occupational health and safety regulations, statutes, or laws, or the timely submittal of periodic reports required by permits, regulations, statutes, or laws, during the reporting period, has been resolved prior to the submittal of a request for issuance of ARB offset credits. However, Finite would appreciate clarity regarding when such issues will be considered “resolved” for the purposes of satisfying this requirement.

**§95976. Monitoring, Reporting and Record Retention Requirements for Offset Projects**

Finite considers the proposed addition to §95976(g) regarding approval of alternate methods to be a positive step towards improving the flexibility and adaptability of the Compliance Offset Protocols. However, Finite has concerns about the language in §95976(g) that states that “ARB may rescind approval of the alternate method at any time.” Rescinding a previously approved method in the middle of the development process or during a subsequent reporting period will be very disruptive to landowners, project developers, offset buyers and regulated entities. If a specific project has moved forward based on approval for an alternative method, it’s likely that significant resources were already invested in that specific project; for a variety of reasons, it may not be feasible for a new project to continue development using a different method or technology, or for an existing project to meet their obligations for verification. We urge ARB to continue to let the project use the interim method until the next full offset verification, required at least once every six years. Because the proposed regulatory language states that approval of an alternate method may only be submitted for a reporting period for which a project is receiving a full offset verification, it would seem reasonable for interim approval to last until the next one six years later.

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

Finite supports the proposed amendment to §95985(c)(2) which corresponds to the changes made in §95973(b)(1) to allow for prorating periods of noncompliance for forest project reporting periods if an invalidation event has occurred. These changes further increase consistency and parity in eligibility and invalidation provisions across the different protocol types.

We look forward to working with CARB on these important regulatory changes. We thank you for your consideration and would be happy to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Carney". The signature is fluid and cursive, with the first name "Sean" and the last name "Carney" clearly distinguishable.

Sean Carney  
President