



# YUROK TRIBE

190 Klamath Boulevard • Post Office Box 1027 • Klamath, CA 95548



October 2, 2013

Mary Nichols, Chairperson  
Air Resources Board  
1001 "I" Street  
Sacramento, CA 95814

RE: Comments to Proposed 2013 Regulatory Amendments to Cap-and-Trade Regulations

Aiy-ye-kwee':

The Yurok Tribe welcomes the opportunity to comment on the Initial Statement of Reasons (ISOR) and proposed 2013 amendments to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms (Cap and Trade Revisions). The Air Resources Board has made considerable progress in addressing Tribal concerns, though certain issues remain.

The Yurok Tribe supports the proposed revisions to sections 95975(l)(1) and 95975(h). The Tribe was previously assured that the ARB would not seek punitive or exemplary damages from Tribal governments. The revised section 95975(l)(1) incorporates this assurance in the regulation by reference to California Government Code sections 818 and 818.8. Revised section 95975(h) removes unintentional impediments to Tribal projects due to the need to secure a limited waiver of sovereign immunity. It recognizes that additional time may be necessary to negotiate a limited waiver on a government to government basis with a Tribe and to secure any federal input. While this is not the Tribe's preferred approach, it does largely address the Tribe's concern as to timing of Offset Project listing.

No change is proposed for section 95973(d). The Yurok Tribe continues to advocate for deleting section 95973(d)(3) in its entirety. It is neither necessary nor appropriate for ARB to require a limited waiver of sovereign immunity for projects on land within Indian lands as defined at 25 U.S.C. § 81(a)(1). To the extent a project is implemented within such lands, ARB enforcement is only appropriate against the implementing entity, not a Tribe.

Finally, the revised section 95974(a)(2)(B) requires that an Authorized Project Designee (APD) register as an account representative for the CITSS account of an Offset Project Operator (OPO). The Tribe, like many other Offset Project Operators, has multiple offset projects that have various confidentiality and contractual commitments prohibiting the Tribe from including an APD as a CITSS account representative with access to certain project information. Unless CITSS is modified to limit an APD's access to only specific projects, this revision precludes an OPO like the Tribe from having an APD. Rather than bolstering enforcement, it limits ARB's remedies in case of any regulatory violation. The Tribe, like other OPOs, will not be able to use an APD, against which ARB otherwise could have enforced the regulation. Liability is limited to the OPO, which may have had only a small role in developing an Offset Project. This revision reduces ARB's ability to enforce the regulations and hold key parties accountable.

Letter re Cap and Trade Proposed 2013 Reg Amend\_v1

The Yurok Tribe appreciates ARB's efforts to address Tribal concerns in the 2013 regulatory amendments and looks forward to working with ARB to continue refining the regulations. Should you have any questions, please contact our Staff Attorney Nathan Voegeli at 707-482-1350 ext. 1408 or email [nvoegeli@yuroktribe.nsn.us](mailto:nvoegeli@yuroktribe.nsn.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas O'Rourke, Sr.', with a stylized flourish at the end.

Thomas O'Rourke, Sr.  
Chairperson, Yurok Tribe