

March 16, 2018

California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Re: Comments of Shell Energy North America (US), L.P. on Preliminary  
Discussion Draft of Potential Changes to the Cap and Trade Regulations

To: Air Resources Board:

Pursuant to the schedule established at the March 2, 2018 workshop, Shell Energy North America (US), L.P. (“Shell Energy”) provides comments on the ARB Staff’s “Preliminary Discussion Draft” addressing potential changes to the cap and trade regulations. Shell Energy’s comments focus on the Staff’s proposed process and standard for determining whether an out-of-state offset project provides “direct environmental benefits in the State” (“DEBS”).

## I.

Under AB 398, beginning in 2021, no more than one-half of the offset credits used for GHG emission compliance may be sourced from projects that do not provide “direct environmental benefits in the state.” Health and Safety Code Section 38562 (c)(2)(E)(i). The statute provides that “direct environmental benefits in the state” means “the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of any pollutant that could have an adverse impact on waters of the state.” Health and Safety Code Section 38562 (c)(2)(E)(ii).

The Staff’s preliminary discussion draft seeks to implement the statutory language, relying on the exact words in the statute to define DEBS in the regulation. See Discussion Draft at p. 17. The Staff proposes a two-step process to determine whether an offset project satisfies the DEBS standard.

The Staff proposes a fact-based assessment to determine whether an offset project meets the DEBS standard, beginning with a requirement that each new offset project provide information regarding the location of the reduction or avoided emissions of any air pollutant, or the location of the reduction or avoidance of any pollutant that could have an adverse impact on the waters of the state. The Staff proposes that if the reduction (or avoided emissions) is physically located in California, or if the project is located adjacent to a water body that flows within or into California, the DEBS standard is satisfied, and no further information is needed.

The Staff also proposes, however, that if these threshold criteria are not met, an applicant still may demonstrate that an out-of-state offset project meets the DEBS standard, through the submission of additional factual data. Discussion Draft at p. 18. The Staff properly seeks additional information that can show that an out-of-state offset project is beneficial to the California environment. Significantly, the Staff acknowledges that “a GHG reduction anywhere is a benefit everywhere . . . .” *Id.* at p. 17. As discussed below, this statement provides a foundation for broad application of the DEBS standard.

## II.

Shell Energy supports the Staff’s proposed DEBS framework for three fundamental reasons: First, by recognizing the direct environmental benefits to California from out-of-state offset projects, the Staff’s proposed approach reduces the likelihood of a successful legal challenge based on the “dormant commerce clause.” Adopting a legally sustainable approach provides increased certainty to offset project developers as well as offset market participants.

Second, it is critical that investments continue in much needed offset projects that help obligated entities cost effectively manage their carbon exposure. The Staff recognizes that it will need to “apply criteria retroactively to the tens of millions of offsets already issued in the system that may be used for compliance surrender for emissions for the year 2021 and forward.” Discussion Draft at p. 17. A fact-based process for DEBS consideration for out-of-state offset projects will enable project developers to demonstrate California-specific environmental benefits of their offset projects.

Third, as discussed during the workshop, the Staff’s proposed framework will protect tribal initiatives that rely on offset projects as economic resources. Maintaining certainty in the burgeoning market for offset projects on tribal lands will contribute to California’s efforts to support disadvantaged communities.

## III.

GHG emissions anywhere in the world have direct (and indirect) impacts on California. On this basis, the DEBS language of AB 398 should be interpreted broadly and inclusively. The ARB has developed detailed regulations addressing the eligibility of offset projects for compliance, approval of offset protocols, and independent verification of GHG emission reductions from offset projects. The ARB has linked California with other jurisdictions to encourage the development of offset projects to meet covered entities’ increasing compliance obligations over time. California’s worldwide leadership on climate change mitigation should not be derailed through a narrow interpretation or limited implementation of the DEBS standard, as related to out-of-state offset projects.

In this connection, as a leader in the worldwide movement to reduce GHG emissions, California's offset program stimulates national and international participation in the development of GHG emission reduction projects. A robust worldwide offset program directly benefits California as a key player in the movement to reduce GHG emissions.

By contrast, narrowly limiting the DEBS standard would create uncertainty and reduce the incentive for developers in other states and countries to participate in California's offset program. Shrinking the universe of DEBS-eligible offset projects would result in an increased cost burden on covered entities that would reduce their competitiveness in their respective product markets.

For the foregoing reasons, the Staff's proposal should be finalized and adopted by the ARB in the earliest possible timeframe. Approval of the Staff's DEBS evaluation approach for out-of-State offset projects will provide certainty and encourage investment in projects that will reduce GHG emissions and provide direct benefits to California.

#### IV.

Shell Energy appreciates the opportunity to submit these comments. Please do not hesitate to contact the undersigned with any questions you may have regarding the comments.

Sincerely,



John W. Leslie  
Dentons US LLP  
Attorneys for Shell Energy North America (US), L.P.

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