July 20, 2018

Ms. Rajinder Sahota
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Submitted via email

The Verified Emission Reduction Association, or VERA, offers the following comments on the direction staff has discussed related to offsets under the proposed amendments to the Cap and Trade Regulation as presented in the June 21, 2018 staff workshop. We appreciate the opportunity to provide additional comments and look forward to working with you and your staff in the upcoming weeks to finalize this critically important rulemaking to ensure the continued and successful use of offsets in the revised Cap and Trade Program.

VERA is made up of 11 individual companies with vast experience in achieving real greenhouse gas (GHG) reductions for the cost-effective use in California's Cap and Trade Program (Program). VERA strongly supports California's efforts to reduce statewide 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 California's Cap and Trade Program and we continue to support CARB's efforts to maximize the benefits of offsets to contain costs and support the development of new innovative projects and technologies on a scale not achievable through command and control regulations. We believe an effective component to help accomplish the Programs' lofty goal—establishing a program in which other jurisdictions can participate—is to maximize offset usage under the new AB 398 parameters.

VERA members are fully committed to the fundamentals of environmental integrity, ensuring that offsets are real, quantifiable, permanent, verifiable, and enforceable GHG reductions, as required under the Program. Maximizing offsets will have a direct positive economic and environmental benefit within California, including within designated disadvantaged communities.

We have been an active participant in this rulemaking process and previously submitted detailed comments.[1] VERA stands by those recommendations and would like to provide additional comments based on the staff presentation, updated Preliminary Discussion Draft of the Regulation (PDD2) and the implied policy direction that may result.

[1] https://www.arb.ca.gov/lists/com-attach/1219-ct-4-26-18-wkshp-ws-UWRVflZmVTYGLQQ1.pdf

VERA was also pleased to see a multitude of other stakeholders, including non-offset developers, provide comments in support of offsets after the last workshop.[2] These comments highlighted the many diverse reasons to support the offset program. Many commenters presented supporting data and well rationed arguments on behalf of offsets—VERA supports these well-reasoned positions.

The Legislature's decision to codify offset use recognizes that they benefit the Program and California's environment and economy in both rural and urban areas throughout the state. Therefore, implementing the program in a way that fully utilizes the new statutorily authorized limits is key to keeping with legislative intent. At the last workshop staff again highlighted some of the major benefits of the offset program—cost containment and production of "real reductions outside of capped sectors".[3] VERA concurs with these staff positions.

Staff also highlighted some additional thinking on updating regulatory compliance policy as it relates to Forestry projects. The issues of Temporal Limitations, Spatial or Operational Limitations, and Materiality Limitations are critically important across the offset spectrum. VERA supports this effort and encourages CARB to take broader view of this issue and revisit all adopted protocols in a similar light.

VERA also supports CARB's interest in narrowing the types of activities that are considered in any regulatory conformance assessment of offset projects. As other regulations in other areas (water, waste, health and safety) get more complex and encompassing, it will be even more important for CARB to let those with enforcement authority for those areas address any issues. CARB should rightly focus on regulatory conformance which may impact GHG reductions accounting.

We remain supportive of several key policy statements contained within the second Preliminary Discussion Draft (PDD2) of the Cap and Trade Regulation,[4] including:

- The construction of § 95854(b)—Quantitative Usage Limit on Designated Compliance Instruments—Including Offset Credits.
- Timing associated with implementation of these new limits as depicted in slide 25 of the staff workshop presentation.

Implementation of Direct Environmental Benefit Provision of AB 398

VERA continues to support CARB's straightforward acceptance that any project which can show a direct reduction of an air pollutant in the state, or the reduction or avoidance of any pollutant that could have an adverse impact on waters of the state, has a direct environmental benefit to the state (DEBS). Our previous comments provide significant detail on this issue. VERA remains committed to those comments.[5]

[2] https://www.arb.ca.gov/lispub/comm2/bccommlog.php?listname=ct-6-21-18-wkshp-ws
[3] https://www.arb.ca.gov/cc/capandtrade/meetings/20180621/ct_pres062118.pdf (Slide 25)
[4] https://www.arb.ca.gov/cc/capandtrade/meetings/20180621/ct_pdd_06192018.pdf
[5] https://www.arb.ca.gov/lists/com-attach/35-ct-3-2-18-wkshp-ws-UWIGLVJiA2YLIAMy.pdf and 4-26-18 comments.

The most significant change in the PDD2 relating to offsets is found in the discussion text box in the PDD2, shown here in double underline for reference, that exclusively reducing GHG's per the methodologies laid out in CARB's approved protocols wouldn't be classified as providing a direct environmental benefit.

- Location of reduction or avoided emissions of any air pollutant, in addition to GHGs for which the project is receiving credits.

VERA has significant concerns with the implications of this new language. First and foremost, this adds additional layers of intent onto the actual language of AB 398[6] and is an added criteria that has not been supported by any legal or technical analysis. GHG's are air pollutants by statutory definition, as well as by CARB's own regulatory definition. Succinctly said, a reduction in GHGs is a reduction in Air Pollution, and therefore a benefit to the environment. Any reading other than a plain language interpretation of the statute will open a series of other questions for CARB to answer. VERA recommends that this direction and language not be pursued.

Notwithstanding the position stated above, if CARB does indeed head in a direction where a broader and more expansive view of AB 398 is taken, then it would also be incumbent on CARB to adopt a broader view of the environmental benefits that count. Statutory construction does not allow CARB to take a broad view on a single aspect of the statute while taking a strict view on the same sentence of a particular section of code. And indeed, if CARB takes an expansive view, there are many environmental benefits to California provided by offsets. For example, the collection and destruction of ODS creates a healthier ozone layer and results in reduced skin cancer rates. It also protects against higher ozone levels due to more frequent high heat days that will come with increased atmospheric GHG concentrations.

The argument presented by offset opponents which seems to have spurred this additional language is the following – an offset surrendered, on net, doesn't provide an actual GHG reduction. VERA strongly disagrees with this premise. CARB very purposefully created conservative offset accounting mechanisms to ensure that there is a margin of safety associated with all offsets credits. This foundational policy of the program would be ignored if CARB takes the PDD2 position. Additionally, VERA has already commented on the temporal benefit of GHG's, i.e. that an offset (reduction today) has a benefit even if the offset is later used by a compliance entity under the rules of the program (emission at a later date). Basic climate science tells us that benefit cannot be ignored.

The original AB 32 Climate Change Scoping Plan laid out a vision for leadership and exportability of California's GHG program. It also highlighted that reducing in-state emissions alone would not solve the larger issue. Those original goals of global action for the benefit of California are being achieved with the use of offsets, both within and outside of California as the reduction of unregulated GHGs has enormous benefit to California's long-term goals of reducing the impacts of global climate change. The continued release of potent emissions such as methane, black carbon and refrigerants is of great concern and urgency. Offsets provide a viable mechanism to achieve the additional reductions necessary to help achieve the larger goal, and that is a foundational policy

[6] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB398

laid out in the Scoping Plan that needs to continue. These impacts are also laid you in great detail by the California Resources Agency's Safeguarding website.[7]

Retroactive DEBS

Though neither the staff presentation nor the PDD2 added new staff thoughts on existing offsets, VERA's serious concerns about the previous proposal to retroactively evaluate over 90 million previously issued offsets remain. These compliance instruments are already in the marketplace, have value, and represent early actions and investment by both the offset developer and the offsets' current owner. It is simply unfair to alter their value after the market transaction has been completed. In addition, having to wait until the end of 2021 to learn if these assets have changed in value will cause significant disruption in the offset marketplace.

Furthermore, we would like to reiterate that retroactively looking at all issued offsets would cause all stakeholders, including CARB, to incur significant administrative and implementation costs. It may also grind to a halt the issuance of new and future offset credits, further disrupting the market. These costs are in addition to the added program costs associated with the reduction in offset usage limits as highlighted in the regulations SRIA.[8] Therefore, VERA recommends that all offset projects that were or are listed prior to the finalization of this rulemaking not be subject to the DEBS evaluation process and instead be categorized in a way that does not subject them to the new DEBS usage limitations imposed for offsets post 2020. VERA also previously provided additional policy and legal arguments against retroactively assigning DEBS to existing offsets.

Update to the Invalidation Provisions under the Current Cap and Trade Rulemaking

VERA previously submitted detailed comments and a proposal to address the current offset invalidation mechanisms. While we are appreciative and supportive of the staff's effort on regulatory compliance and additional Forestry clarifications, these positive changes will not mitigate the inherent market costs associated with the current buyer liability framework for offsets. In recent conversations with CARB, it was conveyed that current rulemaking will be limited to the extent possible to implementation of AB 398 provisions. But it was also clearly stated that a subsequent rulemaking to specifically address broader offset and programmatic issues would follow. VERA strongly believes that addressing the issue of offset invalidation would significantly improve the program and provide additional incentive to produce additional offset projects. Such a change would surely make additional offset projects more attractive, including producing those GHG reductions within the State of California as encouraged by AB 398 and the yet-to-be formed Offset Protocol Task Force.

Conclusion

VERA is committed to a robust offsets market and our members are available to answer questions on these recommendations. We look forward to working with CARB on these important regulatory changes. VERA can be reached through Jon Costantino at Tradesman Advisors, at: 916-716-3455, or via email at jon@tradesmanadvisors.com.

[7] http://resources.ca.gov/climate/safeguarding/

[8] http://www.dof.ca.gov/Forecasting/Economics/Major_Regulations/Major_Regulations_Table/documents/Cap-Trade_SRIA_ARB_6-2018.pdf