The Nature Conservancy

March 16, 2018

Ms. Rajinder Sahota, Assistant Division Chief, Climate Programs
Mr. Jason Gray, Branch Chief, Cap and Trade Program
California Air Resources Board
1001 I Street
Sacramento, CA 95812

RE: Comments from The Nature Conservancy on the March 2, 2018 Preliminary Discussion drafts to amend the cap and trade program regulations

Dear Ms. Sahota and Mr. Gray:

The Nature Conservancy appreciates the opportunity to provide comments on the preliminary discussion drafts that were released at the March 2, 2018 workshop. We support the state's cap and trade program and believe it is an important tool to ensure the state meets its greenhouse gas reduction goals. We offer the following comments in support of the program and GHG reductions from natural and working lands.

Include in the regulations a process for developing a price ceiling reserve to support the 2030 cap and achieve reductions from California's natural and working lands

We appreciate the staff suggestions for how to address the new language of AB 398, the price ceiling and related price tiers. We urge ARB staff to consider, as part of the price ceiling, the opportunity to advance additional reductions from California's natural and working lands (i.e., an uncapped sector) that would not only help maintain the statewide cap, but also support the GHG goal established for this sector in the scoping plan. Attachment A describes in more detail how this could function. In support of such an outcome, the regulations should include language that does the following:

1) Identifies that ARB will initiate a process to enable the procurement of additional GHG reductions if and when the price of allowances approaches the tier 1 price containment allowance pool price
2) Identifies the natural and working lands sector (and perhaps other uncapped sectors) as the intended source of reductions to help meet the intent of the Health and Safety Code Section 38562(c)(2)(A)(ii)(II) and that ARB may work with other state agencies to procure such reductions
3) Establishes the accounting criteria that will need to be met to fulfill the requirements of Health and Safety Code Section 38562(c)(2)(A)(ii)(II)

Include in the regulatory package new offset protocols that will advance additional GHG reductions from natural, urban and working lands in California and elsewhere

Several offset protocols have been developed or updated by carbon registries that would have the effect of fostering more benefits in and around California and leveraging more reductions from uncapped sectors. For instance, the Climate Action Reserve has an updated version of the urban forest protocol that could enable more interest and investment in urban forestry projects in California and elsewhere. The Reserve has also developed and adopted an avoided grassland conversion protocol that could help reduce the conversion of rangelands in California and associated greenhouse gas emissions. Their forest protocol has been augmented to include forest-based reduction activities in Hawaii. Inclusion of Hawaii's forests in the existing regulatory forest protocols would have the effect of leveraging reductions beyond California's borders and supporting California's partnership with Hawaii and other states in the US Climate Alliance.

The American Carbon Registry has developed and adopted a wetlands restoration protocol that could help reduce emissions and sequester carbon in across the state and in the Sacramento-San Joaquin River Delta. These kinds of projects will not only reduce carbon dioxide in the atmosphere but also provide climate resilience in the form of flood control, water quality protection and levee stability.

We recommend that CARB include the vetting and adoption of these protocols as part of the cap and trade regulatory amendment process, as their adoption becomes even more important as part of the effort to deliver direct environmental benefits to California.

Include regulations that will allow for future linkages with tropical forest jurisdictions and acceptance forest-based GHG reductions

At the workshop, it was suggested that CARB may include regulations that would allow for future linkages with tropical forest jurisdictions that could ultimately allow California's program to include a percentage of forest-based reductions from these international jurisdictions. We strongly support the inclusion of regulations that would allow for such linkages and transactions in the future, as it will help demonstrate how different jurisdictions can link programs, and inspire action to reduce a major source of global emissions and support low carbon, sustainable development.

The Conservancy supports staff recommendation to adopt the statutory definition of "direct environmental benefits" in the regulations and the provision of a standardized approach to determine these benefits

The Conservancy agrees with staff's inclination to rely on the statutory definition of direct environmental benefits for the regulations given the variability of offset project protocols and the varying conditions of individual projects, making the development and application of a single criterion to identify DEBS challenging. We also support a general, standardized approach to identifying DEBS for similar reasons and because it will minimize burdens and costs to entities (e.g., landowners, communities, etc.) who are seeking to develop and implement GHG offset projects. We suggest that ARB provide a table of the kinds of benefits that would qualify as DEBS (that is updated over time), based on peer-reviewed literature so it is clear to the public and project developers at the outset what projects and actions would qualify. In addition to this table, there should be a process for offset projects to demonstrate how it achieves DEBS if not identified on the list. We'd be happy to provide peer reviewed data to help develop a list for what may qualify as DEBS.

We appreciate CARB staff's consideration of our comments and look forward to additional discussion to advance this program. Please contact Michelle Passero@mpassero@tnc.org for more information.

Attachment A

Proposal: A Price Ceiling Reserve and GHG Goal for California's Natural and Working Lands

Prepared by Michelle Passero, The Nature Conservancy, Kevin Poloncarz, Paul Hastings LLP, and Dallas Burtraw, Resources for the Future

Concept Proposal Purpose: This concept paper outlines how California could bridge efforts to ensure the integrity of the state's GHG emissions cap and California's 2030 target, while establishing a clear role for natural and working lands to support that target. It proposes to: 1) establish a Price Ceiling Reserve prior to 2020 that can be drawn upon, in the event the ceiling is reached to ensure the integrity of the statewide 2030 GHG cap; and 2) use some funds from the Greenhouse Gas Reduction Fund to invest in reductions from California's natural and working lands to initially develop the Reserve, and support an overall GHG goal for this sector and the state's GHG target.

Background: In 2016, California enacted a 2030 GHG reduction goal to reduce its emissions by 40% below 1990 levels, deepening the ambition of Assembly Bill (AB) 32's 2020 target. In 2017, the State adopted legislation (AB 398) to authorize extension of the cap and trade program to 2030, a key market-based program the state is implementing to cap 80% of statewide emissions. The legislation directs ARB to amend the program in certain respects, including by establishing a ceiling on the price of allowances. Because the inclusion of a price ceiling in the program creates the possibility that emissions from covered sectors will exceed the cap, the legislation also includes provisions to mitigate this risk, including by directing ARB to set aside allowances left remaining in the Allowance Price Containment Reserve (APCR) for retirement in the event the price ceiling is reached. Once the APCR is exhausted, ARB is then required to offer covered entities additional metric tons at the price ceiling if needed for compliance and, to ensure the integrity of the cap, use all moneys generated to achieve emissions reductions, on at least a ton for ton basis, meeting certain criteria.[1]

To meet the 2030 target, the state has adopted a scoping plan outlining a combination of existing policy measures that will be implemented, including the renewable portfolio standard, low carbon fuel standard, short-lived climate pollutant strategy, and cap and trade program, among others. To the extent the identified regulatory measures are unable to achieve their forecasted reductions or there is uncertainty about whether their implementation alone will achieve the cap, the cap and trade program will make up the difference, providing assurance that the 2030 cap will be achieved. Given this role for the cap and trade program, the reductions achieved through the sale of allowances at the price ceiling (after using the allowances in the APCR) play a critical insurance role for the cap and trade program, and by extension, for all the GHG reduction measures identified in the scoping plan.

A GHG Goal and Insurance Role for Natural and Working Lands: For the first time, the state scoping plan includes a GHG reduction goal for California's natural and working lands, though this sector is not

---

[1] *See Health and Safety Code* § 38562(c)(2)(A)(ii)(II) (operative through Jan. 1, 2031) (providing that such reductions must be "real, permanent, quantifiable, verifiable, enforceable by the state board and in addition to any greenhouse gas emission reduction otherwise required by law or regulation and any other greenhouse gas emission reduction that otherwise would occur.").

officially a part of the state's 2030 GHG target. The scoping plan acknowledges that California's natural and working lands (forests, urban forests, wetlands, rangelands and agricultural lands) can play a key role in helping the state meet its long-term climate mitigation goals, as their management and conservation influence whether these resources are a net contributor to the state's overall GHG emissions or a net sink that will remove GHG emissions from the atmosphere. To start, the plan proposes a minimum GHG goal of 15 – 20 million metric tons of carbon dioxide equivalent to be achieved by 2030.

With the adoption of the scoping plan in December 2017, the ARB Board also committed by resolution to re-evaluate this minimum target by September 2018, considering ongoing scientific analyses that are assessing the contribution that California's natural and working lands could make to the state's long-term GHG goals. A recent study published by the Proceedings of the National Academy of Sciences indicates that the management and conservation of natural and working lands in California can help the state meet up to 17% of the state's 2030 cumulative GHG reduction goal.[2]

Through 2018, ARB and partner agencies will develop a plan to identify how the management, conservation and restoration of natural and working lands and related programs could help meet California's long-term climate goals. Unlike other sectors, the GHG goal for this sector is not driven by or mandated by a specific policy measure (e.g., Renewable Portfolio Standard, Low Carbon Fuel Standard, etc.), leaving an opportunity and need to identify a specific role and supporting program(s) for this sector.

One important role this sector could play is the GHG reduction insurance role mentioned in the previous section. In this concept paper, we refer to it as a "Price Ceiling Reserve." The Price Ceiling Reserve (PCR), as described below, could be an insurance pool of GHG reductions that helps maintain the integrity of the 2030 GHG cap, as well as a GHG reduction goal for the state's natural and working lands.

A Price Ceiling Reserve and ARB Legal Authority: AB 398 mandates that ARB establish a price ceiling on allowances and, once the supply of allowances remaining in the APCR on December 31, 2020 is exhausted, offer covered entities additional metric tons at the ceiling and then spend all the moneys generated through such sales to achieve reductions on a ton-for-ton basis meeting specified criteria.

The Global Warming Solutions Act provides clear authority for ARB to enact regulations necessary to achieve the state's 2020 and 2030 targets and to assure the integrity of reductions achieved through implementation of market-based mechanisms. Likewise, other state law, such as SB 1386 (Wolk, 2006), directs state agencies, including ARB, to consider the role that protection and management of natural and working lands can play in achieving the state's GHG reduction targets and to consider this goal when establishing grant criteria, among other things. Further, AB 398 announces the intent of the Legislature that moneys collected from the auction or sale of allowances shall be appropriated for a number of priorities, including healthy forests and urban greening and sustainable agricultural practices. In addition to the scoping plan goal for natural and working lands, these authorities further establish a clear place for natural and working lands within California's overall program to achieve its GHG

---

[2] Cameron, D.R., D.C. Marvin, J.M. Remucal, M.C. Passero. November 13, 2017. Ecosystem management and land conservation can substantially contribute to California's climate mitigation goals. *Proceedings of the National Academy of Sciences*: http://www.pnas.org/content/early/2017/11/07/1707811114.abstract

reduction goals and provide authority to fund efforts that support the role natural and working lands play in reduction of emissions.

Based on these authorities, ARB has clear authority to establish a reserve of reductions that can be drawn upon, if and when needed, to satisfy the ton-for-ton reduction requirement established by AB 398 in the event the ceiling is reached and the APCR is exhausted.[3] Moreover, to assure the integrity of the cap and the state's GHG reduction goals, ARB can and should establish this reserve in advance of the ceiling being reached. If ARB does not establish such a reserve in advance of that time, then implementation of the price ceiling could realistically jeopardize achievement of the 2030 target. For example, if the ceiling should be reached in 2028 and ARB should only then seek to invest the moneys from sale of additional metric tons at the ceiling in reductions meeting the criteria set forth by AB 398, it is entirely possible that ARB may fail to secure sufficient additional reductions that satisfy the criteria set forth by AB 398 in time to achieve the state's 2030 target. Further, early investments to establish a reserve in advance of the time that the ceiling is reached can spark innovation in the identification of measures to achieve GHG reductions from natural and working lands. It can also enhance the validation that these emissions reductions are real, permanent, quantifiable and verifiable in advance of their use for compliance.

Some stakeholders may argue that, once the ceiling is reached, ARB can then hold a reverse auction or otherwise then attempt to procure the required ton-for-ton reductions at least cost. However, by establishing a reserve of such reductions in advance of the ceiling being reached and the supply of remaining APCR allowances being exhausted, ARB will better assure that the integrity of the cap is maintained and the 2030 target achieved. In that respect, establishing the PCR in advance of prices reaching the ceiling would buy insurance against the risk that implementation of the price ceiling could cause the state to miss the 2030 target, while harmonizing continued implementation of the cap-and-trade program with state policies intended to integrate the role of natural and working lands with the state's efforts to achieve that target.

Conclusion: The important role of natural and working lands in removing long-lived GHG emissions from the atmosphere and thereby avoiding the worst impacts of climate change cannot be overstated. By providing incentives to encourage such removals to occur and developing the validation methodologies and institutions necessary to assure their permanence, California can again play an outsized role in combatting climate change on a global scale. Accordingly, ARB should begin funding the PCR with revenue from the auctions occurring in 2018 and then continue investing in the reserve if and when each of the price containment points (i.e., "speed bumps") are reached. Using auction revenue for such purposes is fully consonant with the requirements of governing law, as it would facilitate the achievement of GHG reductions and advance the overall purposes of AB 32,[4] and is consonant with the

[3] While the criteria applied to these reductions may be similar to the criteria applied to offset projects pursuant to AB 32,[3] the reductions from sales at the ceiling would not be offsets. They are not "up front" investments made by individual capped entities to meet compliance obligations. Rather, they are a pool of reductions that serve to ensure that the overall greenhouse gas emissions cap is maintained.

[4] *See* Gov. Code §§ 16428.8(b) and 16428.9(a)(2)-(3) (requiring all expenditures from the Greenhouse Gas Reduction Fund to be supported by a record describing how they will further the purposes of AB 32 and contribute to achieving and maintaining GHG reductions pursuant to AB 32); Health and Safety Code § 39712(b), (c)(3) and (c)(6) (providing that moneys from the sale of allowances shall be used to "facilitate the achievement of reductions of [GHG] emissions in this state" through investments in, *inter alia*, "[f]unding to reduce GHG emissions associated with . . . land and natural resource conservation and management, forestry, and sustainable agriculture", and

priorities enumerated for investment of auction revenue established by AB 398.[5] It would also provide a more discrete role for the state's natural and working lands in state climate policy and support a quantitative GHG goal for this sector.

For more information, please contact: Michelle Passero at MPassero@tnc.org, Kevin Poloncarz at kevinpoloncarz@paulhastings.com or Dallas Burtraw at Burtraw@rff.org

through "programs implemented by local and regional agencies [and collaboratives], Native American tribes in the state, and nonprofit organizations coordinating with local governments.").

[5] *See id*. § 38590.1(a) (expressing the Legislature's intent that moneys collected from auction or sale of allowances be appropriated for several priorities, including, *inter alia*, "sustainable agricultural practices . . ." and "[h]ealthy forests and urban greening.").