

## Public Comments for ARB Board Meetings, 15-Day Notices, and Executive Officer Hearings

### PROPOSED AMENDMENTS TO THE CALIFORNIA CAP ON GREENHOUSE GAS EMISSIONS AND MARKET-BASED COMPLIANCE MECHANISMS REGULATION

#### **§ 95854. Quantitative Usage Limit on Designated Compliance Instruments— Including Offset Credits.**

The Environmental Justice Community and others clearly believed the DEBS clause in AB398 was an attempt to bring at least one half of any co-benefits of offset projects back to California. This assurance should not be undermined by ARB staff language that would allow any more than one half of offsets to be sourced outside the physical boundary of the State or not having the ability to impact state waters. Projects that “do not provide direct environmental benefits in state” should be defined as projects located outside the boundaries of the State or not *within watersheds* of State waters. The clause related to “waters of the state” is the only criteria potentially needing clarification. The most reasonable, conservative, and consistent way to define the waters of the State are to adopt the definition as “*watersheds* of state waters”. Watersheds are clearly defined spatially and well accepted methods for delineating physical boundaries for the source of flowing waters.

ARB staff must strive to sincerely meet the Legislative intent of AB398. Legislators clearly intended offsets to be restricted in some manner beyond the 4% Usage Limits by including language intended to benefit the people of California and exclude the use of offsets that do not provide direct environmental benefits in state (DEBS). ARB must clearly define which offsets should be excluded. Clear, enforceable language should be developed that defines which offsets “do not provide direct environmental benefits in state”. If ARB adopts language that has no clear criteria for exclusion there will be no defensible authority for ARB to exclude offsets, as intended by the Legislator, because the regulation will provide no basis to deny use of any offsets. Each offset would be reviewed on a case-by-case basis without useful criteria to determine if they meet the Legislation intent thereby resulting in no basis for establishing if an offset “does not provide direct environmental benefits”.

The statement in the PDD that “science supports that a GHG reduction anywhere is a benefit everywhere” seems to be a leading statement that implies offsets in the program could come from anywhere. Furthermore, ARB should provide the scientific citation that supports this claim. While it *may* be true that “science supports that a GHG reduction anywhere is a benefit everywhere”, it is doubtful that science supports that a GHG reduction anywhere is a “*direct*” benefit everywhere. There may be direct and indirect benefits of a reduction, but ARB should not imply that a reduction anywhere provides a direct benefit in State.

If ARB has any confusion over the intent of the DEBS language, ARB should take a conservative view as to how to implement the language. The conservative interpretation of the DEBS restriction is to limit offsets to those sourced from offset projects located within the physical boundaries of the state or within watersheds of State waters. A conservative interpretation would provide the most benefits to the people of the State of California. Disadvantaged communities and others living near emission sources are more likely to receive some benefits if offset revenues are directed towards offset projects located within the State.

The PDD states that “due to the diverse nature of adopted offset protocols, it will be difficult to find a single DEBS criterion that applies appropriately to each offset protocol type”. However, there is nothing inherent about the protocols that make it difficult to apply a single criterion for DEBS. Each offset project has a physical location and that criteria alone can be used as a single DEBS criterion. The location of offset projects that are “in the state” or physically located in a watershed of state waters meet the DEBS intent. Location is clearly described in each project and all the adopted offset protocols have this in common.

The location of the reduction or avoidance of the emission would clearly and most reasonably capture the intent of the DEBS clause. Importantly, offset projects are credited as being a reduction or avoidance of an emission at the physical location of the offset project. Reduction or emission avoidance does not mean the hypothetical location of an “avoided” emission at the source, but rather under offsetting principles, the emission occurs at the source but is compensated for by the reduction or avoidance of the emission at the physical location of the offset project. It should be clearly stated that the physical location of the offset project is the defining criteria rather than the source of the emission.

The PDD states that “moreover, CARB staff will also 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.” It is agreed that this was the intent of ARB398. It appears ARB has two choices, 1) Effectively require all currently issued credits to be used in the system before 2021 by not deciding which offsets meet DEBS requirements or 2) Conduct the criteria review for all issued offsets.

The PDD states “Potential Staff Proposal: Use the exact words in the statute to define DEBS in the Regulation. Because each project type will require further details when implementing this new direction, staff is currently focused on developing a general approach to be utilized in the Compliance Offset Program.” However, it is unclear what further details would be required if the exact words from the statute are used. If project location (i.e. within the state or within state watershed boundaries) is the criterion to determine DEBS eligibility, there are no further details needed because the location of each offset project is already required by each offset protocol. ARB staff should not add additional unnecessary requirements nor imply that additional information is needed to make a case-by-case determination of the DEBS intent.

The general approach used should be clear without requiring arbitrary decision making by ARB. An improvement to the PDD language would be as follows:

Require each new project to provide location information as required in the offset protocol regarding:

- Location of the offset project to determine whether the reduction or avoided emissions of any air pollutant occurs in state.
  - o If location of the offset project is physically located in California, the offsets sourced from the project are eligible; otherwise if the source of the offset is not physically located in California the offsets are ineligible.
- Location of the offset project to determine whether the reduction or avoidance of any pollutant could have an adverse impact on the waters of the state (as defined by publicly available approved watershed maps delineating state waters).
  - o If the offset project is located within a watershed of waters that flows within or into California, the offsets sourced from the project are eligible; otherwise if the source of the offset is not located within a watershed of waters that flows within or into California the offsets are ineligible.

The PDD lists several sources of information that a project could provide to ARB for consideration on a case-by-case basis for eligibility to meet the DEBS requirement. However, there is no description of what information could be found in any of the sources that would be used to demonstrate how the project offsets would create 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. If these sources are relied upon, there would be no objective criteria to be used in the evaluation and each decision would amount to little more than arbitrary decision making by ARB.

For existing projects for which projects have credits issued, ARB should apply the same criteria as new proposed projects. The location of the project clearly and conservatively meets Legislative intent incorporated in the Statute. Location was intended to be within the State of California or within areas of the waters of the state. Waters of the state is most commonly defined as the physical watershed boundaries of waters that flow through or within the State boundaries. ARB should not complicate this any further by developing vague exceptions without criteria in what seems like an attempt to circumvent the intent to provide at least some benefit of offset projects to the people of California and in particular disadvantaged communities that must deal with air pollutants and the worst effects of Global Climate Change. The legislature should be commended for including DEBS language in AB398 and ARB should strive to uphold the promises made to the people of California when the Statute was adopted.