



# CLIMATE ACTION RESERVE

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September 19, 2016

*Via Electronic Submission*

Re: Comments on the Proposed Amendments to the Cap-and-Trade  
Regulation

Dear Chairwoman Nichols and Members of the California Air Resources  
Board:

The Climate Action Reserve congratulates the California Air Resources Board and its staff on the achievements of the state's pioneering cap-and-trade program and the work to further strengthen the program. The Reserve is the largest Offset Project Registry (OPR) serving California's Compliance Offset Program and has issued over 17 million registry offset credits to 66 projects under the current Cap-and-Trade Regulation. Supporting these projects and ARB staff over the last four years has given us significant experience and insight into the process and requirements codified in the regulation. Our comments below are based on this experience and our desire to improve the function, equity and success of the Compliance Offset Program.

### **§95973(a)(2)(D) – Transitioning to a New Version of a Compliance Offset Protocol**

This section currently limits an Offset Project Operator's or Authorized Project Designee's (OPO/APD) ability to transition a project to the latest version of a Compliance Offset Protocol. We believe this requirement unnecessarily requires an OPO/APD to continue to use an old version of the relevant Compliance Offset Protocol, even if they would voluntarily choose to transition for a given reporting period. Newer versions of the Compliance Offset Protocols represent the latest policy developments and often contain corrections, improvements, and enhanced usability for both the OPO/APD and the verification body. ARB should allow projects that can meet the requirements of the latest version of a protocol to use it, regardless of when the initial Offset Project Data Report (OPDR) is submitted.

### **§95973(b) – ARB Discretion to Find Regulatory Noncompliance**

In the Initial Statement of Reasons, ARB specifies that changes to this section give ARB the “discretion to find regulatory noncompliance where noncompliance exists but has not been subject to enforcement action by a regulatory oversight body.” We believe it is inappropriate for ARB to overrule a regulatory oversight body if the body was aware of a noncompliance but chose not to pursue an enforcement action. ARB should rely on the capability of the relevant regulatory oversight bodies outside of California to assess noncompliance. If a potential noncompliance issue is identified by the verifier or ARB that the regulatory oversight body was unaware of, ARB should notify the appropriate regulatory oversight body and allow that body its own due process to assess and act upon the potential noncompliance.

### **§95973(b)(1) and (b)(2) – Eligibility and Regulatory Compliance**

We applaud ARB’s proposal to limit the period of ineligibility for a project to the period the project was out of regulatory compliance; this is how the Reserve’s own voluntary program has handled regulatory noncompliance issues since its inception and believes it is an equitable approach to ensure the penalty matches the magnitude of the violation. However, we do not agree that this change should only be applicable to livestock and mine methane capture projects and should instead be changed for all project types listed in 95973(a)(2)(C). Livestock and mine methane operations are not unique in their ability to identify and document the duration of a noncompliance event. Regulatory compliance requirements should be enforced and penalized equitably across all project types.

### **§95973(b)(1)(B) – Written Determination from Regulatory Oversight Body**

Regarding the need for the relevant regulatory oversight body to provide a written determination regarding the date when the project returned to regulatory compliance, we suggest you clarify that ARB will accept email as an acceptable form of written communication. This has been the case under the current program in practice to date, but as not all regulatory oversight bodies are forthcoming with correspondence, especially on the time frame needed to stay on track for verification and issuance, it would be valuable to make it clear to stakeholders that email is an acceptable form of written communication.

### **§95976(d) – OPDR Deadlines and Consequences**

The proposed changes to this section appear contradictory, or at the very least, confusing. The section states that if the OPO/APD fails to submit an OPDR, then the Offset Project will be considered *terminated* (emphasis added) and not eligible for ARB offset credits. It then goes on to say that the OPDR can be submitted after the deadline identified in section 95976(d)(8), but before the end of the next Reporting Period, to maintain continuous reporting. At what point, then, will the project be considered terminated? After it fails to submit the OPDR before the end of the next Reporting Period? If that is ARB’s intention, it should be made clearer in the language. It would also be helpful to add a definition of “terminated”, as it is only currently used in the regulation in relation to forest projects.

**§95977.1(b)(1) – Notice of Offset Verification Services**

With the proposed changes, the OPO/APD is now required to send an OPDR to the Offset Project Registry before verification services can begin. What is the consequence if this requirement is not met? As an OPR, we need clear guidance on what the ramifications are of this process-oriented requirements.

Changes to this section also appear to shorten the time period OPRs and ARB have to review and approve conflict of interest self-evaluations from 30 days to 10 days. While the Reserve is confident it can meet this expedited timeline, the current process of the OPR and ARB both needing to review and approve conflict of interest self-evaluations does not happen within 10 days. While this may not require any further changes to the proposed amendments, we urge ARB to re-consider the current process and rely on the OPR’s review of conflict of interest self-evaluations to make this process more efficient.

**§95977.1(b)(3)(M) – Correctable Errors**

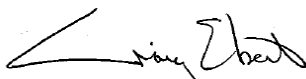
We urge ARB to apply the same common sense approach it did in §95985(b)(1)(A)(1) for minor correctable errors found in early action projects. It is unduly burdensome to force OPO/APDs to fix these minor errors. Instead of requiring the OPO/APD to fix any correctable errors, we urge you to give the OPO/APD the choice to fix minor correctable errors. If minor correctable errors that do not result in an offset material misstatement are found and the verification body does not identify any other nonconformance that would result in an adverse Offset Verification Statement, ARB should allow the verification body to issue a Qualified Positive Offset Verification Statement and identify the correctable errors on the Offset Verification Statement.

**§95985(h)(3) – Replacing Invalidated Buffer Pool Credits**

We suggest that ARB change the 50% value for buffer account credits required to be replaced due to invalidation to a number that is instead representative of the percentage of buffer account credits that have actually been used in the program to date (i.e., at the time the invalidation occurs). For example, if only 10% of buffer account credits have been retired at the time of the invalidation, the OPO would only be responsible for replacing 10% of its original contribution to the buffer account, rounded up to the nearest whole number. We believe this approach based on a real representation of the buffer account balance is more equitable than an arbitrary 50%.

The Reserve would like to thank the Members of the Board as well as the ARB staff for their consideration of these comments and for their continued efforts to improve the Compliance Offset Program.

Sincerely,



Craig Ebert  
President