



March 16, 2018

California Air Resources Board  
1001 I Street  
Sacramento, CA 95812

*Via Electronic Submission*

Re: Comments on the Preliminary Discussion Draft of Potential Changes to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms

Thank you for the opportunity to provide comments on the Preliminary Discussion Draft of Potential Changes to the Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms. New Forests is a timberland investment firm that manages over \$3 billion in forestry assets globally, including 186,000 acres of California timberlands and over 500,000 acres of forest carbon offset projects under the California compliance offset protocol. New Forests was among the earliest investors in California's compliance offset program, developing the 8,000 acre Yurok CKGG IFM project with the Yurok Tribe in northern California, which was the first project to be issued offset credits under ARB's compliance offset protocol. Since then, New Forests has generated over 6 million ARB offset credits, almost half of which are from projects located within the state.

We commend ARB for its efforts to improve and strengthen the cap and trade program. The Preliminary Discussion Draft (PDD) is a positive first step, and we encourage ARB to expand upon the current proposed changes with the following recommendations:

## § 95985. Invalidation of ARB Offset Credits

*The last 5 years of the program have demonstrated that invalidation risk is much lower than previously anticipated<sup>1</sup> and can be more appropriately managed through 1) an environmental integrity account, and 2) clearer criteria for invalidations related to regulatory compliance.*

- We support the Verified Emissions Reductions Association's (VERA) recommendation to update the framework for invalidation to follow the Ontario model in which some causes of invalidation are covered by seller liability and others are covered by an Environmental Integrity Account. This change would provide greater incentive to both generate and utilize

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<sup>1</sup> Less than 0.1% of total issued credits have been invalidated, and the credits that have been invalidated were for non-GHG protocol related events associated with an early action reporting period. To date, no credits associated with compliance offset protocols have been invalidated.

offsets, an important cost containment mechanism, while at the same time protecting the integrity of the system.

- We encourage ARB to more narrowly define the types of activities within the scope of regulatory compliance evaluation that “have a bearing on the integrity of the generated offsets” (Appendix E). We also encourage ARB to establish thresholds for invalidation that consider the severity, materiality and duration of infractions. These changes would remove substantial uncertainty in the market. For forest projects in California, we encourage ARB to work closely with CalFire and other California forest stakeholders on developing these definitions and thresholds.

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

*We support a clear and replicable approach to evaluating Direct Environmental Benefits in State (DEBS).*

- We support ARB’s proposal to use the exact words in the statute to define DEBS in the Regulation such that any project that can show “the reduction or avoidance of any pollutant that could have an adverse impact on waters of the state” is deemed to meet the requirement.
- We encourage ARB to establish a clear and replicable process for projects to demonstrate DEBS. Once one project has been evaluated and accepted by ARB as providing DEBS, all other projects that meet those same criteria should automatically be accepted as well.
- We believe that the DEBS evaluation should not be applied retroactively to offsets or projects that have been developed prior to finalization of this rulemaking, due to the significant upfront investment in developing offset projects. Therefore, we recommend that offset projects that have been listed prior to the finalization of this rulemaking be exempt from the DEBS usage limitations.

## Administrative efficiency

*We support greater efficiency and transparency in administration of the offsets program by 1) shortening the process for issuing ARB offset credits, 2) relying more heavily on the Offset Project Registries, and 3) making offset project guidance publicly available.*

### § 95981.1 Process for Issuance of ARB Offset Credits.

Recent data from CaliforniaCarbonInfo.com indicates that the average time from Registry Offset Credit (ROC) issuance to ARB offset credit (ARBOC) issuance is approximately 208 days. This is 3.5 times longer than the 60 days anticipated in the regulation.<sup>2</sup> These delays cause

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<sup>2</sup> 45 calendar days for ARB to make a determination pursuant to Section 95981(c) and 15 calendar days for ARB to issue ARB offset credits pursuant to Section 95981.1(a) and to notify the Offset Project Operator (OPO) or Authorized Project Designee (APD) pursuant to Section 95981.1(c), assuming the project developer submits complete and accurate information with the Request for Issuance documentation immediately following ROC issuance.



substantial uncertainty in the market, both for project developers who have invested capital in developing the offset projects, as well as for compliance entities who may be relying on offset credits to meet their compliance obligation. The current proposed changes in Section 95981.1 would only extend these already lengthy timelines.

- We believe the proposal to give Offset Project Registries 90 calendar days to cancel ROCs after ARBOC issuance rather than the current 10 calendar days is excessive and should remain at 10 calendar days or at most changed to 10 working days for ease of implementation. In our experience, 10 days has been more than adequate for ROC cancellation.
- Currently, ARB is required to transfer ARB offset credits into the holding account of the OPO, APD or third party within 15 working days after the notice of determination to issue ARBOCs. However, the current proposal would change the requirement to transfer credits to 15 working days after the registry provides proof of cancellation, which can be 5 working days after the actual ROC cancellation, and 90 days after issuance. This in effect would extend a 15-day timeline to a 110-day timeline, and is in addition to the average 208 days it currently takes to get to ARBOC issuance. We strongly encourage ARB to keep the current timelines or even shorten them, since we see no technical reason why credits that have been already issued cannot be deposited into an OPO, APD or third party's account shortly after the cancellation ROCs.

#### § 95987. Offset Project Registry Requirements.

We support enhanced Offset Project Registry responsibilities and new project statuses of "Inactive," "Terminated," and "Completed."

- We support the proposed changes to rely on the Offset Project Registries (OPRs) more heavily, particularly for: 1) reviewing the documentation from the third-party verification and maintaining an issues log from their review, and 2) submitting information related to a project's request for issuance of ARB offset credits. Currently, there is substantial duplication of effort between the third-party verification, the OPR's review and ARB's review. This duplication of effort leads to inefficiencies, delays in review, regulatory uncertainty and increased costs for participation. We encourage ARB staff to rely on the work of the approved third-party verifiers and accredited offset project registries, and to focus ARB staff time on reviewing the issues log submitted by the OPR.
- We support the addition of the three new project status designations and believe they will increase clarity and transparency of the program. Further, we recommend the addition of a fourth project status of "Maintained" that would apply to projects that have not yet reached the end of their project life, but will not be seeking additional ARB offset credits. An example would be a forestry project that has been issued ARBOCs and is continuing to monitor and verify per the requirements of the Protocol but will not be requesting additional issuance of ARB offset credits. Forest projects that are merely maintaining the GHG reductions that have already been achieved for 100 years should be eligible for a unique status that allows for lower intensity and lower cost monitoring and verification requirements over the long time horizons required by the Protocol. In addition, we encourage ARB to allow a project to be removed from an Offset Project Registry if it has had a project status of "Inactive" for more than 12 months.



## Program Transparency

We encourage ARB to increase program transparency by making their guidance publicly available.

- Currently, project developers and verifiers seek guidance from ARB directly on specific project-related questions, but that guidance is not made public or shared with other program participants. The result is that different project participants have access to different information, with some potentially having a competitive advantage over others. The most recent FAQ documents for the Forest Protocol were released in 2013. We encourage ARB to post the written guidance that they give to individual project proponents on their website (with any identifying information redacted) so that the important guidance that ARB is giving individual projects is publicly available to all project participants at the same time. Doing so would also reduce the staff time required to handle repeat questions and clarifications.

## Compliance Offset Protocols

*We encourage ARB to include in the 2018 rulemaking the update of existing protocols as well as the adoption of new protocols.*

- We support the formation of the Compliance Offset Protocol Task Force to provide guidance on new protocols that can increase in-state offset development. However, we also believe that the existing set of approved offset protocols can and should be modified to encourage greater adoption and more in-state GHG reductions. We encourage ARB to consider updates to the existing Compliance Offset Protocols, particularly the Forest Offset Protocol, which has comprised the majority of ARB Offset Credits issued to date. Changes to the Forest Protocol to reduce uncertainty and cost would help improve uptake among smaller landowners, Native American Tribes and California forest owners, thus increasing the volume of offsets available for compliance use while providing associated environmental and societal benefits.

We would like to thank ARB staff and board members for considering these comments and for their continued efforts to improve the Compliance Offset Program. We look forward to working with ARB on these important regulatory changes going forward.

Sincerely,

New Forests, Inc.

