



October 22, 2018

Rajinder Sahota
Assistant Division Chief, Industrial Strategies Division
California Air Resources Board
1001 I Street
Sacramento, CA 95812-2828

Re: Comments on the June 2018 Preliminary Discussion Draft

Dear Ms. Sahota,

The California Forest Carbon Coalition (CFCC) represents a diverse array of California based stakeholders—including conservation groups, Native American Tribes and industrial timberland managers—representing a large portion of California’s forestland that have come together to support a continued role for sustainable forest management and forest-based offsets in achieving the ambitious emission reduction goals set forth in the Global Warming Solutions Act.

To that end, the CFCC is including comments here on CARB’s June 2018 “Preliminary Discussion Draft” regarding how Environmental, Health and Safety Violations are addressed, definitions of “Direct Environmental Benefits”, suggested offset program management efficiencies and revisions to the existing Forest Offset Protocol.

1. Environmental, Health and Safety Violations: The current cap and trade regulation provides objective criteria for when an offset overstatement or use in another program results in an invalidation. However, the criteria for determining when a violation of a local, state or national environmental, health or safety (EHS) regulation results in an invalidation are vague and the remedies are unclear. The resulting uncertainty discourages forest offset project development, particularly in California which has the most stringent forest practice and EHS rules in the country. The inability to quantify the risk of invalidation also discourages the purchase of forest offsets by many small covered entities that may be most in need of cost containment.

CFCC has provided language changes to the Preliminary Discussion Draft in the attached Appendix we hope CARB will consider. These changes build on our May 10th, 2018 comments to CARB requesting a change to how certain types of EHS violations impact forest carbon offset projects.

2. Direct Environmental Benefits (DEBS) language: The CARB language for DEBS proposes to adhere to the clear intent of Assembly Bill (AB) 398 and adopt regulatory language that ensures that not less than one-half of the offsets surrendered for compliance come from projects that result in “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*” (Section 38562c2(E)(ii), emphasis added). In addition, CARB has proposed, and the CFCC agrees, that out of state forestry offsets located in watersheds flowing into California clearly meet this requirement since they contribute to the health of waters of the state and the environmental and economic benefits they sustain.

As you know, California forest-based offset projects have substantially enhanced the conservation and sustainable management of California's forests, while providing cost-effective GHG reductions and many other environmental, cultural and economic benefits to the state. The direct environmental benefit requirement set forth in AB 398 is a clear expression of the Legislature's intent that forest offset projects continue to provide *direct* environmental benefits in California. We urge CARB to adopt regulatory language that furthers that objective.

3. CARB Offset Efficiency Improvements: We suggest CARB work towards greater efficiency and transparency in administration of the offsets program by 1) moving to a risk-based review process that reduces the administrative burden and staff time required to review projects without sacrificing quality, 2) relying more heavily on approved and accredited Verification Bodies and Offset Project Registries for project review assistance, and 3) making offset project guidance transparent and available to all program participants.

4. Update the Existing Forest Offset Protocol: We support the formation of the Compliance Offset Protocol Task Force, as proposed in AB 398, 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 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 important environmental and societal co-benefits.

We look forward to working with CARB to expand and improve the offset program going forward. Thank you again for the opportunity to provide you with our recommendations on this vitally important issue.

Sincerely,

Thomas P. O'Rourke, Sr.
Chairman
Yurok Tribe

Gary C. Rynearson
RPF 2117
Manager, Forest Policy and Communications
Green Diamond Resource Company

Brian Shillinglaw
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Mark Welther
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Redwood Forest Foundation, Inc.
Usal Redwood Forest Company, LLC

Chris Kelly
California Program Director
The Conservation Fund

Richard Gordon
President/CEO
California Forestry Association

John Anderson
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Rich Padula
President
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Bob Rynearson
Manager, Land Department
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California Regulatory Affairs Manager
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APPENDIX

CFCC Suggested Regulatory Changes to CARB's Preliminary Discussion Draft Regarding Environmental Health and Safety Violations

The dark underscored text are changes that appear in the Proposed Regulation Order dated September 4, 2018. The red additions and ~~strike-outs~~ are changes requested by the California Forest Carbon Coalition.

Section 95973

95973 (b) Local, Regional, State, and National Regulatory Compliance and Environmental Impact Assessment Requirements. An Offset Project Operator or Authorized Project Designee must fulfill all local, regional, state, and national requirements on environmental impact assessments that apply based on the offset project location. In addition, an offset project must also fulfill all local, regional, state, and national environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project, including as specified in a Compliance Offset Protocol. The project is considered out of regulatory compliance if the project activities were subject to enforcement action by a regulatory oversight body during the Reporting Period, although whether such enforcement action has occurred is not the only consideration ARB may use in determining whether a project is out of regulatory compliance.

(1) An offset project using a protocol from sections 95973(a)(2)(C)1., 2., 4., or 5. that is out of regulatory compliance is not eligible to receive ARB or registry offset credits for GHG reductions or GHG removal enhancements that occurred during the period that the offset project is out of regulatory compliance. The Offset Project Operator or Authorized Project Designee must provide documentation indicating the beginning and end of the time period that the offset project is out of regulatory compliance to the satisfaction of ARB.

(A) The time period that the offset project is out of regulatory compliance begins on the date that the activity which led to the offset project being out of regulatory compliance actually began and not necessarily the date that the regulatory oversight body first became aware of the issue. For determining the initial date of the offset project being out of regulatory compliance the Offsets Project Operator or Authorized Project Designee must provide one or more of the following to ARB:

1. Documentation from the relevant local, state, or federal regulatory oversight body that expressly identifies the precise start date of the offset project being out of regulatory compliance. Documentation must include evidence of the start date such as CEMS or other monitoring data, engineering estimates, satellite imagery, witness statements, or other reasonable method to aid in the identification of the precise start date; or

2. Documentation provided by an Offset Project Operator or Authorized Project Designee notifying the relevant local, state, or federal regulatory oversight body of the precise date upon which an activity resulted in the offset project being out of regulatory compliance; or

2-3. Documentation of the date of the last inspection by the relevant local, state, or federal regulatory oversight body that did not indicate the offset project was out of regulatory compliance for the activity

in question. The project will be considered out of regulatory compliance beginning the day after the inspection.

~~34.~~ If the last inspection described in section 95973(b)(1)(A)~~23.~~ above was prior to the beginning of the Reporting Period, or if documentation regarding the date the project was out of regulatory compliance is not provided as set forth in sections 95973(b)(1)(A)(1), (2) or ~~(2)3~~ above to the satisfaction of ARB, then the time period that the offset project is out of regulatory compliance, for purposes of the Reporting Period, commences at the beginning of the Reporting Period.

(B) For determining the end date when the offset project returned to regulatory compliance, the Offset Project Operator or Authorized Project Designee must provide documentation from the relevant local, state, or federal regulatory oversight body stating the date that the activity that led to the offset project is back in being out of regulatory compliance ceased. The date when the offset project is deemed to have returned to regulatory compliance is the date that the ~~relevant local, state, or federal regulatory oversight body determines that the project is back in regulatory compliance. This date is not necessarily the date that the activity ends or the device is repaired, and may include time for the payment of fines or completion of any additional requirements placed on the offset project by the regulatory oversight body, as determined by the regulatory oversight body. activity that led to the offset project being out of regulatory compliance has ceased, provided that the offset project has fulfilled the any remediation or other enforcement measures required by the relevant regulatory oversight body with respect to the subject activity prior to the submittal of a request for issuance of ARB offset credits pursuant to section 95981 or the determination of the daily emission reductions subject to invalidation pursuant to section 95973(E).~~ If the regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance in accordance with the foregoing criteria to the satisfaction of ARB, the Offset Project Operator or Authorized Project Designee may provide documentation to ARB clearly identifying the date the project returned to regulatory compliance. Documentation should be dated, official correspondence, with the relevant regulatory agency, such as a consent decree, inspection report, or other such documentation, identifying that the project has returned to regulatory compliance. If the relevant regulatory oversight body does not provide a written determination regarding the date when the project returned to regulatory compliance to the satisfaction of ARB, and the Offset Project Operator or Authorized Project Designee is unable to provide documentation clearly identifying the date the project returned to regulatory compliance to the satisfaction of ARB, then for purposes of the applicable Reporting Period, the Offset Project Operator or Authorized Project Designee must use the end of the Reporting Period for the end date when the offset project returned to regulatory compliance.

95973(b)(1)(E) For determining GHG emission reductions or GHG removal enhancements for the Reporting Period as modified to reflect any period the offset project was out of regulatory compliance, the Offset Project Operator or Authorized Project Designee must remove the days when the project was out of regulatory compliance from the Reporting Period using the following methods:

3. For projects using a protocol in section 95973(a)(2)(C)4., the entire calendar day during which any portion of the project was not in regulatory compliance must be removed by dividing the total calculated emissions reductions for the 12 month period from the end of the previous Reporting

Period, by the total number of days in the previous 12 months, either 365 days or 366 days, to calculate a daily emissions reductions. For purposes of this Section 95973(E)3, the period during which the project was not in regulatory compliance shall be that period that begins on the date that the activity which led to the offset project being out of regulatory compliance actually began and ends on the date that such activity ceased as established pursuant to Section 95973(b)(1). The daily emissions reductions will be multiplied by the number of days the project was not in regulatory compliance and this number will be added to the project baseline for the end of the Reporting Period and the emissions reductions for the Reporting Period, excluding the days the project was out of regulatory compliance, will be calculated.

Appendix E: Offset Project Activities Within the Scope of Regulatory Compliance Evaluation. For all project types, projects that were not in compliance with ~~requirements regarding occupational, local, regional, state, and national environmental and health and safety laws and regulations, statutes, or laws, or the timely submittal of periodic reports as required by permits, regulations, statutes, or laws,~~ under Section 95973(b) during the reporting period a Reporting Period, are still eligible to receive ARB offset credits if the ~~noncompliance~~ determination of the period during which the project was out of regulatory compliance has been resolved established pursuant to Section 95973(b)(1) and any obligations necessary to return the project to regulatory compliance as prescribed by the relevant regulatory oversight body have been met prior to the submittal of a request for issuance of ARB offset credits pursuant to section 95981. This appendix identifies the specific project activities considered for regulatory compliance by project type.

(d) Projects Using a Compliance Offset Protocol in Section 95973(a)(2)(C)4. All project activities within the project area that directly affect carbon stocks must be in compliance with all requirements that have a bearing on the environmental integrity of the generated offsets. This includes site preparation, planting, harvesting, and monitoring. Activities external to the project area, such as transportation of logs to mills, mill operations, and landfilling, ~~are outside the project regulatory compliance assessment or that otherwise do not have a material and direct adverse environmental impact within the project area, are outside the project regulatory compliance assessment. For example, requirements regarding occupational health and safety regulations, statutes, or laws, or the timely submittal of periodic reports required by permits, regulations, statutes, or laws are not within the scope of regulatory compliance evaluation.~~