

January 17, 2017

California Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812

RE: Comments to Target Scoping Plan Update 2030 Discussion Draft

The staff of the Placer County Air Pollution Control District (District) thank you for the opportunity to comment on the latest draft of the Short Lived Climate Pollutant Plan (draft SLCP Plan) dated November of 2016. We appreciate the work done by the Air Resources Board (ARB) to lay out a comprehensive plan to address anthropogenic SLCP, as directed by Senate Bill (SB) 1383 (Lara 2016), which will significantly reduce the impacts of SLCPs, and further the State's goals to reduce the impacts of climate change on California.

Our comments today are singularly focused on ARB's decision to remove the Section of the document on black carbon emissions related to forest fires. This Section can be found within the April 2016 draft of the draft SLCP Plan on pages 50 through 59, and is attached to this letter for reference. For the following reasons, District staff does not concur with reasons provided by ARB staff to remove this discussion. These include:

- There is no legal basis found within the language of the legislation that would require, or even suggest, that this deletion was necessary;
- There are a myriad of policy reasons why omitting the single largest emission source of the most potent of the SLCPs (black carbon from wild fire) leaves a significant hole in the draft SLCP Plan as a whole;
- While not specifically anthropogenic as defined in the draft SLCP Plan, there is little debate that the scope, severity and impact of wildfires in California have been significantly altered by anthropogenic activities, and;
- It contradicts the collaborative spirit of California interagency cooperation, as well as the Governor's Office direction, given that staff from multiple agencies worked on the drafting of the Section, and the support for wildfire mitigation that has been evident from the Governor on forest fire and black carbon related issues.

We will take these issues in turn.

#### *Legislative Interpretation*

The draft SLCP Plan states that "since the legislative direction and intent of SB 1383 is to include only non-forest sources of black carbon in the target, a target for forest-derived black

carbon emission reductions is not included in this SLCP Strategy.”<sup>1</sup> The District recognizes that there was no target set for non-anthropogenic black carbon emissions related to forest fire, but this lack of target for reduction does *not* justify removing the entire topic from the comprehensive strategy that is required under the previous bill, SB 605. The District has reviewed the record and disagrees with ARB’s approach on this matter.

The first step in this kind of analysis is always reviewing the plain language of the statute itself.<sup>2</sup> First, the bill does not state that the non-anthropogenic black carbon emissions related to forest fire should be excluded from the comprehensive strategy. Second, the introductory section of the SB 1383, Section (1)(a)(1) states that “Short-lived climate pollutants, such as black carbon, fluorinated gases, and methane, are powerful climate forcers that have a dramatic and detrimental effect on air quality, public health, and climate change.” Then later in the bill specific references to “anthropogenic black carbon” are mentioned when the bill is setting specific targets (See Section 2). This reflects the fact that the Legislature recognized that there is a general concern about all types of black carbon, but that this bill was setting targets for anthropogenic black carbon. Also, this legislation does not amend the Sections of the Health and Safety Code (HSC) that already have been interpreted to require the inclusion of non-anthropogenic black carbon emissions related to forest fire, but rather added new Sections, further reflecting that the existing requirements from SB 605 are still in place.

District staff have reviewed the presentation given on April 6, 2016 to the Senate Environmental Quality (EQ) Committee, hours 1.26 through 2.30, and noted that there was no discussion of removing non-anthropogenic black carbon emissions related to forest fire from the overall required SLCP Plan, and no suggestions by others who commented at the hearing, or the legislative members on the Committee. Additionally, staff have reviewed both Senate EQ Committee analysis and both Senate Floor analysis, as well as both of the assembly floor analysis and the Assembly Natural Resources and Appropriations committees analysis and have not found any single reference or suggestion that the non-anthropogenic black carbon emissions related to forest fire should be removed from the draft SLCP Plan due to the passage of SB 1383, or any inference that there was any intention to direct ARB to take such action.

Additionally, the Senate EQ Committee analysis and the Senate Floor analysis both specifically mention that non-anthropogenic black carbon emissions related to forest fire “contributes [a large percentage] of the total state’s black carbon emissions.” This reference in both documents was in terms of the general problems associated with black carbon, and certainly recognized the impact of this black carbon source in the overall state inventory. The Assembly Natural Resources Committee and Assembly Floor analysis also make similar statements regarding the role non-anthropogenic black carbon emissions related to forest fire plays in GHG emissions within California. Based on these multiple references, it is clear that while the Legislature understood the importance of non-anthropogenic black carbon emissions related to forest fire, it was only establishing specific targets for anthropogenic short lived climate pollutants under SB 1383.

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<sup>1</sup> November Draft Strategy at page 7.

<sup>2</sup> “The Plain Meaning Rule” has been a foundation of common law principles.

It could be that perhaps ARB was following a legislative maxim of interpretation which states that the expression of one thing is the exclusion of the other. When certain persons or things are specified in a law, contract or will, an intention to exclude all others from its operation may be inferred.<sup>3</sup> In this situation, however, the requirement to include non-anthropogenic black carbon related to forest fire has already been determined to be required pursuant to HSC Section 39730 (d), which states that “short-lived climate pollutant” means an agent that has a relatively short lifetime in the atmosphere, from a few days to a few decades, and a warming influence on the climate that is more potent than that of carbon dioxide. Non-anthropogenic black carbon related to forest fire falls within this definition, and as such it must be included in the strategy required under this Section.

Another well-established maxim of statutory construction is that generally any particular section of a statute should not be interpreted to be inconsistent with the rest of the statute<sup>4</sup>. In this case, interpreting the new targets for methane, f- gases and anthropogenic black carbon within Section 39730 as tacitly deleting requirements from other sections runs contrary to this rule of statutory interpretation. The fact that specific reduction targets were later added to the HSC for other short lived climate pollutants does not change the requirements under Section 39730 to provide a comprehensive strategy to reduce short lived climate pollutants. Based on legislative interpretation, we believe ARB should put the Section relating to non-anthropogenic black carbon related to forest fire back into the draft SLCP Plan.

*Policy Implications of removing the non-anthropogenic black carbon related to forest fire Section of the Draft SLCP Plan*

The District would like to emphasize that it has been made clear that funding decisions relating to short lived climate pollutant reductions will pull directly from the Plan. <sup>5</sup> To meet the State’s long term climate goals, it is critical for non-anthropogenic black carbon related to forest fire to be reduced, and that requires including it within the comprehensive strategy. Other documents, such as the Forest Carbon Plan,<sup>6</sup> will not serve the important role of cross sector education and influence, especially in terms of funding, that the SLCP Plan will serve.

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<sup>3</sup> *expressio unius, Blacks Law Dictionary.*

<sup>4</sup> *Nix v. Hedden*, 149 U.S. 304 (1893)

<sup>5</sup> “The measures identified in this SLCP Strategy and their expected emission reductions will feed into the update to the Climate Change Scoping Plan that is currently being developed. The 2030 Target Scoping Plan Update will establish a broad framework for meeting all of California’s climate-related targets and will include an evaluation of all proposed GHG reducing activities, for both short-lived and longer-lived pollutants. Throughout this SLCP Strategy, there is an emphasis on early actions, often supported by public investments and strong policy incentives.” See this at Page 24 of the November draft Plan.

<sup>6</sup> <http://www.fire.ca.gov/fcat/>

The District refers to the comments filed by the Bioenergy Association of California for a comprehensive list of the other policy reasons that the Section on non-anthropogenic black carbon related to forest fire should not be removed from the draft SLCP Plan. The District strongly supports these comments.

Finally, the District would point out that deleting this Section goes against the spirit of interagency cooperation that brought together staff from many departments within the Resources Agency, including the California Department of Forestry and Fire Protection, and several State Conservancies. Additionally, the Governor's Office has been very instrumental in evaluating non-anthropogenic black carbon related to forest fire, as illustrated by the extensive work taking place at the Tree Mortality Task Force, and other Governor initiated programs to better understand the issues such as the Forest Carbon Action Team and its upcoming "Forest Carbon Plan". It is important to continue to support these coordinated activities, and including a robust discussion of forest wildfire black carbon emissions in the draft SLCP Plan is an important element of this effort.

In summary, it is important that ARB lead the discussion on addressing all black carbon emissions in California, as recognized by SB 1383. This necessarily includes considering and addressing non-anthropogenic black carbon emissions related to forest fire. ARB should also recognize that in addressing black carbon emissions from wildfire, it is providing important health co-benefits from reduced fine particulate matter (PM 2.5), for which many regions of the State, including Placer County, do not meet ambient air quality standards. Ultimately, because non-anthropogenic black carbon emissions related to forest fire is a short lived climate pollutant, ARB must address these emissions under HSC Section 39730(d). For these reasons, this discussion and the deleted Section should be added back into the draft SLCP Plan.

Thank you again for the opportunity to comment on this important document. If you have any questions, please do not hesitate to contact me at (530) 745-2321, or at [ecwhite@placer.ca.gov](mailto:ecwhite@placer.ca.gov).

Sincerely,



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