

# CARBON MARKET COMPLIANCE ASSOCIATION

Friday, March the 16<sup>th</sup>, 2018

Via Electronic Submittal

Ms. Rajinder Sahota  
Assistant Division Chief  
Industrial Strategies Division  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

Re: CMCA AND STAKEHOLDER COMMENTS ON THE PRELIMINARY CONCEPTS PAPER  
RELEASED BY ARB IN FEBRUARY 2018 ALONG WITH THE ACCOMPANYING WORKSHOP  
ON MARCH 2, 2018

Dear Ms. Sahota:

The Carbon Market Compliance Association (“CMCA”) and other stakeholders identified at the bottom of this letter wish to submit the following high-level comments on the proposed concepts ARB presented at the workshop on March 2<sup>nd</sup>, 2018.

CMCA is concerned that certain aspects of the concepts proposal, if enacted in regulation, could create a long-term challenge to the Cap and Trade Program. Specifically, CMCA is concerned about ARB’s initial thoughts on the Price Ceiling and Price Containment Points and supports the definition of Direct Environmental Benefits (DEBS).

The reason stakeholders and elected officials pushed for the inclusion of a price ceiling in AB 398 was to ensure the maximum cost of the program to Californians would be known and to give a measure of certainty to stakeholders that the program would not be suspended if prices got too high. The high end of the price levels proposed by ARB could lead to the suspension of the program well before the price ceiling or price containment points are reached. This result would frustrate one of the main objectives of AB 398 and introduce significant uncertainty into the program.

**1. PRICE CEILING:**

AB 398 requires that ARB establish a price ceiling and that certain prescribed considerations be used in establishing the price ceiling.

At the March 2, 2018 workshop, ARB indicated that *“the price ceiling value in 2030 would not be lower than the single tier value for Table 2 of approximately \$81.9 (\$2015) and no higher than \$150”*. A price ceiling of no lower than \$81.90 (\$2015) actually equates to a price ceiling of no lower than \$110 in 2030 and \$92 in 2021, if one assumes a 2% inflation rate. The maximum price ceiling, suggested by ARB, of \$150 equates to approximately \$198 in 2030 and \$165 in 2021. Very simply, these numbers are too high and do not reflect the considerations set out in AB 398. CMCA held a broad-based discussion group in the fall of 2017 and concluded that the price ceiling should be no lower than \$50/ton and no higher than \$80/ton in 2021 in order to:

- Minimize adverse impacts on the California economy and jobs.
- Minimize economic and environmental leakage when considering the level of assistance (direct allocations) provided to covered entities.
- Avoid threatening the long-term viability and support for the cap and trade program within the WCI and other jurisdictions with which it might link in the future.

The price levels outlined in the March 2<sup>nd</sup> workshop are well outside the range recommended by CMCA and, in fact, are much higher than any numbers even discussed by the stakeholder group in the fall of 2017. Furthermore, CMCA believes that the range for the starting point of the price ceiling in 2021 of \$92 to \$165 is considerably higher than was contemplated by the legislature in the summer of 2017 when AB 398 was passed. Such a high price ceiling, if ever reached, would likely impose burdens and on California consumers, and does not meet the guidelines identified in AB 398.

**2. PRICE CONTAINMENT POINTS:**

AB 398 also requires that ARB establish certain price containment points. Based on the price levels discussed in the March 2<sup>nd</sup> workshop, it seems like ARB is proposing establishing price containment points at very high price levels and potentially at prices very close to the price ceiling.

It is important that the price containment points be used to send appropriate market signals, mitigate extreme price volatility and provide a trigger point for the legislature and stakeholders to review the program parameters. If the price containment points are set at levels of around \$80 in 2021, as has been proposed by ARB, and ARB sets the price ceiling at the lower end of the range around \$92, the two price containment points could be too close to the price ceiling. As ARB pointed out when it proposed collapsing all three tiers of the APCR into one in the 2016-2017 regulatory amendment process, the price containment points are ineffective if set too close to the price ceiling or too close to each other. Conversely, setting the price ceiling at the upper range around \$165 would be ineffective in containing costs and likely introduces political uncertainty into the program.

The price containment points should function as market speed bumps where upward price movements are slowed for a period of time so that stakeholders, ARB, and the legislature can evaluate abatement opportunities and the merits of the Cap and Trade program. If such evaluation only occurs at \$80 or above, as proposed by ARB, there is a risk that policy makers might intervene and suspend the program. Such an outcome would be an unwelcome development and end to the groundbreaking efforts California has undertaken to this date.

**3. Adding allowances to backstop the Price Ceiling**

CMCA commented on the prior proposal to add allowances into the Price Ceiling. In short, the market would be much better served, if ARB bolstered the price containment points with additional allowances rather than adding to the price ceiling stockpile. Additional allowances at the price ceiling would not support cost-containment in a program that already has a hard price ceiling.

If additional metric tons are sold, AB 398 provides ARB the authority and ability to develop a robust mechanism to ensure that real, permanent, additional reductions are purchased to ensure the environmental integrity of the program. ARB should have discretion to procure a broad range of instruments and reductions from projects that meet the statutory criteria.

ARB should also establish a process for third parties such as registries, project developers and other parties to pre-qualify protocols or projects that could produce eligible reductions. Because offset projects can take several months or years to develop, ARB should establish this pre-qualification process by January 1, 2020 to provide project developers enough time to start developing projects if they are ever needed.

Any party should be able to sell eligible instruments to ARB, including but not limited to compliance entities, project developers, marketers and Non-Governmental Organizations (NGOs). ARB should be able to use multiple procurement methods to obtain eligible reductions from these parties, including, Requests for Offers, bilateral contracts, exchanges, and Dutch auctions.

ARB could also be bound by specific timelines to fulfill the environmental integrity provision. For example, ARB could require that procurement of eligible reductions must occur within two years of the sale of additional metric tons, and that all the reductions needed to maintain environmental integrity be delivered within a certain number of years following the conclusion of the procurement process.

CMCA suggests that ARB should, if possible under its authority, further explore methodologies of either pre-procuring or pre-contracting or otherwise incenting third parties to generate eligible reductions, if, for example, prices reach the second Reserve tier (price containment point).

#### 4. Direct Environmental Benefits in State (DEBS)

ARB's potential staff proposal is to use the exact words in the statute to define DEBS, an approach CMCA supports for the clarity it provides to compliance entities. In line with this

approach, CMCA recommends that ARB fully recognize the impact GHGs have, regardless of where they are emitted, on waters of California.

AB 398 defines DEBS as “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.” Impact on waters can come from “any pollutant,” and GHGs are pollutants, as determined by the U.S. EPA. Furthermore, the definition allows for any “adverse impact” on California waters, such as impaired quality or quantity. GHGs emitted anywhere are expected to have a range of impacts on California waters. To name a few issues, reduced Sierra Nevada snowpack will limit water availability; rising sea levels threaten Delta water sources with salinity; wildfires and flooding lead to high levels of sediment and contaminants in water bodies; and rising temperatures will increase demand for water, further constraining its availability and concentrating pollutant levels in shrinking volumes of surface and ground water. Impacts of GHGs on California waters are recognized within State Water Resources Control Board policy, and regional water boards are making plans accordingly.<sup>1</sup> A DEBS interpretation that recognizes the effects of any GHG emissions on California waters would be both scientifically accurate and consistent with state water policy and planning.

Furthermore, it is important that ARB’s interpretation protect against challenges from the Commerce Clause and encourage investment in offset development in the near term. CMCA would suggest that all existing credits from projects listed before 2021 be deemed to have had a direct benefit to the state, providing additional market certainty. It is equally

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<sup>1</sup> State Water Resources Control Board Resolution No. 2017-0012, adopted March 7, 2017, [www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/rs2017\\_0012.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0012.pdf)  
Central Valley Regional Water Quality Control Board, *Central Valley Region Climate Change Work Plan*, Dec. 2017. [https://www.waterboards.ca.gov/centralvalley/board\\_decisions/tentative\\_orders/1712/20\\_climatechange/3\\_climatechange\\_wkpln.pdf](https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/1712/20_climatechange/3_climatechange_wkpln.pdf)  
Los Angeles Regional Water Quality Control Board, *Los Angeles Region Framework for Climate Change Adaptation and Mitigation*, July 2015. [https://www.waterboards.ca.gov/losangeles/water\\_issues/programs/climate\\_change/docs/2015/Climatechange-frameworkforclimatechangeadaptation-final7-20-2015.pdf](https://www.waterboards.ca.gov/losangeles/water_issues/programs/climate_change/docs/2015/Climatechange-frameworkforclimatechangeadaptation-final7-20-2015.pdf)

imperative that, in continuing its efforts to support disadvantaged communities, ARB protect tribal initiatives that rely on offset projects as economic resources.

5. Banking Rules and Holding Limits

At the March 2nd workshop, ARB also requested comments from interested stakeholders on the Allowances Banking Rules. CMCA strongly supports the continued use of the existing allowance banking rules and believes that holding limits and auction purchase limits provide adequate bounds to mitigate the risk of any potential market concerns. Existing rules should continue and should also be harmonized with linked programs in order to allow for a smooth transition to a successful post-2020 Cap and Trade program.

The decisions made by CARB on these very important points will directly affect the long-term viability of a market-based solution to climate challenges in California and across the world. As such, CMCA asks that ARB carefully reconsider the price levels and recognize the GHG-water nexus within the DEBS interpretation proposed in the March 2<sup>nd</sup> workshop, taking into account relevant suggestions made by a broad group of interested stakeholders.

Dated: March 16, 2018

By: \_\_\_\_\_

Andre Templeman

Executive Director, Carbon Market Compliance Association (“CMCA”)

Cc: Mary D. Nichols  
Chair, California Air Resource Board

Cc: Richard Corey  
Executive Officer, California Air Resource Board