



June 4, 2015

Via electronic submission at:

http://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=capandtradeprf14&comm_period=1

Greg Mayeur, Manager
Climate Change Program, Operations Section
California Air Resources Board
1001 I Street, Sacramento, CA 95812

Re: Proposed 15-day Modifications to the Rice Protocol, Impacts to Wildlife

Dear Mr. Mayeur:

Please accept these comments submitted on behalf of the Center for Biological Diversity regarding the proposed 15-day modifications to the Compliance Offset Protocol for Rice Cultivation projects ("Rice Protocol") as part of the Amendments for the California Cap On Greenhouse Gas Emissions and Market-Based Compliance Mechanisms. These comments are submitted in response to the additional changes included in the 15-day modification released on May 20, 2015.

In our comments following the February 2015 workshop, we enumerated the potential Rice Protocol's potential negative impacts to wildlife, including raptors, shorebirds, seabirds, long-legged waders, geese, ducks and other waterbirds, and some special-status species, including bald eagle, Swainson's hawk, and greater sandhill crane.¹ Many of these threats were identified in the Staff Report, which acknowledged that the Rice Protocol has the potential to negatively impact wildlife. *"Because the proposed project activities would occur during the rice growing season, avian species that use the rice fields for resting, nesting, and feeding during the rice growing season have the highest potential to be affected by changes to the flooding practices."* Staff Report at 39. In fact, the potential wildlife impacts were found to be problematic to the extent that the Rice Protocol excludes rice farms in the critically important bird habitat in the Butte Sink Wildlife Management Area from participating in the program. *"By excluding this important and sensitive area from any proposed rice cultivation offset project activities, potential adverse effects in this area would be avoided."* Staff Report at 40.

The threats to wildlife in California seem to be greatest with the Rice Protocol activity known as Dry Seeding, whereby Rice Protocol projects are credited for sowing seed into dry or moist fields rather than the usual practice of sowing in flooded fields. This incentivizes the management decision not to flood the field for a period of seven to ten days in spring when the

¹ Staff Report and Compliance Offset Protocol Rice Cultivation Projects at 38.

field would normally be flooded, a time when flooded fields are normally utilized by late migratory bird species and other avian species that rely on flooded rice fields for nesting.

Although the Staff Report concludes that "*because variability in the timing and availability of flooded rice habitat is common, and voluntary compliance responses under the proposed Rice Cultivation Protocol would occur on a limited rather than widespread basis, implementation of these activities would be within the natural variability of rice farming and would not cause a significant effect on bird populations,*"² these conclusions are based on a number of assumptions that are not supported by any evidence presented in the Staff Report or supporting documents. Specifically, the Staff Report provides no evidence that variability in the timing and availability of rice habitat is common, and no characterization of that variability, quantitative or otherwise, that could serve a baseline comparison for the impacts of the Rice Protocol.

Nor does the Staff Report consider that the impact of the Rice Protocol--and the Dry Seeding option in particular--is likely to be more problematic in drought years when there is already a reduction in the area of flooded field habitat regionally. In fact, the Dry Seeding option may be particularly attractive to project landowners in precisely those years when water (and, thus, flooded field habitat) is scarce due to drought. In such cases, rather than being "within the natural variability," Dry Seeding would exacerbate a natural decrease in habitat availability.

In addition, the Staff Report provides no evidence that participation in the Rice Protocol will be limited, stating only that "*rice farms implementing the practices would likely constitute a small fraction of existing habitats within the region at any one time.*"³ While it may be true that the Rice Protocol is unlikely to become an industry-wide practice, wildlife impacts are more likely to occur at the local level, yet the Staff Report includes no consideration of the potential for localized impacts with respect to exceptionally large project areas or participation by multiple adjacent landowners.

Also, the Staff Report asserts that "*Limiting the proposed project activities to the rice growing season would avoid potential impacts to wintering habitat for migratory waterbirds during the non-growing season.*"⁴ However, this conclusion seems to depend on the assumption that switching to Dry Seeding has no effect on winter flooding. Although the decision to flood fields in winter is quite possibly independent of participation in the Rice Protocol, the decision to use Dry Seeding could result in management decisions to end the winter flooding (i.e., to drain the field) earlier.

Given the uncertainty of these various assumptions and the possibility for negative impacts to wildlife, we strongly urge ARB to: 1) verify the various assumptions critical to the assessment of the program's impacts on wildlife and wildlife habitat, 2) put in place measures to guard against localized wildlife impacts from the participation of exceptionally large project areas or multiple adjacent landowners, and 3) make publicly available a map of the cumulative

² Staff Report at 40.

³ Staff Report at 41.

⁴ Staff Report at 39.

project areas and the reported data on the timing and duration of flooding for each participating project, and solicit public comments regarding the impacts to wildlife. There were no changes in the Proposed 15-day Modifications to the Rice Protocol or the regulation responsive to these concerns.

The Center for Biological Diversity appreciates the attention that ARB has given to the wildlife impacts and the specific measures in the Rice Protocol intended to reduce the negative impacts to wildlife. We would be pleased to work with you to develop measures to check the assumptions identified in the Staff Report, to guard against localized impacts, and to identify wildlife impacts as they occur.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Brian Nowicki".

Brian Nowicki
Center for Biological Diversity
(916) 201-6938
bnowicki@biologicaldiversity.org