

Corporate Headquarters

PO Box 649
Glennallen, Alaska 99588
Office: (907) 822-3476
Fax: (907) 822-3495



Anchorage Office

110 W 38th Avenue, Suite 100
Anchorage, Alaska 99503
Office: (907) 868-8250
Fax: (907) 868-8285

Our Culture Unites Us; Our Land Sustains Us; Our People are Prosperous

September 19, 2016

Via Electronic Submission

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95812

Re: Comments of Ahtna, Inc. on the Proposed Amendments to the Cap-and-Trade Regulation Regarding Forest Offset Projects.

Dear Chairwoman Nichols and Members of the Air Resources Board,

Thank you for the opportunity to comment on the proposed amendments of the Air Resources Board (“ARB”) to the Cap-and-Trade Regulation, 17 Cal. Code. Regs. §§ 95800 *et seq.* (the “Regulation” or “CTR”). In these comments we summarize the importance of the opportunities created by the forest offset program, and follow that with more detailed comments on specific proposed amendments that pertain to forest offset projects.

1. The Importance of California’s Offset Program to Ahtna.

Ahtna, Inc. (“Ahtna”) is one of the 13 Alaska Native Regional Corporations established under the Alaska Native Claims Settlement Act of 1971. Based in Glennallen, Alaska, Ahtna is owned by more than 1,900 shareholders, almost all of whom are of Ahtna Athabascan descent. Ahtna is committed to preserving, strengthening, and enhancing a cultural identity that has existed for thousands of years and protecting and preserving our lands and resources for future generations. We manage land in accordance with cultural and traditional uses and values, conservative development strategies, and principles of culturally appropriate stewardship.

Currently, Ahtna holds title to approximately 1.6 million acres of land conveyed from an entitlement of 1,770,000 acres in the Ahtna region, which is roughly the size of the state of Ohio and is located in Southeast Central Alaska. The Ahtna region contains some of the most rugged and breathtaking areas of the state, including over 600,000 acres in America’s largest National Park, Wrangell St. Elias, and holdings in Denali National Park and Preserve, home of the tallest peak in North America.

Ahtna's natural resources are plentiful and have been consistently surveyed for decades. Unlike any other region in Alaska, Ahtna's is completely accessible via the road system, connecting us to busy depots like Anchorage, Fairbanks, and Valdez. Ahtna's leaders made it possible for the Trans-Alaska Pipeline System ("TAPS") to be constructed in the 1970's by setting aside a fifty-five mile corridor through Ahtna's fee-simple lands for the 48-inch diameter pipeline. TAPS has transported approximately 17 billion barrels of oil through our lands in a safe and environmentally sound manner thanks in part to our long-time partnership. However, with the fall of oil and gas and prices and TAPS operating at only approximately 25 percent of its capacity, we are desperately in need of new revenue sources. We do not want to turn to profitable, but harmful, forms of resource development such as strip mining.

Alaska's villages are among the most economically depressed communities in the nation and California's Offset Program provides a new means to stimulate economic renewal while enabling our people to preserve their traditional culture and the environment. Forest offset projects offer an alternative to timber harvest and other resource development opportunities and reward sustainable forest management. Developing forest offset projects will enable us to positively impact the planet while offering a solution to providing for our shareholders for the long term.

California's Offset Program will help us to improve our forestry management and enable us to sequester more carbon than we would by maintaining our current practices. The sale of ARB offsets credits ("ARBOCs") could have a net positive impact on the environment, which is particularly important in northern communities like ours where we are seeing first-hand the effects of climate change. We have already been able to put our shareholders to work in much-sought-after local positions inventorying our forest resources' carbon potential. Ahtna plans to register with ARB, and to develop a sizable improved forestry management plan that will result in the sequestration of a substantial amount of carbon. If it is unsuccessful in doing so economically, Ahtna will have to explore other economic uses of its land.

Forest offset projects have the potential to generate millions of dollars in revenue for Ahtna, thereby increasing our ability to provide much-needed social and economic benefits to our people. In 2015, Ahtna provided over \$14 million dollars in benefits to our shareholders in the form of dividends, wages, charitable contributions, memorial and community support, land use, and educational scholarships. These programs all improve the quality of life for our people and allow for the successful continuation of a customary and traditional lifestyle that has existed for thousands of years – a lifestyle that is the foundation of Ahtna's culture, values and vision.

Thus, maintaining the integrity of forest offset projects under California's Offset Program is very important to us. In general, we believe that the proposed amendments to the Regulation will improve and strengthen the Program and forest offset projects in particular. That said, we also believe that making certain adjustments will better effectuate the goals of the amendments and provide better guidance to stakeholders. With that in mind, we offer below comments on certain specific proposed amendments.

2. The Proposed Amendment to the Regulatory Compliance Requirement are Good, though More is Needed.

ARB's proposed Appendix E does much to clarify what activities would fall afoul of the regulatory compliance requirement set forth in CTR Sections 95973(b) and 95985(c)(2). This is a significant improvement. In particular, Section (d) of Appendix E makes clear that only those activities that actually affect carbon stocks in a forest offset project should be considered for the regulatory compliance requirement. While Appendix E provides much needed clarity, we believe that more can be done to clarify Section 95973(b). That provision still can be read to suggest that any violation of a legal requirement that applies to the location of the offset project, though not directly to the offset project itself, can result in the ARBOCs generated by that project being invalidated. Given the vast size of Ahtna's forest offset projects— and thus the scope of the location to which legal requirements may apply – this ambiguity poses a significant risk to our projects. This has been a real concern ever since ARB's 2014 final determination invalidating certain ARBOCs generated by the destruction of ozone depleting substances at the Clean Harbors facility in Arkansas. It is a significant concern as well for certain forest offset projects that are situated atop underground mines. We therefore respectfully request that ARB clarify the regulatory compliance requirement only includes those legal requirements that apply directly to the offset project activities.

3. We Support the Proposed Expansion of the Deadline for Submitting a Project's First Offset Project Data Report.

ARB's proposal to expand the reporting deadline for the first offset project data report ("OPDR") for a project makes a significant improvement over the deadlines in the current Regulation. Ahtna could not reasonably assemble its report within the former period if it intended to include 24 full months of data. By extending the deadline from 24 to 28 months, ARB will allow a full 24 months of data to be included, while still giving Ahtna four months to prepare the report itself. Many of the ARBOCs generated by a project likely will occur within the first reporting periods. This change allows these credits to be captured during the initial phase, which will enhance efficiency. It also will facilitate annualized reporting periods.

4. We Support the Proposal to Allow Late-Filed OPDRs to Satisfy the Continuous Reporting Requirement.

Allowing a late-filed OPDR to satisfy the continuous reporting requirement in proposed CTR Section 95976(d) provides breathing room in what otherwise can be a fairly drastic provision. Forest projects with vast acreages such as many of those in Alaska will require a great deal of work to ensure that all of the information included in the OPDR is complete and accurate. Given the size of the task, there is a chance that a report may not be timely submitted.

5. The Proposed Changes to the Definition of Intentional Reversal is Not Appropriate.

ARB's proposed definition of "intentional reversal" changes what determines the status of a reversal – that is, whether the reversal was "caused by a forest owner's negligence, gross negligence, or willful intent . . ." CTR Section 95802(a)190. A forest owner that so causes a reversal is responsible for replacing the requisite amount of ARBOCs. *Id.* at 95983(c)(3). The

proposed definition of “intentional reversal” would include reversals “caused by approved growth models overestimating carbon stocks.” Proposed CTR Section 95802(a). Using a growth model approved by ARB should not be the same as “negligence, gross negligence, or willful intent.” Instead, any reversal due to an overestimation of carbon stocks caused by the use of an approved growth model should be treated as an unintentional reversal. They would be the result of a third party – the persons that developed the growth model and the ARB officials that approved it – and not the forest owner. The forest owner should not be held responsible for the acts of others as if she was guilty of negligence, gross negligence, or willful intent.

In Ahtna’s case, the chance of a reversal due to overestimation is a massive risk, significantly impacting the value of a project. Overestimation in a small forest project may be minor. But because Ahtna’s forest project could account for millions of tons of sequestered carbon, even a relatively small overestimate could lead to costly, and unfair, forest owner liability. On the other hand, underestimation, which diminishes the perceived value of the project, is not a solution. Ahtna’s earnest and honest attempts to accurately estimate carbon stocks by applying an approved growth model should not be punished by a reduction in value merely because the approved model fails to accurately predict the future.

6. We Support the Proposed Amendment to Extend the Timeline for Conducting a Post-Unintentional Reversal Carbon Stock Estimate.

We support ARB’s proposal to expand the timeline to complete a post-unintentional reversal carbon stock estimate. Proposed CTR Section 95983(b)(1) would allow 23 months for such an estimate to be prepared. For large forest offset projects, providing a complete and accurate carbon estimate could take a long time. Ahtna’s contemplated forest project is very large, and so we support this proposed change.

7. We Support the Proposal Regarding Required GHG Emission Reductions But it Should Be Broadened to Include Jurisdictions Like Alaska.

The Initial Statement of Reasons (August 2016) (the “ISOR”) states that ARB “[s]taff is proposing clarification that if a law, regulation, or legally binding mandate to limit GHG emissions that directly applies to an offset project goes into effect during the crediting period of a project, then the project may continue to receive ARB offset credits for the remainder of their crediting period, but may not renew their crediting period.” *Id.* at 56. We support this proposal to protect the reasonable expectations of those that have made significant investments in developing compliance offset projects under California’s Cap-and-Trade Program. However, proposed CTR Section 95973(a)(2)(G) is unduly limited to a GHG reduction requirement that “comes into effect *in California or in a linked jurisdiction.*” It does not address what happens with offset projects in other jurisdictions that are not linked, such as Alaska. We respectfully request that the provision be expanded to clarify that changes in law, regulation, or mandate outside California or a linked jurisdiction have no effect whatever on the crediting period, even if such changes are to the jurisdiction in which the project is located.

8. The Proposal to Require Forest Owners to Replace Invalidated Offset Credits in the Forest Buffer Account Should be Improved.

Proposed CTR Sections 95985(h)(3) and (i)(3) require the Offset Project Operator (which for a forest offset project is the forest owner) to replace 50% of any ARBOCs that are located within the Forest Buffer Account (“FBA”) that have been invalidated. This is not consistent with the rest of the Regulation. At present, the only invalidated ARBOCs that must be replaced are those that have been used and are in a retirement account. CTR Sections 95985(h) and (i). ARBOCs in the FBA have not yet been used. They have been placed in the FBA to serve as insurance against unintentional reversals. CTR Section 95802(a)(153). ARBOCs that have been invalidated reflect a determination that the credits never should have been issued in the first place. And if they had not been issued, then there would have been no need to insure them against reversal.

Put differently, the proposed change will result in the FBA growing well beyond what is reasonable or necessary. In the event of an invalidation, the invalid ARBOCs are obviously no longer in the system. Used invalidated ARBOCs are replaced by valid ARBOCs – a percentage of which are already in the FBA and adequately insured against unintentional reversals. To require replacement of any part of the invalidated ARBOCs in the FBA will add additional but unnecessary protection against unintentional reversals of projects that are no longer represented in the system.

The ARB has determined, correctly we believe, that the FBA adequately protects valid ARBOCs against unintentional reversals, and that the current percentage of withholding ARBOCs to the FBA adequately estimates the risk of such reversals. The proposal would increase the withholding beyond what ARB has determined to be necessary. Indeed, the fact that the proposal only requires 50% replacement itself suggests that ARB sees replacement as not solving any particular problem, else replacement would solve only half of it. If not a solution to a problem, this proposal must instead be punitive or a means to discourage operators from taking the risks associated with participation in the program, neither of which is an appropriate goal. We respectfully suggest that this unnecessary and unreasonable proposal be dropped.

Conclusion

Ahtna supports California's commitment to addressing climate change. Forest offset projects made possible by the Cap-and-Trade Program enable millions of tons of carbon to be sequestered while also providing critical co-benefits to our shareholders in rural Alaska, allowing them to sustain their traditional culture and way-of-life and protect the environment that they have called home for thousands of years. As a general matter, we therefore support the Offset Program and we believe that most of the currently proposed amendments will improve the Regulation and the Program. That said, we do think that certain improvements can and should be made. We thank ARB for considering these comments.

Sincerely,



Michelle Anderson
Ahtna, Inc. President