



May 10, 2018

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

Re: Comments on the April 26, 2018 Workshop “to Discuss Possible Revisions to the Cap-and-Trade Regulation”

Dear Ms. Sahota,

Thank you for CARB’s continued leadership in implementing California’s cap-and-trade program. We, the California Forest Carbon Coalition (CFCC), represent a diverse array of California forest landowners—including conservation groups, Native American Tribes and industrial timberland managers—representing a large portion of California’s forestland that have come together with a unified voice to support California’s offset program.

We are writing to request CARB fulfill its statement at the April 26th meeting to change how certain types of environmental, health and safety (EHS) violations impact forest carbon offset projects. We have attached a proposal we hope will help in your deliberations based on extensive discussion both with internal and external stakeholders that included several state agencies. We believe now is the time for such changes that will promote more in-state California offset that will help level the playing field compared to other states with less extensive timber harvest regulations. We also believe this proposal ensures CARB maintains the highest level of environmental integrity, that the law is upheld by each appropriate regulatory agency, and that offset developers are not unnecessarily excluded from developing projects.

The proposal addresses three issues regarding how CARB deals with EHS violations on a carbon offset project including the following:

- 1) Clarify that only EHS violations occurring on a project site are relevant to evaluating a potential invalidation event;
- 2) Affirm that for an on-site EHS violation to affect offset validity or eligibility, it must either affect carbon stocks or have an impact on other environmental resources;
- 3) If an EHS violation occurs on a carbon offset project and is on site, ARB should be consistent with other parts of its offset invalidation policy by taking the following actions:
 - a) For a violation that directly affect offsets in an amount greater than the materiality threshold (5%), the number of offsets invalidated should be equal to the number of offsets directly



affected by the violation, as is the case for invalidations due to overstatements pursuant to Section 95985(c)(1);

- b) For non-carbon environmental impacts, ARB should rely on the California Department of Forestry and Fire administration of the Forest Practice Rules in determining the appropriate remedy.

Providing clarity on these rules will allow offset developers to develop more offset projects in California that help reduce in-state emissions, provide more jobs in California and help us reach our collective state greenhouse gas emission reduction goals.

We look forward to working with ARB to expand and improve the offset program going forward.

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
Director, US Investments & Operations
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Mark Welther
President & CEO
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
Director of Forest Policy
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Rich Padula
President
Coastal Forestlands, Ltd.

Bob Rynearson
Manager, Land Department
W.M. Beaty and Associates

Cedric Twight
California Regulatory Affairs Manager
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**CALIFORNIA FOREST CARBON COALITION RECOMMENDATIONS
REGARDING INVALIDATION OF FOREST CARBON OFFSETS**
May 10, 2018

Background: The California Cap and Trade Regulation (Regulation) specifies three bases upon which Air Resources Board Offset Credits (ARBOCs) may be invalidated.¹ The 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 environmental, health and safety rules in the country.² 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.

Proposal: To encourage California forest offset project development and level the playing field with jurisdictions with less extensive timber harvest regulations compared to California, the California Forest Carbon Coalition proposes that ARB clarify its guidance on EHS violations and limit actions that affect offset validity or eligibility to those that occur on the *project site*, have an *environmental impact* and, in such cases, apply a *remedy* that is proportional to the violation’s direct effect on carbon stocks and sufficient to ensure the project’s compliance with environmental regulations. We believe this is consistent with current guidance and the intent of the Regulation and will significantly reduce risks relating to California forest project development, regulatory review time of EHS violations, and therefore increase covered entities’ confidence to use California forest offsets. Such guidance will also further AB 398’s objective of encouraging forest offset projects and their direct environmental co-benefits in California.

Discussion:

1. **Occur on Project Site:** Appendix E of the Regulation states that “project activities within the project area that directly affect carbon stocks must be in compliance with all requirements that have a bearing on the integrity of the generated offset. Activities external to the project area, such as transportation of logs to mills, mill operations, and landfilling, *are outside the project regulatory compliance assessment.*”³ (Emphasis added). We agree that there should be a clear nexus between the EHS violation and the purpose of the Regulation. For example, while getting a ticket for failing to signal a turn on the way to the project site may be incidentally related to timber

¹ 95985(c) Grounds for Initial Determination of Invalidation.

² The Forest Practices Act and Forest Practice Rules alone cover 330 pages:

http://calfire.ca.gov/resource_mgmt/downloads/2017%20Forest%20Practice%20Rules%20and%20Act.pdf

³ See also Section 95973(b), which states in pertinent part that “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.” (Emphasis added).



harvesting, the violation of the California Vehicle Code does not physically occur on the project site and has no effect on the carbon stocks or the integrity of the generated offset.

We encourage ARB to affirm that only EHS violations that occur on the project site are relevant to evaluating a potential invalidation event.

2. **Environmental Impacts:** ARB should affirm that for an on-site EHS violation to affect offset validity or eligibility, it must either affect carbon stocks or have an impact on other environmental resources. We discuss each in turn.

A. *Impacts on Carbon Stocks.* Where an EHS violation affects carbon stocks, there should be a *de minimis* threshold below which a violation does not warrant invalidation. Such a standard would be consistent with the treatment of offset overstatements under Section 95985(c)(1)(A), which provides that “ARB may determine that an ARB offset credit is invalid ... if the Offset Project Data Report contains errors that overstate the amount of GHG reductions or GHG removal enhancements by more than 5.00 percent...”. This provision recognizes the potential for inadvertent, good faith errors or mistakes in the development of an offset project that may occur despite rigorous third-party verification and registry review, and is an implicit acknowledgement that an overstatement of less than 5% does not impair the integrity of the generated offset.⁴

B. *Impacts on other Environmental Resources.* A violation affecting offset validity or eligibility should have an onsite environmental impact.⁵ Wherever applicable, the determination of whether such an impact has occurred should be made by CAL FIRE. CAL FIRE is the Lead Agency⁶ for Timber Harvesting Plan compliance, monitors Timber Harvesting Plan environmental rule compliance within carbon project areas in California, including but not limited to, the Z'berg-Nejedly Forest Practice Act, the Timberland Productivity Act of 1982, the California Environmental Quality Act (CEQA) of 1970, the Porter Cologne Water Quality Act, and the California Endangered Species Act. Where CAL FIRE observes violations of state laws it will issue a Violation. A CAL FIRE Violation(s) will state the rule infraction observed and indicates the required corrective mitigation measures that shall be applied to resolve the violation if there are any available.

3. **Remedies:** Unlike provisions for invalidation due to offset overstatement, Section 95985(g)(1)(B) provides an “all or nothing” standard for EHS violations which results in the ineligibility or invalidation of an entire Reporting Period irrespective of the violation’s impact on

⁴ In the case of EHS violations, a materiality threshold of 5% seems reasonable. Intentional violations, or instances where the offset project developer or forest owner had knowingly failed to disclose a violation that is subsequently discovered would be held to a strict liability standard and not covered by the threshold.

⁵ Administrative violations (for example, failure to have an adequate number of fire tools onsite) should not be a basis for invalidation.

⁶ California Forest Practice Rules, Title 14, California Code of Regulations, Section 896(a) provides that “The THP process substitutes for the EIR process under CEQA because the timber harvesting regulatory program has been certified pursuant to PRC Section 21080.5. In recognition of that certification and PRC Section 4582.75, these rules are intended to provide the exclusive criteria for reviewing THPs. If the Director believes that there are significant adverse environmental impacts not covered in existing rules, matters should be referred to the Board as otherwise specified in these rules.”



project offsets or other environmental resources. This disparity seems arbitrary and inconsistent with the intent of the Regulation and should be amended.

A. Remedies for violations affecting carbon stocks. In the event an on-site violation results in a loss of carbon that exceeds a 5% *de minimus* threshold, the remedy should be proportional to the direct impacts on carbon stocks. This is how the Regulation treats invalidations due to offset overstatements. Specifically, Section 95985(c)(1) provides a detailed method for calculating the number of offsets issued due to an overstatement greater than 5%. In such case, only the number of overstated offsets will be invalidated.

B. Remedies for violations impacting other environmental resources. ARB should rely on the environmental review and mitigation process administered by CAL FIRE or, in the case of tribal or out-of-state projects, on the environmental review and mitigation process of the appurtenant administrative authority with jurisdiction over harvesting activities. Specifically, a Timber Harvest Inspection or Completion Report (“THP Report”) for the period including the applicable reporting period certifying that all corrective mitigation measures have been implemented shall be sufficient to establish that any EHS violation did not have an environmental impact warranting the ineligibility or invalidation of offsets. Where a violation has occurred and the implementation of corrective measures has not been certified in a THP Report, then the offset verification statement may be submitted, but a final determination as to the eligibility for issuance of offsets for the applicable reporting period should be suspended until a certified THP Report covering the reporting period has been issued. Any reporting period subsequent to one where a violation occurs will be provided credits while the reporting period in question addresses its violation. Any failure to implement or maintain corrective measures set forth in a certified THP Report shall constitute a separate violation in the reporting period in which such failure occurred⁷. If credit issuance is suspended for a reporting period, subsequent reporting periods shall still be eligible for issuance as long as they are not subject to separate violations.

We urge ARB to adopt guidance specifying that in the case of EHS violations that (a) directly affect offsets in an amount greater than the materiality threshold, the number of offsets invalidated should be equal to the number of offsets directly affected by the violation, as is the case for invalidations due to overstatements pursuant to Section 95985(c)(1)⁸ or (b) impact other environmental resources, ARB should rely on CAL FIRE’s administration of the Forest Practice Rules in determining the appropriate remedy .

⁷ For tribal or out-of-state projects where a certified THP report from CAL FIRE is not applicable, similar documentation from the appurtenant administrative authority stating that corrective mitigation measures have been implemented to resolve the violation shall be sufficient.

⁸ California Air Resources Board Offset Credit Regulatory Conformance and Invalidation Guidance, 2015, at page 3 and Section 4. Regulatory Conformance and Invalidation Scope for Specific Project Types.



Figure 1: EHS Violation Flow Chart

