

AB 398 Compliance Offsets Protocol Task Force Meeting

March 2, 2020



Agenda

- Opening Remarks by Richard W. Corey
- Introduction of Compliance Offsets Protocol Task Force Members
- Discussion of Bagley-Keene Open Meeting Act and Public Records Act Requests
- Review of Task Force Charter
- Discussion of Schedule
- Background and History of the Compliance Offset Program
- Considerations in Identifying New Project Types
- Discussion

Task Force Members (1 of 2)

Stakeholder Group	Name	Organization
Scientists	Frank Mitloehner	Department of Animal Science, UC Davis
Air pollution control and air quality management districts	Bruce Springsteen	Placer County Air Pollution Control District
Carbon market experts	Emily Warms	New Forests
Tribal representatives	Timothy Hayden	Yurok Tribe
Environmental Justice advocates	Neil Tangri	Global Alliance for Incinerator Alternatives
Labor and Workforce representatives	Antonio Sanchez	International Brotherhood of Electrical Workers, Local 11
Forestry experts	David Ford	American Forest Foundation; L&C Carbon

Task Force Members (2 of 2)

Stakeholder Group	Name	Organization
Agriculture experts	Robert Parkhurst	Sierra View Consulting
Environmental advocates	Brian Nowicki	Center for Biological Diversity
Conservation advocates	Constance Best	Pacific Forest Trust
Dairy experts	Jean-Pierre "J.P." Cativiela	Cogent Consulting and Communications
Public member	Gavin McCabe	Private citizen, former Supervising Deputy Attorney General for California Department of Justice
Public member	Andrea Tuttle	Forest and Climate Policy

Chair: Gavin McCabe

Bagley-Keene Open Meeting Act (1 of 2)

- Overview
 - Designed to ensure a “state body” conducts its business openly and transparently
 - Sets requirements for a state body’s meetings, writings, and communications
 - Text of Act available at Government Code sections 11120-11132
- Bagley-Keene applies here
 - Bagley-Keene applies to state bodies created by statute
 - Task Force was established by statute in AB 398 (Garcia, Statutes of 2017)
- General requirements
 - Task Force must have a quorum—here, at least 7 members—to hold meetings or conduct official business
 - Information given to Task Force as a group must also be made available to the public
 - Task Force meetings must be public and noticed in advance

Bagley-Keene Open Meeting Act (2 of 2)

- Task Force communications
 - Task force quorum may not deliberate outside of noticed meetings
 - Includes informal gatherings unless they are purely social gatherings
 - Even communications involving less than a quorum need to be carefully managed to avoid triggering a Bagley-Keene issue
 - Series of communications of less than a quorum may enlarge to become a quorum and thus a prohibited “serial meeting”
- Formal vs. informal subgroups
 - Bagley-Keene also applies to subgroups of three or more persons “created by formal action of the state body”

Public Records Act Request

- Overview of California Public Records Act (PRA)
 - Sunshine law that allows public to access many public agency records
 - Promotes transparency and public understanding of governmental activities
 - Does not require disclosure of personnel records, attorney-client advice, and certain other records
- PRA applies to Task Force
 - PRA applies to local and state agencies, including “every state office, officer, department, division, bureau, board and commission or other state body or agency”
 - Task Force is a state body covered by the PRA
- Implications
 - Public may request copies of records in the possession of the Task Force, including records used/created for Task Force purposes
 - CARB’s Legal Office will work with the Task Force to process public requests if they arise

Task Force Charter

- Scope of Responsibility
 - Provide guidance to CARB in approving new offset protocols for the purposes of increasing offset projects with direct environmental benefits in California while prioritize:
 - Disadvantaged communities
 - Native American or tribal lands
 - Rural and agricultural regions
- Process
 - Task Force Role and Responsibilities
 - CARB Role and Responsibilities
 - Meetings and Report
 - Code of Conduct
- Role of Facilitator

Disadvantaged Communities

- Disadvantaged communities are defined as the top 25% scoring areas from CalEnviroScreen along with other areas with high amounts of pollution and low populations



Task Force Schedule (1 of 2)

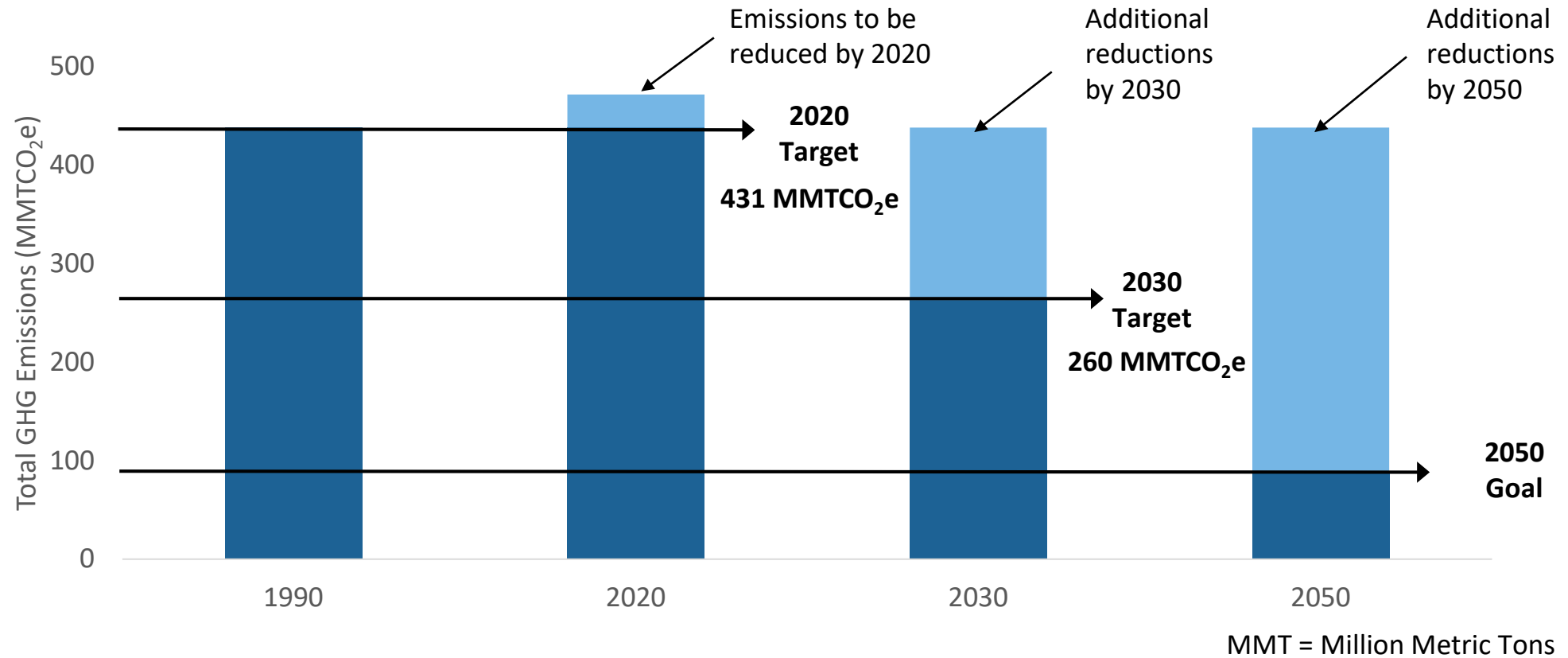
- First Meeting – March 2, 2020
- Workgroups
 - Assigned at First Meeting
- Draft Report – Early Fall
 - Each workgroup will submit their portions of report
 - Facilitator and CARB staff will compile into draft report for public comment
- Public Comment - Fall
 - Draft Report will be release for public comment prior to Final Meeting
 - At least 30 days for public comment

Task Force Schedule (2 of 2)

- Final Meeting and Adoption of Report – Late Fall/Winter
 - Task force will develop process for responding to comments and adoption the final report
- Board Presentation – Early 2021

Background & History of Compliance Offset Program

California GHG Emissions Reduction Targets



Cap-and-Trade Program Background



- Critical part of State strategy to achieve GHG reduction targets
 - 2017 Scoping Plan that includes Cap-and-Trade is 4 times less costly than alternatives
- Covers ~80% of State's emissions and works in concert with other complementary air quality and climate policies
- Greater than \$12.5 billion generated for California Climate Investments
 - ~60% of investments are benefiting disadvantaged communities

Cap-and-Trade Program Design Features

- Multiyear compliance periods
- Banking (subject to holding limits)
- Allocation to industrial sources to prevent leakage
- Auction with price floor for carbon price discovery to inform investments and compliance decisions
 - Current auction reserve price: \$16.68 (increases by 5% plus CPI annually)
- Allowance Price Containment Reserve
- Limited Offsets (8% limit through 2020 emissions; 4% and 6% limits afterwards)
 - Essential part of the Cap-and-Trade Program cost containment mechanism

Role of Offsets (1 of 2)

- Entities may use offsets to meet up to 8% of compliance obligation in the Cap-and-Trade Program. AB 398 changed limits post-2020:
 - Calendar year emissions for 2021 to 2025 have an offset usage limit of 4 percent
 - Calendar year emissions for 2026 to 2030 have an offset usage limit of 6 percent
- From 2021 through 2030, for entity's compliance, no more than one-half of the offset usage limit may be sourced from projects that do not provide direct environmental benefits in the State
- Direct Environmental Benefits in the State
 - Reduction or avoidance of emissions of any air pollutant in the State or reduction or avoidance of any pollutant that could have an adverse impact on waters of the State
 - Benefits are beyond the GHGs that are credited pursuant to the applicable Compliance Offset Protocol

Role of Offsets (2 of 2)

- Sources of compliance offsets
 - Issued directly by CARB
 - Offsets issued by linked regulatory programs*
 - Linkage with Quebec starting January 2014
 - Sector-Based Credits (none approved to date)*

* Each linkage is subject to a rulemaking and stakeholder process

General Offset Criteria

- Reductions must meet AB 32 criteria
 - Real, additional, quantifiable, permanent, verifiable and enforceable
 - Additional - beyond regulation or what would otherwise occur (business-as-usual); technology or GHG abatement practices that are widely used would not be considered additional
- Offsets must result from Board adopted Compliance Offset Protocols
- Only CARB can issue compliance offsets under its Compliance Offset Protocols
- Offset credits cannot be issued for GHG emissions reductions activities or sectors that are under the cap
- We will consult with other linked jurisdictions regarding proposed protocols

Compliance Offset Program Development

- Held hundreds of individual and public meetings
 - International (CDM, Australia)
 - Domestic (Western Climate Initiative Design Document, RGGI)
 - California stakeholders (industry, environmental groups, air districts, market participants, voluntary offset programs)
- Conducted workshops and technical working groups to develop the design of the program and Compliance Offset Protocols
- Released multiple drafts of the Regulation and Compliance Offset Protocols for stakeholder comment
- Multi-year process

Protocol Development

- Compliance offset protocols must go through a regulatory process, including stakeholder process, environmental review, and finally Board approval
- Standardized (top-down) approach to protocol approval
 - Protocols include standardized baseline calculations, additionality requirements and quantification methods developed for the relevant sector or project activity
 - Could vary by region within the geographic scope of protocol
 - Board will adopt one protocol for each project type
 - Least administratively burdensome
 - Limits subjectivity by providing clear, prescriptive requirements

Eligible Sectors for Offset Generation

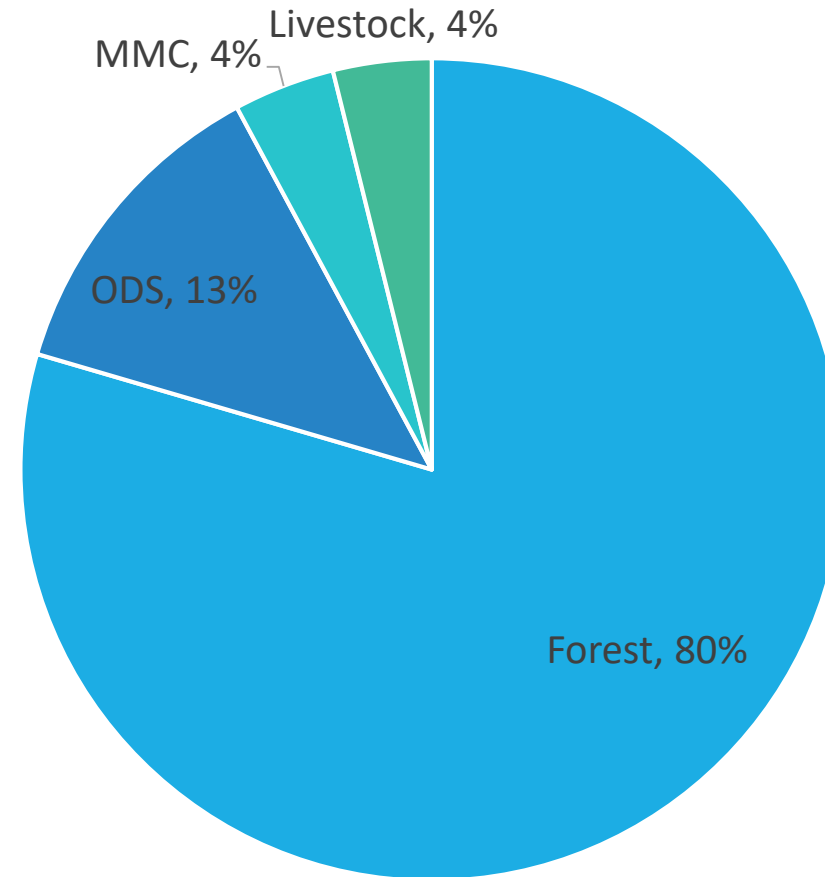
- Sectors covered by the Cap-and-Trade Program are **not** eligible
 - Electricity generation (including imports)
 - Large stationary sources (e.g., refineries, cement production facilities, oil and gas production facilities, glass manufacturing facilities, and food processing plants)
 - Fuel distributors (natural gas and propane fuel providers and transportation fuel providers)
- Eligible sectors/activities
 - Mainly agriculture and natural lands, as well as high GWP gases
 - Avoids double counting in the Cap-and-Trade Program
- AB 293 calls for consideration of offsets on agricultural lands, natural lands, and wetlands

Compliance Offset Protocols

- Six project types adopted
 - U.S. Forestry (2015, 2014, 2011)
 - Urban Forestry (2011)
 - Livestock Digesters (2014, 2011)
 - Ozone Depleting Substances (2014, 2011)
 - Mine Methane Capture (2014)
 - Rice Cultivation (2015)
- Originally developed for voluntary offset market
- Modified by CARB for compliance offset market
- Clear and enforceable requirements

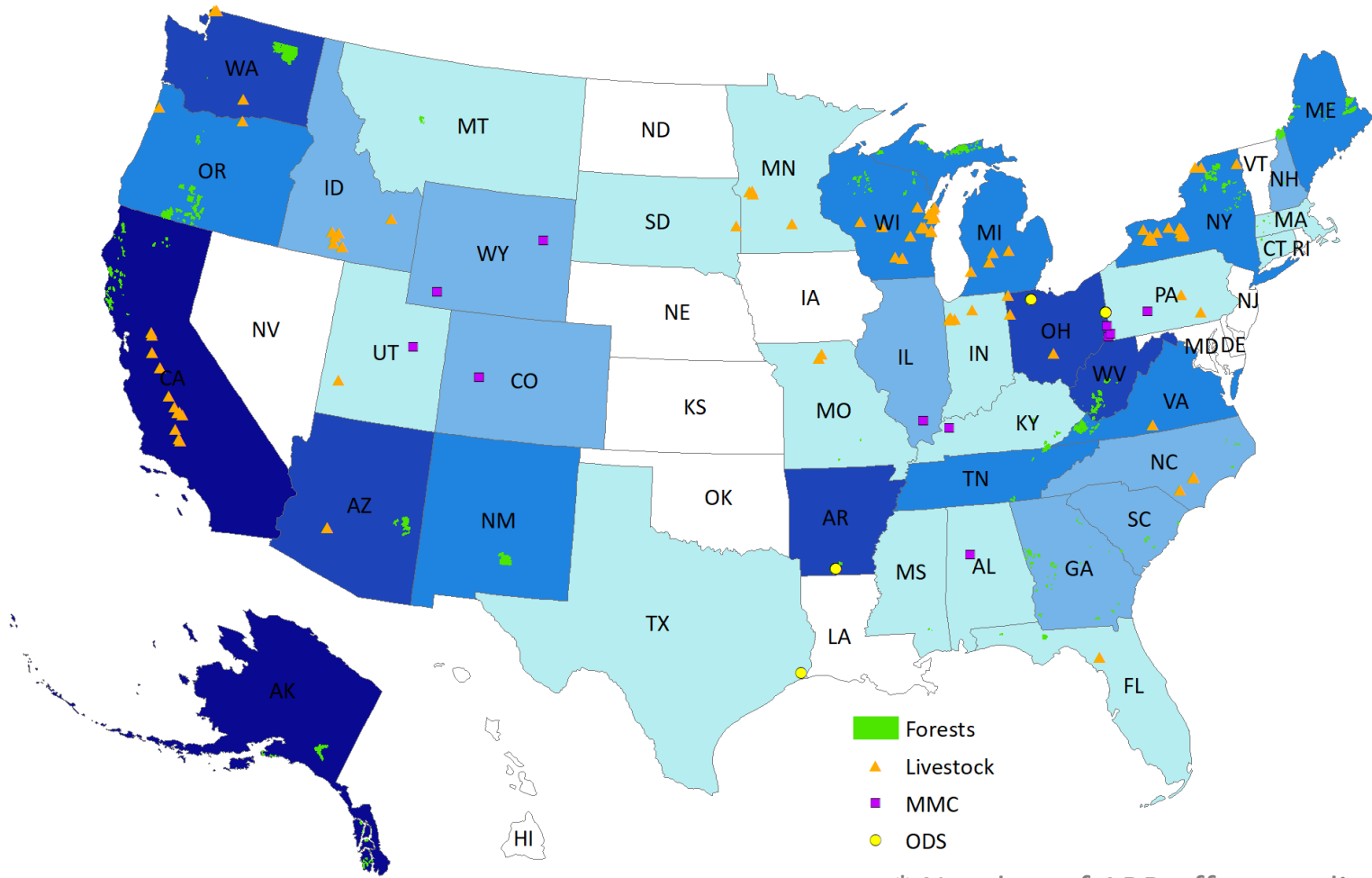
ARB Offset Credits Issued (1 of 2)

Project Type	ARBOC Issued*
U.S. Forest	136,055,741
ODS	21,565,607
MMC	6,823,798
Livestock	6,618,172
Urban Forest	--
Rice Cultivation	--
Total	171,063,318



* Number of ARB offset credits issued as of 26 February 2020

ARB Offset Credits Issued (2 of 2)



State	ARBOC Issued*
CA	25,569,436
U.S. Forest	24,956,309
Livestock	613,127
Rest of US	145,493,882
Total	171,063,318

* Number of ARB offset credits issued as of 26 February 2020

Litigation History

- Lawsuit
 - In 2012, challengers filed lawsuit alleging that CARB's standards-based approach failed to satisfy statutory requirements requirement, particularly related to additionality and permanence
 - CARB argued that acted within its authority and in a way that allowed for enforcement of its protocols
- Results
 - State trial court and appellate court ruled in CARB's favor; state Supreme Court denied petition for review
 - Appellate court noted CARB's standards-based approach:
 - “[E]mploys a protocol which establishes objective criteria for evaluating whether a specific type of project satisfies the additionality requirement”
 - “The ‘essence of ‘standardized’ offset crediting is to minimize the subjective judgment required in evaluating whether a project should receive a credit for emission reductions, and how much credit it should receive.’ ”
 - Published case cite: *Our Children's Earth Foundation v. State Air Resources Bd.* (2015) 234 Cal.App.4th 870

Considerations for New Protocols (1 of 2)

- **Additionality**
 - Is the project activity already business-as-usual?
 - Example: Wastewater treatment
 - Is the project activity already legally required?
 - Example: Landfill gas capture
 - Example: Organic waste composting
 - Example: Some refrigerants and foam blowing agents
 - Is the project activity covered by cap?
 - Examples: Solar, electrification, fuel switching

Considerations for New Protocols (2 of 2)

- Assuring permanence
 - Does the science support the permanence of soil sequestration?
 - Rangelands/Grasslands
 - Wetlands
- Accurate/Conservative Quantification
 - Are there existing methods to accurately quantify emissions reductions for new project types?
 - Have these methods been tested in practice?
- Updates to existing Compliance Offset Protocols
 - What updates to existing protocols would further support AB 398 or AB 293 requirements?

Additional Information

- Cap-and-Trade Program

<http://www.arb.ca.gov/cc/capandtrade/capandtrade.htm>

- Compliance Offset Task Force Webpage

<https://ww3.arb.ca.gov/cc/capandtrade/offsets/taskforce.htm>

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