



Sept 27, 2011

*Via electronic submittal*

California Air Resources Board  
James Goldstone, Executive Officer  
1001 I Street  
Sacramento, CA 95812

**RE: TWS Comments on the Second 15-day Change Notice for the Cap-and-Trade Regulation**

On behalf of its 90,000 California members and supporters, The Wilderness Society (TWS) is writing to provide comments on the Second 15-day Change Notice for the Cap-and-Trade Regulation issued by the California Air Resources Board (ARB) staff on September 12, 2011. TWS commends California and ARB and its staff for their continued leadership in implementing sustainable policies that place a strong cap on greenhouse gas emissions. The impacts of unmitigated greenhouse gas emissions in California include rising sea levels, decreasing oxygen concentrations in California ocean waters, more frequent large wildfires, and increased tree deaths in the Sierra Nevada. California's landmark climate policies will help ensure healthy and resilient communities, spur clean technology development, and maintain economic growth statewide. We offer the following comments on the revised cap-and-trade regulation and offer our assistance to work with ARB on the recommendations we suggest. These comments supplement, and are in addition to, comments previously made by TWS on August 11, 2011 with respect to the revised Cap-and-Trade Regulation.

***Summary of Recommendations:***

- 1) TWS seeks further clarification regarding the mechanics and timing of contributions to the Forest Buffer Pool and suggests the addition of provisions for replenishing the Forest Buffer Account in order to ensure cap integrity in the face of offset reversals and terminations;***
- 2) Recognizing that ARB has chosen to include Tribal lands as lands eligible for certain types of forest offsets – subject to federal approval or DOI confirmation that approval is not required; TWS submits for ARB's consideration a letter submitted by six leading environmental organizations to the U.S. Department of Agriculture and the U.S. Department of the Interior outlining potential issues associated with allowing offsets on federal lands;***



- 3) *While TWS strongly supports reducing fugitive methane emissions by retrofitting existing high-bleed pneumatic controllers with low-bleed options, TWS questions whether the adoption of new protocols to generate offsets from such retrofits is an effective way to ensure that these important emissions reductions occur.*

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TWS seeks clarification of the mechanics and timing of contributions to the Forest Buffer Pool. Reading Section 95983(a)(1-2) of the Cap-and-Trade Regulation along with Section 7.2.2 and Appendix D of the Compliance Offset Protocol for U.S. Forest Projects (the Protocol), it is unclear whether a forest project makes contributions to the buffer pool only at the time of registry, whether that contribution may be adjusted in the future, or whether a project may be required to make contributions to the Forest Buffer Account after registration. Section 95983(a)(1-2) of the cap-and-trade refers to contributions at the time of registration being made in accordance with the Protocol. Section 7.2.2 of the Protocol notes that contributions are made to the Forest Buffer Pool according to a determination of reversal risk determined by requirements and methods in Appendix D of the Protocol; however, Appendix D notes that reversal risk of a forest project is dynamic and recalculated in every year the project undergoes verification.

As identified in California's April 2009, "Indicators of Climate Change in California" report, increased frequency of large wildfires and increased tree mortality are trends occurring in California forests. The risk of unintentional forest offset project reversals (or terminations) is real and may increase over time; and the offset credits in the Forest Buffer Pool are subject to the same unintentional reversals that threaten the permanence of the underlying forest offset projects (although, to the extent there is geographic diversity in the location of registered forest offset projects, that may provide some risk diversification for the Forest Buffer Pool). As the Cap-and-Trade Regulation is currently drafted, it appears that there is no mechanism for replenishing the Forest Buffer Pool after credits are retired to respond to unintentional reversals (and project terminations due to unintentional reversals). Relying on additional contributions to the Forest Buffer Pool from the registration of new forest projects may be an inadequate method of ensuring a Forest Buffer Pool capable of safeguarding the integrity of the emissions cap especially in the face of wildfires or tree mortality events that may affect multiple projects and result in project terminations.



Furthermore, in the case of intentional reversals, if ARB is forced to retire credits from the Forest Buffer Account and to commence an enforcement action, this also creates a risk that the Forest Buffer Account will be depleted and will not have sufficient credits to ensure the integrity of the emissions cap. It is unclear whether any recovery in an enforcement action could be applied to the purchase of replacement credits to replenish the Forest Buffer Account, and even if such replacement credits could be purchased pursuant to a successful enforcement action in an intentional reversal case, there are additional risks and uncertainties created by the disposition of the enforcement action (e.g. the length of time required to secure a successful outcome in an enforcement action, whether bankruptcy or statute of limitation issues may prevent a recovery sufficient to ensure the cap integrity, etc.)

If the Forest Buffer Account is depleted and unable to help restore tons to the cap-and-trade program in the face of forest project reversals, then the integrity of the cap-and-trade program may be compromised. ARB could adopt a number of revisions that would help alleviate the risk of depleting the Forest Buffer Account. First, ARB could provide enhanced mechanisms for seeking new contributions to the Forest Buffer Account if the volume of credits in the Forest Buffer Pool falls below a certain percentage of outstanding forest offset credits; possible sources of such replenishment contributions are varied. For instance, the Cap-and-Trade Regulation could require that if the depletion scenario referenced in the preceding sentence occurs, then some or all of the contribution risk ratings in the Appendix D of the Protocol would be accelerated by a specified percentage. In addition to new projects being subject to the accelerated risk assessment, existing projects could also be made subject to a revised risk assessment and additional contribution assessment. For instance, the Cap-and-Trade Regulation could be revised to clarify that existing projects may need to make additional contributions to the Forest Buffer Pool after registration if a depletion scenario arises (which would be analogous to an increased insurance premium based on new information) – and those additional contributions could either come in the form of forest offset credits or other approved compliance instruments. Secondly, ARB could explore the possibility of either using enforcement proceeds associated with the cap-and-trade program to purchase replenishment credits for the Forest Buffer Pool or the possibility of requiring purchase of replenishment credits from defendants in successful intentional forest project reversal enforcement actions. Finally, to better safeguard against depletion, ARB may want to consider broadening the Forest Buffer Pool into a general Offset Buffer Pool and requiring all offset project types to make contributions to an Offset Buffer Pool (with non-sequestration offsets presumably making contributions at a lower rate than sequestration offsets to reflect any lower project risk rating). This broadening of the buffer pool has two potential benefits; first, risk in the buffer pool would be diversified across different types of offset types, but also the buffer pool would then be capable of further bolstering the integrity of the cap-and-trade program by providing a source of credits which ARB can use to make the



program whole while pursuing any warranted enforcement actions related to non-sequestration project invalidations.

***Recognizing that ARB has chosen to include Tribal lands as lands eligible for certain types of forest offsets – subject to federal approval or DOI confirmation that approval is not required; TWS submits for ARB’s consideration a letter submitted by six national environmental organizations to the U.S. Department of Agriculture and the U.S. Department of the Interior outlining potential issues associated with allowing offsets on federal lands.***

TWS appreciates the language ARB has added in the Forest Protocol and the Second 15-day Change Notice to clarify the eligibility of Tribal lands for reforestation and improved forest management programs. TWS continues to urge caution with respect to any further efforts to make federal lands eligible to generate offset projects for the California cap-and-trade program. As we noted, in our August 11, 2011 comment letter on the California Cap-and-Trade Regulation, any commitment of federal land agencies to manage for increased carbon sequestration, and especially participation of these agencies in private offset markets must be consistent with their broad public mission and fully protect other public benefits. A thorough public and scientific review is necessary to develop a cohesive national policy regarding the appropriateness of use of federal lands in any offset program. As an attachment to this letter, TWS submits for ARB’s consideration a January 2010 letter from six national environmental organizations to the U.S. Department of Agriculture and the U.S. Department of the Interior, further outlining potential issues associated with offsets on federal lands.

***While TWS strongly supports reducing fugitive methane emissions by retrofitting existing high-bleed pneumatic controllers with low-bleed options, TWS questions whether the adoption of new protocols to generate offsets from such retrofits is an effective way to ensure that these important emissions reductions occur.***

Methane accounts for much of the total greenhouse gas pollution from the oil and gas sector and it also has an extremely high global warming potential. According to the 1996 Intergovernmental Panel on Climate Change (IPCC) Second Assessment Report, methane was estimated to be 21 times more effective at trapping heat in the atmosphere when compared to CO<sub>2</sub> over a 100-year time period; however, the global warming potential of methane has been revised upward and in the IPCC Fourth Assessment Report in 2007, methane is now estimated to be 25 times more effective at trapping heat in the atmosphere when compared to CO<sub>2</sub> over a 100-year time period. We draw your attention as well to a review of methane waste issues undertaken by the Government Accountability Office (see *Federal Oil and Gas Leases*:



*Opportunities Exist to Capture Vented and Flared Natural Gas, Which Would Increase Royalty Payments and Reduce Greenhouse Gases (GAO 11-34, October 2010)*, as well a June 2011 letter (attached) to the U.S. Department of the Interior, U.S. Bureau of Land Management, U.S. Department of Energy, U.S. Environmental Protection Agency, and Council of Environmental Quality from twenty-one environmental organizations, discussing methane waste from oil and gas development.

Replacing high-bleed pneumatic controllers with available low-bleed controllers not only reduces methane emissions, but also improves operational efficiency. However, other voluntary incentive programs, such as the U.S. EPA's Natural Gas STAR Program have failed to spur large-scale retrofits. Despite the potentially large greenhouse gas benefits from such conversions, the general trend has been that funds that might be directed toward efficiency retrofits have otherwise been directed toward other expenditures (such as expenditures to increase production that may have greater capacity to increase industry revenues). Given the high global warming potential of methane, and the strong and compelling public interest in minimizing greenhouse gas emissions impacts, TWS believes that direct regulations should be implemented to require these cost-effective, efficiency producing retrofits, especially where public lands have been made available to companies for oil and gas development.

Once again, TWS appreciates the hard work and leadership of ARB in developing and implementing comprehensive climate policies to mitigate greenhouse gas emissions that threaten serious disruption of ecosystem services as well as species extinction. TWS also appreciates ARB efforts to ensure that California's climate policies promote sustainable stewardship of natural resources. We offer our assistance in working on the recommendations in this letter. If you have any questions, please contact Ann Chan at [ann\\_chan@twc.org](mailto:ann_chan@twc.org).