CENTER for BIOLOGICAL DIVERSITY Because life is good.

May 10, 2018

Mr. Jason Gray
Cap-and-Trade Program, Branch Chief
California Air Resources Board
Sacramento, CA

**Re: Additional comments to the 2018 amendments to California's GHG Cap-and-Trade regulation and the April 26 workshop**

Dear Mr. Gray:

These comments are submitted on behalf of the Center for Biological Diversity regarding potential changes to the regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms and the associated public workshop held on April 26, 2018. I appreciate the information that was shared at that workshop, and I appreciate this opportunity to provide additional input on the changes being considered by the Air Resources Board in the coming months.

These comments are offered in addition to the previous letter submitted by the Center for Biological Diversity on March 16, and focus on specific issues raised at the April 26 workshop or the associated materials. 1) The analysis provided in the April staff report fails to adequately address the risk that overallocation of allowances will undermine real reductions and the state's GHG reduction goals. 2) The staff analysis of Industry Assistance Factors for the 2018-2020 period focuses on costs to polluters to the exclusion of any analysis of the potential reductions and associated benefits. 3) Defining "direct environmental benefits in the state" to include any watershed that flows into California would undermine the intent of that provision. 4) The use of offsets for 2024 and 2025 emissions should be capped at 4% to be consistent with the intent of AB 398. These issues are discussed in turn below.

**1. The analysis provided in the April staff report fails to adequately address the risk that overallocation of allowances will undermine real reductions and the state's GHG reduction goals.**

The analysis provided in the April staff report compared the total cumulative reductions expected from cap-and-trade to the cumulative reductions called for in the Scoping Plan, but failed to address the impact of overallocation of allowances on California's emissions in 2030. As described in detail in a research note published on May 7 by Near Zero, "[*state] law requires ARB to reduce emissions to hit an annual target in 2030, not a cumulative target over the period 2021 through 2030. Even if projected cumulative reductions are equal to or greater than the*

*cumulative reductions called for in the Scoping Plan, it is still possible for emissions to significantly exceed the 2030 limit.*"[1]

Furthermore, the staff report used an estimate of projected emissions from "covered sectors" rather than the smaller subset of future "covered emissions" from those sectors, resulting in an erroneously high emissions trajectory that artificially inflates the calculated GHG emissions reductions attributable to cap-and-trade.[2]

We recommend that ARB correct its analysis using the appropriate estimates. More importantly, we recommend that the regulation include measures to address the potential that an overallocation of allowances could undermine real reductions in 2030 and the years leading up to it.

**2. The staff analysis of Industry Assistance Factors for the 2018-2020 period focuses on costs to polluters to the exclusion of any analysis of the potential reductions and associated benefits.**

The staff analysis considered the potential for lower Industry Assistance Factors for the 2018-2020 period to increase compliance costs to polluters over that period. The analysis also indicated that lower Industry Assistance Factors would not be necessary to achieve the reductions currently expected from those sectors over the 2018-2020 period. However, the staff analysis failed to assess the implications for increased reductions and associated benefits.

We urge ARB to analyze the potential for lower Industry Assistance Factors for the 2018-2020 period to increase real reductions and associated benefits during that period and in the years after 2020. For example, a lower Industry Assistance Factor would raise the cost of emissions in the refinery sector for the next two years, providing an incentive for on-site reductions over that period, including equipment upgrades that would continue to provide real reductions in GHG emissions and co-pollutants on an ongoing basis after 2020. We recommend that the Industry Assistance Factors decline for the 2018-2020 period as proposed under the current rule and the Industry Assistance Factor for petroleum refining be set at 0% over that period, in order to increase the amount of reductions achieved in that sector.

**3. Defining "direct environmental benefits in the state" to include any watershed that flows into California would undermine the intent of that provision.**

AB 398 specifies that after 2020 no more than one-half of offset credits may be sourced from projects that do not provide "*direct environmental benefits in the state*," and defines "*direct environmental benefits in the state*" as "*the reduction or avoidance of emissions of any air pollutant in the state or the reduction or avoidance of any pollutant that could have an adverse impact on waters of the state.*"

---

[1] Near Zero. May 7, 2018. Research note: *Ready, fire, aim: ARB's overallocation report misses its target*, at 9. http://wp.nearzero.org/wp-content/uploads/2018/05/Near-Zero-Post-2020-Caps-Report.pdf

[2] *Id.* at 9-10.

One of the proposals that ARB is considering for defining these benefits would include any project within a watershed of a river that impacts water quality of a river flowing into California. If this definition were interpreted in its broadest sense, this would include projects anywhere within the greater Colorado River watershed, which includes more than 24,000 square miles in five states outside of California, and extends more than 500 miles outside the border of California.

This broad geographical definition would not guarantee that offset projects provide "*direct environmental benefits in the state*" as required by law. Even in the case of a project that could ostensibly result in the reduction or avoidance of water pollutants locally, the potential for that benefit to reach California has not been demonstrated. Furthermore, in the case of offset projects registered under any of the current protocols, there is no assurance of any reduction or avoidance of any pollutant that could have an adverse impact on waters even locally. This proposal contravenes the intent of the statute.

If "*direct environmental benefits in the state*" are defined in such a way that could include projects outside of California, clear standards and evaluation procedures for assessing whether a project meaningfully impacts the quality of waters entering the state should be established by an independent scientific review.

**4. The use of offsets for 2024 and 2025 emissions should be capped at 4% to be consistent with the intent of AB 398.**

AB 398 establishes an offset usage limit of 4% for 2021-2025, and 6% for 2026-2030[3], and the usage limits proposed in the table on page 25 of the March 2 cap-and-trade workshop presentation indicates that ARB proposes limits of 4% for the compliance obligations due in 2024 and 2025 and 6% for the compliance obligations due in 2026.[4]

However, in 2024 and 2025, covered entities are required to surrender obligations for only 30% of their emissions in each year 2024 and 2025, with the remainder due in 2026 at the end of the three-year compliance period in 2026. Under the scenario proposed by ARB, the 4% limit would apply to only 30% of the 2024 emissions and 30% of the 2025 emissions, and the remaining 70% of emissions in each of those years would be subject to the higher 6% limit.

The distinction between when emissions are emitted, and the deadline by which compliance obligations covering those emissions must be surrendered to ARB should not be construed to weaken the offset usage limit for 2024 and 2025. Covered entities have a compliance obligation for all of their covered emissions in 2024 and 2025, even if the regulation

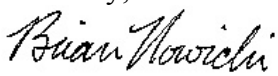
[3] HSC 38562 (c)(2)(E): "(I) From January 1, 2021, to December 31, 2025, inclusive, a total of 4 percent of a covered entity's compliance obligation may be met by surrendering offset credits… (II) From January 1, 2026, to December 31, 2030, inclusive, a total of 6 percent of a covered entity's compliance obligation may be met by surrendering offset credits…."

[4] Air Resources Board, March 2, 2018. Staff presentation: *Amendments to Cap-and-Trade Regulation Workshop*. https://www.arb.ca.gov/cc/capandtrade/meetings/20180302/ct_workshop_3-1-18.pdf

allows them flexibility to postpone surrendering those obligations until 2026. That is, the "compliance obligation" is the emissions they cover, not the timing of when the compliance instruments are surrendered. As defined in the regulation, "*Compliance Obligation" means the quantity of verified reported emissions or assigned emissions for which an entity must submit compliance instruments to ARB."*[5] The 4% offset limit applies to all covered emissions emitted during the years 2021-2025.

Thank you for your consideration of these comments. Please contact me if you have any questions.

Sincerely,



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

[5] 17 CCR § 95802. Definitions.