NewForests
FOREST CARBON PARTNERS

Thursday, 4 June 15

Chairman Mary Nichols
Members of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95812

CC: Rajinder Sahota
Greg Mayeur
Barbara Bamberger
Holly Stout

RE: Comments on Proposed Revisions to Compliance Offset Protocol for U.S. Forest Projects

Dear Chairman Nichols and Members of the Board:

Thank you for the opportunity to comment on the proposed 15-day changes to the Forest Offset Protocol. We, along with 15 other companies and organizations, have signed on to a group letter proposing that ***ARB delay adoption of three key areas of the proposed update and direct staff to organize a technical work group process to allow for a more robust discussion of the complex technical issues involved, including amendments that seek to mirror the California Forest Practice Rules promulgated by the Board of Forestry.***

In addition to this overarching comment, we would like to submit additional comments regarding specific sections of the proposed 15-day changes. Some of our comments below reflect comments we have made in a previous comment letters, as well as at the public workshop in February, and some comments are new.

1. **Revisions to the Common Practice figures and site class breaks are technically accurate and necessary, but would benefit from additional technical discussion**. New Forests recognizes that the Common Practice figures must be updated periodically to reflect updated data from the US Forest Service FIA system. However, we believe that the site class break chosen by the Forest Service to distinguish between "high" and "low" site was not correctly chosen and places the vast majority of working forests into "high" site class. We suggest that ARB consider discussing a more appropriate site class division with the US Forest Service and with stakeholders so that the landscape-level distribution of acreage in productive forestlands is more evenly distributed between the low and high site categories. We further suggest that ARB adopt a clear and consistent process for updating the Common Practice figures periodically, perhaps every five years as the USFS updates their FIA data.

2. **New equation 5.5 and the Logical Management Unit definition are not narrowly targeted to prevent non-additional projects.** The proposed changes will inaccurately prevent many

additional, high-conservation value projects on sub-areas of timberland ownerships where there is a legitimate reason for such areas to contain higher stocking levels than the broader timberland holding. Such reasons include natural disturbances, materially different forest types that are included within the same assessment area by the protocol, management by non-industrial private forest landowners who harvest timber not according to a defined forest management plan but for discrete and irregular cash flow needs, among other causes. We recommend further technical discussion in a work group to flush out the appropriate way to define a Logical Management Unit to more effectively screen for non-additional projects while avoiding "false negatives" that prevent enrollment of truly additional projects. In the past, we have proposed the following definition:

> "Logical Management Unit" or "LMU" means all landholdings or any subset of landholdings managed explicitly as a defined planning unit that the forest owner(s) and its affiliate(s) either own in fee or hold timber rights on, in which the landholdings or subunit of landholdings are within the same assessment area(s) where the project is located. An LMU may be characterized by its unique biological, geographical, and/or geological attributes, delimited by watershed boundaries and/or elevational zones, and/or unique road networks; by an area impacted by a natural disturbance such as a wildfire or windstorm; by distinct forest types (as defined in the USFS FIA program) that fall within the same assessment area; and/or by a distinct woodshed.
>
> For non-industrial landowners, the project area may be considered its own LMU. Following USFS FIA and California state law definitions, non-industrial landowners shall be defined as: (1) Native American tribes; or (2) individuals or corporate landowners who, together with their affiliates, own fewer than 50,000 acres and/or timber rights within the same assessment area(s) in which the project is located.

3. **Even-aged management and verification of point count stocking in Section 8.1(b)(2)(E).** The proposed language for verifying a forest's adherence to stocking and buffer standards when even-aged management takes place are not sufficiently explicit and lack the clear guidance required by verifiers. As currently drafted, the language does not follow the California Forest Practice Rules, and could lead to cost-prohibitive verifications of all even-aged harvest units. In discussions with ARB staff, they have acknowledged that this was not the intent of the language. Rather than adopting this version of the protocol with the current language and relying on future guidance, we strongly encourage ARB to remove this language and work to further refine the language in a work group process so that it better aligns with the intent of staff and the requirements of the California Forest Practice Rules.

4. **"Boots on the ground inventory" should be retained in modified form as a means of demonstrating project commencement date, or the minimum reporting period should be reduced to one month.** Previously, ARB accepted 'boots on the ground inventory' as a means of demonstrating a project's commencement date. The proposed protocol would only accept listing, change of ownership or easement recordation as evidence of project commencement. In practice, project listing will become the most frequent evidence of a project's commencement.

The data now required by ARB for listing is fairly detailed, and so much of a project can already be complete at the time of project listing. The Cap and Trade Regulation requires a minimum six-month reporting period. The combination of project commencement at listing and a minimum six-month reporting period will unnecessarily delay project enrollment: many projects would be able to verify existing carbon stocks soon after listing but will be forced to wait for the minimum six month reporting period. This delay will adversely affect the timing of offset supply.

We recognize that 'boots on the ground inventory' as project commencement may be difficult to adequately verify in some instances. However, we suggest the remedy is to simply tighten the criteria to ensure that such inventory was actually installed for the purpose of initiating a carbon project under the protocol.

We recommend that ARB either (a) accept "boots on the ground inventory" as a project commencement date IF the offset project operator or Authorized Project Designee can demonstrate through a contemporaneous written instrument that the inventory was specifically being implemented for the purposes of the ARB compliance offset protocol; or (b) allow a minimum reporting period of one month for forest projects.

5. **Disclosure requirements in the Protocol should not exceed disclosure requirements in the Cap and Trade Regulation.** Section 3.8 in the proposed Protocol states that projects must meet the regulatory compliance requirements set forth in Section 95973(b) of the Cap and Trade Regulation. In the very next clause, the Protocol states that the OPO or APD "is required to disclose in writing to the verifier any and all instances of non-compliance with *any legal requirement* associated with the project lands." 95973(b) is expressly limited to local, regional and national requirements for environmental impact assessments and all local, regional, 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". Asking for a broader scope of information in the Protocol that is non-actionable under the express terms of the Cap and Trade Regulation places the Protocol in conflict with the Regulation. As drafted, it could be read that OPOs, APDs, verifiers and offset purchasers are now required to diligence for securities laws violations related to the project lands, incidents of trespass by third parties, right of way disputes with neighbors, contractual disputes with a lessee hunting club, or similar legal matters not directly associated with the offset project area or activity. The proposed language would impose significant additional costs on all participants in the system for information that cannot actually be used by ARB because Section 95973 limits the scope of required regulatory compliance for offset issuance to applicable environmental, health and safety laws.

   Similarly, the proposed Section 7.2.1(a)(8) would require for annual reporting a "Statement as to whether the forest project and associated project lands have met and been in compliance with all local, state, or federal regulatory requirements during the reporting period. If not, an explanation of the non- compliance must be provided". This requirement is broader than the regulatory compliance required under the Protocol, which again is limited to environmental, health or safety laws that apply to the project.

We recommend amending Section 3.8 and 7.2.1(a)(8) to only refer to environmental and health and safety laws and regulations that apply based on the offset project location and that directly apply to the offset project.

6. **The Protocol should only require the name and contact information of the OPO, other forest owners and the APD, if applicable.** Section 7.1.1(a)(8) requires the listing of the name and contact information for all forest owners, "as well as third parties with existing property interests within the project area that may have an effect on the trees and standing timber located in the project area (e.g., mineral rights, timber rights, easements, rights of way, leases, etc.)". Section 7.1.1(a)(9) further requires the "name and mailing address of other parties with a material interest in the real property involved in the forest project." In some cases, the identification of third parties with property interests may be simple; in others impossible or prohibitively expensive, such as when mineral rights have been severed from the fee interest and subsequently transacted without recordation of the transaction in county records (a frequent occurrence). Either way ARB has a remedy for breach of the protocol against the OPO and forest owners, but (particularly in other states) not necessarily against third-party property right holders who did not sign attestations submitting to personal jurisdiction in the state courts of California. The Protocol wisely does not require such third party property right holders to sign the attestations with the OPO, as it would prevent the enrollment of most projects – there would be no way to get many minor easement holders to accept liability for a project that they do not control and does not benefit from. The OPO accepts liability even if third parties (such as a mineral rights holder) adversely affect the carbon stocks. This is an appropriate allocation of risk.

   Section 7.1.1(a)(9) would seem to encompass all individuals with a financial or security interest in the real property covered by a forest project, which in the case of publicly listed companies could run into the hundreds of thousands of shareholders. It also leaves open the question of what is a 'material' interest as opposed to 'immaterial'. The provision also could be read to apply to third-party easement holders, in which case the OPO could be required to disclose information that is not legally available to the OPO, such as the financial interests in a third-party privately-held company that holds a right-of-way across the project area.

   The information required in sections 7.1.1(a)(8) and (9) seems to require information that is not necessarily actionable by ARB (what use is knowing each and every utility easement or right of way easement holder?) but imposes significant costs on participants. In addition, both sections are drafted with significant ambiguities that would make it difficult to assess how to comply.

   We recommend amending 7.1.1(a)(8) to: (a) include holders of 'timber rights' in the category of 'forest owner' rather than in the category of 'third parties with existing property interests'; (b) require name and mailing address only for forest owners, not third parties with existing property interests; (c) require only names but not mailing addresses for third parties with existing property interests; and (d) when mineral rights have been severed from the fee, require only the name of the mineral rights holder as a matter of county record.

We recommend deleting 7.1.1(a)(9) as the requirement is overbroad and not related to a clear policy interest of the Protocol or Cap and Trade regulation.

7. **Suggested edits to the sequential sampling section; recommendations for improvement**. The following comments highlight issue in Section 8.1.1, itemized by 8.1.1 subsection:

   (a) The evaluation of needing to use an unpaired test should be clarified to be on a stratum basis where appropriate.

   (d) The selection of stands is applicable to unpaired tests.

   (e) The selection of plots is applicable to paired tests.

   (e)(2) Verification plots must reflect the variability in tree species, heights and diameters existing in a project area. This implies a multi-stage sampling design rather than a random plot design, which is an unnecessary complication. If, however, it is retained then the mulita-stage design should be directed as it would be more efficient than a strictly random plot selection.

   (e)(4) "…selected within a ~~stand~~strata,…"

   (f)(4) All tree heights in plots selected for sequential sampling must be measured. Suggest that this refer to total heights and that merchantable heights be allowed to use taper or regression functions as the measurement error associated with measuring merchantable heights may be greater than the prediction error of the model; and this is the approach used by FIA so it would be consistent with the common practice estimates.

   (l) "…partially pass the paired or unpaired test…"

   Equation 8.1: Last two lines should be "If result ≤ n," and "If result > n,"

   Table 8.1. Finally, the statistical theory for sequential sampling does not call for a minimum number of passing plots. Avoiding an aberration of result due to random sampling is ensured by the minimum number of plots to be sampled. It is appropriate to pass only one plot to stop the sequential sampling process.

8. **Project areas should not be limited to two adjacent Supersections.** Section 4 of the Protocol allows a project to extend across multiple assessment areas but only two adjacent supersections. There are many parts in the country where three or more supersection boundaries are in close proximity to one another, and a single ownership could span more than two adjacent supersections. Under the current language of the Protocol, such a landowner would be forced to split their property into multiple projects, thereby assuming additional costs with no additional benefit to the climate. Moreover, in parts of the country such as the Northeast land ownership is often fragmented between many small private and family forest owners. Many of these landowners would like to participate in a carbon project if they could collectively group their properties together in aggregation and share in the upfront development and verification costs.

Allowing projects to span multiple supersections would allow for greater participation of small landowners in the program and generate additional opportunities for greenhouse gas reductions.

9. **The look-back period for the high stocking reference (HSR) should be clarified.** Equation 6.6 of the protocol defines the high stocking reference (HSR) as 80% of the highest value for above-ground standing live carbon stocks per acre within the Project Area during the preceding 10-year period. However, if a landowner has recently acquired the land enrolled in the carbon project within the last 10 years, the look-back period should be limited to the length of time that the current landowner has owned the property. Current landowners who want to restore forestland or manage it more sustainably should not be unduly penalized by the management practices of previous landowners.

10. **CO2 conversion factors should be consistent throughout the Protocol.** ARB has done a good job of standardizing the conversion factors from carbon to carbon dioxide; however, in two places the conversion factor is still not consistent: on page 127 and on page 134 where it is stated as 3.664.

11. There is contradictory language in section on page 115 regarding whether sampling error should be calculated for each carbon pool or all carbon pools together.

12. On page 143, cubic feet/ac is a volume metric rather than a basal area metric.

13. For effective wildfire risk reduction, fuel reduction activities should be allowed to take place elsewhere on a property for the purpose of reducing wildfire risk on the project area.

Thank you for considering our comments.

Sincerely,

Brian Shillinglaw
Tim Robards
Emily Warms

New Forests Inc.