

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

FINAL DRAFT STAFF REPORT

Rule 2301 (Emission Reduction Credit Banking)

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I. SUMMARY

A. Reasons for Rule Development and Implementation

1. Background

In August 2008 the District's Governing Board adopted the Climate Change Action Plan (CCAP). The CCAP recognized the importance of climate change issues for District residents and businesses and identified opportunities for the District to take an active role in anticipating and addressing the challenges concerning climate change in the San Joaquin Valley.

The CCAP was developed and adopted as the District's proactive response to activities at the State level concerning climate change, including the passage and implementation of "California Global Warming Solutions Act of 2006" (AB32), designed to significantly reduce existing and future GHG emissions in California; and requiring the analysis of environmental impacts of new GHG emissions related to discretionary project approvals under the California Environmental Quality Act (CEQA). Regulations implementing AB32 are now largely in place, and are being implemented by CARB and other agencies. Additionally, analysis of a project's GHG emissions environmental impacts required by CEQA has been particularly difficult to implement as no state agency has provided definitive guidance on how to address GHG emissions impacts under CEQA.

The District's Governing Board, in adopting the CCAP, took a proactive approach to assist Valley businesses and residents address these requirements. The CCAP directed the Air Pollution Control Officer to develop guidance in several different areas, as his investigations found appropriate. The areas to investigate were: methods to guide the District and to assist land use agencies in addressing greenhouse gas (GHG) emissions as part of the California Environmental Quality Act (CEQA) process; development of a GHG emission reduction banking registry; enhancement of the existing emissions inventory process to include greenhouse gas emissions; and methods to administer voluntary greenhouse gas emission reduction agreements.

This staff report focuses solely on the development of a GHG emission reduction banking registry via amendments to Rule 2301 – Emission Reduction Credit Banking.

A District-administered mechanism to allow facilities to bank GHG emissions reductions generated within the San Joaquin Valley Air Basin will be beneficial to Valley residents and businesses for the following reasons:

- Recognizes high quality GHG emission reductions generated within the San Joaquin Valley Air Basin
- Allows banked GHG emission reductions to be retired as mitigation in the CEQA process as and if allowed by the lead agency under its own CEQA policies and procedures
- Provides a mechanism for the trading of banked GHG emission reductions
- Promotes the reductions of GHGs and associated criteria and toxic pollutants in the District
- Provides a measure of certainty for banked GHG emission reductions lacking in some other GHG registries due to the District's extensive experience in banking criteria pollutant emissions
- Provides a mechanism for persons to purchase and retire banked GHG emission reductions for societal benefit
- Allows banked protocol-based GHG emission reductions to be used for compliance offsets in the California Air Resource Board (CARB) cap-and-trade program, provided the CARB cap-and-trade regulation includes such provisions.

One especially important benefit of a District based GHG emission reduction banking program is that in addition to encouraging GHG emission reductions, it would result in the collateral benefit of decreasing criteria and toxic air contaminant emissions.

Emission reductions of GHGs are often brought about by employing a more efficient process, e.g. by installing a more efficient combustion device or by replacing a fossil fuel fired IC engine with an electric motor. In these cases, in addition to a decrease in GHG emissions, there would likely be a collateral reduction in criteria air contaminant emissions that would benefit the entire Valley that can be attributed to the use of a more efficient process. These types of emission reductions may also have a collateral reduction in toxic air contaminant emissions. Emission reductions of toxic air contaminant emissions would primarily benefit those persons who live or work near the location of where the emission reduction occurred.

2. Process used in developing draft rule amendments

To investigate the various issues concerning the development of a mechanism to bank GHG emission reductions, the District formed a diverse technical workgroup consisting of District staff, land use agency representatives, industry representatives, agricultural representatives, environmental group representatives, and other interested parties. The District asked these stakeholders to participate in this process to gather ideas and issues from as many and as varied perspectives as possible, and to allow the District to develop a program that had benefits for Valley residents and businesses. This

workgroup met several times in public meetings during late 2008 and early 2009, and engaged in a robust and frank discussion of pros and cons of establishing a carbon exchange. See summary of the stakeholder contributions during this process in Appendix A.

The workgroup investigated several areas of interest regarding a GHG emission reduction banking program, including:

- The differences between the CARB cap-and-trade regulation and a GHG emission reduction banking program. Succinctly, the CARB cap-and-trade regulation is a method to reduce actual GHG emissions by operating under a declining GHG cap, whereas GHG emission reduction banking is a method to preserve GHG emission reductions that are in excess of any GHG emission reduction requirement, including reductions required by the CARB cap-and-trade regulation.
- Potential uses of banked GHG emission reductions. Banked GHG emission reductions could possibly be used to provide mitigation in the CEQA process, as a means to comply with a GHG cap-and-trade program, or other purposes, such as voluntary purchase and retirement for societal benefit, or to mitigate the impacts of stand-alone events, or a person's carbon footprint.
- A review of other GHG emission reduction registration programs currently in existence was undertaken, including the Chicago Climate Exchange, New York Climate Exchange, Northeast Climate Exchange, Climate Action Reserve, and SCAQMD's SoCal Climate Solutions Exchange.
- Required elements of a District-administered GHG emission reduction banking program were discussed, including the establishment of criteria for GHG emission reduction banking, the use of CARB protocols, and the concept of additionality to quantify some GHG emission reductions. It was identified that some of the processes the District currently has in place for criteria pollutant emission reduction banking could be applied to GHG emission reduction banking.
- The advantages and disadvantages of development of a GHG emission reduction banking program. See a summary of these advantages and disadvantages in Attachment A. Please note that these discussions were those of a diverse workgroup, and the conclusions are not necessarily those of the District.
- Alternatives to the development of a District administered GHG emission reduction banking program were discussed, including the District's possible role in the Climate Action Reserve as a GHG emission reduction project verifier and/or providing technical assistance to project proponents quantify and mitigate their projects GHG emissions as part of the CEQA process.

A more detailed discussion of the above topics and workgroup members' various perspectives and conclusions are documented in the Report to the APCO Regarding the Development of the San Joaquin Valley Carbon Exchange, dated March 16, 2009, and available through the District website at www.valleyair.org.

While there was no consensus among all of the technical workgroup members, District staff's analysis of the information gathered during this public process led to their recommendation to the APCO to develop a mechanism to allow the banking of GHG emission reductions.

District staff believes that by developing a program that allows the issuance of banked GHG emission reductions for those projects that are not addressed by a CARB approved protocol, and those projects that are addressed by such protocols (as discussed below), the concerns of the technical workgroup will be satisfactorily addressed and the advantages of such a program can be realized to the benefit of Valley businesses and residents.

B. Discussion of draft rule amendments

The draft amendments to Rule 2301, Emission Reduction Credit Banking, incorporate a method to bank voluntary GHG emission reductions. While the CCAP indicated that such a system would be contained in a rule called the San Joaquin Valley Carbon Exchange, staff proposes that these provisions be incorporated into Rule 2301. A separate rule allowing the banking of GHG emission reductions is not required.

The goals of the draft amendments to Rule 2301 are to provide a mechanism to preserve voluntary high quality greenhouse gas (GHG) emission reductions.

The draft rule would allow the use of banked GHG emission reductions for any purpose and will not impose any restrictions on their use. Lead agencies may allow the use of such banked GHG emission reductions as mitigation in the CEQA process. The allowance of such mitigation is at the discretion of the lead agency and must conform to the lead agency's own CEQA policies and procedures. Note that the proposed rule amendments do not mandate that lead agencies allow the use of banked GHG emission reductions as mitigation in the CEQA process and are not intended to supersede any lead agency's CEQA discretion in any way.

The potential use of banked GHG emissions under the CARB cap-and-trade regulation will be subject to the requirements of that regulation. District banked GHG emission reductions are not currently allowed for use as compliance offsets in the CARB cap-and-trade regulation, as the District is not yet a CARB-approved GHG registry administrator. The District is in ongoing discussions with CARB regarding such an approval, but the proposed rule amendments will position us to quickly take advantage of CARB's approval, when received.

The draft amendments to Rule 2301 allow for GHG emission reductions that fall into two different categories to be banked with the District, as discussed below.

Non-protocol GHG Emission Reductions

In quantifying this type of GHG emission reduction the District would use the criteria in Rule 2301, i.e. that the emission reductions be real, enforceable, permanent, surplus, and quantifiable. The District has a tremendous amount of experience in using these criteria and validated techniques to quantify criteria pollutant emissions reductions, and would simply be expanding this rule to extend the same type of time-tested analyses to quantifying and validating GHG emissions reductions.

The District anticipates that one probable use of banked ERCs would be retirement to mitigate project related GHG emissions during the CEQA process. Under CEQA, the lead agency for a particular project has discretionary authority to determine what mitigation measures are appropriate and feasible.

When serving as the Lead Agency in the CEQA process, the District would generally allow retirement of banked GHG ERCs that were quantified using either of the methods below as a method to mitigate a project's GHG emission impacts.

The District proposes to quantify and identify such non-protocol emission reductions using either of two different methods.

1. The first method would be to quantify greenhouse emission reductions that are surplus of any specific greenhouse emission reduction. This method would allow the banking of greenhouse gas emission reductions that occur as a collateral benefit of a requirement that did not specifically greenhouse gas emission reduction. Such emission reduction credits would be identified and labeled as being surplus and additional of all greenhouse gas emission reduction requirements.

Lead agencies that determine the significance of greenhouse gas emission increases for purposes of CEQA consistent with the method recommended in District policy "Guidance for Valley Land-Use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA" dated 12/17/09, or other CEQA program based on compliance with AB 32, may choose to allow such emission reductions to be used as mitigation as these emission reductions are consistent with the basis of that policy, i.e. that the emission reductions are surplus those required by AB32.

2. The second method would be to quantify greenhouse gas emission reductions that are not caused by any regulatory requirement. This method is being created in response to comments (see Attachment C) and in recognition that many CEQA lead agencies in the San Joaquin Valley have not adopted our CEQA policy, and in fact may not have adopted any GHG CEQA policy. Such lead agencies may desire or require access to GHG emission reduction credits that are surplus and additional to all requirements. This method fills that need and

would allow the banking of greenhouse gas emission reductions that were not caused by any requirement, including rules or regulations designed to regulate other concerns, and that did not specifically require a reduction in greenhouse gas emissions. This type of emission reduction credit would be identified and labeled as being surplus and additional of all requirements.

Lead agencies that determine the significance of greenhouse gas emission increases for purposes of CEQA that is not consistent with the policy mentioned above may choose to allow or require the second type of emission reductions as mitigation in the CEQA process as these emission reductions would be surplus of any emission reduction that would occur due to any requirement.

GHG emission reductions achieved by a facility to comply with the CARB cap-and-trade regulation are required by the regulation, i.e. the facility is relying on the reduction to satisfy, at least in part, the requirements of the CARB cap-and-trade regulation. As such, these reductions are not surplus and cannot be banked after the baseline date of the Cap and Trade program.

Excluding GHG emission reductions achieved in compliance with the CARB cap-and-trade regulation ensures that the reductions made to comply with the cap-and-trade regulation are not double counted.

Finally, GHG emission reductions that have been previously banked with an entity other than the District or previously used as mitigation are not surplus and would not be eligible for banking.

Protocol-based GHG Emission Reduction Credits

In addition to the types of projects described above, stakeholders would be able to bank GHG emission reductions that rely on a CARB approved GHG emission reduction project protocol. CARB approved GHG emission reduction project protocols include detailed procedures on how to quantify GHG emission reductions for specific project types and specific criteria to ensure that the emission reductions are additional.

Emission reductions quantified using such protocols (known as compliance offsets) can be used to a limited degree by facilities to comply with the AB32 cap-and-trade regulations as adopted on Dec 16, 2010 if the reductions are registered with a qualified third party offset program. Furthermore, to be interchangeable with other emission reduction registries, e.g. Climate Action Reserve or the Chicago Climate Exchange, GHG emission reductions would likely have to be quantified pursuant to a CARB approved emission reduction project protocol.

As specified by CARB, for an emission reduction to be additional it must not be due to (either directly or indirectly) a routine replacement of equipment or due (either directly or indirectly) to any regulatory requirement, including any requirement of AB32 or any local, State, or Federal rule requirement. The requirement that GHG emission

reductions be additional means that the actions that generate the emission reduction go beyond any type of requirement that would have the effect (even if not the target of the requirement) of reducing GHG emissions and is due primarily with the intent of generating GHG emission reductions.

As of December 2011 there are four currently approved CARB GHG emission reduction project protocols: ozone depleting substances projects, livestock projects, urban forests projects, and U.S. forest projects.

The CARB cap-and-trade regulation allows the use of GHG compliance offsets registered with CARB or with qualified third party offset programs as a means of compliance. California Code of Regulations Article 5, Subarticle 14, section 95990 of the regulation specifies criteria that third party offset programs must meet. One of these criteria is that “the program’s primary business is operating an offset project registry for voluntary or regulatory purposes”. While a District program may not meet these criteria, regulation or policy may be amended in the future to allow District’s to operate a qualified third party offset program for Cap and Trade purposes. This rule will position the District to respond quickly when such a change is made.

In general, the development and CARB approval process for GHG emission reduction project protocols (i.e. approved by incorporation into the cap-and-trade regulation) is a very involved and time consuming process. Additional protocols are currently being developed by the Climate Action Reserve and the California Air Pollution Control Officers’ Association that may be submitted for CARB incorporation into the regulation in the future.

If Valley businesses or other local entities determine that there is a need for a new CARB approved GHG emission reduction project protocol (to allow such emission reductions to be used for compliance in the CARB cap-and-trade regulation compliance), under this rule the District could develop such a protocol and submit it to CARB for their approval. Due to the District’s extensive experience with criteria pollutant emission reduction banking and its proactive approach to providing Valley businesses and residents with assistance in meeting California’s climate change issues, we believe that the District could develop such protocols that would address Valley business and residents’ concerns in a timely and efficient manner.

GHG emission reductions that are quantified using CARB approved GHG emission reduction project protocols are also intended to be interchangeable with GHG emission reductions in other registries.

CARB approved protocol GHG emission reductions that have been previously banked with an entity other than the District or previously used as mitigation are not surplus and would not be eligible for banking.

Finally, we should note that reductions banked under the non-protocol requirements of the rule would be eligible for re-examination and potential re-banking after a protocol is developed for that type of reduction, to the extent allowed by the approved protocol.

C. Implementation of Draft Rule Amendments

Applications to bank GHG emission reductions will take the same form as applications that are currently used for the more traditional criteria pollutant emission reductions. Such applications will be subject to the existing fee structure in Rule 3060 (Emission Reduction Credit Banking Fee). This rule requires that for Emission Reduction Credits (ERCs) to be issued for a project, that a filing fee and an analysis fee be paid for the issuance of an ERC. Currently, these fees are as follows: a filing fee of \$759, and an analysis fee of \$100/hour (the \$759 is a deposit towards the hourly processing fees, and is also the minimum fee for analyzing an ERC banking application). Subsequent transactions for a particular ERC are only subject to a lesser filing fee of \$71 per certificate.

The District currently has a computerized system in place to issue, transfer, and track the use of ERCs for affected pollutants. Such ERCs are issued in an amount (lbs) per calendar quarter. All valid ERCs are included in an ERC registry that is available on the District's website.

This existing system, with appropriate modifications, will be used to issue, transfer, retire, and track the use of GHG ERCs issued as CO₂ equivalents. The computerized system will be revised to reflect that GHG ERCs are issued on annual amounts (not quarterly) and in units of metric tons (1,000 kg) per year.

In addition, GHG ERCs that are based on protocols will be clearly noted to reflect the CARB-approved protocol upon which they are based, and GHG ERCs that are not based on a protocol will be clearly indicated as being either surplus of greenhouse gas reduction requirements or surplus of all requirements. These separate categories of ERCs will be tracked and reported separately on the District website, so that buyers and sellers of such credits will have a clear indication of the availability of various types. In addition, the District will track, and will display on the District Website, purchase prices of all transactions.

D. District Authority

On August 21, 2008 the San Joaquin Valley Air Pollution Control District's Governing Board adopted the Climate Change Action Plan (CCAP). One of the items that the CCAP authorized was the development of a mechanism, through a public process, to allow facilities to preserve greenhouse gas emission reductions that occurred in the District.

These draft amendments to Rule 2301 are implementing this mandate of the District's Governing Board. In general, the SJVAPCD's legal authority to adopt rules is based in the California Health and Safety Code Sections 39002, 40000, and 40001.

Unlike most District rules, the draft amendments to Rule 2301 do not create any new requirements for regulated sources – they are voluntary in nature. The draft amendments are designed to assist Valley residents and businesses who choose, or are required by

some third party or regulatory requirement, to mitigate GHG emissions. The draft amendments would allow facilities to preserve GHG emission reductions and allow for the trading and retirement of such emission reductions. The draft amendments do not require that facilities bank GHG emission reductions, nor do they require that such reductions be used in any way, such as to mitigate emissions increases.

Separately, California CEQA guidance allows for lead agencies to develop programs to address the cumulative impacts of projects, provided such a program itself is subject to a CEQA review. The draft amendments to Rule 2301 could be part of a program developed by a lead agency to address the cumulative impacts of projects GHG emissions under CEQA, and in fact the District is proposing these changes as an important part of the District's efforts to address such situations.

II. CURRENT AND PROPOSED REGULATIONS

A. Existing Rule 2301

Rule 2301 (Emission Reduction Credit Banking) was adopted September 19, 1991 and was last amended on December 17, 1992. The purpose of the rule is to:

- Provide a regulatory mechanism for sources to store ERCs for later use as offsets where allowed by District, state, and federal rules and regulations, and
- Provide a regulatory mechanism for sources to transfer ERCs to other sources for use as offsets as allowed by Rule 2201 (New and Modified Stationary Source Review Rule), or state and federal rules and regulations, and
- Define eligibility standards, quantitative procedures and administrative practices to ensure that ERCs are real, permanent, quantifiable, surplus, and enforceable.

The current rule applies to all transactions involving the storage, transfer, or use of ERCs of affected pollutants. Other provisions contained in the rule include eligibility requirements, ERC Certificate application procedures, registration of ERC Certificates, and administrative requirements.

The current rule allows the banking of emission reductions of pollutants and their precursors for which air quality standard exist. As there is not an ambient air quality standard for GHGs, the current rule does not allow the banking of GHG emission reductions.

B. Summary of Draft Amendments to Rule 2301

Section 1.0 Purpose

Subsection 1.1 will be amended to indicate that this subsection applies to affected pollutants only. Affected pollutants, as defined in Rule 2201, do not include greenhouse gasses.

New subsection 1.2 will be added to indicate that the purpose of Rule 2301 has been expanded to allow the banking and transfer of greenhouse gas emission reductions and to define the standards for banking greenhouse gas emission reductions.

Section 2.0 Applicability

The applicability of Rule 2301 will be expanded to apply to greenhouse gas emission reductions as well as affected pollutant emission reductions. Subsection 2.1 will be amended to indicate that the rule also applicable to the storage, and transfer of banked greenhouse gas emission reductions.

Section 3.0 Definitions

Several new and revised definitions will be included to define terms used in the registration of greenhouse gas emission reductions, as discussed below.

A new definition of affected pollutant will be added. This definition will refer to the definition of affected pollutant in Rule 2201, except that greenhouse gasses will be explicitly excluded. While greenhouse gasses are not currently considered to be affected pollutants, a recent greenhouse gas endangerment finding by EPA may result in greenhouse gasses being considered to be affected pollutants in the near future. As such, greenhouse gasses will be excluded from the definition of affected pollutant solely for the purposes of Rule 2301.

A new definition of carbon dioxide equivalent (CO₂e) will be added to the rule. The term carbon dioxide equivalent will be used to normalize the global warming potential of defined greenhouse gasses to the global warming potential of carbon dioxide.

The definition of Emission Reduction Credits (ERCs) will be revised to include both affected pollutant and greenhouse gas emission reductions. It will be revised to specify that such emission reductions can also be used for tradeoffs or offsets, CEQA mitigation, or other purposes. The use of banked GHG emission reductions will not be limited by the rule.

A new definition of greenhouse gas will be added. This definition includes six greenhouse gasses: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).

Section 4.0 Eligibility of Emission Reductions

Subsections 4.1, 4.2, and 4.4 will be revised to indicate that these existing subsections apply to affected pollutant emission reductions.

New subsection 4.5 will be added to specify the eligibility requirements for greenhouse gas emission reductions.

Subsection 4.5.1 will require that the GHG emission reductions, except as allowed by a specific CARB approved GHG emission reduction project protocol, actually occurred after January 1, 2005.

January 1, 2005 was chosen because this date is immediately after the 2002 – 2004 baseline period used in the AB32 scoping plan to determine baseline emissions that were used to project year 2020 business as usual emissions, that is, the level of emissions that would occur in the absence of any of the control measures called for in AB32. The difference between 2020 projected emissions and 1990 emissions is the quantity of greenhouse gas reductions called for in the AB32 scoping plan.

Disallowing greenhouse gas emission reductions occurring before January 1, 2005 to be banked ensures that the emissions were not included in the baseline period used in the AB32 scoping plan.

Subsection 4.5.2 will require that the GHG emission reductions have occurred within the District. The CCAP mandated that the District develop a program to bank GHG emission reductions that occurred within the District. GHG emission reductions that occurred outside of the District are beyond the authority of the District, i.e. the District could not readily determine that the emission reductions occurred. As GHG emission reductions will generally be made enforceable via a District permit or contract, the District does not have the authority to impose requirements on equipment or operations outside of its boundaries. In addition, the District hopes to benefit from collateral reductions in criteria pollutants as entities reduce GHG emissions, and requiring the reductions to occur in the Valley assures this benefit.

Subsection 4.5.3 requires that GHG emission reductions, except for GHG emission reductions quantified pursuant to a CARB approved protocol, be real, surplus, permanent, quantifiable, and enforceable. These are the same five criteria required to the banking of affected pollutant emission reductions.

Cap and trade facilities will have to reduce their 2013 emissions to levels that are based on the respective industry-sector's 2012 emissions. Subsection 4.5.3.1 clarifies that reductions that occur on or after January 1, 2012, are not surplus, because such reductions are already included in the cap and trade calculations and reduction requirements.

Subsection 4.5.3 also establishes two paths for banking surplus GHG emissions reductions, for the reasons discussed above, and in the responses to comments in Attachment C:

Subsection 4.5.3.3 allows greenhouse gas emission reductions that occur due to an action taken by a facility that is not part of any GHG reduction requirement to be eligible for banking. Such emission reduction credit certificates are required to be identified and labeled as meeting this criterion.

Subsection 4.5.3.4 allows greenhouse gas emission reductions that occur due to an action taken by a facility that is not part of any requirement (including those requirements that are addressing other concerns and did not specifically require a GHG reduction) to be eligible for banking. Such emission reduction credit certificates are required to be identified as meeting this criterion.

Subsection 4.5.4 specifies how GHG emission reductions are calculated, i.e. as the difference between the average annual GHG emissions before the project (based on the 24 consecutive month period immediately prior to when the emission reduction occurred, or another 24 month period in the 60 months prior to the date the emission reduction occurred if determined by the APCO as more representative of normal source operation) and the potential GHG emissions after the project.

Subsection 4.5.5 requires that when the GHG emission reduction is created by a non-permittable operation, the source must enter into a legally binding contract with the District that ensures the emission reduction will be enforceable and will continue to occur, as specified in the rule.

Section 5.0 ERC Certificate Application Procedures

Subsection 5.3 will be revised to indicate that for a particular emission reduction, a single ERC application can be submitted to bank emission reductions of affected pollutants and greenhouse gases.

Subsection 5.5 will be revised to indicate that ERC applications for greenhouse gas emissions reductions that occurred after the end of the baseline period on which AB 32 reduction goals are based, namely January 1, 2005, and before the rule amendment date are due by six months after the rule amendment date.

New subsection 5.6 will be added to specify that entities that were issued GHG ERCs that did not rely on a CARB approved emission reduction project protocol may apply to have the ERC re-issued using a CARB approved emission reduction project protocol when and if such protocols become available. Such applications will be subject to the requirements of the protocol and will be subject to filing and evaluation fees pursuant to Rule 3060.

Section 6.0 Registration of ERC Certificates

New subsections 6.14 and 6.15 will be added:

Subsection 6.14 requires that greenhouse gas emission reductions be banked as metric tons (1,000 kg) of CO₂e per year. These units are consistent with those used by other GHG emission reduction registries.

Subsection 6.15 requires that GHG emission reductions that were quantified using CARB approved protocols include a notation that specifies the protocol being used. This section also requires that emission reductions that meet the

requirements of subsections 4.5.3.3 or 4.5.3.4 be identified and labeled as meeting the respective criteria.

Section 7.0 Withdrawal, Transfer, and Use of ERCs

New subsection 7.5 clarifies that the proposed rule amendments do not define or mandate any particular uses of banked greenhouse gas emission reductions.

III. RULE DEVELOPMENT PROCESS

District staff conducted a scoping meeting in November, 2008, in which implementation of the Climate Change Action Plan (CCAP) was discussed.

A technical workgroup consisting of District staff, land use agency representatives, industry representatives, agricultural representatives, environmental group representatives, and other interested parties was formed to study the feasibility and need for the San Joaquin Valley Carbon Exchange (SJVCE). This group met three times in late 2008 and early 2009.

As part of the rule development process, District staff conducted public workshops to present and discuss proposed amendments to Rule 2301. The series of workshops took place during the second quarter of 2009. The comments received from the public, affected sources, interested parties, California Air Resources Board (ARB), and EPA, during the public workshop process have been incorporated into the draft rule as appropriate.

The initial proposed rule amendments and final draft staff report with appendices were published in September, 2009, with the public hearing to consider the adoption of proposed rule amendments to Rule 2301 by the District Governing Board scheduled to take place in November 2009. However, subsequent public comments led to the rule being held back by the District, to provide an opportunity to review recent court cases and to observe developments in CARB's Cap and Trade regulatory process. CARB adopted its Cap and Trade regulation in October 2011 and so the District is proceeding with the Rule adoption at this time.

The District held another workshop on September 7, 2011, and received further comments that are addressed in this staff report and in Attachment C. Changes made to the rule since the September 7 workshop are not considered significant, and will be made available for public review and comment for at least 30 days prior to the proposed adoption date on December 15, 2011.

IV. COST EFFECTIVENESS AND SOCIOECONOMIC IMPACT ANALYSIS

Pursuant to State law, the District is required to analyze the cost effectiveness of any proposed rule amendment that implement Best Available Retrofit Control Technology

(BARCT). The draft amendments do not add BARCT requirements and therefore are not subject to the cost effectiveness analysis mandate.

Additionally, state law requires the District to analyze the socioeconomic impacts of any proposed rule amendment that significantly affects air quality or strengthens an emission limitation. The draft amendments will have neither effect, and is therefore not subject to the socioeconomic analysis mandate.

V. RULE CONSISTENCY ANALYSIS

Pursuant to CH&SC Section 40727.2 (g) a rule consistency analysis of the draft rule is not required. The draft rule does not strengthen emission limits or impose more stringent monitoring, reporting, or recordkeeping requirements.

VI. ENVIRONMENTAL EFFECTS

The purpose of this project is to amend existing District Rule 2301 (Emission Reduction Credit Banking), which was last amended by the District's Governing Board on December 17, 1992. The draft amendments incorporate a method to bank voluntary GHG emission reductions. This project would provide a mechanism to preserve voluntary high quality greenhouse gas (GHG) emission reductions.

Pursuant to the California Environmental Quality Act (CEQA), District staff has reviewed the possible environmental impacts of the proposed rule amendments. District staff concludes that there is no substantial evidence in the whole record before the District that the proposed amendments to Rule 2301 would cause any adverse effects on the environment. As such, District staff concludes that it can be seen with certainty that the proposed amendments to Rule 2301 and the use of banked GHG emission reduction credits to mitigate project specific GHG emission impacts will not have any significant adverse effect on the environment. However, in an effort to avoid future delay in implementation of this important project, District staff prepared an environmental impact report (EIR) for Board approval supporting adoption of the proposed project.

Approval of the draft amendments does not change the meaning of current rule language having to do with banking of criteria pollutants, and neither the voluntary banking of, nor the eventual use of, banked GHG emission reduction credits to mitigate project specific GHG emission impacts, would impose new regulatory requirements. Thus, there are no project specific environmental impacts. Global climate change is the only potentially affected environmental resource. Therefore, consistent with California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15006 (Reducing Delay and Paperwork) the scope of the EIR focused on potential greenhouse gas emission impacts.

The draft EIR was published on August 8, 2011 and the comment period closed on September 26, 2011. All comments received have been addressed, and the EIR will be

presented to the board for their consideration on January 19, 2011, the same date proposed for adoption of Rule 2301.

VII. REFERENCES

San Joaquin Valley Air Pollution Control District – Climate Change Action Plan -
Adopted August 21, 2008

(http://www.valleyair.org/Board_meetings/GB/agenda_minutes/Agenda/2008/August/Item%208/Agenda%20Item_8.pdf)

Climate Change Action Plan Staff Report - November 2008

(http://www.valleyair.org/Programs/CCAP/CAPP%20Staff%20Report%202008Nov12_re_titled.pdf)

Report to the APCO Regarding the Development of the San Joaquin Valley Carbon
Exchange March 16, 2009

(<http://www.valleyair.org/Programs/CCAP/SJVCE%20program%20final%20report%20to%20APCO%203-16-09.pdf>)

California Global Warming Solutions Act of 2006 (AB32)

(http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.pdf)

AB32 Scoping Plan (<http://www.arb.ca.gov/cc/scopingplan/scopingplan.htm>)

ATTACHMENT A

Advantages and disadvantages of developing a mechanism to register GHG Emission Reductions identified by the technical workgroup

Please note that the following thoughts and conclusions do not necessarily reflect the views of District staff – they represent the varied perspectives of members of public agencies, environmental groups, business groups, and many other interested parties.

Advantages of the development of a District administered GHG emission reduction registration program

- The program would be purely voluntary.
- It would allow Valley businesses and other entities to obtain credit for voluntary projects that generate GHG emission reductions, and that generate early reductions in GHG emissions in advance of regulatory requirements.
- By providing a mechanism to register GHG emission reductions with the District, the program can promote early local reductions of GHGs (and collateral criteria and toxic air pollutant emissions) in the San Joaquin Valley. The associated emission reductions of criteria and toxic air pollutant emissions can help mitigate the impacts air pollution has on all Valley residents and can aid in bringing the District into attainment with the ambient air quality standards.
- Retirement of registered GHG emission reductions may be used as mitigation for a projects GHG emissions as part of the CEQA process. The retirement of locally occurring GHG emission reductions that were registered with the District may increase their credibility as mitigation in the CEQA process.
- Registered GHG emission reductions may be retired by an individual or an organization as a means to reduce that entities “carbon footprint”.
- With some GHG registries there is uncertainty involved with many of the emission reduction projects. It is sometimes difficult to judge whether the emission reductions registered in these other programs are indeed real.
- The District’s extensive experience (over 20 years) in banking criteria pollutant emission reductions can readily be extended to registering GHG emission reductions. This experience can provide a high level of certainty that the GHG emission reductions are valid. Additionally, the proximity of District staff to such emission reduction projects will allow easy verification of the emission reductions.
- The District as the “local” air regulatory agency can provide better and more responsive service to applicants than larger statewide or nationwide GHG emission reduction registries.

- Pending development of the California Assembly Bill 32 – California Global Warming Solutions Act of 2006 (AB32) cap-and-trade program by CARB, the retirement of registered GHG emission reductions that are additional and quantified using a CARB approved GHG emission reduction project protocols may be able to be used to a limited degree to comply with the AB32 cap-and-trade program. Details on the use of registered GHG emission reductions for AB32 compliance will be addressed in the cap-and-trade rulemaking process.

Disadvantages of the development of a District administered GHG emission reduction registration program

- The proposed program, like other emissions trading programs, would facilitate the retirement of registered GHG emission reductions as mitigation for a project. Some believe that allowing the retirement of previously registered emission reductions does not truly mitigate a projects emission increase because the emission reductions to be retired occurred prior to and independent of the project's emission increase. Instead of using retirement of registered GHG emission to provide mitigation, contemporaneous GHG emission reductions should be required.
- Other existing GHG registries are currently in place that allow facilities in the San Joaquin Valley to register GHG emission reductions. As such, there may not be a need for a District administered GHG emission reduction registry.
- While some of the existing GHG registries may allow the banking of questionable GHG emission reductions, the Climate Action Reserve appears to have the greatest number of safeguards in place to ensure that GHG emission reductions must be real, additional, etc. in order to qualify for registration. Emission reductions registered in the Climate Action Reserve must be quantified using CARB approved protocols. The use of such protocols would generally ensure that the emission reductions are real.
- The Climate Action Reserve has been in existence since 2006. To date the Climate Action Reserve has received applications for 32 projects and six have been issued. This relatively low amount of activity may be indicative of the low demand for a GHG registry in general. There may not be sufficient demand for a District administered GHG emission reduction registry.
- Administration of a GHG emission reduction registry may tax District resources, especially given all of the current mandates of the District, especially Title V permitting and agricultural permitting for small sources due to the upcoming change to the major source threshold, permitting activities related to compliance with new rules, etc.
- Administering the SJVCE program could be a distraction from the District's core mission of regulating criteria air pollutants, and as a result local air quality could suffer.

- The development of project protocols and receiving CARB approval is an involved and time consuming process that could tax District resources. However, if the proposed rule amendments are developed, there may be ways to minimize the impact on District resources regarding the development of new project protocols. These include the pooling of resources with other APCDs/AQMDs, coordination through CAPCOA, and to only develop new project protocols if there is a sufficient demand indicated from project proponents.
- The cost of developing the draft rule amendments would indirectly be born by the current permit holders as these activities would be funded by the current District budget. While it is understood that individual applicants would reimburse the District for time expended in registering a particular GHG emission reduction, other administrative costs, including the rule development process itself, would be born by the District, and by association, regulated entities. These costs would unfairly be passed onto stationary sources.

ATTACHMENT B

SUMMARY OF COMMENTS AND RESPONSES FROM THE WORKSHOP HELD ON June 30, 2009

EPA comments:

None received.

ARB Comments:

1. **COMMENT:** Section 1.2.1: (a) In order to generate additional reductions for use in a cap-and-trade program, offsets used for compliance purposes (instead of an allowance) must come from an activity that will not generate a compliance obligation in the cap-and-trade program. Under this concept, capped sources would not be eligible to generate compliance offsets. Therefore, voluntary GHG emission reductions from such activities registered by the District would automatically be ineligible. Once a cap-and-trade program is in place, reductions made by capped sources would be neither surplus nor additional, and so should not be considered voluntary reductions. (b) Thus far, ARB has approved three protocols for voluntary purposes only. Any use of these protocols to generate compliance offset credits would need to be adopted as part the California cap-and-trade rulemaking. (c) It is also important to note that in addition to using approved protocols for generating compliance offsets, reductions credited under CARB's cap-and-trade program will need to meet very rigorous requirements for verification which will also be established during the cap-and-trade rulemaking process.

RESPONSE: The draft amendments provide a mechanism to bank two different types of GHG emission reductions – those quantified using a CARB approved protocol, and those not quantified using a CARB approved protocol. The draft rule does not make any statements that either type of such reductions can be used as compliance offsets in CARB's upcoming cap-and-trade program. We understand that the use of any GHG emission reductions for compliance with the CARB cap-and-trade program will be subject to the requirements of such a program. We understand that GHG emission reductions not quantified using a CARB approved protocol and approved for use in the cap-and-trade program will not be allowed as compliance offsets in the cap-and-trade program. However, such non-protocol emission reductions have other uses, including but not limited to, their retirement as a mitigation in the CEQA process.

2. **COMMENT:** Section 1.2.2: California is in the process of designing its cap-and-trade program. Whether or not GHG credits under the District's program would be recognized in a California cap-and-trade program for use as compliance offsets would need to be determined through the State rulemaking process. Any reductions made by sources covered by the cap-and-trade program reduce the

compliance obligation for those sources in the program and should not be available for other uses.

RESPONSE: The draft amendments require that GHG emission reductions be surplus. As a result, for sources covered by a cap-and-trade program, GHG emission reductions that are claimed by a facility in meeting their GHG emission cap would not be eligible for GHG banking. As such, only GHG emission reductions that are surplus of the upcoming CARB cap-and-trade program will be banked pursuant to the draft amendments. Also, see response 1.

3. **COMMENT:** Section 1.2.3: We are in the process of defining these same standards, requirements and criteria for compliance offsets within the California cap-and-trade program. Depending on ARB's definitions, District approved credits may not be eligible for use in the California cap-and-trade program. Also, as described in page 4 of the Draft Staff Report, "*Emission reductions would not be required to be additional, i.e., GHG emission reductions that occur as a collateral benefit of another requirement may qualify for registration, provided they are surplus of existing regulations.*" Therefore, those credits would not meet the test of additionally for offsets that would be required under AB32 program for compliance-based offsets.

RESPONSE: See response 1.

4. **COMMENT:** Section 3.8: The definition and proposed usage of ERCs, as defined by the District, appears overly broad to be applicable for use as a GHG compliance offset in a California cap-and-trade program.

RESPONSE: See response 1.

5. **COMMENT:** Section 4.5.4: The determination of historical emissions runs a risk of resulting in data manipulation that could magnify average historical emissions by an affected source. In this case, the emission reduction credits generated could be inflated and not representative of actual emissions. ARB is still the process of determining how additionally and baselines should be calculated for compliance offsets in a cap-and-trade program. Nevertheless, staff believes that ARB's methodology for calculating baseline and additionally is likely to be more restrictive than the District's proposed rule language.

RESPONSE: The calculation procedure in section 4.5.4 states that the emission reduction is the difference between the historic actual emission before the project and the potential to emit after the project. We do not see how this calculation methodology could lead to "inflated" actual emission reductions. In fact, this calculation methodology is similar to that used for affected pollutant emission reductions that has been in place since 1992. We have not seen any evidence that using this type of calculation methodology results in the inflation of banked affected pollutant emission reductions and therefore do not expect such problems

with GHG emission reductions. On the other hand, our analyses will result in issuing credit for reductions that have occurred, and have been demonstrated to have occurred.

6. **COMMENT:** Section 4.5.6: (a) A non-permitted source in the District's jurisdiction could still be a capped source or contained within a capped sector subject to ARB's cap-and-trade regulation. In this case, the non-permitted source in the District's jurisdiction would be ineligible for generating compliance offsets. (b) Emissions calculation methods (including emission factors) should be defined before the issuance of any ERCs (if not provided in ARB's approved protocols). (c) The term "reasonable expected life" for applicable projects, along with the duration of the reduction period for eligible sources should be more carefully defined to ensure the enforceability of this provision. (d) For emissions that are land use dependent, such as agricultural waste burning, a deed restriction that prohibits zoning changes should be included to ensure the permanency of emissions reductions. (e) The District should consider enforcement provisions to address circumstances when GHG credit projects are not producing committed emissions reductions.

RESPONSE: Pursuant to Section 8.5, when the District makes its preliminary decision on GHG emission reduction banking application, the preliminary decision is published in a newspaper of local and general circulation, and also forwarded to EPA, CARB, and the applicant. With this process we are documenting the basis of our preliminary decision, including all emission factors and calculations used.

The criteria in Section 4.5.6 that the emission reduction must continue for the reasonable expected life of the equipment requires that as long as the equipment that is generating the emission reduction is operable and enforceable by a legally binding contract with the District that the GHG emission reduction is eligible for an ERC. If the equipment that is generating the emission reduction is no longer operable, the facility would be in breach of the contract with the District. As such, the District could take enforcement action and determine that the emission reductions are no longer valid.

Additionally, such a contract would impose any restrictions on the use of land or equipment that was used to generate a GHG emission reduction that are necessary to ensure the long-term existence of the reduction. If deed restrictions are found to be necessary for such a purpose, they will be employed.

Also, see response 1.

7. **COMMENT:** Section 7.5: At this point, there is no assurance that District registered GHG emission reductions will be recognized under an ARB cap-and-trade program; therefore, language in this provision should clarify that credits generated under this rule would not to be available for complying with a California cap-and-trade program, unless otherwise provided for in the California regulation.

RESPONSE: District staff concur. Section 7.5 has been revised to add the following “Use of banked greenhouse gas emission reductions for compliance with any State or Federal greenhouse gas regulation will be subject to the requirements of such regulations.”

Industry Comments:

California Cotton Ginners and Growers Associations (CCGGA)

Center for Biological Diversity (CBD)

Dairy Cares (DC)

Earthjustice, (EJ)

Kern Oil (KERN)

Silgan Containers Mfg. Corp. (SC)

Western Agricultural Processors Association (WAPA)

8. **COMMENT:** We request that the District provide further clarification of its use of the terms “surplus” and “additional” in connection with eligibility for emission reductions credits from criteria pollutant emissions and GHG emissions. (DC)

RESPONSE: The term surplus, as used in Rule 2301 means that the emission reduction of a particular pollutant is in excess of any emission reduction of that pollutant that is currently required, or is identified as being required in the future for a particular type of equipment. For example, NOx emission reductions from a boiler that reduce emissions to the level required by a current or upcoming District Rule would not be surplus.

The term “additional” is not an eligibility criteria in the draft amendments. Therefore, except as required in specific CARB approved protocols, GHG emission reductions banked pursuant to amended Rule 2301 will not be required to be additional.

Notwithstanding the above, generally speaking, for an emission reduction to be additional, it has to have occurred primarily due to the financial incentive due to generating the GHG emission reduction. Emission reductions due to any regulatory requirement (even as a collateral benefit) or due to normal business activity are typically not additional.

9. **COMMENT:** We suggest the District clarify that new projects, which satisfy California Air Resources Board (CARB) protocols for quantifying GHG reductions, or for which the District has determined that reductions are “real, additional, quantifiable and enforceable,” would be eligible to bank GHG reduction credits. (DC)

RESPONSE: For emission reductions that are not quantified using a CARB approved protocol, the emission reductions will eligible for banking if the emission reductions meet all of the eligibility criteria in the draft rule, including the requirements that the emission reductions occurred after January 1, 2005 and the

emission reductions are real, surplus, quantifiable, permanent and enforceable. For such emission reductions, credit is only available if the emission reduction occurred after January 1, 2005. New equipment that generates GHG emissions that is installed after January 1, 2005 that includes an inherent GHG reduction technology will not be eligible for banking as there is actually an emission increase and not an emission reduction.

For emission reductions that are quantified using a CARB approved protocol, emission reductions will qualify for banking provided that they meet all criteria in the protocol. Please note that at least one CARB approved emission reduction protocol (manure management) allows the banking of GHG emission reductions from new operations that employ a GHG emission reduction technology. Provided that such projects meet a CARB approved protocol, they would be eligible for GHG banking pursuant to the draft rule amendments.

10. **COMMENT:** We suggest that the District clarify that compliance with a CARB-approved GHG reduction quantification protocol means that the emission reductions are eligible for banking regardless of whether they meet the District's criteria for "real, surplus, quantifiable and enforceable." (DC)

RESPONSE: GHG emission reductions quantified using a CARB approved protocol must only meet the requirements of that protocol. Such emission reductions are not subject to the other eligibility requirements in Section 4.5.

11. **COMMENT:** In reference to Definition 3.3, we suggest the definition of "Bankable Emission Reductions" be revised to allow inclusion of GHGs. The current language appears to limit the definition to "pollutants and their precursors for which ambient air quality standards exist and which meet the provisions of this rule." Because no ambient air quality standards exist for GHGs, the current language appears to preclude them from the definition. (DC)

RESPONSE: District staff concur. Section 3.3 has been revised as follows:

Bankable Emission Reductions: emission reductions of affected pollutants and their precursors for which ambient air quality standards exist and greenhouse gasses as defined in this rule. Such reductions may be deposited in the District's ERC Bank. Once banked and certified, the emission reductions become ERCs.

12. **COMMENT:** We recommend that the District change the requirements that an emission reduction source be determined real and permanent *globally* when determining eligibility for CEQA projects. The non-protocol emission reduction credits in the proposed amendments will be primarily used to satisfy CEQA and not a global trading system or other regulation. The purpose is to trade emission reductions from California businesses to allow other California businesses to expand or be created within California. Since we are dealing with a California only

regulation, these emission sources should be considered real and permanent within California for purposes of providing CEQA offsets.

A new source that is coming into California will be subject to the CEQA requirements without first determining whether that source, by locating in California or the San Joaquin Valley, will have a global increase on GHG emissions. Therefore, the offsets used to satisfy CEQA should use the same standard. (CCGGA), (WAPA)

RESPONSE: Unlike affected pollutants, the effect of GHGs extends beyond the Valley air basin. To ensure that banked emission reductions are highly credible, the District must conclude that the emissions that are to be banked are real and permanent, i.e. the GHG emissions do not occur elsewhere as a result of the GHG emission reduction that occurred in the Valley. The District's analysis to determine if a particular GHG emission reduction is real and permanent will occur on a case by case basis. We agree that a global analysis would sometimes be difficult and unnecessary, and we have therefore eliminated the use of the word "global". However, to allow the District to determine if a GHG emission reduction meets the eligibility criteria, the applicant should provide documentation that demonstrates with reasonable certainty that the emission reduction is real and permanent.

13. **COMMENT:** The proposed rule contemplates allowing the banking of credits that are merely "surplus" in lieu of "additional." Under the "surplus" rule, greenhouse gas reduction benefits that are incidental to a regulation or other required action could be banked. Thus, entities could bank greenhouse gas reductions that are a corollary benefit of compliance with regulations aimed at reducing criteria pollutants. By allowing participants to take credit for the corollary benefits of actions they were otherwise required to do, claimed reductions are illusory, undercut genuinely additional greenhouse gas mitigation, and cannot validly be used for CEQA purposes. Rather than function to mitigate the cumulative impacts on climate change of new projects, the proposed rule allows entities to subsidize the costs of complying with criteria pollutant and other regulations by banking any associated greenhouse gas reductions. (CBD), (EJ)

RESPONSE: The draft rule amendments allow the banking of emission reductions that, among other criteria, are surplus. Such GHG emission reductions must be in excess of any GHG emission reduction that is currently required, or is identified as being required in the future for a particular type of equipment. Such emission reductions are not "illusory", they did in fact occur and are in excess of any required emission reduction.

While the concept of additionality of GHG emission reductions may be appropriate for GHG emission reductions to be used as compliance offsets in a cap-and-trade program, such a requirement is not necessary or appropriate for GHG reductions that will likely not be used in such a program.

Similar to affected pollutant emission reduction banking, the District believes that GHG emission reductions that are in excess of any current or upcoming GHG emission reduction requirement are eligible for banking. Such emission reductions, even if incidental to other actions by a facility, did nonetheless actually occur and will be eligible for banking, provided all of the criteria in Rule 2301 are satisfied.

Finally, while we believe that such banked GHG emission reductions should be valid as mitigation in the CEQA process, it is up to each lead agency to determine the appropriateness of any GHG mitigation.

14. **COMMENT:** When asked at the June 30, 2009 public workshop whether new sources will also be able to take advantage of the GHG bank, staff remarkably answered “yes” and explained that the GHG reductions to be banked could be calculated as the difference between the potential GHG emissions after the project is complete and the historic annual average GHGs of similar projects using any consecutive 24 month period during the previous 60 months. So essentially, the District is saying that new projects can generate emission reduction credits by *adding* emissions to the environment. (CBD), (EJ)

RESPONSE: This is not correct, except as allowed by CARB-approved protocols. See response 9.

15. **COMMENT:** For the majority of the processes, production volumes were removed from the market. The few pieces of equipment which, were relocated to other facilities were mostly refitted to create zero emissions installations or fully offset by internal reductions. Closed facility, energy use and resulting GHG from light, heat, and vehicle miles will be permanently reduced from the closed sites as these are not being replaced or additive to another location.

Please look at this and consider the criteria you would need to qualify shutdown banking of GHG. (SC)

RESPONSE: If the applicant can demonstrate with reasonable certainty (and the District concurs) that the emission reduction due to equipment or facility shutdown is in fact real and permanent, such an emission reduction may be eligible for banking. Such determinations will be made on a case by case basis.

16. **COMMENT:** If ERCs for a combustion source were banked after January 1, 2005, could those ERC projects be re-evaluated for potential GHG reductions without the filing of a new ERC application, and would those projects be exempt from Rule 2301, Section 5.5.2 requiring the ERC application to be submitted within 180-days after the emission reduction occurs? (KERN)

RESPONSE: Applications for GHG emission reductions that occurred after January 1, 2005 will require the submittal of a new ERC application and filing fee.

As specified in Section 5.5.2, for emission reductions that occurred prior to the rule amendment date (and after January 1, 2005) such ERC application must be filed within 6 months of the rule amendment date (and not within 180 days of when the emission reduction occurred).

17. **COMMENT:** How would the District consider the banking of “fugitive” GHG reductions, for fugitive components exempt from permit pursuant to Rule 2020, Section 6.12? (KERN)

RESPONSE: For GHG emission reductions from equipment that is prohibited from being issued a permit, pursuant to Section 4.5.6 the facility would have to enter into a legal binding contract that will make the emission reductions enforceable. Such emission reductions would have to meet the eligibility requirements in Section 4.5, including the requirement that the emission reduction is surplus. However, if not prohibited from issuing a permit, the District would use permitting to enforce the reductions.

In evaluating such an application the District would need to determine if there are any current or upcoming rules or regulations, including those being developed by CARB as a result of the AB32 scoping plan that will require reduction in fugitive GHG emissions at refineries. If there are any such current or upcoming regulations, such GHG emission reductions would not be surplus and would therefore not be eligible for banking. Also note that facilities subject to CARB’s Cap and Trade regulations are not eligible to bank reductions, as explained in section 2 of the District’s staff report.

18. **COMMENT:** At the June 30, 2009 workshop staff indicated that GHG credits could be bought outside of the SJV to mitigate a project within the SJV. Since the purchase of offsets can occur outside of the SJV to mitigate projects inside the SJV, Kern recommends the proposed rule be amended to allow the banking of GHG credits from sources outside the SJV including international projects as long as the credits conform to District recognized protocols (e.g., Western Climate Initiative, Kyoto Protocol, etc.). Allowing the banking and purchasing of international credits is consistent with the premise that climate change is a “global” issue with global impacts. (KERN)

RESPONSE: In developing the draft rule amendments, the District determined that GHG emission reductions that occurred outside of the District are beyond the authority of the District, i.e. the District could not readily determine that the emission reductions occurred. As GHG emission reductions will be made enforceable via a District permit or contract, the District does not have the authority to impose requirements on equipment or operations outside of its boundaries.

Please note that there are other entities in existence that are available to facilitate the banking of GHG emission reductions in areas outside of the District.

19. COMMENT: The proposed rule should have some language that indemnifies a source from any future challenges of the validity or permanency of GHG emission reduction credits used to mitigate a project. (KERN)

RESPONSE: Prior to making a decision to issue GHG ERCs, the District must document the basis for its decision. If the District cannot find that the GHG emission reductions satisfy all of the requirements of Rule 2301, we cannot issue GHG ERCs. However, if we determine that such an emission reduction satisfies all of the requirements of the rule, the District will issue such ERCs.

If the lead agency is challenged on the validity of GHG ERCs used for mitigation, the District will assist the lead agency with any technical questions concerning the ERCs. However, the District will not indemnify the CEQA lead agency or the facility for possible future challenges involving the uses of such ERCs.

ATTACHMENT C

SUMMARY OF COMMENTS AND RESPONSES SUBSEQUENT TO THE WORKSHOP HELD ON SEPTEMBER 7, 2011

EPA comments:

None received.

ARB Comments:

None Received.

California Attorney General Comments

Comment 1

Relying on the phrase “not otherwise required” in CEQA Guidelines section 15126.4(c), the AG’s office comments that the District should not create a banking program that allows the banking of GHG reductions that result from regulatory requirements aimed at issues other than reducing GHGs.

Response 1

This comment is inconsistent with the record established during the adoption of the relevant revisions to the CEQA Guidelines.

On July 3, 2009, the Natural Resources Agency noticed its proposal to amend CEQA regulations to implement SB97’s requirement of including GHG’s in CEQA reviews.

The Initial Statement of Reasons (ISOR) for this action contains, beginning on page 40, a section called the “Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects.” It discussed five types of potential mitigations for GHG impacts, one of which is off-site measures, including offsets. The concept of additionality is not discussed in this section, nor is it discussed anywhere in the ISOR. The term “additionality” is not used in the ISOR, nor is the phrase “not otherwise required.”

The relevant proposed regulatory language associated with this ISOR is as follows:

(c) Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with section 15126.4(a), lead agencies shall consider feasible means of mitigating greenhouse gas emissions that may include, but not be limited to:

- (1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;
- (2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;
- (3) Off-site measures, including offsets, to mitigate a project's emissions;
- (4) Measures that sequester greenhouse gases; and
- (5) In the case of the adoption of a plan, such as a general plan, long range development plan, or greenhouse gas reduction plan, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

The concept of “additionality” for purposes of CEQA did not appear until the Natural Resources Agency’s August 27, 2009 response to comments submitted by the Center for Biological Diversity.

As in the ISOR, there is no discussion of limiting the use of offsets to certain kinds of offsets in the initially proposed regulatory language shown above. Again, there is no discussion of “additionality” or of “not otherwise required.” The concept of additionality was not raised until the Natural Resources Agency responded, on August 27, 2009, to comments from the Center for Biological Diversity, et al., on the proposed Section 15126.4(c). After discussing CEQA’s requirement that there be a “nexus” between a mitigation measure and a project’s impact, the Resources Agency writes in their response:

Notably, this interpretation of the CEQA statute and case law (for the requirement for a nexus between mitigation and impact) is consistent with the Legislature’s directive in AB 32 that reductions relied on as part of a market-based compliance mechanism must be “in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.” See Health and Safety Code § 38562(d)(2). While AB 32 and CEQA are separate statutes, the additionality concept may be applied analytically in the latter as follows: *greenhouse gas emission reductions that are otherwise required by law or regulation would*

appropriately be considered part of the existing baseline. Pursuant to section 15064.4(b)(1), a new project's emissions should be compared against that existing baseline (emphasis added).

Thus, in light of the above, and in response to concerns raised in this comment and others, the Natural Resources Agency has revised section 15126.4(c)(3) to state that mitigation may include: "Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions[.]" This provision is intended to be read in conjunction with the statutory mandate in Public Resources Code sections 21002 and 21081 that mitigation be tied to the effects of a project.

This provision would not limit the ability of a lead agency to create, or rely on the creation of, a mechanism, such as an offset bank, created prospectively in anticipation of future projects that will later rely on offsets created by those emissions reductions.

The California Health and Safety Code section referenced in the above response, section 38562(d)(2), is actually prefaced as follows:

For regulations pursuant to Part 5 (commencing with Section 38570), the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur.

Part 5, "Market-Based Compliance Systems," contains the legislature's directives to the California Air Resources Board, through AB 32, regarding the development of the market-based program that has now been adopted, known as "Cap and Trade." Thus, the Legislature directed ARB to require that reductions relied on as part of Cap and Trade be "in addition to any greenhouse gas emission reduction otherwise required by law or regulation, *and any other greenhouse gas emission reduction that otherwise would occur*" (emphasis added).

However, in crafting the amendment to CEQA Guideline section 15126.4, the Natural Resources Agency noted that AB 32 and CEQA are separate statutes, and that, in the CEQA context, the latter phrase (emphasized above) does not necessarily have relevance in a discussion of CEQA mitigation requirements. The Resources Agency, thus, intentionally omitted that portion of the requirement, stating that only greenhouse gas emission reductions that are otherwise required by law or regulation would appropriately be considered part of the existing baseline.

Thus, the administrative record for the amendment to section 15126.4(c) demonstrates that, while the Resources Agency intended greenhouse gas emissions that are required by law or regulation be included in the existing baseline for a project, it specifically excluded "any other greenhouse gas

emission reduction that would otherwise occur” from the existing baseline. Accordingly, the Resources Agency has expressly rejected the interpretation of section 15126.4(c)(3) that the AG now urges.

Following the above-referenced comment period, the Resources Agency revised section 151226.4(c) as follows:

(c) Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. *Reductions in emissions that are not otherwise required may constitute mitigation pursuant to this subdivision.* Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:

- (1) Measures in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency’s decision;
- (2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;
- (3) Off-site measures, including offsets, to mitigate a project’s emissions;
- (4) Measures that sequester greenhouse gases; and
- (5) In the case of the adoption of a plan, such as a general plan, long range development plan, or greenhouse gas reduction plan, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions (emphasis added).

Rather than addressing the “not otherwise required” language in subsection (c)(3), the Resources Agency added it to the preface of subsection (c) such that it became applicable to all of the various types of mitigation listed in the section. In other words, it was not just offsets that the Resource Agency proposed to apply the “not otherwise required” standard to, but all off-site mitigation, all measures in plans, all project design features, all sequestration measures, etc.

Natural Resources Agency reaffirmed their concept of “additionality” in the CEQA context in their November 10, 2009 response to comments from the Center for Biological Diversity.

Comments on the above revisions to section 1512604(c) were received and addressed by the Resources Agency in October and November of 2009. This

round of responses did not alter the Resource Agency's position regarding the meaning of "additionality" for purposes of CEQA.

Rather, in its response to the comment submitted by the Center for Biological Diversity, the Resources Agency acknowledged that the language that applied the term "not otherwise required" to all forms of GHG mitigation was confusing, and explained as follows:

...the Natural Resources Agency has further refined section 15126.4(c) to clarify that the "not otherwise required" limitation applies in the context offsets. Specifically, the added sentence has been deleted, and subdivision (c)(3) has been revised to state that mitigation includes: "Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions[.]"

This revision does not imply that changes in a project that are made pursuant to environmental regulations cannot be considered mitigation. Offsets by their nature occur as part of some other action. Moving this concept from the general provisions on mitigation of greenhouse gas emissions to the provision on offsets does not materially alter the rights or conditions in the originally proposed text because the "not otherwise required" concept would only make sense in the context of offsets. Because this revision clarifies section 15126.4(c)(3), consistent with the Public Resources Code and cases interpreting it, and does not alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the originally proposed text, this revision is nonsubstantial and need not be circulated for additional public review.

Accordingly, the above makes clear that, by moving the phrase "not otherwise required" to subsection (c)(3), the Resources Agency did not modify its earlier position on the applicability of "additionality" in a CEQA context, as such a change would be substantive.

Thus, the District believes that the history leading up to the Resources Agency's addition of CEQA Guideline 15126.4(c)(3) makes clear that, while the Resources Agency intended offsets used to mitigate a project's greenhouse gas impacts under CEQA to be additional of any *greenhouse gas emission reductions* that are otherwise required by law or regulation, it did not intend for the offsets to be additional of *other types of emissions reductions* required by law or regulation.

Indeed, the AG's reading of section 15126.4(c)(3) would lead to the absurd result that banked offsets must be additional of *all* other regulatory requirements but other off-site mitigation need only be additional of greenhouse gas requirements. A more plausible reading of the phrase, "offsets that are not otherwise required" is that a project proponent cannot use as CEQA mitigation offsets that have

already been used for some other purpose, such as an air district's new source review regulation.¹

The Final Statement of Reasons for Regulatory Action (FSOR) and the final CEQA Guidelines language were then published by the Natural Resources Agency in December of 2009, claiming no substantial changes to the previous version.

The final version of section 15126.4(c) (shown in strikeout format to demonstrate the revisions) is as follows:

(c) Mitigation Measures Related to Greenhouse Gas Emissions.

Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse gas emissions. ~~Reductions in emissions that are not otherwise required may constitute mitigation pursuant to this subdivision.~~ Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:

...

(3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;

Regarding the changes to the section, the FSOR states on Page 48:

The reference to 'offsets' in subdivision(c)(3) generated several comments during the public review period. The offsets concept is familiar in other aspects of air quality regulation. The Federal Clean Air Act, for example, provides that increases in emissions from new or modified sources in a nonattainment area must be offset by reductions in existing emissions within the nonattainment area. (See, e.g., 42 U.S.C. §7503(a)(1)(A).) California laws also apply to offsets and emissions credits. (See, e.g., Health & Saf. Code, §39607.5.) Those other laws generally require that

¹ This could occur when a proposed project would result in increases in volatile organic compounds (VOC) and GHGs, and the project is required to surrender offsets for the VOC emissions under an Air District regulation. Under this scenario, the project could not then use any GHG reductions that also occurred as a result of the VOC reduction to mitigate the GHG increase. Another example of the "offsets not otherwise required" could be in the context of CAP and Trade facilities: one of the potential compliance mechanisms under Cap and Trade is a partial reliance on GHG offsets banked under an ARB-approved protocol. The plain language of this section is saying that offsets that are relied upon in showing compliance with Cap and Trade are not then available to show mitigation under CEQA.

emissions offsets must be 'surplus' or 'additional'. Comments on the proposed amendments suggested that to be used for CEQA mitigation purposes, offsets should also be 'additional.' Thus, the Natural Resources Agency further refined the revisions it publicized on October 23, 2009, by deleting the lead-in sentence stating that 'Reductions in emissions that are not otherwise required may constitute mitigation pursuant to this subdivision,' and amending subdivision (c)(3) to state that mitigation may include 'Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions[.]'

Moving this concept from the general provisions on mitigation of greenhouse gas emissions to the provision on offsets does not materially alter the rights or conditions in the originally proposed text because the 'not otherwise required' concept would only make sense in the context of offsets. Because this revision clarifies section 15126.4(c)(3), consistent with the Public Resources Code and cases interpreting it, and does not alter the requirements, rights, responsibilities, conditions, or prescriptions contained in the originally proposed text, this revision is nonsubstantial and need not be circulated for additional public review.

Examining this regulatory history makes it very clear that the Resources Agency never wavered from its initial determination that agencies implementing section 15126.4(c) should not apply the AB 32 standard that reductions relied on as part of Cap and Trade must be "in addition to any greenhouse gas emission reduction otherwise required by law or regulation, *and any other greenhouse gas emission reduction that otherwise would occur*" (emphasis added). Instead, in a CEQA context, lead agencies should apply only a part of that standard, specifically that offsets that are relied on as mitigation should be *greenhouse gas emissions reductions* that are not otherwise required. Accordingly, the Resources Agency never intended to require offsets to be additional of *all* regulatory requirements as the AG suggests.²

Finally, the definition of "additionality" in the FSOR makes clear that the Resources Agency did not intend its use of the phrase "offsets that are not otherwise required" to mean that offsets must be additional of all regulatory requirements. On page 89 of the FSOR, the Resources Agency defined "additional" as follows:

² It should also be noted that the Resources Agency uses the words "surplus" and "additional" interchangeably in the FSOR. The term surplus is used in the Clean Air Act context to mean additional of only those requirements applicable to the specific pollutant at issue, not additional of all possible regulatory requirements. Thus, the Resources Agency's use of the terms "surplus" and "additional" synonymously further indicates that the Resources Agency had no intention of requiring greenhouse gas offsets to be additional of all regulatory requirements.

...the additionality concept may be applied analytically (in the context of CEQA) as follows: *greenhouse gas emission reductions* that are otherwise required by law or regulation would appropriately be considered part of the existing baseline (emphasis added).

Accordingly, while section 15126.4(c)(3) prohibits the use of offsets generated to comply with regulatory requirements directed at greenhouse gas emissions, it does not govern the use of offsets generated as a co-benefit of some other regulatory requirement, such as an air district's VOC or NOx regulation.

Other Issues related to the AG's comments on "additionality"

Regardless of the language in CEQA Guideline 15126.4(c), the District appropriately applied the concept of additionality in Rule 2301 because section 15126.4(c) governs the *use* of credits as mitigation, not the adoption of a program to recognize and encourage the *creation* of GHG reductions.

The District agrees that one must examine the appropriateness of using offsets to mitigate a significant GHG increase. The regulation and the FSOR are very clear in that regard. However, this language does not provide any guidance or requirements for programs designed for the creation of offsets, such as Rule 2301. This lack of specificity is appropriate, as lead agencies have wide latitude in determining significance thresholds, based on their examination of the available science and other evidence. The nature of that significance threshold then determines the necessary nature of mitigations required, within the context of the significance threshold used by the lead agency.

If the Resource Agency had intended the limiting language to apply to the *creation* of offsets or credits, rather than the *use* of the offsets as mitigation, it had ample opportunity to say so, but in fact it solely addressed the *use* of offsets as mitigation. Therefore, nothing in CEQA Guideline 15126.4(c) should be applied to a program aimed at the creation of credits.

In providing comments on the District's proposed Rule 2301, the AG has expanded the definition of the term additionality by applying a single standard to all offsets, regardless of the FSOR's definition and regardless of a lead agency's analysis and basis of a project's impacts. This is inappropriate under CEQA, as discussed above, and inconsistent with the statutory mandate in Public Resources Code sections 21002 and 21081 that mitigation be tied to the lead agency's analysis of the effects of a project.

Under CEQA, mitigation must be roughly proportional to the impact being mitigated.

Section 15126.4(a)(4)(B) requires that mitigation measures be roughly proportional to the lead agency's analysis of the impacts of a project. Applying a standard of "additionality to all requirements" to all reductions that are then banked as emission reduction credits does not consider the nature and scope of the lead agency's analysis of a project's impacts. This could result in non-proportional mitigation of a project's impacts when those credits are used as offsets.

For instance, the District's analysis of the GHG impacts of a particular project with increased GHG emissions will assess the increases in the context of whether they comply with AB 32's goal of a 29% reduction from the year 2020 projected emissions. Any required mitigation should then also be based on the same approach – namely, are the reductions surplus and additional to the requirements of AB 32. In other words, the mitigation the AG would have us require does not match with, and would not be proportional to, the District's analysis of the GHG impacts of the project. The mitigation under the AG's approach would be required to be surplus and additional to all requirements, rather than just additional to greenhouse gas requirements. As a result, the District would have to require more credits, or more costly credits, than would be required under its current CEQA policy. Requiring disproportional mitigation in this fashion would violate CEQA.

The five types of GHG mitigation types listed in the CEQA Guidelines are not all-inclusive.

Regardless of the discussions above, section 15126.4(c) says, "Measures to mitigate the significant effects of greenhouse gas emissions *may include, among others...* offsets that are not otherwise required, to mitigate a project's emissions" (emphasis added).

This language indicates that both the Office of Planning and Research and the Resources Agency recognized that there may be methods of mitigating GHG impacts other than those considered and listed by the agencies. Again, this is relevant to the District's position that the appropriate time to consider whether any particular use of any mitigation is appropriate for a specific project is at the time the impacts of that project are being considered under CEQA, not at the time of creation of some recognized "credit" which may or may not be used in a CEQA context. A lead agency may determine and demonstrate that "credits" banked by the District under Rule 2301 are valid mitigation for a GHG increase, in the context of its own significance threshold. As the FSOR states:

The CEQA Guidelines do not establish thresholds of significance for other potential environmental impacts, and SB97 did not authorize the

development of a statewide threshold as part of this CEQA Guidelines update. Rather, the proposed amendments recognize a lead agency's existing authority to develop, adopt and apply their own thresholds of significance or those developed by other agencies or experts. As set forth in the existing section 15064.7, a threshold is "an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant." Because a threshold would be used in the determination of significance, the threshold would need to be supported with substantial evidence. (CEQA Guidelines § 15064.7(b).)

Therefore it is not appropriate to try to anticipate all the variations in CEQA significance determinations and the related mitigation decisions at the time of creation of credits or offsets that may be used as CEQA mitigation. The effort being discussed here is one more step removed: it is an effort to develop a program designed to recognize and encourage GHG reductions that may eventually be used as CEQA mitigation, under circumstances where they are appropriate based on a lead agency's analysis of the significance of the GHG impacts of a particular project.

To examine the appropriateness of any particular mitigation, one must wait until the lead agency performs its role under CEQA in analyzing a project's impacts and the significance of those impacts. Only then can one analyze the appropriateness of any proposed mitigations in the context of the lead agency's GHG CEQA processes and policies.

The AG's comments regarding Rule 2301 come too early in the process and should be reserved for individual cases where the AG believes that credits recognized under Rule 2301 are being inappropriately used as mitigation of a GHG impact.

The District recognizes that some lead agencies may want access to offsets that are surplus and additional of all requirements.

The District recognizes that some CEQA lead agencies, even in the San Joaquin Valley, have not adopted the San Joaquin Valley Air District's Greenhouse Gas CEQA policy, or any other policy based on compliance with the AB 32 obligations. In fact, as discussed above, some lead agencies and other air districts have instead adopted quite high significance thresholds below which no GHG mitigation is required. To the extent that increases below the threshold go unmitigated, these agencies are relying on incidental reductions in GHG emissions, such as those that result from non-GHG regulatory requirements, to achieve the reduction goal under AB 32. The District does not agree that this hands-off approach is best, and we do not rely on these incidental reductions to

achieve the state's GHG reduction goals. Instead, under the District's policy, all projects with GHG emissions increases must demonstrate a 29% reduction in GHG emissions, consistent with the overarching requirements of AB 32 and its scoping plan, as discussed in more detail below.

However, in recognition that these other agencies may need to require extra mitigation for projects exceeding their significance thresholds because they are not requiring all GHG emissions increases to be mitigated, the District is now proposing to issue a second category of non-protocol-based emission reduction credits for GHG reductions: those that are additional of all requirements, rules, or regulations. Each reduction certified by the District will then be labeled with two pieces of information. First, the method of generating the reduction will be identified, and second, the ERC will be labeled as "*surplus and additional to all applicable GHG reduction regulatory requirements*" or "*surplus and additional to all applicable regulatory requirements.*"

Both types of credits would then be available for use as offsets, as appropriate, under an individual lead agency's significance criteria and other CEQA policies.

Credits that are "surplus and additional to all applicable GHG reduction regulatory requirements" are appropriate for use as CEQA mitigation under certain circumstances.

For the purposes of the use of GHG emission reduction credits in the context of the District's GHG CEQA policies and procedures, as explained below, no significant change is necessary to the current proposed amended rule, and so, while the District is adding the second category of GHG ERCs discussed above, we are also maintaining the existing rule language allowing the banking of GHG reductions that are surplus to all required GHG reductions.

For this discussion it's important to note that Rule 2301 does not prescribe any particular use of the GHG emission reduction credits. The District agrees that the resulting credits are likely to be proposed for use to mitigate significant GHG impacts under CEQA, under certain conditions, but they may also be used for various non-regulatory purposes or they may be banked by those making GHG reductions and then never used for any purpose. Rule 2301 in no way supersedes the authority of any lead agency to make determinations of significance or to ascertain proper mitigation. The rule is specific in stating that the nature of any eventual use of credits banked under its provisions is not defined or mandated by the rule.

In fact, the proper time for determining the adequacy of the credits for mitigating a significant impact under CEQA is during the analysis of that proposed use as a mitigation of a specific increase, which analysis must include all factors relevant to the lead agency's policies and practices related to determining and mitigating significant impacts. CEQA provides significant latitude and discretion in

determining levels of significance, within certain defined constraints, and that latitude creates widely varying, yet equally valid, determinations of significance across the range of CEQA lead agencies in California³.

Therefore, the AG's comments regarding the validity of Rule 2301, based on the use of credits in the context of some hypothetical CEQA policy, are not ripe. In addition, the AG's comments inappropriately narrow the flexibility and discretion provided by the new section of the CEQA Guidelines that were specifically added to provide that discretion, Section 15064.4, which states in part:

- (a) *The determination of the significance of greenhouse gas emissions calls for careful judgment by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency shall have discretion to determine, in the context of a particular project, whether to:*
- (1) *Use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use. The lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence. The lead agency should explain the limitations of the particular model or methodology selected for use; and/or*
 - (2) *Rely on a qualitative analysis or performance based standards.*

The District's approach to determining the significance of GHG impacts for projects follows the performance-based approach suggested in Section 15064.4(a)(2) above⁴.

³ It should be noted here that the basis of the District's GHG significance criteria for CEQA purposes (namely using the performance standard of compliance with AB 32's goal of reducing GHG emissions by 29% of the 2020 business as usual baseline emissions) has been upheld by the California courts. See *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista*, 197 Cal App 4th 327, 335-337 (2011), review denied (Oct. 19, 2011).

⁴ See the District's staff report (<http://www.valleyair.org/Programs/CCAP/12-17-09/1%20CCAP%20-%20FINAL%20CEQA%20GHG%20Staff%20Report%20-%20Dec%2017%202009.pdf>) and permitting policy (<http://www.valleyair.org/Programs/CCAP/12-17-09/2%20CCAP%20-%20FINAL%20District%20Policy%20CEQA%20GHG%20-%20Dec%2017%202009.pdf>) for a fuller discussion of the District's approach to the significance of GHG emissions under CEQA.

The District's policy on this issue does not establish a threshold above which GHG emissions increases are believed to be significant. Instead, it requires that all projects with increases in GHG emissions provide mitigation consistent with compliance with AB 32 and its scoping plan. In other words, increased GHG emissions that are mitigated by 29% (compared to ARB's projected 2020 emissions)⁵ are not significant, because such mitigated emissions are wholly consistent with the AB 32 Scoping Plan's assessment of the reductions in California's 2020 emissions (including the growth in GHG emissions between 2004 and 2020) that are necessary to reach the 1990 GHG emissions level mandated by AB 32, and therefore meet our performance standard. Note that all expected growth in GHG emissions is included in ARB's analysis – this includes the specific growth that will be analyzed under CEQA for any particular proposed GHG increase.

In practice, this means that the District's CEQA policy requires that all permitting projects proposed in the San Joaquin Valley with increased GHG emissions must propose to mitigate those emissions by 29%, or be considered significant. While we have built some streamlined processes⁶ for project proponents to meet this target, the District continues to see a need for other mitigation methodologies. Offsets that are generated by reductions in GHG emissions are one potential method, if it can be demonstrated that the reductions are consistent with the District's underlying CEQA significance policy.

To that end, Rule 2301 defines the criteria for bankable GHG emissions reductions, in part, as follows:

4.5.3 The greenhouse gas emission reductions are real, surplus, permanent, quantifiable, and enforceable...

For the purposes of this discussion, the essential word is "surplus." Surplus is further defined for the purposes of GHG banking in two relevant sections of the rule (note that 4.5.3.1 and 4.5.3.4 are not relevant to this discussion):

4.5.3.2 Greenhouse gas emission reductions that occur as a result of law, rule, or regulation that required the greenhouse gas emission reduction are not surplus.

⁵ This 29% reduction is derived from the AB 32 scoping plan, and is the calculated reduction from expected GHG emissions in California in the year 2020, including economic growth, but excluding any GHG controls, necessary to achieve year 1990 GHG emissions levels as mandated by AB 32.

⁶ Most notably by proposing to use equipment or controls that meet the "Best Performance Standards" established by the District for specific types of proposals.

4.5.3.3 Greenhouse gas emission reductions that occur due to an action taken by an entity that is not the result of any greenhouse gas emission reduction requirement are surplus and additional of all greenhouse gas reduction requirements...

Section 4.5.3.2 would prohibit the District from issuing credit for any reduction that is required by AB 32 and the AB 32 scoping plan, and 4.5.3.3 clarifies that reductions that are co-benefits of some other type of regulatory effort are surplus, as long as they are not specifically required as a GHG emissions reduction effort.

Now the question is do such credits properly mitigate GHG emissions increases under the District's CEQA policies? The answer is yes.

For instance, let's look at an example of a reduction to which the District would be required to apply both 4.5.3.2 and 4.5.3.3 before issuing a corresponding emission reduction credit:

Rule 4702 is a rule adopted by the air district to reduce pollution emissions, primarily nitrogen oxides (NOx), from internal combustion engines. It is not designed to reduce GHG emissions, nor does it require any GHG reductions. Agricultural irrigation pump engines are subject to this rule, and owners of such engines must reduce the NOx emissions from those engines. They may propose to replace the engine with a significantly cleaner (lower NOx emissions) internal combustion engine, but this does not have a significant impact on GHG emissions as approximately the same amount of fuel will be burned in both cases, and therefore approximately the same amount of CO2 emissions will be generated.

However, another option available to the owner is to electrify the irrigation pump, eliminating the combustion process entirely. This approach is preferred by the District, because it removes all of the local pollution impacts entirely. In addition, because grid electrical power is more efficiently produced than mechanical engine power, there is a reduction in GHG emissions (and other pollutants) when an engine is electrified. This GHG reduction is real and quantifiable, and would be made enforceable and permanent under Rule 2301 by permit conditions or legal contract. Also, it is not required by any GHG reduction effort envisioned in the AB 32 scoping plan so it complies with section 4.5.3.2.

So electrification is an optional method of complying with the required NOx emissions reductions of Rule 4702, but that doesn't affect the nature of the GHG reduction: it is still real, quantifiable, permanent, enforceable, and surplus of all GHG emissions reduction efforts. And in fact, we're hoping that the existence of Rule 2301 creates market conditions that drive engine operators to electrify, rather than merely replace their engines with other, albeit cleaner, engines – as explained above, the air quality impacts are significantly more favorable when the engines are electrified.

The District would then, following the rule compliance analysis sketched above, issue a certificate that certifies the GHG reduction meets the criteria of the rule.

Now let's look at a project that might need to mitigate an increase in GHG emissions under the District's CEQA policy. For example, consider a proposed boiler at a manufacturing plant. When this permitting project is proposed, the District, in its role of CEQA lead agency, would analyze whether the GHG emissions increase is mitigated by 29%. This mitigation could be provided in any number of ways, including providing offsets that are consistent with the District's CEQA policy. Again, our CEQA policy is based on the State of California's determination, via AB 32, that 2020 emissions, including growth in emissions after 2004, must be reduced by 29%. If the District requires all increases to be mitigated by 29% from projected 2020 levels, we have successfully assisted California in meeting that goal.

The AB 32 scoping plan has laid out in considerable detail the reductions that will be necessary to achieve the 29% reduction, but GHG reductions from the electrification of agricultural irrigation engines are not included. Because the GHG emissions reduction from the engine discussed above is not in any way accounted for in the AB 32 scoping plan's assumptions or requirements, it is a valid reduction to use towards meeting the District's CEQA obligation of a 29% reduction. In other words, these engine electrification reductions are additional to all AB 32 requirements.

In conclusion, the answer to the question, "Does Rule 2301 result in the creation of credits that can be used to *"...mitigat(e) the significant effects of greenhouse gas emissions?"* is "Yes, reductions banked under Rule 2301 are additional to all GHG reductions required under AB 32, and therefore are consistent with the District's CEQA policies related to GHGs."

It should be noted that the Governor's Office of Research and Planning and the California Natural Resources Agency both declined to use the word "additional" in the CEQA guidelines related to defining allowable offsets. This omission was appropriate, since the word "additional" has been used in so many contexts relating to GHG reductions that it has no single meaning. One group who commented on the District's rule believes that for a reduction to be additional, it must be one that would not happen in the absence of the credit system acknowledging the emissions reduction. Others say that a reduction can be additional if it is not otherwise required (directly or indirectly) by a rule or regulation. Both definitions are likely appropriate within the confines of one or more of the various GHG reduction efforts that now exist in the world, but, as discussed in more detail above, neither is appropriate to apply to Rule 2301.

In recognition of this potential for confusion, the District had at first chosen to avoid the use of the word "additional" in its rule. However, the AG's comments,

and those of others, has caused the District to understand that the absence of the word has contributed to the confusion it hoped to avoid, and causes some to be concerned about the adequacy of the credits. The District now believes that a better approach is to carefully define the use of the word “additional” within the confines of the rule.

As discussed above, the District will define “additionality” for use in the context of Rule 2301 via sections 4.5.3.3 and 4.5.3.4, as follows:

4.5.3.3 Greenhouse gas emission reductions that occur due to an action taken by an entity that is not the result of any greenhouse gas emission reduction requirement are surplus and additional of all greenhouse gas reduction requirements. Such emission reduction credit certificates shall be identified as specified in Section 6.15.2.

4.5.3.4 Greenhouse gas emission reductions that occur due to an action taken by a facility that is not the result of any requirement, including any requirement that is not intended to control greenhouse gases, are surplus and additional of all requirements. Such emission reduction credit certificates shall be identified as specified in Section 6.15.3.

Finally, on this “additionality” concept, the AG’s references to a report by a District-sanctioned technical workgroup are incomplete and off-target⁷. The section of the report referenced by the AG is applicable to the development of a carbon exchange system that serves as a registry for greenhouse gas credits banked under CARB-approved protocols and are theoretically interchangeable with other national or international carbon registry. The District is proposing such a registry with amended Rule 2301 (see sections 4.5.1, 4.5.5, 5.6, and 6.15.1), but all credits associated with that registry would be required to follow CARB-approved GHG reduction protocols. CARB has made it clear that all such protocols must include carefully defined and individually identified methods for assuring “additionality.” In fact, the AG is not commenting on the section of the rule that discusses such a carbon exchange registry. Instead, the AG is commenting on the non-protocol credits that would then be available for use under the District’s CEQA policy.

Fortunately, the same technical workgroup report referenced by the AG does discuss and provide guidance on, beginning on page 14, the option on which the AG is commenting, namely, “Develop a District-only greenhouse reduction registration program.” The discussion that follows is quite clear in specifying that credits issued under such a program could be for emission reductions that are

⁷ See <http://www.valleyair.org/Programs/CCAP/03-04-09/SJVCE%20program%20final%20report%20to%20APCO%203-4-09.pdf>

surplus (additional to GHG reduction requirements), rather than “additional” to all requirements.

In conclusion, in recognition of the potential for other agencies’ reliance on numeric significance thresholds, and the probable need for credits that are additional of any and all requirements, rules, or regulations, the District is proposing to satisfy the AG’s comments by creating another category of certified GHG emissions reduction for such credits. Such credits will be labeled accordingly, and should be a valuable mitigation option for other lead agencies’ approaches to addressing GHGs under CEQA. However, the District will continue to offer, with these rule amendments, the service of certifying GHG emission reductions that are additional to all GHG-reduction requirements, as well. Such surplus reductions may be available to mitigate GHG emissions increases under the District’s CEQA policy, and any other lead agency’s CEQA policy that relies on AB 32 compliance as its basis.

Comment 2

The AG’s office commented that the Rule 2301 amendments should not allow the calculation of the quantity of emission reductions as the difference between any 24 month period in the last 60 months and the post-project emission level. This methodology could allow applicants to choose a high level of pre-project emissions that is not representative of normal operations or that does not have a likelihood of continuing into the future without the emission reduction project. This would result in inflated credits or paper reductions, which do not constitute mitigation under CEQA. In addition, the AG’s office states that the effects of climate change will disproportionately impact lower income residents who can’t afford air conditioning and farm workers who must work outside, and implies that such “inflated” credits will exacerbate that problem.

Response 2

The District’s original proposal to calculate greenhouse gas emission reductions allowed the use of any consecutive 24 month period during the previous 60 months determine the actual emissions. The emission reduction is the difference between the actual greenhouse gas emissions and the potential greenhouse gas emissions after the emission reduction project. This methodology is consistent with the methods used in the Federal Clean Air Act “New Source Review” requirements to calculate actual emissions, and the District’s experience in implementing this regulation is that the fear of inflated emissions is not borne out in practice. Typically, the emissions from any 24-month period have proven roughly representative of normal operations.

However, the District recognizes the potential for manipulation of operations to spike emissions, and we agree with the AG’s office that the District should instead use our standard approach to ascertaining historical emissions for the

purposes of banking criteria for non-GHG pollutants, consistent with the requirements in District Rule 2201 – New and Modified Stationary Source Review. Specifically, the District now proposes to require that the actual emissions be the historical annual average emissions calculated using the 24 consecutive month period immediately prior to when the emission reduction occurred, or another consecutive 24 month period in the 60 months prior to when the emission reduction occurred, if the alternate period is determined by the Air Pollution Control Officer as more representative of normal operation. Section 4.5.4 has been amended accordingly.

This proposed revision will ensure that applicants do not manipulate their operation in a manner to maximize emission reductions beyond what would have normally occurred, and will make the calculation of historical emissions consistent with that used in the District’s traditional emissions reduction banking processes. This should eliminate the AG’s concern about the potential for inflated credits.

Although the above should also address any concern the AG has over the rule exacerbating any “*effects of climate change...disproportionately affect(ing) certain San Joaquin Valley residents,*” it is important to note that the OEHHA report referenced by the AG very clearly shows a strong decrease in extreme heat trends at almost all San Joaquin Valley sites referenced over the past fifty-plus years. It is simply not possible, given the data presented, to conclude that the Valley’s temperature or number of extreme heat events has increased over that period. Therefore, any conclusion based on this data that climate change is having a negative impact on people in the San Joaquin Valley is speculative.

Comment 3

The AG commented that the proposed rule amendments would reduce the incentives under CEQA for project proponents to actually mitigate GHG emissions, and therefore inhibit the reduction of harmful co-pollutants.

Response 3

The District’s disagrees with the comment. The proposed amendments would neither reduce nor enhance incentives to mitigate GHG emissions under CEQA. The proposed amendments to Rule 2301 do nothing to affect mitigations – they only identify the processes and criteria for the District to certify that a reduction has taken place. In fact, the District believes that the amendments to Rule 2301 will provide market forces that will encourage the generation of emissions reductions that would not have otherwise occurred (see irrigation pump example under Response 1, above). The appropriateness of whether those reductions are available and viable as CEQA mitigations would then be determined during the CEQA analysis of a specific project with proposed increases in emissions, within the confines of the relevant and specific CEQA significance policy and

process adopted by the lead agency, and not at the time an emissions reduction is generated.

To the extent that the AG's comment 3 was directed at the District's pre-project emissions calculation methodology, we are now proposing to change that methodology consistent with the AG's comments (see response to comment 2).

Comment 4

The AG states that these comments do not constitute an exhaustive review of the District's proposed rule.

Response 4

Considering the weight carried by comments from the Attorney General, it is unfortunate that the Attorney General's office did not take the time to review and understand the District's proposed rule and its relationship to the District's GHG CEQA policy more thoroughly before submitting its comments. Although the Rule 2301 amendments have potential uses beyond providing GHG mitigation under CEQA, the AG's comments on this rule are exclusively regarding this CEQA context. In the absence of state guidance on establishing CEQA significance thresholds, the District has invested thousands of person-hours to investigate and publicly discuss all the possible paths to establishing a workable and environmentally protective GHG CEQA policy.

The District believes strongly in bringing innovation and streamlining to our regulatory obligation to clean up the San Joaquin Valley's air quality. In today's recessionary business environment and anti-regulatory atmosphere, it is more important than ever for environmental protection agencies to exercise creativity in protecting our natural resources in ways that allow continued economic growth and simultaneously protect the public's health.

The District is proud to have developed a GHG CEQA approach that does just that. It is streamlined in implementation and more protective of climate change than any other air district policy that we've seen put into place to deal with GHG emission increases under CEQA. Other policies allow increases in GHG emissions under various arbitrary thresholds to go unmitigated, artificially label projects as non-discretionary, or allow lead agencies to regularly make findings of overriding considerations. On the other hand, the San Joaquin Valley Air District's policy requires every permitting project with increased GHG emissions to mitigate those emissions. Hopefully, these benefits will be recognized by the AG's office after a more exhaustive review of the District's proposed rule and the responses to the AG's comments above.

Center for Biological Diversity Comments

Comment 1

Comments submitted by the Center for Biological Diversity (CBD) in 2009 remain relevant and are incorporated by reference.

Response 1

The prior comments were addressed in 2009 (see Attachment B to this staff report).

Comment 2

CBD states that the proposed Rule fails to ensure additionality of the credits, as required for use in CEQA.

Response 2

Please see responses to the Attorney General's comments for a fuller discussion of the issues, but The District disagrees with CBD's comments on additionality.

In brief, the rule does not mandate the use of the credits in any way, and the credits may have a number of uses outside the CEQA context upon which CBD bases all of its comments. Furthermore, the proper time to ascertain the appropriateness of any mitigation under CEQA is at the time it is proposed to be used to mitigate an environmental impact. Therefore, it is unnecessary to include the concept of additionality in the rule, and premature to find fault with the rule because, CBD believes, it creates credits that may not be valid for use under some lead agencies' GHG CEQA policies and procedures.

However, due to the confusion caused by the absence of the word "additional" in prior versions of the proposed amended rule, the District has addressed the additionality issue by carefully defining "additional" within the confines of the rule and considering the GHG emission reduction credits' presumed use in a CEQA context. In addition, most relevant to CBD's concerns, the District has added a category of credit for GHG reductions that are additional of all requirements, so that those lead agencies that have not adopted a CEQA GHG policy that is, like the District's, based on AB 32 compliance, can rely on the District's Rule 2301 to provide credits that additional to all requirements and are therefore presumably valid under their policies, as well. Again, note that the proper time to assess that validity will be when a lead agency proposes to allow the mitigation of a significant GHG impact with such credits.

Finally, CBD refers several times in its comments to a report by Ramseur, called "The Role of Offsets in a Greenhouse Gas Emissions Cap and Trade Program..." The District is not proposing to use the non-protocol credits on which CBD is

commenting in any cap and trade program, and therefore these references by CBD are not illustrative or appropriate.

This response and the responses to the AG's comments addressed above also adequately address CBD's comments regarding additionality as addressed in the Draft EIR.

Comment 3

CBD comments that the proposed rule relies on a flawed conception of the CEQA "baseline" and permits double-counting of reductions, and that the California Attorney General has explicitly warned the District that its "business as usual" threshold of significance for GHG emissions will not adequately mitigate the effects of new projects and will leave the District and other lead agencies vulnerable to legal challenges.

Response 3

The District disagrees with the commenter. Rule 2301 relies on no CEQA concepts at all. As discussed above, the rule does not mandate the use of the resulting GHG reduction credits in any manner, and to the extent that such credits do get used to mitigate GHG impacts under CEQA, the appropriate time to address the validity and adequacy of those credits is at that time.

However, it should be noted that the District's CEQA policy has been in place for approximately two years, without legal challenge. In fact, the basis of the District's GHG significance criteria for CEQA purposes (namely using compliance with AB 32, including its scoping plan's business-as-usual baseline, as its measure of the significance of GHG emissions increases) has been upheld by the California Courts. See *Citizens for Responsible Equitable Environmental Development v. City of Chula Vista*, 197 Cal App 4th 327, 335-337 (2011), review denied (Oct. 19, 2011).

Even notwithstanding the *City of Chula Vista* case, the District believes CBD's analysis of double-counting is flawed. CBD incorrectly concludes that ARB's definition of "business as usual" emissions in the year 2020 includes reductions that would have occurred for "virtually any reason" other than those required by a GHG reduction regulation. ARB could not predict the quantity of GHG reductions that will occur without the benefit of a GHG reduction requirement before the year 2020. In fact, it was not necessary for ARB to do so, because it developed the business as usual emissions estimates for the year 2020 by considering only growth in GHG emissions from the 2002-2004 baseline period. ARB did not consider or anticipate reductions of any type, except as they related to negative economic growth. See discussion of growth factors, pages F-3 and F-4, of Appendix F of ARB's Climate Change Scoping Plan.

Comment 4

CBD comments that the draft EIR fails to comply with CEQA, because it is based on an impermissible baseline for evaluating significance, namely one that *“compares project effects to a projected “business as usual” baseline derived from the AB 32 Scoping Plan.”*

Response 4

As discussed above, the District’s CEQA significance approach for GHGs, including the “business as usual” baseline, has been upheld by the California courts, and has been found to be a valid implementation of CEQA. However, CBD’s contrary conclusions may be because of a basic misunderstanding of our approach. The District’s CEQA approach does not compare a project’s effects to the 2020 projected baseline to determine significance. Instead, it determines the significance of a project via the performance standard of comparing the project’s effects to the state’s own AB 32 scoping plan goal of reducing those “business as usual” projected baseline emissions by 29%.

See the District’s response to the Attorney General’s comments (above) for a full discussion, but under the District’s CEQA policy, all projects with increased GHG emissions are considered significant, unless they successfully demonstrate that they have met that 29% reduction through one of several mechanisms.

Comment 5

CBD comments that the DEIR’s alternatives analysis is flawed in rejecting alternative banking systems that recognize “additional” credits.

Response 5

The DEIR appropriately rejected setting up a requirement that all reductions be additional before allowing them to be banked through proposed Rule 2301, because such a requirement is not necessary for the reductions to be used in the context of mitigation under the District’s CEQA policy. It would be nonsensical to create such discrepancies between the District’s CEQA policy and a banking rule that establishes credits that may be used within that CEQA policy, as discussed above. See the District’s response to the Attorney General’s comment 1.

However, as also discussed above, the District has created another category of credit which does require additionality of all requirements, and those credits presumably address CBD’s concerns.

Western States Petroleum Association Comments

Comment 1

WSPA disagrees with section 4.5.3.1 of the draft rule which states that reductions that occur at facilities subject to cap and trade are not surplus (and are therefore not eligible for banking).

WSPA specifies that this comment applies to both protocol-based credits and non-protocol based credits.

Response 1

Answering the latter comment first: the limitation of 4.5.3.1 applies only to non-protocol credits. All the requirements of Section 4.5.3 and its subsections apply only to non-protocol credits, as indicated by the phrase, “...*except as provided in Section 4.5.5,*” which section says,

Greenhouse gas emission reductions proposed to be quantified using CARB approved emission reduction project protocols shall be calculated in accordance with the applicable protocol.

Therefore section 4.5.3 does not apply to protocol-based credits.

However, the District disagrees with WSPA’s position that reductions that occur at a cap-and-trade facility are surplus. We believe that issuing credits for reductions that happen at cap and trade facilities would result in double-counting of those reductions, and the end result could be an unmitigated increase in GHG emissions. For instance, a facility that is subject to cap and trade is required to reduce its emissions by a certain percentage each year, or surrender a corresponding amount of allowances, offsets, or some other kind of “compliance instrument.”

Thus, if a cap and trade facility reduces its own GHG emissions, that action reduces its reliance on those other cap and trade compliance instruments and the facility can even sell its excess allowances to other facilities that haven’t reduced their emissions sufficiently to meet their own cap and trade obligation. Clearly, then, this reduction has already been used to meet the facility’s obligation under the AB 32 cap and trade program (a GHG-reduction requirement), and so that reduction is not surplus.

If the District were to then allow that reduction to be banked as an emission reduction certificate, it could then be available to others to mitigate a GHG increase, thus double-counting the reduction, resulting in an unmitigated increase. For these reasons, the District does not agree with WSPA’s comment, and will not consider reductions occurring at cap and trade facilities as surplus (accept as noted under the response to Comment 3, below).

Comment 2

WSPA comments that reductions achieved at cap and trade facilities could be considered surplus because they can't be used as offsets to satisfy a facilities cap and trade obligations.

Response 2

As noted above, reductions at cap and trade facilities don't have to be banked to become a part of the facility's cap and trade compliance effort. The reduced emissions mean that fewer other allowances or offsets need be obtained, and therefore are a direct piece of its cap and trade compliance method.

Comment 3

At the September 7 workshop, WSPA commented that the prohibition on considering reductions at cap and trade facilities to be surplus should only apply after cap and trade compliance requirements has kicked in. They reiterate this comment in their comment letter.

Response 3

The District agrees that some reductions that occur at cap and trade facilities prior to the start of cap and trade obligations can be banked. However, we believe that such reductions must occur prior to the baseline year which is used in establishing the industry-sector's cap, the year 2012. CARB has indicated that they will be issuing allowances based on 2012 emissions, using a calculation that will benefit the most efficient facilities within each industry sector. Since efficiency efforts implemented in 2012 will then benefit facilities in the cap and trade program, the District does not believe that it would be appropriate for the same facility to also benefit through the issuance of GHG credits for that same reduction.

To that end, section 4.5.3.1 has been modified to specify that reductions at cap and trade facilities that occur on or after January 1, 2012 are not surplus.

Comment 4

WSPA asks that the District revise language of section 4.5.4 to more clearly indicate that reductions may be calculated using any 24 month period out of the past 60 months.

Response 4

As discussed in our response to the Attorney General's comment 2, and for the reasons stated there, we have modified this language to require that the

calculation of actual emissions be based on the 24 months just prior to the reduction occurring, or be based of some other 24 hour period that is more representative of normal operations. Therefore, the District will not be making the clarification requested by WSPA.