

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT

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 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 currently being developed by CARB. Additionally, an analysis of a project's GHG emissions environmental impacts required by CEQA has been particularly difficult to implement as no state or local agency has provided definitive guidance on how to address GHG emissions impacts under CEQA.

The District, 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; potential development of a GHG emission reduction registry; investigate the enhancement of the existing emissions inventory process to include greenhouse gas emissions; and methods to administer voluntary greenhouse gas emission reduction agreements.

In a separate effort, the District has begun a public process to develop guidance on how lead agencies can address GHG emissions in the CEQA process.

The District's investigations into incorporating reporting of facilities GHG emissions with the existing criteria pollutant inventory revealed that CARB requires that facilities GHG emissions be reported directly to them. As a result, the District will not be incorporating GHG emission reporting into the existing criteria pollutant emissions inventory process.

The District has extended its historical practice of entering to and executing voluntary criteria pollutant emission reductions to entering into voluntary GHG emission reduction agreements. To date, the District has entered into two such agreements with project proponents to implement a grant program for projects that reduce GHG emissions in the District.

This staff report focuses solely on the development of a GHG emission reduction registry via amendments to Rule 2301 – Emission Reduction Credit Banking. A District-administered mechanism to allow facilities to register GHG emissions reductions will be beneficial to Valley residents and businesses for the following reasons:

- Registered GHG emission reductions can be retired to provide mitigation for CEQA
- Provide a mechanism for the trading of registered GHG emission reductions
- Registered GHG emission reductions could possibly be used for compliance with the upcoming AB32 cap and trade program
- Promote the early reductions of GHGs and their associated criteria and toxic pollutants in the District
- Provide a measure of certainty for registered GHG emission reductions lacking in some other GHG registries due to the District's extensive experience in banking criteria pollutant emissions
- Provide a mechanism for persons to purchase and retire banked GHG emission reductions for societal benefit

2. Process used in developing draft rule amendments

To investigate the various issues concerning the development of a mechanism to register 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 concerns in Appendix A.

The workgroup investigated several areas of concern regarding a GHG emission reduction registration program, including:

- The differences between the upcoming AB32 cap and trade program and a GHG emission reduction registration program. The upcoming AB32 GHG cap and trade program is a method to reduce actual GHG emissions by operating under a declining GHG cap, whereas GHG emission reduction registration is a method to preserve GHG emission reductions that are in excess of any GHG emission reduction requirement, including a cap and trade program.
- Potential uses of registered GHG emission reductions. Registered 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. However, the proposed GHG emission reduction program would not impose any restrictions on the uses of registered GHG emission reductions.
- A review of other GHG emission reduction registration programs currently in existence, 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 registration program were discussed, including the establishment of criteria for GHG emission reduction registration, the use of CARB protocols and the requirement for 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 use applied to GHG emission reduction banking.
- The advantages and disadvantages of development of a GHG emission reduction registration program. Please note that these discussions and conclusions are those of the workgroup, and are not necessarily shared by District staff. See a summary of these advantages and disadvantages in Attachment A.
- Alternatives to the development of a District administered GHG emission reduction registration program were discussed, including the District's possible role in CAR 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 detail discussion on the above topics and workgroup member's 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.

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 registration of GHG emission reductions.

District staff believes that by developing a program that allows the issuance of registered 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.

3. Discussion of draft Rule amendments

The draft amendments to Rule 2301 – Emission Reduction Credit Banking incorporate a method to register voluntary GHG emission reductions. While the CCAP indicated that such a system would be called the San Joaquin Valley Carbon Exchange, staff proposes that these provisions be incorporated into Rule 2301. A separate rule allowing the registration 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 will allow the use of registered GHG emission reductions for any purpose and will not impose any restrictions on their use.

The draft amendments to Rule 2301 will allow for GHG emission reductions that fall into two different categories to be registered with the District.

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 accepted, 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. 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.

ERCs quantified without CARB approved protocols could likely be retired as one possible method to provide mitigation for a project's GHG emissions as part of the CEQA process, if approved by the lead agency. Please note that the lead agency for a particular project has the discretion to determine what mitigation measures are appropriate. When the District is the lead agency, it would allow the retirement of registered GHG emission reductions that were quantified without CARB approved protocols as a method to mitigate a project's GHG emissions. Additionally, in its role as a responsible or commenting agency in the CEQA process, the District would support this type of GHG mitigation.

By providing a method for facilities to generate registered GHG emission reductions from a wide variety of emission reduction projects and allowing the transfer and

retirement of such ERCs, the District will provide a mechanism to assist facilities to adequately address their project's GHG emissions in the CEQA process.

It is expected that many different types of GHG emission reduction projects would qualify for registration using this approach.

Protocol-based GHG Emission Reduction Credits

In addition to the projects described above, the District would be able to register GHG emission reductions that rely on a California Air Resources Board (CARB) approved GHG emission reduction project protocol.

To be interchangeable with other emission reduction registries, e.g. Climate Action Reserve or the Chicago Climate Exchange, or for use in a cap and trade program, GHG emission reductions would have to be quantified pursuant to a CARB approved 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.

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 emission reductions be additional is generally more stringent than the Rule 2301 requirement that emission reductions be surplus, i.e. in excess of any current or proposed regulatory requirement that targets that specific pollutant. The requirement that GHG emission reductions be additional requires 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.

To date, there are three CARB approved GHG emission reduction project protocols – forestry preservation, urban forestry, and manure management.

These protocols typically require that emission reduction occur after a specified date and that the registered GHG emission reductions have a specified life, i.e. 100 years for forestry preservation and urban forestry, and 10 years for manure management.

In general, the development and CARB approval process for GHG emission reduction project protocols is a very involved and time consuming process. Additional protocols are currently being developed by the Climate Action Reserve and the South Coast Air Quality Management District that may be submitted for CARB approval 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 possibly use for compliance in the AB32 cap and trade program

compliance), under this rule the District would develop such a protocol and submit it to CARB for their approval. Due to the District's extensive 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 additional and quantified using CARB approved GHG emission reduction project protocols are intended to be interchangeable with GHG emission reductions in other registries, and, potentially, to be used to some 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 AB32 cap and trade rulemaking process.

4. Implementation of Draft Rule Amendments

Applications to register GHG emission reductions will take the same form as applications that are currently used for affected 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 \$702, and an analysis fee of \$90/hour (the \$702 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 \$65 per certificate. Please note that the filing fees will increase by approximately 8% as of July 1, 2009.

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 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, such GHG ERCs will be clearly conditioned to reflect the CARB-approved protocol upon which they are based. Likewise, ERCs that are not based on a protocol will be clearly indicated. 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.

B. 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 are purely voluntary, and 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 to allow for the trading and retirement of such emission reductions. The draft amendments do not require that facilities register 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.

Potential uses of registered GHG emission reductions are to allow facilities to register GHG emission reductions, retain or sell the registered emission reductions, and the retirement of such GHG emission reductions as mitigation in the California Environmental Quality Act (CEQA) process.

The draft amendments to Rule 2301 would provide such a mechanism for facilities and therefore would be useful as a component of a CEQA-implementation program.

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 does not apply to greenhouse gases.

B. Summary of Draft Amendments to Rule 2301

The draft amendments described below includes changes made as a result of comments received on the May 7, 2009 draft amendments. See comments and responses in Attachment B.

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 registration and transfer of greenhouse gas emission reductions and to define the standards for registering greenhouse gas emission reductions.

New subsection 1.2 does not restrict the use of registered greenhouse emission reductions for any particular purpose, i.e. their use is not restricted for any District, State, or Federal rule or regulation.

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 registered 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 gases 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. Registered GHG emission reductions can be used for any purpose and will not be limited by the rule.

A new definition of greenhouse gas will be added. This definition includes six greenhouse gases: 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 the January 1, 2005.

January 1, 2005 was chosen because this date is immediately after the 2002 – 2004 used in the AB32 scoping plan to determine baseline emissions that were used to project year 2020 business as usual emissions. This 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.

By allowing greenhouse gas emission reductions occurring after 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 reduction have occurred within the District. The CCAP mandated that the District develop a program to register 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 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.

Subsection 4.5.3 requires that, 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.

Subsection 4.5.4 specifies how GHG emission reductions are calculated, i.e. as the difference between the projects potential GHG emissions and the average annual GHG emissions before the project (based on any 24 month period within the past 60 months).

Subsection 4.5.5 requires that when the GHG emission reduction is created by a non-permitted operation, the source must enter into a legally binding contract with the District that ensures the emission reduction 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/register emission reductions of affected pollutants and greenhouse gasses.

Subsection 5.5 will be revised to indicate that ERC applications for greenhouse gas emissions reductions that occurred after January 1, 2005 and before the rule amendment date are due by six months after the rule amendment date, i.e. likely March 2010.

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 registered 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 notation will allow persons to readily determine that the ERC was quantified using a CARB approved protocol and therefore that the ERC may potentially be used in a cap and trade program.

Section 7.0 Withdrawal, Transfer, and Use of ERCs

New subsection 7.5 indicates that registered GHG emission reductions can be used for any purpose. Possible uses include, but are not limited to, retirement for CEQA mitigation; retirement for the benefit of the environment or to reduce or eliminate a carbon footprint by an individual, household, facility, corporation, community, city, or other group; or proposed to be used in a local, state, federal or international cap and trade program.

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 will conduct public workshops to present and discuss proposed amendments to Rule 2301. The series of workshops will take 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 will be incorporated into the draft rule as appropriate.

The proposed rule amendments and final draft staff report with appendices will be published prior to a public hearing to consider the adoption of proposed rule amendments to Rule 2301 by the District Governing Board. The public hearing is tentatively scheduled to take place in the third quarter of 2009.

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

Pursuant to the California Environmental Quality Act (CEQA), District staff will investigate the likely environmental impacts of the proposed rule amendments later in the rule development process and recommend appropriate action to the District Governing Board.

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_revised.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 project's 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 MAY 7, 2009

Industry Comments:

Building Industry of the Delta, (BIA)
California Cotton Growers and Ginners Association (CCGGA)
Earthjustice, (EJ)
Occidental of Elk Hills, (OXY)
Western United Dairymen, (WUD)

1. **COMMENT:** We would like to assist the air district in establishing protocols for quantifying GHG reduction credits for retrofitting older homes with energy saving additions such as dual pane windows and higher rated insulation on a house by house basis. I would like to see GHG reduction credits issued for each home that is retrofitted to today's standards. As the representatives of the building industry in San Joaquin County we are situated to assist the air district in rolling out this program to local contractors and tradesmen. By selling the credits to those who need GHG offsets we will reduce the costs of retrofitting and speed up the reduction of GHG in the older residential sector. (BIA)

RESPONSE: GHG emission reductions associated with the retrofitting of houses and buildings with energy saving improvements may qualify for banking provided all of the criteria in the draft Rule 2301 amendments are satisfied.

Section 5.1 states that an entity that owns or operates a source where the emission reduction occurred may apply for an ERC. In the case you described the building contractor or equipment supplier is not the owner or operator of the source, and as such cannot submit an application to bank the emission reduction without the consent of the house/building owner or occupant. However, with such consent it may be possible for a building contractor or equipment supplier to apply for ERCs.

Additionally, section 4.5.2 states that the emission reduction must have actually occurred in the District. As the GHG emission reductions are will not occur at the particular house or building but rather at the power plant or utility that generates/ transmits the electricity used at the house or building, it must be demonstrated that these emission reduction occurred within the District. Such a demonstration would likely entail an analysis that demonstrates that the electricity conserved was generated within the District and a quantification of the GHGs associated with such conserved electricity.

Finally, as the house/building is not subject to permit, pursuant to section 4.5.6 the owner of the house/building must enter into a contract with the District to ensure that the GHG emission reductions will continue to occur for the reasonably expected life of the house/building.

As can be seen above, the draft amendments to Rule 2301 allow such emissions reductions to be banked provided all of the criteria in the rule are satisfied.

2. **COMMENT:** GHG emission reduction that occurred since the passage of AB32 in 2006 should qualify for banking and for which affected pollutant ERCs were issued should be allowed to re-apply for GHG emission reductions. (CCGA)

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RESPONSE: The District believes that GHG emission reductions that occurred within a reasonable time prior to the adoption of the draft amendments to Rule 2301 should qualify for banking. To establish what is reasonable, we examined the AB32 scoping plan. In the AB32 scoping plan a baseline period of 2002 through 2004 was used establish actual emissions (prior to enactment of any of the GHG emission reduction measures called for in the scoping plan) and to subsequently project what GHG emission would be in 2020 in the absence of any GHG emission reduction requirements. Restricting GHG emission reductions to those that occurred after this baseline period will ensure that the 2020 GHG projection be maintained reasonably accurate.

Therefore, the draft rule has been revised to allow GHG emission reduction that have occurred on or after Jan 1, 2005 to qualify for banking.

3. **COMMENT:** Just a quick thought on the issue of when to allow GHG emissions reductions banking to begin under rule 2301. For the emissions that are reported under an ARB protocol, the start date should be the same as whatever ARB has. It could lead to confusion if the Air District and ARB are using the same protocols with different start dates. It may also lead to shopping around for protocols, depending on project start date.

As for non-protocol reductions, I think early adopters should be credited for their efforts and not penalized where the emissions reductions can be quantified. Using the date of rule adoption as the start date for credit banking sends a signal that businesses should wait until the rule is adopted, the US passes GHG legislation, or the US joins an international agreement on GHGs so that their reductions will have more value. In the meantime GHG reduction opportunities are not being realized. (WUD)

RESPONSE: As written, for reductions covered by a CARB approved protocol, the draft rule amendments will rely solely on the emission reduction eligibility date in the protocol. The emission reduction eligibility date for emission reduction not covered by a CARB approved protocol has been revised to Jan 1, 2005. See response 2 above.

4. **COMMENT:** Why is a protocol necessary in this Rulemaking process? I do not believe the protocol development requirements of the EU, RGGI, WRI, etc are not necessary to properly identify reductions that have been identified as real, surplus, enforceable, etc. This is something of an unnecessary extra step brought about by folks that really did not have the experience in monitoring emissions as we have in the US (especially in CA). AB 32 provides for reductions back to 1990. The District has a good deal of experience quantifying emissions. (OXY)

RESPONSE: As written, the draft rule amendments do not require that the District any new emission reduction protocols. However, if there is a demand by Valley businesses for a new CARB approved protocol, the District may develop the protocol and submit it to CARB for approval.

Please note that the draft rule amendments allow the banking of GHG emission reductions that are based on a CARB approved protocol and GHG emission reductions for which there is no CARB approved protocol. CARB approved protocols are not necessary for an emission reduction to be eligible for banking.

5. **COMMENT:** Can you better define "Societal Benefit"? (OXY)

RESPONSE: The staff report indicated that one possible use of banked GHG emission reductions would be their retirement by a person for societal benefit. This could be the case where a person or organization wishing to reduce their "carbon footprint" would purchase and retire GHG emission reductions. Such retirement would make the GHG emission reduction unavailable for any other uses.

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6. **COMMENT:** Why have you reversed your position from when this process began to now allow non-additional GHG reductions to be banked? Since state, federal, and international experts on GHG reductions will not recognize the validity such reductions, what makes the District feel that they are appropriate in the CEQA context? (EJ)

RESPONSE: The draft provisions to allow “non-protocol” emission reductions to be banked is mechanism to recognize GHG emission reduction that have actually occurred even though they were not generated by a deliberate GHG emission reduction project, i.e. additional. Such GHG emission reductions will have actually occurred in the District and will be verified to meet the criteria for banking with the District.

While we recognize that other GHG emission reduction entities may not recognize such emission reductions, the ability to bank such GHG emission reduction may encourage facilities to make GHG (and affected pollutant reduction) and recognize GHG emission reductions that occur as a collateral benefit of a project.

The draft rule amendments do not restrict the use of banked (protocol or non-protocol) GHG emission reductions. One possible use of banked GHG emission reductions is the surrendering of the emission reductions as mitigation in the CEQA process.

Each lead agency must use their discretion when considering mitigation in the CEQA process. When the District is the lead agency, it is our intent to generally consider the retirement of banked GHG emission reduction as appropriate GHG mitigation, however, the determination will be made on a case by case basis.

7. **COMMENT:** In the staff report, you say that when the District is lead agency for CEQA, it will allow the retirement of these non-protocol banked credits to mitigate a project's GHG emissions. Does the District plan on creating a program that allows the use of these credits that will be subjected to CEQA review? (EJ)

RESPONSE: The District will be revising its CEQA policy to address GHG emissions, including possible means to mitigate GHG emissions. This policy revision will itself be subject to CEQA.