

Date of Hearing: April 10, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 1159 (Aguiar-Curry) – As Introduced February 16, 2023

SUBJECT: California Global Warming Solutions Act of 2006: natural and working lands: market-based compliance mechanisms

SUMMARY: Clarifies that projects and actions that receive state funding, excluding federal funds dispensed by state agencies, for the primary purpose of reducing greenhouse gas (GHG) emissions are prohibited from being eligible to generate credits under any market-based compliance mechanism.

EXISTING LAW:

- 1) Requires the GHG emissions reduction limit, pursuant to AB 1279 (Muratsuchi, Chapter 337, Statutes of 2022) to be at least 85% below the 1990 level by 2045, and establishes a goal of zero net carbon emissions by 2045, commonly known as carbon neutrality. (Health and Safety Code (HSC) 38500 et seq.)
- 2) Requires the Air Resources Board (ARB) to prepare and approve a Scoping Plan for achieving the maximum technologically feasible and cost-effective reductions in GHG emissions from sources or categories of sources of GHGs. Requires ARB to consult with all state agencies with jurisdiction over sources of GHGs. Requires the Scoping Plan to identify and make recommendations on direct GHG emissions reduction measures, among other things. Requires ARB to update Scoping Plan at least once every five years. (HSC 38561)
- 3) Authorizes ARB to include in their California Global Warming Solutions Act of 2006 (Act) regulations the use of market-based compliance mechanisms to comply with the regulations. (HSC 38570)
- 4) Requires any reduction of GHG emissions used for compliance purposes to be real, permanent, quantifiable, verifiable, enforceable, and additional. (HSC 38562(d)(1)-(2))
- 5) Establishes a goal of reducing at least five million metric tons of GHG emissions per year through the development and application of compost on working lands. (Public Resources Code 42649.87)
- 6) Requires, on or before January 1, 2024, the Natural Resources Agency (NRA), in collaboration with ARB, the California Environmental Protection Agency (CalEPA), the Department of Food and Agriculture (CDFA), the expert advisory committee, and other relevant state agencies, to determine an ambitious range of targets for natural carbon sequestration and for nature-based climate solutions that reduce GHGs for 2030, 2038, and 2045 to support state goals to achieve carbon neutrality and foster climate adaptation and resilience. Requires these targets to be integrated into the Scoping Plan. (HSC 38561.5 (b)(1))
- 7) Prohibits emissions reduction projects and actions that receive state funding are not eligible to generate credits under any market-based compliance mechanism. (HSC 38561.5 (b)(3)(B))

FISCAL EFFECT: Unknown

COMMENTS:

1) **Need for the bill.** According to the author:

Last year, the Legislature passed AB 1757 (C. Garcia and R. Rivas), which required the Natural Resources Agency to determine a range of targets for natural carbon sequestration and for nature-based carbon solutions for GHG reductions. AB 1757 also includes well-intended provisions to ensure any emission reductions work used toward achieving targets is not double-counted and that projects or actions that receive state funding are not eligible to generate credits under any market-based mechanisms. However, the existing law under AB 1757, is overly broad, and could be interpreted to apply to *all* state funds, not just funds intended for carbon sequestration or GHG emissions reduction. This interpretation has the potential to halt projects that return ancestral lands to tribes because these projects rely on state funds for the acquisition and restoration grants, but also generate carbon sequestration projects.

This bill clarifies that the prohibition established in AB 1757 against generating credits under a market-based compliance mechanism - if a project or activity receives state funds - *only* applies to actions and projects that receive state funding for the *primary* purpose of reducing GHG emissions.

This clarification will allow land managers to seek and receive state acquisition and restoration grants for projects on properties that generate carbon sequestration credits (without the use of state funds) to move forward with legal certainty.

2) **California's climate goals.** Under the Act, California has adopted GHG reduction targets to reduce GHG emissions to at least 85% below the 1990 level by 2045, and establishes a goal of zero net carbon emissions by 2045.

Under the Act, ARB adopted the cap-and-trade program as a market-based compliance mechanism to establish a declining limit on major sources of GHG emissions throughout California, and ARB creates allowances equal to the total amount of permissible GHG emissions (i.e., the "cap"). Each year, fewer allowances are created and the annual cap declines. Under the program, covered entities can invest in "offsets" – projects that sequester carbon in forests, flooded rice fields, biogas control systems for manure management on dairy cattle and swine farms, and others – to satisfy a small percentage of their overall compliance obligation. Any reduction of GHG emissions used for compliance purposes must be real, permanent, quantifiable, verifiable, enforceable, and additional.

3) **Natural and working lands.** Current law defines natural lands as lands consisting of forests, grasslands, deserts, freshwater and riparian systems, wetlands, coastal and estuarine areas, watersheds, wildlands, or wildlife habitat, or lands used for recreational purposes such as parks, urban and community forests, trails, greenbelts, and other similar open-space land. Working lands include lands used for farming, grazing, or the production of forest products. Natural and working lands cover approximately 90% of the state's 105 million acres, including California Native American tribes' ancestral and cultural lands and waters.

In response to the Governor's executive order N-82-20, the state released the draft *Natural and Working Lands Climate Smart Strategy* in 2021, which describes how these lands can deliver on our climate change goals and identifies options to track nature-based climate action and measure progress.

Although natural and working lands can remove carbon dioxide from the atmosphere and sequester it in soil and vegetation, disturbances such as severe wildfire, land degradation, and conversion can cause these landscapes to emit more carbon dioxide than they store.

California's natural and working lands and the critical ecosystem services they provide, including their ability to sequester carbon from the atmosphere, are at risk. Actions to protect, restore, and sustainably manage the health and resiliency of these lands can greatly accelerate our progress to mitigate climate change and our ability to reduce worsening climate change impacts. Recent research has shown that California's working lands have the ability to sequester up to 100 million metric tons of carbon dioxide per year.

AB 1757 (C. Garcia, R. Rivas, Chapter 341, Statutes of 2022) requires ARB, by January 1, 2024, with NRA, CalEPA, and CDFA, to determine an ambitious range of targets for natural carbon sequestration, and for nature-based climate solutions, that reduce GHGs for 2030, 2038, and 2045 to support state goals to achieve carbon neutrality and foster climate adaptation and resilience.

- 4) **Current law impacts on offset eligibility.** AB 1757 provides that any emissions reduction project that receives state funding is not eligible to generate credits under cap-and-trade. The intent was to ensure that there is no "double payment" for stored carbon or avoided emissions from natural and working lands projects.

This creates an either/or scenario for project proponents: either receive financial recognition for stored carbon or avoided emissions as an offset project completed under an ARB-approved compliance offset protocol or receive state funding with the primary purpose being to help the state achieve its climate targets developed pursuant to AB 1757.

The author argues that provision effectively prohibits landowners from using state funds, even those that may have a federal origin, to implement ecological land management for the betterment of habitat without jeopardizing their ability to generate carbon offsets.

For example, The Conservation Fund, a national nonprofit organization, since 2004 has owned and managed more than 75,000 acres on California's north coast. The Conservation Fund's restoration and progressive management regimes have improved habitat for the endangered Northern Spotted Owl and state-threatened Coho salmon and steelhead trout. Instrumental to the ability of The Conservation Fund to manage these vast forestlands is the revenue generated through the sale of carbon offsets via the cap-and-trade program. In 2022, The Conservation Fund secured more than \$900,000 in state grants in partnership with Trout Unlimited and California Department of Fish and Wildlife for the improvement of salmon and trout habitat. With the passage of AB 1757, according to the author, The Conservation Fund must now decline those grants.

ARB issued guidance to interpret how AB 1757 applies to various project. In the context of state funding for sustainable forest management practices or conservation easements projects, ARB explains, "A project receiving compliance offset credits in the Cap-and-Trade Program

can still receive State funding for actions that do not have as their primary purpose climate mitigation and increases in quantified stored carbon or avoided GHG emissions.” In addition to its issued guidance, ARB works with offset project registries and third-party verifiers on a case-by-case basis to verify projects are in compliance with AB 1757 before issuing offset credits under the project. The intent with AB 1159 is to be consistent with ARB’s guidance.

It is important to note that the Act explicitly requires any reduction or avoidance of GHG emissions used for market mechanism compliance purposes be *additional*, amongst other criteria. Meeting the criterion of additional GHG reductions ensures the integrity of the ARB offset credit and its eligibility for use in the cap-and-trade program.

The provision in AB 1757 at the heart of this bill starts with “notwithstanding any other law,” which null and voids the requirement to assess whether the proposed offset provides additional GHG reductions or avoidance. Striking the “notwithstanding” verbiage would restore compliance with the Act under this provision. Further, to be consistent with the Act, but without creating a higher standard, the bill could be amended to require only the eligibility of GHG emissions *in addition* to those that would otherwise occur for offset compliance.

- 5) **Rewording AB 1757.** AB 1159 proposes to amend the AB 1757 provision to instead provide that “projects and actions that receive state funding for the *primary* purpose of reducing greenhouse gas emissions are not eligible to generate credits under any market-based compliance mechanism.”

Many state-funded projects have the intended purpose of restoration or other environmental benefit and have the incidental benefit of GHG reductions. Examples include, but are not limited to, land acquisition for conservation, forest health management or fire prevention projects, or wetland restoration. Landowners of those properties want to maintain the opportunity for offset compliance, which provides a funding source for further land management. Hence, the inclusion of the word “primary” in AB 1159.

However, maintaining the intent of the state’s GHG reduction laws necessitates the need to avoid “double dipping” (getting paid twice for the same GHG reduction project) and “double counting” (counting a project’s GHG reductions twice under different programs or goals).

To achieve that, the language from AB 1757 needs to address the nuances of state-funded projects – specifically, the proportion of those projects funded with state funds for GHG emission reductions so that it is clear that the prohibition is on generating offsets from the project or action the state paid for to reduce GHGs.

- 6) **Committee amendments.** To make both the intent and interpretation of AB 1757 clearer, *the Committee may wish to amend* subdivision (B) as follows:

(B) ~~Notwithstanding any other law~~ To ensure that all greenhouse gas emission reductions and removals are in addition to any reductions and removals that would otherwise occur, natural and working lands projects and actions that receive state funding ~~for the primary purpose of reducing greenhouse gas emissions~~ are not eligible to generate credits under any market-based compliance

mechanism for any greenhouse gas emissions reduced or removed as a result of the state funding.

While these amendments will provide further clarity, the author and stakeholders may need to continue to identify the various permutations of project funding, such as an acquisition project that involves multiple funding sources, including both state funding and offset revenue, to further refine this provision of law to recognize all potential project eligibility.

REGISTERED SUPPORT / OPPOSITION:

Support

Hoopa Valley Tribe
Trout Unlimited

Opposition

None on file

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