IETA

MAKING NET ZERO POSSIBLE

Assembly Committee on Natural Resources
1020 N Street, Room 164
Sacramento, CA 95814

09 April 2024

Re: Support if Amended AB 2331

Dear Chairman Bryan and Esteemed Members of the Committee:

We are writing to express our support for AB 2331, if amended.

We appreciate your leadership and work on addressing climate change. On behalf of IETA's over 300 business members with clean assets, investments and workforces across California and globally, we see AB 1305 as a generally positive measure that will help to ensure transparency of carbon credits and thereby serve to enhance the integrity of the voluntary carbon market. Since its publication last year, IETA has advocated for additional amendments to the bill to provide much-needed clarity for businesses to better align with the objectives of AB 1305. We are encouraged by the first round of amendments proposed in AB 2331. However, the effective date and clarification on applicable credit types were not the only elements of the bill that have caused confusion and imposed burdens on businesses, threatening the achievement of the law's intentions of increasing transparency and accountability in the voluntary carbon market. To address the remaining uncertainty and concern, we strongly urge the Commission to consider IETA's additional amendments proposed below. To reiterate, while IETA supports AB 1305 and the intent of AB 2331, as currently written, we believe that AB 2331 fails to adequately address businesses' reasonable concerns that have been previously communicated to legislators since AB 1305 was passed last year.

Below we provide a high-level summary of the main amendments that IETA believes are necessary to ensure AB 1305 achieves its policy objectives, many of which have been communicated to Assemblymember staffers over the past year.

Priority Proposed Amendments:

1. **Claim Applicability & Additional Clarity:** AB 2331 should be amended to provide additional detail related to what constitutes a claim, more specifics about what must be disclosed, and clarification on how previously made claims are covered (e.g., a claim made in 2015, well before the effective date, but for which the sustainability report is still publicly accessible).

2. **Alignment of Terminology with Industry-Standard Language:** To avoid confusion, language in clause 44475 should be amended to further align with industry-standard terminology, particularly registry terminology. Recommended amendments include: Project crediting period instead of "crediting timeline"; Project start date instead of "the date when the project started or will start"; Vintage rather than "dates of the offsets issued"; Average annual emissions instead of "emissions reduced or carbon removed on an annual basis"; and Descriptions of the pertinent data and calculation methods used for the quantification and verification of emissions reduction or removal credits issued using the protocol, including how such data was obtained rather than "The pertinent data and calculation methods needed to independently reproduce and verify the number of emissions reduction or removal credits issued using the protocol."

3. **"Durability" is vague, ambiguous and hotly contested:** Depending upon the greenhouse gas ("GHG") and the context in which it was emitted, the IPCC has recognized that it may persist in the atmosphere from anywhere between a few decades and a thousand years. Given this high level of uncertainty, it is not fair or appropriate to impose a burden upon entities to disclose the durability of any particular project's GHG emission reduction or removal enhancement, as it will vary widely depending upon many different variables. "Durability" should be replaced with the more workable definition: "the lifetime of the project in years that the measuring, reporting and verification is committed, and the buffer pool contribution for applicable projects".

If the legislature is unable to replace the term “Durability” as recommended above, IETA proposes the following alternative amendments: Amend section 44475. (a) (8) to: The durability period for the project’s greenhouse gas reductions or greenhouse gas removal enhancements and relevant provisions related to the permanence of the greenhouse gas reduction or removal under the applicable methodology and issuing carbon crediting standard. Further, section 44475. (d) (1) the definition of “Durability” should be changed to the duration of time over which an offset project is required to maintain its greenhouse gas reductions and greenhouse gas removal enhancements, as applicable, pursuant to the relevant offset protocol. As part of this alternative proposal, a new definition for permanence will need to be added under 4475. “Permanence” means the duration of time over which an offset project is required to maintain its greenhouse gas reductions and greenhouse gas removal enhancements, as applicable, pursuant to the relevant offset protocol and the provisions and systems that are in place at the carbon crediting standard level to address any potential future reversal or re-release of stored greenhouse gas emissions.

4. **Further Clarification on Renewable Energy Certificates:** Regarding the treatment of renewable energy certificates (RECs), the initial AB 2331 update was too specific, only exempting RECs issued through a government accounting system. Our concern is that this language may not actually exclude RECs due to its mischaracterization of the REC issuance process. We're unclear on what it means for a REC to be issued "through an accounting system of a governmental regulatory body," as North American RECs are generally issued through independent tracking systems and not governmental regulatory bodies. We fear that this new language could actually implicate voluntary RECs under the bill's requirements rather than exclude them.

5. **Data Availability Problems:** We suggest amending section 44475 (b)(1) to explicitly clarify what details a marketer or seller must disclose "regarding accountability measures if a project is not completed or does not meet the projected emissions reductions or removal benefits," particularly those that must be disclosed "(1) if carbon storage projects are reversed." We believe this disclosure requirement overlooks the reversal risk mitigation that is already employed by the registries. Registries do not hold buyers accountable for reversal of carbon stocking on projects—project owners and developers are required to mitigate reversals by (i) contributing to a buffer pool account to mitigate unintentional reversal, and (ii) to reimburse for intentional reversals with an equivalent amount of offsets to cover the decreased amounts of carbon stocking. In addition, this disclosure requirement fails to address the fact that there is no public tracking of reversals, except for cases in which a reversal is mentioned in the monitoring report or credits are used to compensate an intentional reversal. Therefore, we recommend amending the text of section 44475 (b)(1) to: "(1) if carbon storage projects undergo an unmitigated reversal and such information is available from the registry that issued the offsets generated by the project or otherwise known." As currently written, 1305 is problematic for any marketer or seller of a credits who is not the project developer of a given credit (other than to simply defer to the protocol and registry safeguards for that project). As the standards/registries do have reversal risk mitigation mechanisms that work to safeguard these issues, recommend amending the law to more explicitly defer to those.

6. **Liability Clarity:** We would like to see more clarity on enforcement action, violations, and penalties in 44475.3, in addition to a "safe harbor" measure for those that comply with its disclosure requirements. Ideally, this would include an express statement that a person that is in full compliance with the provisions of this Act are not liable for "false or misleading" information under Cal. Bus. & Prof. § 17500.

7. **<u>Treatment of Intermediaries:</u>** We believe it is important to include clarification around obligations for disclosure for intermediaries (who didn't develop the project they are marketing or selling credits from), as well as project owners (e.g. the forest landowner with whom a project developer is working to generate credits from but are not marketing or selling credits to the end buyer). Intermediaries or secondary market participants are limited to publicly available information from the applicable registry they transact offsets with. It is important to highlight that not all aspects of the required disclosures in AB 2331 are necessarily captured by each registry, raising legal concerns for well-intentioned intermediaries and secondary market participants. IETA recommends AB 2331 should clarify that intermediaries and secondary market participants – who don't have access to all the required information – should be entitled to rely on and point to the applicable registries and the information contained therein as fulfillment of their disclosure requirements as marketers and sellers of offsets.

Again, although we strongly support AB 2331's objectives of bringing much-needed clarifications to AB 1305, **IETA respectfully views that the initial proposed amendments have failed to address significant uncertainties remaining with the bill. IETA strongly holds that further amendments are necessary.** IETA's positions and these valid concerns are shared in good faith, and we welcome the opportunity to share additional insights to support the stated policy objectives.

Sincerely,

Dirk Forrister
President and CEO
IETA