

STAFF REPORT

Proposed Amendments to:

Rule 431, *Emission Reduction Credits and Banking*

Date of Release: May 23, 2011

Schedule of Meetings

- Date of Public Workshop:
 - 3:30 p.m., Wednesday, June 8, 2011, District Office, 629 Enter Avenue, Suite 15, Chico, CA
- Date of Board Hearing:
 - 10:00 a.m., Thursday, June 23, 2011, Town of Paradise Council Chambers, 5555 Skyway, Paradise, CA

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Date of Release: May 23, 2011

Date of Board Consideration for Adoption: June 23, 2011

Public Hearing: June 23, 2011 at 10:00 a.m.
Town of Paradise Council Chambers
5555 Skyway, Paradise, CA

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- Attachment B.** Registry of Current Community Bank ERCs
- Attachment C.** Notice of Public Workshop and Hearing
- Attachment D.** Proposed Resolution of Adoption

Proposed Amendments to:

Rule 431, *Emission Reduction Credits and Banking*

STAFF REPORT

Executive Summary

The Butte County Air Quality Management District (District) has a no net increase over 25 tons per year of non-attainment criteria pollutants for new or modified sources. Sources that emit greater than this amount must offset the amount over 25 tons, including essential public services. During the processing of Emission Reduction Credit (ERCs) applications, the District Rule 431, Emission Reduction Credits and Banking, requires the District to take 5% of the ERCs granted and place them in the Community Bank to provide offsets for essential public services.

In 2009, the Governing Board adopted procedures to loan Community Bank ERCs to essential public services. The District has received a request to amend the rule to allow leasing of credits to other sources to allow growth and construction when required offset credits are not available on the open market. Therefore, the District is proposing to amend Rule 431 to set procedures for leasing ERCs including determining loan rates and terms.

The proposed Rule provides for the credits to be leased for term periods of 30 to 50 years. Since any net proceeds are required to fund air quality benefit projects, the Rule proposes to have the loan amount paid in either the first 3 or 5 years (Board option) to maximize the air quality benefits to the public from the loan of ERCs from the Community Bank.

1.0 PURPOSE

The purpose of the proposed amendments to Rule 431, Emission Reduction Credits and Banking is to set forth definitions and procedures for leasing emission reduction credits (ERCs) from the Community Bank.

2.0 APPLICABILITY

The current Rule 431 sets forth the procedures to loan ERCs to essential public services. The proposed amendments would allow other sources that could not find available credits in the

private section to apply to lease ERCs from the Community Bank to provide offsets as required by Rule 430- New Source Review. Since the Community Bank ERCs are provided in lieu of offsets from private holdings, those entities holding ERCs may also have interest in the proposed rule amendments.

3.0 REQUIREMENTS OF PROPOSED AMENDMENTS TO RULE 431

The proposed amendments to this rule expand the use definition for the Community Bank to include sources other than those recognized as Essential Public Services. The Community Bank is defined as a depository of ERCs available for loan to essential public services and other sources. An essential public service is defined as a sewage treatment plant; prison, jail, or correctional facility; a police or fire fighting facility; a school; a hospital; a landfill gas control or processing facility; a water delivery operation; an environmental cleanup; or a biomass to energy conversion facility. Staff is proposing to delete the biomass to energy facility category from the list of essential public services.

The Rule will continue to allow any project that meets the definition of an essential public service and needs offsets access to the Community Bank ERCs at no cost. Per Governing Board direction, no restrictions are placed on whether the entity is a public agency or private operation as long as the project is an essential public service.

The proposed amendments include new procedures for other sources to apply to the APCO for Community Bank ERCs and establishes the process for determining the loan amount based on the two most recent market rate transfers for the nonattainment pollutant in the District or, if not available, transfers in the Northern Sacramento Valley Planning Area (NSVPA). If no transactions have occurred in the District or NSVPA, the APCO must use what transaction data is available for the pollutant to propose a loan rate to the Governing Board. The proposed Rule provides for a Loan Term to the source for at least 30 years but not more than 50 years. The proposed amendments contain restrictions to not allow the sale or leasing of Community Bank ERCs by the borrower to other sources. When the loan concludes or if the project is cancelled or terminated before the loan term is complete, the ERCs would revert back to the Community Bank less the retired offset ratio as required by Rule 430.

The Basic Loan Rate as approved by the Governing Board would be the amount of the Loan. The Rule proposes payment of the loan on the front end of the loan term so that the public health benefits can be realized sooner. The proposed Rule includes two loan payment options for the Governing Board to review and select the option which best serves the public and regulated community's needs. The loan payment would either be paid in three or five installments depending on the Board's selection.

The proposed amendments comply with the requirements of H&SC §42504 in that they do not relax or allow for less stringent requirements on the amount offsets, including offset ratios, as required in current rules and regulations. ERCs will be retired from the Community Bank pursuant to the distance based offset ratio required in the current Rule 430, Section 5.3 for any ERCs disbursed from the Community Bank.

Any net proceeds from the leasing of credits are required to be used for pollution reduction projects within the District as approved by the Governing Board.

4.0 COST IMPACTS/COST EFFECTIVENESS:

Cost of Compliance: The cost of the ERCs is based on the average market value of the last two ERC transactions for that pollutant at the time of the loan. Depending on the type of pollutant, commercially available ERCs can cost from \$10,000 to \$25,000 per ton (based on transactions reported to the Air Resources Board). There is no cost to obtain a loan of ERCs from the Community Bank by an essential public service.

Type of Business Affected: The proposed amendments would allow sources other than essential public sources to apply for a Community Bank ERC loan.

Impact to Economy: The proposed amendments should have a positive impact to the economy since credits are required for the growth and construction of new and expanding businesses and such expansion could not occur if ERCs are not available from private holdings. In addition, any net proceeds shall be returned to the community in the form of emission reduction projects.

District Costs: The costs to the District for the proposed amendments will include staff time to create and track the Community Bank ERCs on loan. The District may incur costs to administer innovative emission reduction projects that are created from the leasing of ERCs from the Community Bank.

5.0 ALTERNATIVES:

The Governing Board may choose to:

- a) Approve the rules as proposed;
- b) Direct staff to modify the proposed Rules after receiving public comments during the hearing; or
- c) Take no action.

6.0 ENVIRONMENTAL REVIEW AND COMPLIANCE:

The adoption of proposed amendments to Rule 431 is categorically exempt from the California Environmental Quality Act (CEQA) under Sections 15307 and 15308 of the State CEQA Guidelines and no exceptions to these exemptions apply. This exemption is allowed when the Rule will help improve air quality in Butte County. California Public Resources Code (Section 21159) requires an environmental analysis of the reasonably foreseeable methods of compliance. The District has concluded that no reasonably foreseeable adverse environmental impacts will be caused by adoption of the proposed Rules.

7.0 REQUIRED FINDINGS:

Findings required by Division 26 of the California Health and Safety Code requires local districts to comply with a Rule adoption protocol as set forth in Section 40727 of the Code. This section has been revised through legislative mandate to contain six findings that the District must make when developing, amending, or repealing a Rule or regulation. These findings and their definitions are included in the following table.

Required Findings

FINDING	DEFINITION	REFERENCE
Authority	A District shall adopt Rules and regulations and do such acts as may be necessary or proper to execute the powers and duties granted to, and imposed upon, the District by this division and other statutory provisions.	California Health and Safety Code, Sections 40000, 40001, 40701, 40702, and 40709-13, are provisions of law that provide the District with the authority to adopt these proposed amendments to Rule 431.
Necessity	The District has demonstrated a need for the Rule, or for Rule amendment or repeal.	The proposed amendments to Rule 431 are necessary to provide procedures for disbursing emission reduction credits from the Community Bank if the credits are to be available to sources other than essential public sources.
Clarity	The Rule is written or displayed so that its meaning can easily be understood by the persons directly affected by it.	There is no indication, at this time, that the proposed Rules are written in such a manner that persons affected by the Rules cannot easily understand them.
Consistency	This Rule is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or State or federal regulations.	The proposed amendments to the Rules are consistent with applicable statutory requirements.
Non-Duplication	The Rule does not impose the same requirements as an existing State or federal regulation, unless the District finds that the requirements are necessary and proper to execute the powers and duties granted to, and imposed upon, the District.	The proposed amendments to the Rule do not impose requirements that duplicate existing laws or regulations.
Reference	Any statute, court decision, or other provision of law that the district implements, interprets, or makes specific by adopting, amending, or repealing a regulation.	California Health and Safety Code, Division 26, Part 3, Sections 40000, 40001, 40701, 40702, and 40709-13.

8.0 ATTACHMENTS

- Attachment A.** Proposed Amendments to Rule 431, *Emission Reduction Credits and Banking*
- Attachment B.** Registry of Current Community Bank ERCs
- Attachment C.** Notice of Public Hearing and Workshop
- Attachment D.** Proposed Resolution of Adoption

Attachment A.

Proposed Amendments to Rule 431, *Emission Reduction Credits and Banking*

Rule 431 Emission Reduction Credits and Banking

*(Adopted February 15, 1995; Amended July 18, 1996; Amended and Recodified June 24, 1999;
Amended May 24, 2001; Recodified August 22, 2002; Amended May 28, 2009
Proposed for Adoption June 23, 2011)*

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RULE 431**1 PURPOSE**

- 1.1** To provide a mechanism for permitted and non-permitted emission sources to deposit, transfer, and use Emission Reduction Credits (ERCs) as offsets as allowed by applicable laws and regulations. To ensure that all emission reductions are transferred through the Butte County Air Quality Management District's (DISTRICT's) emission reduction credit bank pursuant to the California Health and Safety Code (HSC). All transfers and uses of emission reductions that are required under the DISTRICT's New Source Review (NSR), Rule 430 of this Regulation, shall be processed in accordance with this Rule.
- 1.2** To define ERC eligibility standards, quantitative procedures, and administrative practices and to ensure that ERCs are real, permanent, quantifiable, surplus, and enforceable.
- 1.3** To provide a mechanism for intra-basin transfer and use of banked ERCs.
- 1.4** To ensure that open biomass burning is restricted or prohibited for a parcel for which an ERC certificate has been issued exists.
- 1.5** To ensure that Phase Down emission reductions qualify as air quality offsets and emission reduction credits.
- 1.6** To set forth procedures for disbursing ERCs from the Community Bank.

2 APPLICABILITY: The provisions of this Rule apply to the deposit, transfer, and use of ERCs from stationary sources and open biomass burning sources of air pollution emissions. References in this Rule to non-permitted source, permit exempt, shutdown, curtailment, authority to construct and permit to operate do not apply to open biomass burning sources. Additional details and procedures covering open biomass burning sources can be found in the DISTRICT Administrative Code Part B.

3 DEFINITIONS:

- 3.1 Actual Emissions:** Means the measured or estimated emissions that most accurately represent the emissions from an emissions unit.
- 3.2 Actual Emission Reductions:** Means a reduction in actual emissions from an emissions unit. Actual emission reductions shall be calculated on a quarterly basis, pursuant to Sections 10 or 15 of this Rule, and shall meet the following requirements:

- 3.2.1** Emission reductions shall be real, enforceable, quantifiable, and permanent.
- 3.2.2** Emission reductions shall be in excess of any emission reductions that are:
- 3.2.2.1** Required or encumbered by any laws, rules, regulations or orders; or
 - 3.2.2.2** Attributed to a control measure proposed or contained in a State Implementation Plan; or
 - 3.2.2.3** Contained as measures in the adopted DISTRICT Air Quality Attainment Plan for attaining annual reductions required for the California Clean Air Act (CCAA) and the Federal Clean Air Act. Actual emission reductions attributed to a proposed control measure may be re-eligible as actual emission reductions in the following circumstances:
 - 3.2.2.3.1** For control measures identified in the DISTRICT Air Quality Attainment Plan or State Implementation Plan, no rule has been adopted within two (2) years from the scheduled adoption date provided, however, the Air Pollution Control Officer (APCO) has not extended the scheduled adoption date;
 - 3.2.2.3.2** For control measures not identified in the DISTRICT Air Quality Attainment Plan or State Implementation Plan, no rule has been adopted within two (2) years from the date of the latest public workshop notice.
- 3.2.3** Notwithstanding Section 3.2.2.1 of this Rule, emission reductions due to the decreased open burning of rice fields that were planted prior to the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991 shall qualify as actual emission reductions in accordance with HSC Section 41865(r)(1).
- 3.3** **Affected Pollutants:** Means all air pollutants for which an ambient air quality standard has been established by the U.S. Environmental Protection Agency (EPA) or the California Air Resources Board (CARB), and the precursors to such pollutants.
- 3.4** **Applicable Requirements:** Means air quality requirements with which a facility must comply pursuant to the State Implementation Plan, the Federal Clean Air Act as amended in 1990 and implementing regulations, and other provisions of the United States Code of Federal Regulations, and DISTRICT Rules, Regulations or permit requirements.

- 3.5 Applicant:** The person, entity, landowner or their designee applying for an ERC certificate.
- 3.6 Bankable Emissions:** Reductions in affected pollutants which meet the applicable provisions of the DISTRICT's banking and NSR Rules.
- 3.7 Banking System:** The procedures of quantifying, certifying, recording, and storing ERCs for future use or transfer.
- 3.8 Banking Register:** The document that records all ERC applications, deposits, withdrawals, transfers, and other transactions including the claiming of open biomass burning offset credits by stationary sources existing prior to first adoption of this Rule.
- 3.9 Biomass:** Material derived from the harvesting of crops or removal of vegetation, including timber, except for material from processed dimensional timber.
- 3.10 COMMUNITY BANK:** A depository of certified emission reduction credits available for loan ~~at no cost~~ to essential public services [and other sources](#) for compliance with offset requirements specified in Rule 430-*New Source Review*.
- 3.11 Control Efficiency:** Means the ratio of controlled emissions to uncontrolled emissions of the proposed air pollution control technology which will be incorporated, by means of enforceable permit conditions, in the Authority to Construct and Permit to Operate. Emission reductions attributed to lowering throughput rates or operating hours shall not be considered in determining control efficiency.
- 3.12 Emission Reduction Credits:** Reductions of actual emissions from an emission source that are registered with the DISTRICT in accordance with this Banking Rule. Reductions will be specified by pollutant, by location, and in units of pounds per calendar quarter.
- 3.13 Emissions Unit:** Means an identical operation, parcel(s), process, or control equipment, such as an article, machine, or other contrivance, which emits, may emit, or results in the emissions of any affected pollutant directly or as fugitive emissions.
- 3.14 Enforceable:** Means real, quantifiable, permanent, verifiable and legally binding.
- 3.15 ERC Certificate:** A document certifying title to defined quantities and types

of emission reductions issued by the DISTRICT to the owner(s) identified on the certificate.

3.16 Essential Public Services: The following facilities shall be considered essential public services:

3.16.1 A sewage treatment plant; or

3.16.2 A prison, jail or correctional facility;

3.16.3 A police or fire fighting facility; or

3.16.4 A school; or

3.16.5 A hospital; or

3.16.6 A landfill gas control or processing facility; or

3.16.7 A water delivery operation; or

3.16.8 An environmental cleanup operation; ~~or~~

~~**3.16.9** A biomass to energy conversion facility.~~

3.17 Historic Actual Emissions: Means actual emissions from an existing emissions unit averaged over the two (2) consecutive years immediately preceding the date of application. If the last two (2) years are unrepresentative of normal operations as determined by the APCO, then two (2) consecutive years of the previous five (5) years may be used. Where an emissions unit has been in operation for less than two (2) years, a shorter averaging period of at least one (1) year may be used, providing it represents the full operational history of the emissions unit. For rice straw burning the phase down emissions baseline years will be a five-year period (1988 through 1992).

3.18 No-burn List: A list of parcels for which ERCs exist and which will not receive burn permits.

3.19 Non-permitted Emissions: Emissions of pollutants into the atmosphere from sources that do not have air pollution operating permits. Non-permitted sources include exempt facilities.

3.20 Northern Sacramento Valley Planning Area: The area consisting of the following counties: Butte, Colusa, Glenn, Shasta, and Tehama, and the northern portions of Sutter and Yuba Counties.

3.193.21 Offsets: The use of an emission decrease from one or more sources to compensate for an emission increase in a non-attainment pollutant or its precursor from a new or modified source subject to the requirements of the DISTRICT's NSR Rule.

3.203.22 Parcel(s): A legally identifiable piece of land, or a portion of that land, or combined lands under common ownership, as registered with the County Assessor's office for property tax purposes.

3.213.23 Permanent: Means verifiable, real, quantifiable and legally binding

emission reductions which continue or endure without fundamental or marked change.

3.223.24 Phase Down: Refers to any parcel(s) that was planted with rice during the years from 1988-1992.

3.233.25 Potential to Emit: Refers to the maximum daily capacity of a stationary source or emissions unit to emit affected pollutants under its physical and operational design. Any physical or operational limitation on the daily capacity of the source or unit to emit a pollutant, including pollution control equipment and restrictions in hours of operation, type of material combusted, stored, or processed, shall be treated as part of its design limitation if they are incorporated into the applicable permit as enforceable permit conditions.

3.243.26 Proposed Emissions: The potential to emit for a new or post-modification emissions unit.

3.253.27 Quantifiable: Means the ability to estimate emission reductions in terms of both their amount and characteristics. The same method of estimating emissions should generally be used to quantify the emission levels before and after the reduction.

3.263.28 Quarterly: Means calendar quarters beginning in January, April, July and October.

3.273.29 Real: Means emission reductions that are not artificial, fraudulent or illusory.

3.283.30 Registered owner: The person, entity, landowner or their designee in whose name the ERC certificate is issued and listed in the banking register.

3.293.31 Restricted Burn List: Means a list of parcels for which ERCs exist and can receive a restricted burn permit.

3.303.32 Restricted Burn Permit: Means a permit to burn specific fields within an emissions unit or parcel of land for which an ERC certificate has been issued. The restricted burn permit ensures that the actual emissions are less than or equal to the amount allotted to the permit holder.

3.313.33 Shutdown: Either the earlier of the permanent cessation of emissions from a source or an emissions unit or the surrender of that unit's or source's operating permit. If prior to the surrender of the operating permit, the APCO determines that the source or emissions unit has been removed or fallen into an inoperable or unmaintained condition, the APCO may notify the owner of the intent to cancel the permit. If the owner cannot demonstrate to the

satisfaction of the APCO, or does not respond within 60 days from the DISTRICT'S notice to cancel the permit, that the owner intended to operate again, then the APCO may cancel the permit and deem the source shutdown as of the date of the last emissions.

3.323.34 Source: Any building, structure, facility, or emissions unit which emits or may emit any affected pollutant directly or as a fugitive emission. A source may have a Permit to Operate or be exempt from permit. For purposes of this Rule open biomass burning will be considered a source and such activity requires an annual burning permit.

3.333.35 Surplus: Means emission reductions that are in excess of any emission reductions which are proposed or contained in a DISTRICT Air Quality Attainment Plan for attaining reductions required to attain and maintain federal and State ambient air quality standards. Emission reductions due to the decreased open burning of rice fields that were planted prior to the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991 shall qualify as surplus emission reductions in accordance with HSC Section 41865(r) (1).

3.343.36 Transfer: The conveyance of an ERC certificate from one entity to another by the DISTRICT.

4 REGISTRATION OF EMISSION REDUCTION CREDITS

4.1 The DISTRICT shall maintain a bank register, which shall consist of the following:

4.1.1 A record of all deposits, withdrawals, and other transactions with regard to the DISTRICT's banking system.

4.1.2 A record of all open biomass burning offset credits derived from reduced burning within the DISTRICT and which credits are claimed by stationary sources existing prior to the adoption of this Rule (pre-existing source).

4.2 In the event that open burning biomass emission credits are claimed by a new or modified stationary source as offsets and obtained from outside the DISTRICT, the DISTRICT shall report the claiming of such offset credits to the district of origin of the biomass material.

4.3 The APCO may only grant an ERC certificate after the emission reductions have actually occurred and upon satisfaction of the following applicable provisions:

4.3.1 If the emission reductions were created as a result of greater operating efficiencies, reduced throughput, shortened operating hours, or from the application of more efficient control technology, a revised Permit to Operate must be issued. This revised permit must

include specific quantifiable emission limits reflecting the reduced emissions.

- 4.3.2** If the emission reductions were created as a result of the shutdown of a permitted source or emitting unit, the Permit to Operate or permit to burn has been surrendered and voided or modified to ensure that the emissions reductions are permanent.
- 4.4** When all the requirements of this Rule have been satisfied and the emission reductions have actually occurred, the APCO shall issue the ERC certificate. After granting an ERC certificate, the name on the certificate shall be entered into the banking register. Such information may be made available for public inspection.
- 4.5** All ERC certificate information concerning titles, interests, liens, restrictions, encumbrances, and other changes of record shall be identified in the DISTRICT's banking register until the certificate is canceled or nullified by operation of law.
- 4.6** Each ERC certificate shall be numbered, bear the date of issuance, be signed by the APCO, bear the seal of the DISTRICT, and contain information regarding the quantity and type of ERCs. One copy of the ERC certificate shall be retained by the DISTRICT and the original shall be delivered to the applicant. Transmittal of the ERC certificate to the owner shall be accomplished in person or by registered mail. The person accepting the ERC certificate shall sign a receipt therefore and provide such proof of identity as the APCO may require.
- 4.7** ERC certificates issued pursuant to Section 7 of this Rule shall be valid and effective only after, and on the condition that, the ERC certificate is recorded as a condition of the parcel deed. The notice of recording shall be in a form approved by the DISTRICT, and include the following information at a minimum: owner of the ERC certificate, Assessor Parcel Number, owner of the property, notice of open burning restriction and date of recording.
- 4.8** At the option of joint owners of ERCs, such persons may receive one ERC certificate for the entirety or separate ERC certificates reflecting each proportional share and separate ownership. The DISTRICT's bank shall reflect the consolidation or separation of the ERCs.
- 4.9** Title to an ERC certificate shall be deemed registered at the time the required information concerning the ERC is entered into the banking register. Title will be vested in the applicant's name or his/her designee and shall inure to the benefit of his or her heirs. In the case of ERCs granted for open burning of biomass, title will be vested with the landowner or landowner's designee.

- 4.10** All dealings with ERCs and all liens, restrictions, encumbrances, and changes subsequent to the first registration shall be deemed to be subject to the terms of this Regulation, and to such amendments and alterations as may hereafter be made.
- 4.11** The APCO may reissue lost or destroyed ERC certificates after the registered owner certifies in writing that the original has been lost or destroyed.

5 ADJUSTMENTS TO EMISSION REDUCTION CREDITS

- 5.1** Except as provided in Section 5.2 below, the DISTRICT shall take five percent (5%) of the emission reductions before the ERCs are granted and apply the emissions toward attainment of the air quality standards or place the emissions into a community bank controlled by the DISTRICT.
- 5.2** An applicant may restrict use of the ERCs only for the applicants own future use, at the same parcel or site, in which case the DISTRICT will not adjust the ERCs. The applicant may have the restriction removed by the DISTRICT upon payment of costs incurred by the DISTRICT to re-issue an unrestricted ERC certificate.
- 5.3** Deposits are permanent until used by the depositor or any party to whom the ERC certificate has been transferred. After issuance of the certificate, subsequent changes in regulations to require the type of emission reductions which have been banked shall not reduce or eliminate the ERC.
- 5.4** Owners of ERC certificates may donate their ERCs to the DISTRICT for purposes of assisting the DISTRICT towards attainment of the air quality standards. Such donations shall be deposited into the Community Bank.

6 TRANSFER AND USE OF EMISSION REDUCTION CREDITS

- 6.1** The ERCs may be used at the time of, or anytime after deposit into the DISTRICT's banking system by the registered owner, or owner's designee of the ERC certificate to provide offsets for increase in emissions from new or modified sources subject to the DISTRICT's NSR Rule.
- 6.2** Transfer in whole or in part of an ERC certificate shall be done by the registered owner in accordance with applicable procedures of this Rule. Upon payment of a transfer fee a new ERC certificate, certifying the title or interest in the ERC, shall be issued and the original certificate shall be canceled. Such cancellation shall be recorded in the banking register.
- 6.3** Nothing in this Rule prevents the lease or temporary transfer, in whole or in part, of ERCs represented by certificates to be used as offsets, provided the

DISTRICT has procedures for adjusting the ERC at the end of the lease period to account for the facility historic actual emissions. However, no transfers shall be made until application is made to the DISTRICT and approval given by the APCO.

- 6.4** Except as provided below, all emission reductions to be used as offsets under the NSR Rule must first be processed through this Rule and receive an ERC certificate in accordance with the requirements of this Rule. Onsite reductions in emissions which are contemporaneous with onsite increases in emissions from other emissions units and meet the requirements of the NSR Rule are not required to go through this ERC/Banking Rule.
- 6.5** ERCs which result from stationary source shutdowns and curtailments shall not be used as offsets for a new or modified stationary source where permitted emissions would exceed emission thresholds established for the DISTRICT in the Federal Clean Air Act for major source modifications, unless the applicant can establish the following:
- 6.5.1** The proposed new source or modification is a replacement, and the shutdown or curtailment occurred after August 7, 1977, or
 - 6.5.2** An application for credit was filed with the DISTRICT within 180 days of the date of the last emission; and
 - 6.5.2.1** The crediting of shutdown emissions complies with the most recent emission trading policy or regulations of EPA; and
 - 6.5.2.2** The DISTRICT has met statutory planning mandates and air quality improvement milestones.
- 6.6** On transfer of ownership of ERCs to a stationary source for use as offsets the registered owner shall provide information to the DISTRICT on costs, if any, in dollars per ton, on a per pollutant basis, of emission offsets purchased for, or acquired by, the new or modified source.

- 7 ELIGIBILITY OF OPEN BIOMASS EMISSION REDUCTION CREDITS:** Except as noted below, emission reductions must comply with the definition of historic actual emission reductions, and will be deemed to have occurred when the parcel(s) has been placed on the no-burn list or restricted burn list. An applicant may apply for ERCs for the amount calculated using Section 10 of this Rule. Applicants that have been required to phase down rice straw burning under the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991 are eligible for the actual emission reductions that have occurred from the time that the field was initially planted with rice, subject to the following:

- 7.1** Emission reductions from decreased open burning of rice fields that were planted prior to the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991, and burned any one of the years 1988-1992 are eligible for banking 100% of the actual emission reductions able to be quantified

respective to any one (1) of the five (5) baseline years.

- 7.2** Emission reductions from decreased open burning of rice fields that were planted after 1992 are eligible for banking those reductions calculated based on the historic actual emissions, subject to the calculation procedures of Section 10 of this Rule.

8 APPLICATION PROCEDURES FOR OPEN BIOMASS EMISSION REDUCTION CREDITS

- 8.1** Any person, entity, landowner, or authorized agent, which owns or operates an emissions unit for which eligible emission reductions have occurred or will occur may apply for an ERC certificate in accordance with the requirements of this Rule. If the applicant is not the landowner, written authorization from the landowner must be included with the application for an ERC certificate.
- 8.2** The person or entity requesting the ERC certificate shall make an application on forms supplied by the DISTRICT.
- 8.3** The application may be for reductions in one or more affected pollutants.
- 8.4** Applicants may claim confidentiality of information contained in the application pursuant to applicable provisions of the Federal Clean Air Act, Government Code, and HSC.

- 9 ADMINISTRATIVE PROCEDURES AND TIMETABLE FOR OPEN BIOMASS EMISSION REDUCTION CREDITS:** The APCO shall prepare the administrative procedures and timetable for open biomass ERCs in the DISTRICT Administrative Code Part B.

- 10 OPEN BIOMASS BURNING EMISSION REDUCTION CREDIT CALCULATIONS:** The DISTRICT Administrative Code Part B contains emission factors (EF), fuel loading factors (FL), default historical burn fractions (HBF), and default quarterly burn fractions (QBF). Default HBFs and QBFs may be used to calculate the ERCs. The following information will be used in the calculation of ERCs; however, when using default HBF and QBF factors, Sections 10.3 and 10.4 below do not apply:

- 10.1 Basic Information:** The applicant shall provide data on the crop type, exact location of the parcel including assessor's parcel number and other information regarding parcel location required in the DISTRICT Administrative Code Part B, and acreage burned (AB) during the eligibility period. The applicant shall use county burn permit/authorization records or

other verifiable records to validate the information as specified in the DISTRICT Administrative Code Part B. The type of biomass residue and the AB will be used in the ERC calculation.

- 10.2 Acreage Burned (AB):** The applicant for emission reductions from open biomass burning shall provide the acreage burned for each parcel(s) of land for which ERCs are applied. Phase down acreage must have been burned for at least one of the five (5) baseline years of 1988 through 1992. The applicant shall use county burn permit/authorization records or other verifiable records to determine the acreage.
- 10.3 Historical Burn Fraction (HBF):** The applicant shall provide available data on historical biomass burn percentage for the parcel(s). The historical burn fraction (0-1) is an adjustment to the amount of ERCs available. The applicant may use county burn permit authorization records or other verifiable records to determine the amounts of prior burning. For rice straw burning a historical burn fraction of one (1) will be used for the phase down period.
- 10.4 Quarterly Burn Fraction (QBF):** The applicant may provide available data on quarterly biomass burning for the parcel(s). The applicant may use county burn permit authorization records or other verifiable records to determine the date(s) of burning.
- 10.5** The biomass fuel loading (FL) and emission factors (EF) set forth in the DISTRICT Administrative Code Part B or other best available data as approved by the APCO shall be used for the crops indicated.
- 10.6 Discount Acreage (DA):** The applicant may reduce the total acreage covered by the ERC certificate to allow for continued burning of a portion of the total acreage of the parcel. This reduction in the total acreage covered will be reflected in the emission credits applicable to the parcel(s). The DISTRICT shall either:
- 10.6.1** Identify the portion(s) of the parcel(s) covered by the discount acreage (i.e. the acreage eligible for a burn permit) and place the remaining acreage on a no-burn list. This portion will not be allowed to change without prior DISTRICT notification and approval; or,
- 10.6.2** Place the parcel(s) covered by the ERC certificate on a restricted burn list. Burning can only occur on specified fields within the parcel(s) after the DISTRICT has issued a restricted burn permit for the emissions unit (parcel(s)).
- 10.7** The District will determine a quarterly ERC value for each pollutant based on the following calculation:

$$\text{ERCs} = (\text{AB-DA}) * \text{HBF} * \text{FL} * \text{EF} * \text{QBF}$$

11 DISTRICT ENFORCEMENT CONSIDERATIONS FOR OPEN BIOMASS EMISSION REDUCTION CREDITS

11.1 Revision or cancellation of ERC certificates at the request of the registered owner to allow burning of a parcel(s) for which ERCs have been granted may be handled as follows, with prior written approval from the APCO:

11.1.1 The registered owner may request that the DISTRICT reduce the quantities of the emissions covered by the ERC certificate by the amount of emissions associated with the reduced acreage requested. After the DISTRICT revises the ERC certificate, that portion of the parcel may be burned in accordance with current agricultural burning regulations. The portion of the parcel that is covered by the discount acreage (i.e. the acreage eligible for a burn permit) must be clearly identified. This portion will not be allowed to change without prior DISTRICT notification and approval.

11.1.2 The registered owner may surrender the ERC certificate to the DISTRICT for cancellation and burn the parcel(s) pursuant to current agricultural burning regulations.

11.2 DISTRICT enforcement considerations related to ERC certificates are the following:

11.2.1 To meet the requirement of enforceability, a contract, permit conditions, No-burn list or restricted burn list, and/or other means shall be utilized.

11.2.1.1 The primary means of enforcing open biomass burning ERCs will be by placing the parcels on a No-Burn list or restricted burn list. Based on the DISTRICT's enforcement and tracking policy for biomass ERCs, a restricted burn permit or No-burn list will be issued for a parcel(s) if an ERC is currently in effect for that parcel unless the registered owner applies for cancellation, modification or substitution of the ERC under Section 11.1 of this Rule.

11.2.1.2 At the time of application, the applicant for an open biomass burning ERC certificate must provide information to the DISTRICT on the disposition of the biomass.

11.2.1.3 Emission reduction credits used to offset project emissions in another district shall be implemented through an interdistrict agreement to ensure their enforceability and permanence.

11.2.2 Prior to the issuance of an ERC certificate, the registered owner of

an ERC-designated parcel(s)/field(s) shall provide notification by certified mail to all growers leasing land covered by the certificate that open biomass burning is restricted. A copy of the certified letter and receipt shall be provided to the DISTRICT and maintained in the DISTRICT files.

11.2.3 Facilities that claim open burning emission reduction offsets pursuant to HSC Sections 41605.5 and 42314.5 must keep a daily log of biomass received by type, origin, quantity, and date. Such facilities will also be required to prepare and submit to the DISTRICT a quarterly report on their emissions and corresponding biomass offsets. The DISTRICT will further require an annual status report on biomass contracts for the next year prior to re-issuance of the annual Permit to Operate.

11.3 To further ensure enforceability of this Rule refer to the DISTRICT Administrative Code Part B which contains ERC and offset tracking, open biomass burn permitting, and other procedures related to the implementation of this Rule.

12 ELIGIBILITY OF STATIONARY SOURCE EMISSION REDUCTIONS FOR CREDITS: Upon application to the DISTRICT, within 365 days after the emission reductions occurred, the following emission reductions may qualify for ERC certificates. Emission reductions will be deemed to have occurred on the date when emissions actually decreased. The DISTRICT may claim emission reductions not applied for as ERCs under this Rule, from any source, and use such emission reductions toward attainment of air quality standards or deposit the emission reductions into the community bank.

12.1 For non-permitted sources the following additional requirements shall apply:

12.1.1 Emissions must have been included in the 1987 Emission Inventory.

12.1.2 The applicant for the ERCs must apply for and obtain a Permit to Operate from the DISTRICT or execute a legally binding contract with the DISTRICT or through other enforceable means.

12.1.3 An applicant who proposes to bank emissions from permit exempt sources must relinquish the exempt status and obtain permits for any new or modified sources of the same type.

12.1.4 If the emission reductions are due to the shutdown of a non-permitted source, the applicant must demonstrate to the satisfaction of the APCO that the emission reductions from the source meet all applicable requirements of this Rule. The source can no longer be operated within the DISTRICT unless and until a Permit to Operate is obtained from the DISTRICT.

12.2 Under no circumstances shall any emission reductions occurring before the date of adoption, other than as described in Section 12.3 of this Rule, be

eligible for ERC certificates.

- 12.3** Emission reductions occurring after December 31, 1987 and before the date of adoption. The following criteria must be met in order to deem such emission reductions eligible for ERC banking:
- 12.3.1** Emission reductions formally recognized by the DISTRICT (in written form, emission databases, etc.), shall be deemed eligible emission reductions, provided the APCO determines that such emission reductions comply with the definition of actual emission reductions.
- 12.4** A stationary source which obtained offsets pursuant to the DISTRICT's NSR Rule and was issued an Authority to Construct after December 31, 1987, may apply to bank such offsets if the Authority to Construct is canceled or if the Permit to Operate is voluntarily modified or surrendered or is revoked by the DISTRICT.
- 12.5** The following emission reductions are not eligible for ERCs for banking:
- 12.5.1** Emission reductions from the shutdown or curtailment of retail gasoline dispensing or retail dry cleaning operations. These facilities may be eligible if they can demonstrate to the satisfaction of the APCO that their emission reductions are not offset by increases in demand and emissions from other similar sources within the DISTRICT.
- 12.5.2** Emission reductions occurring from the shutdown or curtailment of a stationary source for which the offsets originally provided are no longer enforceable by the DISTRICT.
- 12.5.3** Emission reductions occurring from the shutdown or curtailment of a stationary source for which the DISTRICT originally provided the required offsets.
- 12.6** Emission reduction credits resulting from shutdowns or curtailment of sources shall not be more than the quantity of emissions that would have been emitted had the source operated in compliance with rules and regulations applicable to the source at the time of shutdown or curtailment.
- 12.7** Shutdowns or curtailments must have occurred after December 31, 1987 for State requirements, and November 15, 1990 for federal requirements applicable to major stationary sources and major modifications; or
- 12.8** The emissions from the emissions unit to be shutdown or curtailed are included in the DISTRICT's 1987 Emission Inventory for State requirements, and in the 1990 Emission Inventory for federal requirements applicable to major stationary sources and major modifications; and
- 12.9** Applicants for ERCs due to the shutdown of permitted or non-permitted

emissions units shall demonstrate to the satisfaction of the APCO that such equipment will no longer operate within the district, except as provided in Section 12.1.4 of this Rule.

13 APPLICATION PROCEDURES FOR STATIONARY SOURCE EMISSION REDUCTION CREDITS

- 13.1** Any person, entity, landowner, or authorized agent, which owns or operates a source at which eligible emission reductions have occurred or will occur may apply for an ERC certificate in accordance with the requirements of this Rule.
- 13.2** The person or entity requesting the ERC certificate shall make an application on forms supplied by the DISTRICT.
- 13.3** The application may be for reductions in one or more affected pollutants. The application shall contain sufficient information to allow for adequate evaluation of actual emission reductions.
- 13.4** Applicants may claim confidentiality of information contained in the application pursuant to applicable provisions of the Federal Clean Air Act, Government Code, and HSC.
- 13.5** To verify emission reductions claimed in conjunction with an application for an ERC certificate, the DISTRICT may require source tests by CARB approved methods, continuous monitoring, production records, fuel use records, or any other appropriate means.

14 ADMINISTRATIVE PROCEDURES AND TIMETABLE FOR STATIONARY SOURCE EMISSION REDUCTION CREDITS

- 14.1** The APCO shall determine whether an ERC application is complete not later than thirty (30) calendar days following receipt of the application, or after a longer time period agreed upon in writing by both the applicant and the APCO.
- 14.2** If the APCO determines that the application is not complete, the applicant shall be notified in writing of the decision, specifying the additional information that is required. The applicant shall have sixty (60) days, or a longer time period agreed upon in writing by both the applicant and the APCO, to submit the requested information. Upon receipt of additional information, the APCO shall have another thirty (30) days to determine completeness. If no information is submitted or the application is still incomplete, the APCO may cancel the application with written notification to the applicant.
- 14.3** Upon determination that the application is complete, the APCO shall notify

the applicant and CARB in writing. Thereafter, only information to clarify, correct, or otherwise supplement the information submitted in the application may be requested by the DISTRICT.

- 14.4** Withdrawal of an ERC application by an applicant shall result in cancellation of the application; any re-submittal will be processed as a new application.
- 14.5** Upon acceptance of an application as complete, the APCO shall have 180 days to take final action on the application after considering all written comments. Upon completion of the initial assessment, the APCO shall provide written notice of such to the applicant and shall also provide written notice to CARB and EPA and publish notice in a local newspaper of general circulation. The notice shall specify the applicant, the quantity of emission reduction credits requested and a copy of the initial assessment.
- 14.6** Publication of the notice shall commence a thirty (30) day public comment period during which the APCO shall accept written comments on the merits of the ERC application. Upon conclusion of this thirty (30) day period, the APCO shall have another thirty (30) days to render a decision to approve, conditionally approve, or deny the application. This decision shall be provided in writing to the applicant.
- 14.7** The applicant or any other party may appeal the APCO's decision following provisions specified in DISTRICT Regulations.
- 15 STATIONARY SOURCE ERC CALCULATIONS:** Calculations of emission reductions shall be determined by the methods described in the DISTRICT's NSR Rule.
- 16 COMMUNITY BANK:** Availability, allocation, loan rates, and terms of ERCs disbursed from the Community Bank shall be as determined by the District's Governing Board.
- 16.1 Essential Public Services:**
- ~~16.1~~**16.1.1** **Application for ERCs from the Community Bank:** An applicant for loan of ERCs from the Community Bank for an essential public service shall apply to the APCO and certify the project is an essential public service.
- 16.1.2** **Loan Term:** The ~~base~~-loan term shall be based on project duration as represented in the application and confirmed by the APCO.
- ~~16.2~~**16.1.3** **Loan Rate:** The loan of ERCs from the Community Bank for Essential Public Services shall be available at no cost.
- 16.2 Other Sources:**

- 16.2.1 Application for ERCs from the Community Bank:** An applicant for ERCs from the Community Bank shall apply to the APCO and certify the following criteria for access are met:
- 16.2.1.1** If the applicant holds emission reduction credits access to the ERCs from the Community Bank shall be denied unless the held ERCs are proposed as offsets in the same permitting action where access to the Community Bank is proposed; and
- 16.2.1.2** The source has provided the maximum amount of required offsets available on-site by modifying existing equipment or processes at the stationary source to meet at least Reasonably Available Control Technology (RACT) standards; and
- 16.2.1.3** The source has demonstrated to the satisfaction of the APCO that it is not feasible to secure offsets from other sources.
- 16.2.2 Basic Loan Rate:** The basic loan rate shall equal the dollar amount per ton of pollutant for ERCs leased from the Community Bank and shall be the amount of the loan for the Loan Term.
- 16.2.2.1** The Basic Loan Rate shall be determined by the District's Governing Board with the recommendation of the APCO by selecting one of the following options in the following order:
- 16.2.2.1.3** The basic loan rate shall be the average market rate of two most recent transactions for credits sold for each pollutant within the District; or
- 16.2.2.1.4** If no transactions for the pollutant have occurred in the District, the basic loan rate shall be the average market rate of two most recent transactions for credits sold for each pollutant within the Northern Sacramento Valley Planning Area or used by a source located in Northern Sacramento Valley Planning Area; or
- 16.2.2.1.5** The basic loan rate shall be the fair market value as determined by the APCO based on any available credit transaction data that would be representative for the pollutant.
- 16.2.3 Loan Term:** The Loan Term shall be for at least 30 years but not more than 50 years.
- 16.2.4 Loan Payment:** The Basic Loan Rate shall be paid in 3 or 5 (*choose one (see below)*) installments. The loan payment shall be determined

by as shown in the following formula until the basic loan rate is paid in full:

Board Option 1:

Basic Loan Rate X Total Tons of ERC Pollutant Loaned = Loan Payment Installment
(3 years)

OR

Board Option 2:

Basic Loan Rate X Total Tons of ERC Pollutant Loaned = Loan Payment Installment
(5 years)

16.3 Community Bank Loan Provisions

- 16.3.1** The APCO shall issue an ERC certificate for each pollutant valid for the term of the loan.
- 16.3.2** The APCO shall not issue ERC certificates for amounts that exceed the amounts contained in the Community Bank.
- 16.3.3** Community Bank ERCs cannot be transferred or banked by a source, except back into the Community Bank.
- 16.3.4** If a project or source for which an Authority to Construct has been granted with ERCs from the Community Bank is terminated prior to the commencement of operation, the APCO shall return the ERCs to the Community Bank.
- 16.3.5** At the end of the loan term or premature termination of the project, the ERCs, less the offset ratio amount retired pursuant to Rule 430, shall be returned to the Community Bank.

16.4 Community Bank Revenue Disbursement: Net proceeds from emission reduction credit loans from the Community Bank shall only be used to administer and fund innovative emission reduction programs as approved by the Governing Board. Emission reductions realized from programs so funded and meeting the criteria for banking shall be deposited in the Community Bank.

Attachment B

Registry of Current Community Bank ERCs

Attachment C

Notice of Public Workshop and Hearing

NOTICE OF PUBLIC WORKSHOP AND HEARING

NOTICE IS HEREBY GIVEN that the Butte County Air Quality Management District (District) Governing Board will hold a public hearing to consider adoption of proposed amendments to Rule 431-*Emission Reduction Credits and Banking*. The proposed amended rule will provide definitions and procedures for leasing credits from the Community Bank to private entities. The time, date, and location of the public workshop and hearing are given below:

Public Workshop: 3:30 p.m. June 8, 2011, District office, (address below)

Public Hearing: 10:00 a.m. June 23, 2011, Town of Paradise Council Chambers, 5555 Skyway Drive, Paradise, CA

The Staff Report and proposed rules may be reviewed at the District office at the address below or on the District website: www.bcaqmd.org. For additional information please contact David Lusk at (530) 332-9400, ext. 107. Written comments on the proposed rules must be submitted by June 16, 2011 to: Board Clerk, Butte County Air Quality Management District, 629 Entler Avenue, Suite 15, Chico, CA 95928.

Attachment D

Proposed Resolution of Adoption

**DRAFT RESOLUTION 2011-11
BEFORE THE BOARD OF DIRECTORS OF
BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT
STATE OF CALIFORNIA**

Resolution 2011-11.....)
Adopt Proposed Amended Rule 431

WHEREAS, the Butte County Air Quality Management District Board obtains its authority to adopt, amend, or repeal rules and regulations from California Health and Safety Code Sections 40000, 40001, 40701, 40702;

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed new and amended rules are written such that the meaning can be understood by the persons directly affected by it (Health and Safety Code Section 40727(b)(3));

AND WHEREAS, the Butte County Air Quality Management District Board has determined that the proposed rule adopted herein is in harmony with, and not in conflict with or contradictory to existing statutes, court decisions, or state or federal regulations (Health and Safety Code Section 40727(b)(4));

AND WHEREAS, the Butte County Air Quality Management District Governing Board has determined that the amendment of Rule 431-*Emission Reduction Credits and Banking* is necessary to provide Emission Reduction Credits to sources other than essential public services at a reasonable cost when credits are not available from private holdings;

AND WHEREAS, the Butte County Air Quality Management District Governing Board has determined that the proposed amendments to Rule 431 provide the necessary procedures for applying for a loan from the Community Bank, for determining the loan amount, and for the Air Pollution Control Officer to execute a loan agreement;

AND WHEREAS, the District staff has made notice of and held a public workshop on the proposed rule and received comments as included in the staff report, which are included herein as a record of those proceedings;

AND WHEREAS, the Butte County Air Quality Management District Board conducted a public hearing on June 23, 2011 concerning the proposed amended rule herein;

THEREFORE, BE IT RESOLVED, that the Butte County Air Quality Management District Board hereby adopts the proposed amendments to Rule 431-*Emission Reduction Credits and Banking*, with an effective date of June 23, 2011, as proposed in the attachments to the May 23, 2011 staff report.

On Motion of _____, Seconded by _____, the foregoing resolution is hereby PASSED AND ADOPTED BY THE Air Quality Management District Board of Directors on this 23th day of June, 2011 by the following:

AYES:

NOES:
ABSTAIN:
ABSENT:

W. James Wagoner, Air Pollution Control Officer
Butte County Air Quality Management District

I hereby attest that this is a true and correct copy of the action taken by the Butte
County Air Quality Management District Board of Directors on June 23, 2011

ATTEST: _____
, Clerk of the Governing Board