IETA

MAKING NET ZERO POSSIBLE

Senate Judiciary Committee
1021 O Street
Sacramento, CA 95814

2 April 2024

**Re: IETA Opposition to SB 1036**

Dear Chairman Allen and Esteemed Members of the Committee:

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 believe high-quality carbon credits are critical mechanisms to address climate change, and that requiring transparency and truth in advertising about those carbon credits is critical. However, due to highly problematic and simply unworkable provisions throughout the bill's entirety, IETA must respectfully **OPPOSE SB 1036**.

As written, SB 1036 will have serious negative implications for stakeholders' willingness to support climate action and deliver verified mitigation outcomes through carbon markets **for fear of lawsuits under rules that are subjective and difficult to enforce or prove on matters that lack scientific and policy consensus**. In short, these flawed disclosure requirements would open independent carbon crediting standards and registries, verification bodies, corporations, project developers, and other carbon market participants to substantial potential litigation and will have a material chilling effect on climate action and finance. As Governor Newsom identified, when he wisely vetoed the initial bill (SB 390) in October 2023, "*by imposing civil liability for even unintentional mistakes about offset quality, this bill could inadvertently capture well intentioned sellers and verifiers of voluntary offsets, and risks creating significant turmoil in the market for carbon offsets, potentially even beyond California*". Unfortunately, these sentiments continue to ring true given that language in SB 1036 is nearly identical to the massively perverse and problematic provisions in the original vetoed bill.

Also, as accurately stated by the Governor, the *"(SB 390) impact could easily extend from 'voluntary' buyers to compliance markets and to carbon markets in general outside of California*". The policy precedent that California sets, particularly on tackling climate through market mechanisms, has far reaching effects across both the state and beyond.

IETA believes that SB 1036, while perhaps good intentioned, would run counter to the state's track-record of positive global climate policy leadership, while simultaneously hindering – if not entirely eviscerating – crucial VCM investments into real, demonstrable and verifiable climate mitigation activities, driven voluntary by actors in good faith and under no direct obligation.

Below, we further elaborate on specific high-priority issues and concerns that IETA's broad community has expressed with respect to SB 1036.

## NEGATIVE IMPACTS OF SB 1036 – PRIORITY HIGH LEVEL CONCERNS

### 1. Civil Litigation Assessment Concerns.

IETA is especially concerned about structuring SB 1036 in a manner that leaves enforcement to private civil litigation. This could lead to "bounty hunter" litigation with no benefit for climate action, as well as confusion regarding the interpretation of highly technical terms related to the regulation of greenhouse gas emissions and carbon markets. Private civil litigation is not an appropriate remedy for assessing the quality of carbon credits since **courts are not equipped with the deep expertise required to adequately assess whether projects are quantifiable, real, and additional**. There are existing and emerging frameworks to evaluate carbon crediting programs and credits for adherence to quality standards. This includes evaluation and approval of crediting programs and credits by the UN International Civil Aviation Organization (ICAO) for the Carbon Offsetting and Reductions Scheme for International Aviation (CORSIA), the Integrity Council for the Voluntary Carbon Market's (ICVCM) Core Carbon Principles (CCP), and the California Air Resources Board (CARB) assessment of Offset Project Registries for the

Compliance Offset Program under the State's Cap-and-Trade Program. These bodies have the appropriate knowledge and experience to make determinations on the technical matters of interest to carbon credit buyers while civil litigation is likely to result in misguided and conflicting rulings leading to market uncertainty and confusion.

## 2. "Durability" and "Atmospheric Lifetime of CO2" are Vague, Ambiguous and Contested:

**"Durability" has no broadly accepted definition in the market**, while the concept it defines in the proposed legislation is already applied widely. Additionally, there is **no scientific consensus for a specific "atmospheric lifetime of CO2"** (e.g. duration of carbon dioxide in the atmosphere). For reference, in a recent report by the UN-convened international body for assessing science related to climate change, it was suggested that the atmospheric lifetime of CO2 can range from less than 100 years to over 1000 years.[1] Further concerns are raised when considering the implication on projects and issued credits if the scientifically defined range of the atmospheric lifetime of CO2 were to be updated in the future. Introducing unnecessarily complicated and ambiguous criteria creates confusion which will only lead to market uncertainty.

Further, instilling an atmospheric lifetime of CO2 requirement will **severely impact and deter investment from nature-based projects** where permanence of carbon storage may be on shorter timescales than technology-based removals; carbon market mechanisms (e.g. buffer pools and other specific protocol requirements) already exist and are widely employed to mitigate these challenges of impermanence by insuring against the risk of reversal in certain sectors.

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[1] See Chapter 5 of IPCC, 2021*: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 2391 pp.
doi:10.1017/9781009157896.

**3. Problematic Definitions Open Door to Risks and Unfair Misinterpretations:**

IETA has major concerns with highly problematic and vague definitions in SB 1036. Under the bill, it would be unlawful if a person knows **or should know** that the GHG reductions or removal enhancements of the offset project related to the voluntary carbon offset are **unlikely** to be quantifiable, real, and additional. The inclusion of these terms ("unlikely" and "should") dramatically increases market uncertainty and broadens the scope of risk for any market participant. Offset projects are intentionally verified to a "reasonable level of assurance" following ISO standards. **Mandating an "absolute level of assurance" – which is suggested by the use of these terms in the bill – is simply not feasible**. These terms open the potential for unfair interpretations that could severely penalize market participants acting in good faith, running counter to the bill's intended outcomes.

**4. Material Fiscal Impact to the State:**

SB 1036 would likely have a significant fiscal impact on the state due to staffing costs associated with increased workload at both the Department of Justice (DOJ) and CARB. DOJ costs are dependent on the Attorney General bringing civil actions to enforce violations of the bill, which could be substantial given the broad nature of its provisions. However, a more substantial cost would be borne by CARB given the significant role that Offset Project Registries (OPRs) and Verification Bodies play in the implementation of California's Cap-and-Trade Compliance Offset Program. In the absence of these actors, who cannot sustain their operations by supporting the compliance market alone and may choose or be forced to exit the market due to the liability implications of the legislation, CARB would need to dramatically increase technical, administrative and legal staffing to fill the substantial gap of the OPRs' role in overseeing offset listing, verification and credit issuance, in addition to the development and operation of registry technology. This impact could easily reach millions of dollars annually to establish a new branch to replicate the technical and administrative responsibilities currently outsourced to key entities that will be subject to civil liabilities under this bill.

**5. Duplicative Nature of SB 1036:**

SB 1036 is unnecessary given that existing consumer protection laws are sufficient to protect consumers today from false claims. In addition to existing consumer protection laws, the disclosure requirements of AB 1305 (now law), address many concerns in today's voluntary market (e.g. lack of disclosure if an offset was issued off-registry or without a public methodology).

**6. Unclear Compliance Scope.**

As written, it is unclear how the bill will impact projects and stakeholders outside of California and if/when these actors are captured by the legislation. As such, the bill would be chilling well beyond California, potentially introducing an unlimited liability for companies and organizations who may not be directly working in California at all.

Again, although we strongly support the objectives of enhancing and ensuring the integrity, transparency and accountability of the VCM, **we must respectfully oppose SB 1036 for the reasons stated above**. IETA's strong position and these valid concerns are shared in good faith and we welcome the opportunity to share additional insights and alternative legislative, regulatory and/or best practice guidance angles to support the stated policy objectives.

Sincerely,

Dirk Forrister
President and CEO
IETA