August 7, 2019

Mr. Gregory Sopkin
Regional Administrator
U.S. Environmental Protection Agency
Mail Code 8P-AR
1595 Wynkoop Street
Denver, Colorado 80202-1129

Re: Advance Notice of Proposed Rulemaking, Federal Implementation Plan to Establish a Bank for Ozone Precursor Emission Reduction Credits from Existing Sources on Indian Country Lands Within the Uinta Basin Ozone Nonattainment Area, Docket ID No. EPA-R08-OAR-2019-0002.

Dear Administrator Sopkin:

Western Energy Alliance and the Utah Petroleum Association thank the Environmental Protection Agency (EPA) Region 8 for engaging with stakeholders and publishing the Advance Notice of Proposed Rulemaking (ANPRM). We submit the following joint comments on the ANPRM for the “Federal Implementation Plan to Establish a Bank for Ozone Precursor Emission Reduction Credits from Existing Sources on Indian Country Lands Within the Uinta Basin Ozone Nonattainment Area,” 84 Fed. Reg. 24064 (May 24, 2019).

Western Energy Alliance (Alliance) represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. Alliance members are independents, the majority of which are small businesses with an average of fourteen employees.

The Utah Petroleum Association (UPA) is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah’s oil and gas industry. Our members range from independent producers, to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains. We exist to serve our member companies and advance the responsible development of Utah’s natural resources and manufacture of fuels that drive Utah’s economy.

Many of our members operate in Indian country and have plans to develop the oil and natural gas resources in the Uinta Basin. While the Alliance and UPA cannot predict whether or when our members may need emission reduction credits (ERCs), we support the establishment of an emission banking and trading program to allow for future economic growth on Tribal lands. A trading bank would have several benefits, especially if a future reclassification of the Uinta Basin ozone nonattainment area triggers more stringent emission offset requirements or lowers the
Nonattainment New Source Review (NNSR) major source threshold. A well-designed trading bank will promote early action, help operators obtain emission offsets, and facilitate safe and responsible resource development.

This letter first provides our perspective on certain broad policy issues surrounding the implementation of air quality programs in the Uinta Basin. Second, we respond to EPA’s specific requests for feedback on how to best design and implement an ERC banking and trading program for stationary sources located in the Indian country portion of the Uinta Basin Ozone Nonattainment Area.

I. OVERALL POLICY COMMENTS

A. Scope and Impact of the Rule

The Alliance and UPA support the establishment of a voluntary ERC bank for volatile organic compounds (VOCs) and nitrogen oxides (NOx), which are ozone precursors. The ANPRM primarily addresses the mechanics of establishing and operating an ERC trading bank, as is appropriate. However, certain sections of the ANPRM address broader topics that warrant separate consideration, including minor source permitting and general conformity. The ANPRM solicits comments on whether and how ERCs may be used by minor sources or by sources outside the nonattainment area. This risks conflating the trading bank rule with substantive regulatory and policy questions that must be separately considered on their own merits. The establishment of a trading bank must not influence the separate regulatory or policy issues. We request that EPA narrowly define the scope and impact of the trading bank rule to exclude these topics.

The ANPRM suggests that some sources may choose to use ERCs to support NNSR permitting of new or modified minor sources of VOCs or NOx. The ANPRM cites 40 C.F.R. § 49.155(a)(7)(ii) for the proposition that “source owners seeking permits for construction of new or modified minor sources in a nonattainment area of Indian country must demonstrate that the source will not cause or contribute to a NAAQS violation.” Footnote 6 of the ANPRM states that a new minor source may use compensating emission reductions to show that it will not cause or contribute to an ozone violation and that EPA is open to ideas about other ways to make this demonstration.

We appreciate EPA’s attempt to provide flexibility to the regulated community, but do not agree with EPA’s application of the “cause or contribute” regulation or the position EPA has taken when dealing with some operators that new and modified minor sources require emission offsets. The Alliance and UPA therefore ask EPA to clarify that the substantive requirements for minor source permitting, minor source emission offsets, and cause or contribute demonstrations are outside the scope of any proposal to establish an ERC trading bank, and that the establishment of a bank will have no impact on such rules or EPA’s interpretation of such rules. Most importantly, imposition of such a demonstration would disadvantage development in Indian country.

1 84 Fed. Reg. at 24067.
The ANPRM refers to the General Conformity regulations at 40 C.F.R. Part 93, Subpart B and indicates that ERCs may be used for conformity determinations. We note that Part 93, Subpart B provides additional options for demonstrating conformity, including but not limited to accounting for emissions in a SIP attainment demonstration or facility-wide emissions budget, offsetting emissions through a SIP revision, demonstrating that nonattainment area-wide emissions would not exceed a SIP budget, or demonstrating that total future year emissions from the action do not increase emissions with respect to the baseline.²

We again appreciate the flexibility to use ERCs for purposes other than NNSR emission offsets and ask EPA to clarify that the ERC trading bank rule has no effect on the requirements or methods for federal agencies to demonstrate conformity.

Limiting the scope of the ERC trading bank rule will give members of the public fair notice of the range of issues under consideration, avoid unintended consequences, and allow issues that are outside the scope to be fully considered in an appropriate setting.

B. Relationship to the Reservation Specific FIP

According to the Office of Information and Regulatory Affairs (OIRA) as well as statements made by EPA representatives, EPA is in the process of developing a Federal Implementation Plan rule for the Uintah and Ouray Reservation (U&O FIP) in order to address VOC and NOₓ emissions from existing, new and modified oil and natural gas sources as well as streamlining related permitting.³ The OIRA website and EPA representatives indicate that language for a proposed new U&O FIP is currently under review at the Office of Management and Budget (OMB), which is a preliminary step prior to releasing a proposed rule for public comment.

Since developing and implementing the pending U&O FIP is not a mandatory Clean Air Act (CAA) regulatory step and is for the purpose of reducing minor source emissions prior to a potential nonattainment FIP revision in 2022 upon reclassification to a Moderate area, EPA is proposing what amounts to an early emission reduction program (EERP). A U&O FIP or EERP should involve a voluntary program instead of mandatory reductions as is often done in a nonattainment FIP. In order for the subject emission reductions to be creditable, they cannot be mandatory requirements of the developing nonattainment FIP regulation, but must instead be voluntary steps with criteria that would make the reductions permanent and enforceable in addition to being surplus. An appropriately developed EERP can result in the benefits of early reductions in exchange for granting appropriate emissions credits.

Any EERP measures in the U&O FIP would need to include assurances that credits obtained through the ERC rule would continue to be honored. The U&O FIP or EERP program would need to include provisions that minor source emission reductions are to be used for permitting and not be re-purposed or consumed as part of an attainment demonstration.

² 40 C.F.R. Part 93, Subpart B
³ Unified Agenda: Federal Implementation Plan for Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah, OIRA, Fall 2018.
The emissions reductions in the U&O FIP or EERP would need to be voluntary and creditable and subsequently bankable through a banking program such as the subject of this ANPRM.

C. Flexibility

We encourage EPA to develop a trading bank that is flexible, user-friendly, and efficient while incentivizing early emission reductions. The rules implementing an ERC trading program should maximize flexibility. EPA should also clarify that the use of ERC bank credits would not be the only avenue for operators, the Tribe, EPA, or other entities to gain approval for development projects. This is especially important in the Uinta Basin where the complex jurisdictional and technical aspects of the winter ozone nonattainment issue may require novel regulatory approaches.

D. Generation of ERCs

One important benefit of an ERC trading bank is to promote early actions to reduce emissions. To do so, the trading bank must include simple, clear and pragmatic criteria for generating ERCs. The ERC generation requirements should avoid unnecessary restrictions and costs.

EPA correctly states that ERCs can be generated from permanent shutdown and removal of equipment; upgrade or retrofit to more stringent emissions controls; or change of process, methods, or operating guidelines that affect emissions. For upstream oil and natural gas facilities, when a well is permanently shut in or plugged, the equipment is removed and the source of emissions is gone. Emission reductions resulting from shutting in a well should obviously qualify for ERCs, since the reductions are permanent, quantifiable, enforceable and surplus.

We are concerned that there may be few opportunities to generate ERCs in the Uinta Basin nonattainment area, particularly for NOx. There are few existing sources of NOx that may be controlled, as described herein. If EPA promulgates a U&O FIP or other regulations that mandate additional emission controls, the opportunities for surplus and voluntary emission reductions will decrease further.

Footnote 7 of the ANPRM cites a number of statutes, regulations and non-binding guidance documents regarding the criteria for generating ERCs. The authorities and non-binding guidance cited in Footnote 7 are long-standing. EPA should not impose additional restrictions on the generation of ERCs. Doing so may have the unintended consequence of reducing the incentives for early action. For the trading bank to be viable, there must be a feasible pathway to generate ERCs.

II. RESPONSES TO SPECIFIC AREAS WHERE THE EPA IS REQUESTING COMMENT (ANPRM SECTION V)

A. Conceptual Support
Request for Comment: Should the EPA proceed with plans to propose a rule establishing such a voluntary ERC bank?

The EPA seeks comment on whether industry (and potentially others) would use an ERC bank for the Indian country lands within the U&O Reservation that are part of the Uinta Basin Ozone Nonattainment Area.

Response: We believe EPA should indeed proceed with plans to develop a voluntary ERC bank. An ERC bank could provide industry more flexibility when planning for major source projects in the nonattainment areas of the basin. Industry participation in the ERC bank could be significant depending on the mechanisms developed for creation, transfer, and use of ERCs. At the same time, there are concerns regarding requirements for minor source projects, especially well pad development. As noted above, an ERC bank should not be the only mechanism to obtain air quality permits for major sources or other regulatory approvals.

Request for Comment: Are there any reasons not to create a U&O ERC bank, or are there suggestions to handle surplus emission reduction crediting through another approach?

Response: A well-run ERC bank would provide flexibility and certainty when creating plans for industrial development in the basin. We believe that a banking program would generally be a positive, but it should not be the only means to demonstrate compliance with the CAAs’ major source permitting, emissions offsets for major sources or conformity requirements and should not be used as precedent regarding other issues.

Request for Comment: Finally, are there existing state-run ERC banking systems that may serve as a good example for developing a U&O ERC bank?

Response: The Texas Commission on Environmental Quality (TCEQ) runs a successful ERC program that could serve as a model. It allows for ERC generation from permanent shutdown of facilities, installation and operation of pollution control equipment, change in process or production resulting in emission reductions, and pollution prevention projects. It has defined generation, review, transfer, and use requirements that create a level of certainty for availability of credits. One additional benefit is the transparency of the program while also allowing for control of credit transfer by the generating entity. The Ohio SIP-approved ERC program is also a good model as it meets CAA requirements that provides flexibility for credit generators and users.

B. Participation in the U&O ERC bank

Request for Comment: The EPA expects that the principal clients of a U&O ERC bank would be industrial sources within the Indian country portions of the Uinta Basin Ozone Nonattainment Area depositing emission reduction credits for sale or for later use to support future development, as well as new and modified industrial sources needing offsets necessary to obtain a major NNSR permit. We

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4 Texas Administrative Code, Title 30, Chapter 101, Subchapter H, Division 1
5 Ohio Administrative Code, Rule 3745-111-01 through 05
seek comment on what other entities (besides companies implementing voluntary emissions controls and/or companies needing offsets to support new development) should be permitted to participate in a U&O ERC bank. Such entities might include non-governmental organizations, federal government agencies, local government, the Ute Indian Tribe and others. Are there any reasons to preclude any entities from purchasing ERC credits from such a bank?

**Response:** In order to have a useful exchange, we believe it is helpful for the program to be as transparent and open as possible to any party who wishes to participate. One of the strengths of TCEQ’s ERC program is the liquidity of the credit and allowance markets. There are few restrictions on entities allowed to participate in creation, transfers, and ownership of credits and allowances under those programs. This freedom of participation allows for easier transfer and use of credits and allowances as project needs arise. So long as the entities owning the credits have the final say in transfer of credits to other entities and are informed of buyers’ identities before the transfer, we believe an open market is key to the success of the U&O ERC bank program. Ohio’s program allows both stationary and mobile source credits and also allows participation of any person, including those outside state lands.

**C. ERC Bank Format**

**Request for Comment:** The EPA seeks comment on the format and features of a U&O ERC bank. It is expected that (as with most ERC banks) a database would be created to track and manage ERCs, through their deposit, trading and use, that will be publicly available online. The EPA solicits comment on this expectation.

**Response:** We agree there should be a central database to track and manage ERCs and that it is key that the information is publicly available online to facilitate review and transfer of generated ERCs. We encourage EPA to dialogue with industry and IT consultants regarding options for structuring a secure, reliable and efficient electronic bank.

Banking actions should include information identifying the party involved, contact information, type of credit (NOx or VOC), type of generation (shutdown, control, process change), credit generation amount, date and location of generation, credit transfer amount, or credit use amount, as applicable.

**Request for Comment:** Additionally, should the owner of an ERC be required to deposit the ERC into the bank before using it as an offset, in order to centralize tracking?

**Response:** A centralized tracking database would generally be helpful to manage ERCs. Publicly accessible credit ownership information would facilitate transfer agreements by helping buyers to locate sellers. One other key requirement for such a centralized tracking database would be efficient processing of generation, transfer, review, and use of credits so projects aren’t delayed due to database administration.
However, depositing ERCs into the bank may be unnecessary in some situations. For example, operators that generate ERCs should be allowed to use the ERCs at the same or other facilities under their ownership or control without a requirement to use the bank. Operators should likewise be able to use emission reductions for NNSR netting purposes without a requirement to deposit credits into the bank. The TCEQ allows credit owners to void credits from the Texas registry and hold credits themselves. 30 TAC § 101.309(e).

Request for Comment: Or, if an emissions reduction is created for a specific project, can it be evaluated as part of the project and avoid the U&O ERC bank? The EPA seeks comments on what information should be maintained in the database for each banking action

Response: Companies should have the option to generate emission reductions for a specific project without relying on the ERC bank in the major source permitting process, if desired. There is no need to create additional work generating a certificate of deposit and use in the database when the credits will be generated and used as part of a defined project.

D. Creditable Emissions Reductions

Request for Comment: The EPA intends to propose a rule that specifically outlines what emissions reductions qualify as creditable for deposit in a U&O ERC bank. Generally, qualifying ERCs are limited to emissions reductions that are real, quantifiable, enforceable, permanent, and surplus of CAA requirements. Such ERCs are typically generated by permanently shutting down equipment, modifying a process (i.e., using a lower VOC/sulfur containing material), or by adding emissions controls beyond those required by any applicable regulation

Some state-run ERC banks require that a certain percentage of reductions be removed and made ineligible for future use to ensure an environmental benefit to the banking system. For instance, if an operator achieves a 10 tpy reduction by implementing an emissions control on a given source, some percentage (such as 10%) may be retired for environmental benefit, and only 9 tpy would be deposited in the ERC bank for future offsets or compensating emissions reductions. This ensures that more accelerated progress is made towards attainment. The EPA seeks comment on whether this practice should be implemented for a U&O ERC bank, and if so, at what percentage?

Response: EPA should not impose restrictions on ERC generation beyond those required by the CAA. Emission reductions must be quantifiable, enforceable, permanent, and surplus. Meeting these requirements will ensure that emission reductions are real.

Emission trading programs inherently produce environmental benefits by encouraging early action to reduce emissions. The CAA contains provisions to ensure trading is beneficial and maintains the stringency of the program through major source offset ratios. The fact that ERCs are generated by reductions in actual emissions and used to offset potential emissions further increases the stringency of the trading bank. It is not necessary to discount ERCs by 10% at the time of generation because offset ratios are already imbedded in the nonattainment categories (e.g. marginal, moderate, severe) established at the time of designation.
Request for Comment: Given the seasonal nature of ozone generation in the Uinta Basin, are there legally and technically supported approaches to allowing seasonal emissions reductions to be credited? Should seasonal limitations be placed on the program? For instance, should the rule prevent summertime reductions from being used to support the addition of wintertime emissions?

Response: Separating out reductions or use by season unnecessarily complicates the proposed ERC program. Creating seasonal restrictions would limit ERC generation and use, thus making the ERC program less effective as a tool to address nonattainment. ERCs are credits for emission rates that are typically expressed as tons per year. The annual emission rate meshes with NNSR major source permits and major source CAA offset requirements. Seasonal restrictions are unnecessary because emission reductions that are permanent are likely to occur year-round. It is not clear how a seasonal requirement would function or what authority exists for certifying seasonal ERCs.

Request for Comment: How should the ERC banking rule treat emissions reductions that occur from emissions unit shutdowns?

Response: When oil and natural gas wells are permanently shut-in, the emission units are also permanently removed and therefore, should generate a credit. EPA already has a process to notify the agency of the removal of emission generating equipment, and it should be sufficient for generating credits. While state and federal agencies have formal plugging and abandonment (P&A) processes, those separate processes should not be a condition of generating an ERC. The timing of P&A certification is managed by other agencies and requiring this as part of the ERC generation process would negatively impact the usefulness of the ERC program.

Request for Comment: What requirements should apply to shut-down equipment to ensure it meets the requirement to be a permanent reduction?

Response: It is not uncommon for multiple wells to produce into the same field production equipment. When one or some wells are permanently shut-in but others continue to produce, any requirements to remove equipment should be limited to ensure that only the well production stream generating the credits is impacted. This may mean a change in piping or removal of an associated separator, but allowing for co-mingled separation or tanks to remain on site to allow for production of other wells previously tied into that field production equipment. It is not reasonable to request that equipment required for production of wells not tied to the emissions generating production stream be removed and thus impact other well production streams. Other mechanisms, such as modified permit representations, should also serve to provide certainty for creditable reductions.

Request for Comment: There are restrictions on the use of reductions occurring from equipment shutdowns in 40 CFR 51.165(a)(3)(ii)(C)(1), such as only being eligible for use if the shutdown occurred after the last day of the baseline year for the plan. Additionally, use of reductions from equipment shutdowns must be restricted to prohibit operation of that unit elsewhere in the nonattainment area. Should the use of reductions from shut-down equipment be restricted further,
such as disallowing operation in a broader area outside of the nonattainment area, or requiring
destruction of the unit?

Response: For oil and natural gas production, it is common to relocate and reuse equipment when a
well is shut-in and abandoned. Prohibiting the use of such equipment at other areas or even within
the basin would be a needless additional cost while increasing environmental impact.
Decommissioning equipment would result in a larger overall environmental impact since like-kind
equipment would need to be manufactured for use in the basin or elsewhere. This would also result
in additional cost to industry beyond the loss of production revenue from the shut-in well.
Additionally, developing a new well site already triggers permitting that requires review and controls, whether the equipment is reused or not. EPA should be in a position of encouraging reuse
of equipment, as reduce, reuse and recycle is a general principle of good environmental
stewardship, thus resulting in fewer overall emissions when compared to manufacturing new
equipment.

E. Trading of ERCs

Request for Comment: A principal use of an ERC bank would be to allow companies in need of
emissions offsets to construct new and modified sources to purchase those credits from companies
that have permanently reduced emissions and deposited those ERCs in the bank. The EPA expects
that a U&O ERC bank would allow the purchase and exchange of ERCs, and such exchanges would be
publicly documented. The EPA further anticipates that the price of ERCs would be determined by the
open market based on the demand for such ERCs. The EPA intends to propose to require
documentation from both the company selling a credit and the company acquiring the credit in order
to process that transaction and would make publicly available such information—including the
number of ERCs purchased, the method of emissions reduction, and the purchase price. The EPA
seeks comment on this expectation and any input on what additional information should be provided
to document transactions within the anticipated U&O ERC bank database.

Response: Public documentation is a reasonable and needed requirement. Transparency is key for a
successful trading market. The process needs to be streamlined such that ERCs can be generated
and used in a reasonable time period. The purchase price should be kept private, as is standard in
other commercial transactions. However, serial numbers or other unique identifiers of the ERCs
should be transparent so that all parties know the ERCs’ date of creation and other relevant
attributes. There should also be a mechanism for interested parties to request that the agency
review an ERC to confirm its validity and availability for use.

F. Use of ERCs:

Request for Comment: In addition to using banked ERCs as offsets for new and modified major
sources, these emissions reductions may also be used to show that a new or modified minor source
does not cause or contribute to an ozone NAAQS violation, or to satisfy general conformity
requirements. If such reductions are not available within the existing inventory of a company’s
emissions sources or are needed by a federal agency to demonstrate general conformity for a
specific action, the U&O ERC bank could be used to facilitate the purchase of available ERCs. In such a case, the necessary amount of ERCs would be purchased from one (or more) entities in possession of ERCs. Documentation of the transaction would be provided to the EPA, and those credits would be withdrawn from the bank when used to support a permit action. The EPA intends to propose a U&O ERC banking rule that describes the specifics of this process, consistent with the principles and requirements described in the EIP Guidance. However, the EPA solicits comments on any additional considerations and flexibilities that should be made to allow this process to function efficiently for participants within the U&O Reservation. A primary goal of the program is to allow eligible ERCs to be certified for eventual use as offsets in accordance with major NNSR and general conformity requirements. Are there any other uses of an ERC that EPA should be evaluating, such as for discretionary use in minor NNSR?

Response: We agree that the primary goal of the trading bank is to facilitate the use of ERCs for major source NNSR permitting and general conformity determinations within the nonattainment area. Any trading bank rules regarding the use of ERCs for general conformity determinations should clarify that ERCs are not the only way to show conformity. The rules should also clarify that a single ERC may be used to satisfy both an emission offset requirement and a conformity demonstration. The 2015 Ozone Implementation Rule and CAA Sections 173 and 182 require emission offsets for major sources. The conformity regulations require federal agencies to determine that their actions conform to the 2015 Ozone Implementation Rule, but do not require duplicative emission reductions.

We welcome flexibility regarding the use of ERCs. However, EPA’s solicitation of comments regarding the use of ERCs by minor sources or outside the nonattainment area raises questions that exceed the scope of the trading bank rule or are in conflict with the CAA obligations for minor sources.

Minor sources are not subject to NNSR offset requirements. The offset requirements arise from 42 U.S.C. § 7503(a), which authorizes the major source NNSR permitting program. The offset ratios for each ozone classification established by 42 U.S.C. § 7511a likewise apply only to major NNSR permits. EPA acknowledges as much in Footnote 6 of the ANPRM.

Page 24069 of the ANPRM asks whether there is any justification to allow the use or banking of credits outside the nonattainment area but within the general geographic extent of the Uinta Basin. Neither major nor minor sources require offsets outside the nonattainment area because NNSR permitting does not apply and offsets are not relevant to Prevention of Significant Deterioration (PSD) permits.

The question about using permits in other areas appears to arise from EPA’s position that permits for new and modified minor sources in attainment or nonattainment areas under EPA’s jurisdiction must use emission offsets to demonstrate they will not cause or contribute to nonattainment. We disagree with this position. We note also that this approach to permitting adds complexity to the ERC trading bank and may limit its usefulness. Diverting the limited supply of ERCs to minor sources or to the attainment area may leave an insufficient supply for major NNSR permits mandated to be offset and general conformity demonstrations, which are the primary purposes of the bank.
More fundamentally, EPA should avoid using the trading bank rule to adopt or influence policies that are outside its scope and authority.

G. Withdrawal of ERCs

Request for Comment: The EPA intends to evaluate banked credits for compliance with the “surplus of Clean Air Act” requirement at the time of their use as compensating offsetting emissions (e.g., upon issuance of a permit). In the event of future promulgation of emissions controls as part of a federal or tribal implementation plan, or to satisfy CAA requirements such as reasonably available control technology (RACT) or RFP, the EPA does not expect sources that have already provided offsets to need to pursue additional offsetting emissions. The EPA seeks comment on this anticipated expectation and on whether any other factors should be considered. We also seek comment as to whether banked credits should be discounted or expire after some period of time, even if they remain surplus of CAA requirements.

Response: EPA should not impose unnecessary restrictions on the withdrawal or use of ERCs. As noted above, the CAA contains measures to ensure that ERCs provide environmental benefits. The nature of oil and natural gas production and new permitting requirements ensures that a general decline of emission profiles will occur within the basin and there are already economic penalties when shutting in a producing well to generate credits. Additional requirements to depreciate ERCs over time, allow them to expire, or re-evaluate their validity after generation and certification create uncertainty and undermine the incentives for operators to take early action. Time-based depreciation and expiration dates instead create a perverse incentive to delay emission reductions in order to maintain ERC availability.

We agree that major sources that have already provided offsets do not need to pursue additional offsetting emissions. Major sources that have provided offsets are by definition existing sources and are no longer subject to NNSR, conformity, or other regulatory requirements where offsets might come into play. Only new or modified major sources require offsets.

H. Antecedent Emissions Reductions

Request for Comment: The EPA expects that because the final 2015 Ozone Implementation Rule defines a primary base year of 2017, that year will likely be an appropriate base year for the Uinta Basin Ozone Nonattainment Area banking and trading program. To allow for near-term surplus emissions reductions that would benefit air quality, the EPA intends to include as a component of the proposed rule that qualifying emissions reductions achieved before the final rule’s effective date, but after the nonattainment baseline year, may be banked; effectively, any emissions reduction achieved after January 1, 2018. The EPA seeks comment on the inclusion of this flexibility.

Response: We agree with the need to establish a primary base year for the trading bank and EPA is not bound by the CAA to set the creditable offsets to the base year inventory. The 2015 Ozone Implementation Rule does not provide an appropriate reference point because it did not affect
emissions in the U&O Basin or establish enforceable requirements on sources. EPA’s amendment to the Indian Country Minor New Source Review Rule may be a better reference point because it changed the permitting regulations for sources in the U&O Basin. The minor NSR amendment took effect on June 30, 2014. Accordingly, EPA may set the bank’s primary base year to the 12-month period beginning on July 1, 2014. However, Section IV.C.5. of Appendix S of the 2011 Indian Country Major NSR regulations allows banking of emissions as far back as January 16, 1979. Therefore, further discussion on base year should be considered.

TCEQ regulations allow sources to select a baseline period of any two consecutive calendar years during the previous 10 years for point sources, and two of the previous five or 10 years for area sources, depending on how detailed the area source’s records are. The emission profile of an oil and natural gas well changes over time because production declines. ERCs can only be generated from existing facilities, where production has already declined. ERCs are used at new facilities where production is at its highest. Setting the baseline period at the most recent year or years would result in an effective offset ratio that is dramatically higher than the ratios specified in the CAA, e.g. 1.0 to 1 or 1.1:1.

I. Geographic Considerations and Interaction with Utah-Managed CAA Planning Requirements

Request for Comment: As explained previously, we anticipate that any proposed U&O ERC bank would only apply to sources on Indian country lands within the U&O Reservation that are within the Uinta Basin Ozone Nonattainment Area. There may, however, be situations where sources on land managed by Utah have a need for ERCs and wish to purchase them from a source in Indian country. Conversely, sources covered by the EPA-run bank may wish to purchase ERCs from a source managed by Utah. From a scientific standpoint, ozone precursor emissions are generally uniformly mixed across jurisdictions beneath the inversion during high-ozone events in the Uinta Basin Ozone Nonattainment Area; the original location within the nonattainment area of emissions (and emissions reductions) is irrelevant to the nonattainment area’s overall ozone design values. However, as a legal matter, the EPA is limited in the scope of applying any potential U&O ERC bank rulemaking to sources in Indian country. Accordingly, we seek comment on whether, and under what criteria and constraints, an EPA-run bank for sources on the Indian country portion of the Uinta Basin Ozone Nonattainment Area should interact with any state-run bank that may be developed for sources on land under Utah CAA regulatory jurisdiction. We also seek comment on whether the EPA should pursue collaboration with Utah in allowing for cross-jurisdictional exchange of ERCs.

Response: Cross-jurisdictional exchange of ERCs would improve the usage rate of the ERC program by allowing flexibility in planning ERC generation projects in areas under state or federal jurisdiction without concern to where they would be used in a plan of development. Since emissions in the nonattainment area impact ozone formation regardless of jurisdiction, allowing cross-jurisdictional exchange and use of ERCs seems in line with the intent of the program by allowing development flexibility while lowering overall emissions in the basin.

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7 Texas Administrative Code, Title 30, Chapter 101.303(b)
We agree that EPA lacks the authority to certify ERCs for emission reductions at facilities outside of EPA’s jurisdiction, because EPA could not impose conditions making the emission reduction enforceable. However, EPA has the authority to recognize and accept ERCs that are generated outside EPA’s jurisdictional boundaries and certified by another regulatory agency, such as Utah Division of Air Quality. Emission offsets may be generated anywhere in the nonattainment area or in another nonattainment area of equal or higher classification if emissions from that area contribute to a national ambient air quality standard (NAAQS) violation in the area where the offsets will be used. 42 U.S.C. § 7503(c). The Act does not restrict ERC use based on the identity of the certifying agency.

Request for Comment: Finally, is there any justification to allow the use, or banking of credits outside of the Uinta Basin Nonattainment Area, but within the general geographic extent of the Uinta Basin?

Response: See our comments regarding the use of offsets by minor sources in section II.F.

J. General Comments

Request for Comment: The EPA also invites the public’s comment on any other questions associated with developing an emissions banking and trading program to address the goals described previously in the “Purpose” section of this ANPRM.

Response: EPA should provide for trading between precursors to the extent allowed by the CAA. The potential pool of NOx credits appears to be limited by a lack of NOx sources in the Basin and a low NOx profile at existing wells. Many of the older wells use a very low NOx 2-stroke engine to drive well production. Beyond these engines, NOx sources in the basin are largely limited to tank heaters and flares. TCEQ regulations provide a potential model for inter-precursor trading.8

We support the proposal to develop an emission reduction credit bank. We have a unique opportunity to work together toward our common goals of continued uninterrupted development of the oil and natural gas resources, clean air, and regulatory certainty in the Uinta basin.

In conclusion, we reiterate the continued need for effective and efficient policies that improve air quality and facilitate safe and responsible development in Indian country. We thank EPA for the opportunity to comment on this ANPRM and would like to continue to work with EPA as it further develops the program. Please feel free to contact me regarding any questions with our comments.

8 Texas Administrative Code, Title 30, Chapter 101.306(d) and 101.376(g)
Sincerely,

Kathleen Sgamma
President
Western Energy Alliance

Rikki Hrenko-Browning
President
Utah Petroleum Association