



September 15, 2014

Via Electronic Submission

To:

Mary Nichols, Chair
California Air Resources Board

Matthew Rodriguez, Secretary
California Environmental Protection Agency

RE: Comments on Draft Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies and Approaches to Identifying Disadvantaged Communities

Dear Chairwoman Nichols and Secretary Rodriguez,

Thank you for the opportunity to comment on the Draft Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies and Approaches to Identifying Disadvantaged Communities. We commend the Air Resources Board (ARB) and the California Environmental Protection Agency (CalEPA) for the ambitious vision for their Cap and Trade program and for upholding a vision for direct investments into disadvantaged communities of California through the many state and local agencies receiving Green House Gas Reduction Funds.

I. Introduction

Summary of Comments

In this letter, we support Method 1 *plus* an option to qualify using other data not captured by CalEnviroScreen to define disadvantaged communities for the purpose of the 25% set aside. We describe how the shortcomings of CalEnviroScreen result in many very vulnerable communities being ineligible for the disadvantaged set-aside under any of the proposed methods, due to lack of data, not lack of vulnerabilities. We also urge you to consider and prioritize projects with the greatest positive impacts on human health and housing and to encourage regional agencies to make meaningful community participation a key part of the process for applying for and distributing Cap and Trade auction proceeds.

We advocate for a more protective definition of “benefitting” that will ensure that disadvantaged communities experience tangible improvements in their communities, as well as urge you to prioritize certain types of projects. We also bring your attention to several unique considerations that will face rural, disadvantaged communities applying for benefits: resource-starved communities will likely be unable to present “shovel ready” projects for approval; the existing infrastructure deficit in many of our client communities will result in costlier predictions for identical projects proposed in more established and well-maintained communities; and, ARB and CalEPA should be aware of the inherent prejudice to award funds to denser population centers, as reflected by the oft repeated phrase of getting “more bang for your buck.”

California’s Rural Disadvantaged Communities

Particularly in rural agricultural and industrial areas of California, a history of neglect by policy makers and exploitation by extractive industry has left communities with contaminated soil, polluted air, over-drilled land, and a rapidly declining water table. Also due to this history of neglect and lack of economic opportunities, many vulnerable communities of California work in and around refineries, incinerators, power plants, and toxic agriculture among other major polluters, sacrificing their health to turn the wheels of the climate change machine. After working extreme hours, many of these people return home to dilapidated housing, poor sanitation, contaminated water, and other acute public health concerns. ARB’s and CalEPA’s commitment to targeting disadvantaged communities through state and local agencies is a first-of-its-kind state-level attempt to meaningfully address the intersection of environmental, public health, and socioeconomic disadvantage through capital reinvestment.

Background of CRLA

California Rural Legal Assistance, Inc. (CRLA) is a statewide non-profit rural legal services provider that represents low-income individuals in a variety of issues, including housing, civil rights, labor and employment, education, public benefits, and land use and infrastructure needs in underserved rural areas. The Community Equity Initiative (CEI) is a program within CRLA that strives to address infrastructure and service inequities in disadvantaged, unincorporated communities (DUCs) and to promote greater access to basic necessities, such as clean drinking water and electricity. We provide the following comments in the interest of ensuring that neglected areas receive their due funding and that the full intent of relevant legislation¹ is achieved.

II. Methodology for Identifying Disadvantaged Communities

¹ See AB 1532 (Pérez, Chapter 807, Statutes of 2012), SB 535 (De León, Chapter 830, Statutes of 2012), SB 1018 (Budget and Fiscal Review Committee, Chapter 39, Statutes of 2012), and SB 862 (Chapter 836, Statutes of 2014).

Method 1 will likely be adequate to identify disadvantaged communities in many areas of California, but does not adequately capture vulnerabilities faced in other parts of the state; therefore, we propose a “Modified Method 1” approach.

For many parts of California, CRLA asserts that Method 1 will be the preferred tool for identifying financially and environmentally vulnerable communities that are in dire need of the funds allocated by the Cap and Trade Auction Proceeds under SB 535. Although it is difficult to arbitrarily decide the “suffering point” that will qualify for the disadvantaged community set aside, CRLA advocates for a 15%-20% cut off when going exclusively off of CalEnviroScreen scores under Method 1. To account for various communities throughout the state whose vulnerabilities are inadequately captured by CalEnviroScreen, CRLA proposes that ARB and CalEPA adopt a Modified Method 1 approach and allow for a “write in” option for communities who fall within the 25% vulnerability bracket, who can provide additional data to demonstrate why their community is at the same level of disadvantage as their counterparts within the 15%-20% bracket. We describe the need for this “write in” option below in greater detail, include a description of why CalEnviroScreen is not a reliable tool for all of California.

Suggestions for the “Write In” Option

An exclusive reliance on CalEnviroScreen 2.0 could perpetuate a cycle of disinvestment in low-income rural communities, as inadequate monitoring and enforcement of environmental laws gives rise to inadequate data regarding environmental conditions, resulting in the exclusion of these communities from eligibility for the disadvantaged community set-aside of SB 535. Certain extremely rural areas of the state, for example, the Eastern Coachella Valley, face a multitude of environmental and economic factors that are not captured by CalEnviroScreen (outlined later on in our comments). Exclusive reliance on CalEnviroScreen will result in monies from the disadvantaged community set aside being funneled to those areas with the most data available as reflected by the screening tool; not necessarily securing that the funds will end up in the hands of the most disadvantaged communities. Therefore, we offer the following examples of ways that such a definition might be structured:

- A community may be defined as a “disadvantaged community” if (1) its CalEnviroScreen ranking is within the top 15%-20% scoring census tracts, OR (2) it is within the top 25% scoring Census tracts and demonstrates through write-in supplement that it is subject to well-documented environmental hazards that are not captured by CalEnviroScreen (see below for examples of such hazards).
- Establish a method above and beyond the SB 535 set-asides by which a community that is within the top 25% scoring Census tracts on CalEnviroScreen and has environmental hazards not captured by CalEnviroScreen, may receive support in applying for AB 32-related grants. For example, such communities could receive extra points on their applications, be eligible for waiver of matching fund requirements or other favorable conditions made available to identified disadvantaged communities, etc.

Data Gaps in CalEnviroScreen

CRLA has submitted extensive comments detailing concerns about data gaps in CalEnviroScreen 2.0, including a concern that rural low-income communities of color are likely to be disproportionately impacted by data gaps due to historic under-monitoring of environmental hazards and under-enforcement of environmental laws in these communities. Examples of data gaps impacting these communities include the following:

- The Groundwater Threats indicator does not capture non-point sources of pollution, such as failing septic systems or application of agricultural chemicals, both of which constitute significant environmental hazards that are very common in low-income farmworker communities. Data on dairies and concentrated animal feeding operations (CAFOs) are also largely lacking from the databases on which CalEnviroScreen is based due to public access issues encumbering these data sources.
- The Groundwater Threats indicator does not distinguish between communities that have access to imported water to meet drinking water needs, such as Los Angeles, and communities that rely entirely on groundwater to meet their drinking water needs.
- The air quality indicators (Ozone and PM 2.5) are based on an assumption that existing air quality monitors are reliable up to a radius of 50 kilometers, despite the fact that many air quality monitors in CARB's network are not designed to monitor air quality on such a large spatial scale – e.g., “neighborhood” scale monitors are described by the U.S. Environmental Protection Agency as having the ability to measure air quality in several neighborhoods within a single city, but are assumed in CalEnviroScreen 2.0 to have an effective monitoring radius of 50 kilometers.
- The Asthma Indicator uses asthma-related emergency department (ED) visits as a proxy for asthma incidence and severity. However, this method creates a statistical bias in favor of urban areas and other communities with ready access to EDs. In medically underserved areas, residents may need to travel twenty miles or more to access an ED; anecdotal evidence indicates that residents in these areas are unlikely to access an ED unless an asthma attack appears to be truly life-threatening, whereas populations that live in closer proximity to an ED may avail themselves of these services for asthma attacks of lesser severity.
- The Cleanup Sites, Groundwater Threats, and Hazardous Waste Facilities and Generators indicators, and possibly other indicators, lack data on environmental hazards on tribal lands, some of which are immediately adjacent to California communities. While OEHHA has accessed some federal databases in an effort to incorporate tribal data into CalEnviroScreen, these federal databases are less detailed and reflect less stringent environmental regulation than the California state databases on which CalEnviroScreen is based.
- CalEnviroScreen does not consider a number of public health and environmental hazard factors that uniquely impact low-income rural communities, particularly farmworker communities. These factors include, but are not limited to, the following: exposure to

untreated wastewater due to failing septic systems; lack of access to medical care; lack of access to safe walking or biking infrastructure; lack of access to public transit; lack of walkable proximity to services, employment centers, retail, full-service grocery stores, and other amenities. Even more fundamental is the lack of available and ready emergency response services due to geographic constraints and language access barriers. A number of these factors are closely related to the goals of AB 32 and SB 535 in that they force low-income rural residents to drive long distances in order to access basic services.

- Many CalEnviroScreen indicators rely on data from the decennial Census and/or the American Communities Survey, which are known to differentially undercount² migrant and seasonal farmworkers and racial and ethnic minorities (particularly members of indigenous groups). Moreover, low-income people, renters, children, large households, people with disabilities, linguistically and culturally isolated groups and communities, lesbian/gay/bisexual/transgendered people, and other hard-to-count special populations who tend to live in communities characterized by concentrated poverty and lack of infrastructure, habitable housing and related services are also differentially undercounted in the decennial census. Census data consistently skew data on poverty levels in rural areas due to the large size of Census tracts, and ACS data on unemployment fail to capture seasonal unemployment, such as that experienced regularly by many farmworkers.
- The Low Birth Weight indicator excludes births for which the only known address is a post office box. This exclusion will disproportionately exclude data on farmworkers and other disadvantaged rural populations, among whom significant numbers of residents rely on post office boxes due to housing instability and/or housing that lacks a secure, private mailbox.

We hope that these ideas are helpful in considering ways to make use of CalEnviroScreen's capabilities while recognizing that exclusive reliance on CalEnviroScreen scores could result in the neglect of communities in which a history of environmental under-enforcement and under-monitoring have led to inadequate representation in the databases from which CalEnviroScreen scores are derived.

III. Privileging Projects with Maximum Co-benefits to Human Health and Basic Infrastructure Improvement

² "Differential undercount" refers to the fact that members of racial and ethnic minorities and other vulnerable populations are undercounted at a higher rate in the decennial Census (and other Census Bureau measures); in other words, Census Bureau figures are less reliable with respect to these populations than with respect to other demographic groups.

As many Valley advocates have indicated³, carbon emissions themselves have human health impacts on Valley communities that are more immediately measurable and palpable than the impacts of climate change. This legislation is an opportunity for ARB to acknowledge that carbon emissions not only contribute to climate change that effects ecological processes across the entire nation and world, but more locally, they raise rates of asthma-related emergency room visits and sometimes terminally impact the lives of children and the elderly. Fossil fuel combustion releases microscopic particulate matter (PM 2.5) that remains in the lungs and bloodstreams of Valley residents causing long-term illness and vulnerability⁴. For this reason privileging active transportation, including the construction of safe sidewalks and streets, as well as zero-emissions buses and other forms of low-emissions transit provide excellent co-benefits to both community health as well as climate health. CalTrans and other agencies responsible for administering transportation project dollars must carefully weigh the benefits of new projects and their ability to provide substantial reductions in health risk and pollution burden.

In the same vain, improvements to water efficiency must also be able to account for water contamination, thereby addressing immediate health impacts. For instance projects aimed at increased water-use efficiency, such as green retrofits of home water systems, should also privilege the retrofitting or installment of water treatment facilities, and the connection of unincorporated community water systems, that often run on compromised wells, to municipal water systems. CRLA also supports innovative funds administration to fund the repair of existing dilapidated septic systems, a challenge that our client community currently lacks any sources of government funding for.

As a wider policy recommendation, we suggest creating criteria to gage benefits to human health as well as reduction in pollution burden and GHG emissions. This will be beneficial to ARB's long-term monitoring of the benefit of these programs in DACs and allow for more assertive project funding as the program builds in both administrative efficacy and funding power.

IV. Housing

A recent push towards unsustainable new housing development while ignoring the lack of basic infrastructure in existing communities has negatively impacted the environmental quality as well as the quality of life for our client communities. In addition to increasing vehicle miles traveled, increasing commute times to needed services, and consuming open space and farmland that would otherwise sequester carbon, large developments hurt a sense of community and ownership, and lead to greater visible socio-economic segregation. ARB can build this consideration into the guidance document with language around preserving existing affordable housing, privileging the development of mixed income housing, expanding access to affordable housing, green retrofitting and improvement of housing stock quality. We would like to see language incorporated around

³ Draft SB 535 Guidance, p. 17. August 22, 2014

⁴ Rom WN and Samet JM. Small Particles with Big Effects. American Journal of Respiratory and Critical Care Medicine 2006; 173: 365-369.

the protection of farmland and open space achieved through investment in localized transportation and economic development.

V. Public Participation and Accountability to ARB

We understand that GGRF monies will be disbursed by administering agencies at the state and local level. We would like to ensure that in the interest of ensuring that the funds make it into the most impacted communities, that agencies seek innovative ways to work directly with disadvantaged communities, such as empowering community boards and commissions to have real and meaningful decision-making ability in funding allocation. Additionally there must be concerted effort to involve public input and monitor its incorporation at the local level.

With respect to projects that are located in or benefit DACs, this outreach must be linguistically, culturally, and logistically accessible to community members, incorporating elements such as interpretation, convenient meeting locations and times (preferably evenings), and efforts to ensure that all presentations and communications will be clear to residents with low levels of formal education.

We believe that there must be strong oversight on behalf of ARB in order to make sure that administrative entities are held to a definition of what it means to benefit a DAC. Without refined language, outlined consequences, and stronger accountability to ARB, there is no incentive for funds administrators to solicit projects, offer funds for planning, or conduct public outreach to DACs to ensure that their statutory requirements are being fulfilled. It is necessary that this guidance document establish distinct parameters for “benefit” so that agencies can positively adhere to these guidelines in a meaningful way.

VI. Define “Benefits” in a Manner That Ensures Quality, Long-Term Projects in Disadvantaged Communities

The disadvantaged set aside calls for 25% of funding to go to projects that “benefit” disadvantaged communities, with 10% of that 25% going to projects located *within* a disadvantaged community. We are concerned is that projects may claim ancillary “benefits” to our client communities that may follow the letter of the law, but fail to adhere to the spirit. For example, if jobs to surrounding areas are the “benefit” claimed, there should be protections in place to ensure that the jobs provided are not simply short-term, low-wage jobs but provide some long-term benefit to the community and promise of professional development.

Similarly, we would like to caution against such projects as a proposed bus, bike, or other transportation route that passes through a disadvantaged community but largely services surrounding areas. Projects with only tangential benefits to a disadvantaged community should be funded from the general fund of Cap and Trade auction proceeds, and not from the disadvantaged community set aside. The ½ mile proximity to a DAC as outlined in the guidance document will not provide protection against such concerns.

We urge you to develop guidelines that provide meaningful examples of what a benefit would include and to discourage decision makers from seeing the requirement of providing a “benefit” to a community as merely a requirement met by stretching the concept in order to qualify for the funding. As we mentioned above, areas that absorb the greatest environmental burdens created by toxic industries deserve the greatest investment to offset the damage. Please ensure that the investment they do receive under the set-aside is meaningful, long-term, and regionally appropriate.

VII. Special Challenges Facing Rural, Disadvantaged Communities Applying for Funding

Do Not Penalize Resource-Starved Communities for Failing to Present “Shovel Ready” Projects for Approval or for Inability to Cover Project Costs Up Front

We encourage you to develop draft guidelines that allow for equal footing in considering project proposals. Some regions will clearly have more staff and resources available to develop a project application. Although we understand how important it is to select projects with a high probability of successful completion, we ask that you recognize the difference between lack of funding to prepare an application (including planning and environmental analyses) and lack of the ability to oversee a project to completion. Other funding opportunities in the state have recognized this impediment for resource-deprived areas and permit a portion of the proposed award to go to planning, community outreach, and hiring consultants (for example, the Safe Routes to School program, now part of the Active Transportation Program), i.e. Planning Grants. We encourage ARB and CalEPA to promote this behavior among administering agencies.

In addition, we recommend that grants to disadvantaged community projects *not* be made on a cost-reimbursement basis, particularly with respect to grant programs for which non-profit organizations may apply. A cost-reimbursement structure can render a grant program highly burdensome, or even inaccessible, to non-profits, cooperatives, and other entities that may have the ability to develop critical projects in disadvantaged communities but may lack the capital to pay for such projects up-front.

Existing Infrastructure Deficits in Historically Resource-Starved Communities Should Not Be Negatively Weighed Against Applicants

Disadvantaged communities located in urban areas will likely face very different environmental burdens than rural, disadvantaged communities. For example, an application for a complete streets project in a disadvantaged urban area of Los Angeles will likely look very different than a complete streets application in Tooleville, California. Tooleville, population 340, is a town in Tulare County where children are regularly forced to walk on a busy highway to their school bus stop. In Tooleville as in many other low-income rural communities, there simply are no sidewalks; the area where sidewalks would regularly be tend to flood due to inadequate drainage, compounded by inadequate lighting and the lack of a school bus pullout where the bus can safely stop to let children off and on the bus. In this example, you can see how the two project

applications for sidewalks will look dramatically different, with the application from an urban area likely much more straightforward and less expensive to fund.

Predicting this inevitable disparity, we urge you to incorporate this consideration in the guidelines so that communities lacking basic infrastructure are not penalized if their projects require threshold investment and construction to become ready for the proposed project.

Resist a Pervasive Density Bias For Project Funding

Although it is tempting when doling out limited funds to prioritize awards to denser population centers that will benefit the greatest number of individuals, we encourage you to remember the ultimate goal of distributing the Cap and Trade auction proceeds: to reduce greenhouse gas emissions. Rural residents frequently drive dramatically longer distances to access basic services, employment and education, and medical services. Although there are typically fewer residents per square mile, these residents are driving far further than urban residents in disadvantaged communities. It is also unlikely that these low-income residents are able to afford brand new gas-efficient vehicles, so their potential contribution to greenhouse gas emissions is likely higher due to less gas efficient, older cars.

Rural residents also have few if any public transportation options and spend a disproportionate amount of their income on transportation costs. This is not a matter of changing habits. This is a reality that is faced by the rural poor. Riding a bike, taking the bus, or carpooling is simply not always an option given the almost complete lack of safe transportation alternatives. To address the climate change and air pollution concerns caused by greenhouse gas emissions, it is critical to look at emissions from rural areas and recognize that there is no future in fighting climate change in only densely populated areas. The change must come from throughout the state and focus on driving habits and distance between housing, employment, and critical services, not just population density.

VIII. Conclusion

In order to begin to turn back the clock on historic trends of disinvestment, we are delighted to see that the ARB's draft Interim Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies is guiding agencies to concerted revitalization of disadvantaged communities. Increasing incentives for cleaner energy production, reforestation, alternative transportation, and affordable and adequate housing are long-term goals with the potential for profound social and environmental impacts. We hope that ARB and CalEPA will use CRLA as a source for information regarding regions of the state that are poorly monitored. Because of the broad array of socioeconomic challenges faced by many vulnerable communities, and their associated cumulative health hazards, we would like to encourage that ARB consult with organizations such as CRLA to receive ongoing feedback regarding the effectiveness of the program in encouraging revitalization and greening of our most hard-hit communities.

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