



September 19, 2016

*Via Electronic Filing*

Mary Nichols, Chair  
California Air Resources Board  
1001 I Street  
Sacramento, CA 95814

**Re: Comments on California's Proposed Compliance Plan for the Federal Clean Power Plan under Clean Air Act Section 111(d)**

Dear Board Chair Nichols:

Communities for a Better Environment, Center on Race Poverty and the Environment, and Global Alliance for Incinerator Alternatives (“Environmental Justice Advocates”) submit these comments on the State Board’s Proposed Compliance Plan for the Federal Clean Power Plan under Clean Air Act Section 111(d) (“Trading Plan for CPP”). We are community groups and organizations that work directly with low-income residents and residents of color who are disproportionately impacted by industrial pollution, toxic air emissions, and climate change. We do not support the Trading Plan for CPP because carbon trading places unjust burdens on low income communities and communities of color. Climate change solutions must protect all Californians, starting with those already overburdened by air pollution.

As a result of significant evidence-based advocacy, the final federal Clean Power Plan contains requirements for states to engage with potentially affected communities when developing their compliance strategies.<sup>1</sup> These include meaningful engagement, not merely to give communities information about state implementation plans, but to ensure that the potentially affected communities are able to have an impact on how the state plans to implement the Clean Power Plan. The Trading Plan for CPP does not satisfy these requirements. While the Trading Plan for CPP articulates a continued uniform reliance on cap and trade to reduce greenhouse gas (“GHG”) emissions, the cap and trade program has

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<sup>1</sup> For a description of the gains secured by environmental justice advocacy, see e.g. <http://grist.org/climate-energy/heres-how-environmental-justice-advocates-improved-obamas-clean-power-plan/>

not been affected by the years of public input from affected communities contending that trading may negatively impact their progress toward environmental justice. As described below, and in our companion comment regarding the proposed cap and trade regulation, this has proven to be a reality: the existing cap and trade program has not resulted emissions decreases in California's environmental justice communities. In particular, the greatest users of offsets in the cap and trade system are part of California's electricity sector including Calpine, Southern California Edison and NRG. Simply relying on California's existing cap and trade scheme, which sunsets before any GHG reductions are required by the Clean Power Plan, would actively thwart the environmental justice goals of the landmark federal law.

## **I. The Federal Clean Power Plan Includes Environmental Justice Requirements States Must Meet to Submit an Adequate Implementation Plan**

In 2015, the federal government adopted the Clean Power Plan, with goals for addressing emissions from existing power generation nationwide. The administration was not simply contemplating regulation of greenhouse gases generally; it was specifically looking at GHG emissions from power plants that existed as of 2014. The emissions from these plants impose unburdens on the planet, and they also impact the health of the local communities where they have been operating, and emitting pollutants in addition to GHGs, such as particulate matter and toxic air contaminants.

The administration articulated specific nationwide goals for the Clean Power Plan: contemplating that cutting GHG emissions from existing Electric Generating Units ("EGUs") would have major public health benefits. President Obama identified these as including 3,600 fewer premature deaths; 90,000 fewer asthma attacks in children; 1,700 fewer heart attacks; 1,700 fewer hospital admissions; 300,000 fewer missed school and work days.<sup>2</sup> These benefits are not associated with GHG emissions, but rather with the co-pollutants that will not be emitted from existing EGUs, as a result of the Clean Power Plan.

These gains are possible because existing EGUs contribute significantly to the health burdens born by the public in general, and by communities in proximity to EGUs in particular. EGUs contribute pollutants like nitrogen oxides (NO<sub>x</sub>), sulfur oxides (SO<sub>x</sub>), and particulate matter (PM). NO<sub>x</sub> also is also a precursor for ground-level ozone (smog) and PM<sub>2.5</sub> formation. High PM<sub>2.5</sub> concentrations are linked to increases in heart attacks, particularly in those who are already vulnerable and in the elderly. "Some populations are more at risk to exposure than other groups: high 1-h NO<sub>x</sub> concentrations, 8-h ozone concentrations, and 24-h PM<sub>2.5</sub> concentrations are associated with increased asthma-related hospital visits in children; 8-h ozone concentrations are also strongly correlated with negative health impacts on the elderly and those with low employment status, and weakly correlated with impacts on ethnic or racial minority populations, and populations with high poverty

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<sup>2</sup> <https://www.whitehouse.gov/blog/2015/08/03/what-clean-power-plan-means-america>; *see also* Video address by President Obama announcing issuance of Final Clean Power Plan.

rates or low educational status.”<sup>3</sup>

Unlike GHG emissions, which tend to disperse globally, for criteria pollutants like PM<sub>2.5</sub>, NO<sub>x</sub> and SO<sub>x</sub>, location matters considerably. When the Clean Power Plan anticipates reducing public health impacts, it is because of the population sizes and demographics of the populations around existing EGUs.<sup>4</sup> Various researchers have quantified the cost benefits of reducing criteria pollutants from EGUs, for instance in 2005, the ozone-specific mortality and morbidity benefits of reducing NO<sub>x</sub> emissions from EGUs at different times and places across the country at \$10,700–\$52,800/ton NO<sub>x</sub>, depending on local population density and atmospheric conditions like temperature. A 2009 estimate projected the PM<sub>2.5</sub>-specific benefit of power plant NO<sub>x</sub> reductions as ranging from \$1,100 per ton of NO<sub>x</sub> in Chicago to \$120,000 per ton in Seattle. “In its Clean Power Plan, the US Environmental Protection Agency (EPA) estimated the 2020 health benefit of reducing NO<sub>x</sub> emissions to be highest in California, at \$22–49,000/ton in PM<sub>2.5</sub>-specific benefits and \$14–59,000/ton in ozone-specific benefits.”<sup>5</sup>

The Clean Power Plan also looks to existing sources of energy such as garbage incinerators, which generate tremendous co-pollutants along with GHG emissions. In its Initial Statement of Reasons (“ISOR”) for the Cap and Trade regulation extension, CARB proposes extending the existing exemption for the state’s three garbage incinerators (or “waste to energy”) under the cap and trade program. This “exemption from a compliance obligation” would be for an industry that emits carbon dioxide and other harmful pollutants in three environmental justice communities. At a bare minimum, the state must align with the requirements of the CPP on this point. The CPP clearly recognizes that GHG emissions from burning the fossil fuel-based portion of garbage (including plastics) must be counted. The CPP also acknowledges that incineration undermines waste prevention programs, which have significant climate benefits. Any proposal to meet the CPP must, therefore eliminate any exemption from compliance with GHG regulation for “waste to energy.”

### **A. Clean Power Plan Public Participation Requirements**

It is reasonable for California’s environmental justice communities to expect that some of the public health benefit identified by the Clean Power Plan will accrue to them. This begins with the mandate that CARB provide for meaningful public participation in development of California’s implementation. EPA observes that, under the final Clean Power Plan,

states need to engage meaningfully with communities and other stakeholders during the initial and final plan submittal processes. Meaningful engagement

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<sup>3</sup> A framework for siting and dispatch of emerging energy resources to Realize environmental and health benefits: Case study on peaker power plant displacement”, E.M. Krieger et al./Energy Policy 96 (2016) 302–313, 303.

<sup>4</sup> *See id.*

<sup>5</sup> *Id.*, citing (EPA, 2015).

includes outreach to vulnerable communities, sharing information and soliciting input on state plan development and on any accompanying assessments ... , and selecting methods for engagement to support communities' involvement at critical junctures in plan formulation and implementation.<sup>6</sup>

EPA recommends that states consult its "Guidance on Considering Environmental Justice During the Development of Regulatory Actions."<sup>7</sup> EPA's Guidance poses three critical questions:

1. How did the public participation process provide transparency and meaningful participation for minority populations, low-income populations, tribes, and indigenous peoples?
2. How did the rule-writers identify and address existing and/or new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples?
3. How did actions taken under #1 and #2 impact the outcome or final decision?<sup>8</sup>

Although the Trading Plan for CPP articulates its conviction that it has satisfied these public participation and meaningful engagement requirements, it patently fails to do so. First, the Trading Plan for CPP relies almost exclusively on the analysis performed to adopt the existing cap and trade system. Environmental Justice Advocates were extremely vocal during adoption of the cap and trade system about how poorly the rulemaking process and the final rule reflected the risk to environmental justice communities. The system that already exists did not include transparency and a process for environmental justice communities, did not identify environmental and public health impacts on environmental justice communities, and therefore did not see an impact from participation or address disproportionate impacts. Rather than relying on a flawed system, CARB must undertake a new process with truly meaningful participation, one that candidly acknowledges disproportionate impacts and that is able to change outcome to address those impacts.

## **B. The Existing Cap and Trade Program has Environmental Justice Impacts**

Second, the disproportionate impacts from cap and trade are now documented. What the environmental justice community has warned of since inception of CARB's cap and trade program has in fact been occurring -- major polluters are paying their way out of making real, on-site reductions at the expense of low-income communities, communities of color, and

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<sup>6</sup> 80 Fed. Reg. 64661, 64916 (Oct. 23, 2015).

<sup>7</sup> <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>. May 2015.

<sup>8</sup> *Id.* at pp. ii, 4.

indigenous communities. Reductions of GHG emissions on-site would also reduce the co-pollutants, such as PM<sub>2.5</sub> and air toxics, that are emitted into the surrounding community. This benefit is forgone when a facility buys allowances or offsets. California's existing trading scheme disproportionately impacts communities of color and low-income communities. Over two-thirds of California's low-income African Americans and about 60% of low-income Latinos and Asian/Pacific Islanders live within six miles of a Cap and Trade facility.<sup>9</sup> In California's power sector, the electricity sources that tend to generate the most pollutants – gas-fired peaker plants that are called on to start and stop – are located in or near environmental justice communities. One recent article showed that more than 80% of peaker plants are in communities with above-average CalEnviroScreen scores, and more than half of these plants are in communities in the top 30% of CalEnviroScreen communities.<sup>10</sup>

Since the Trading Plan for CPP was issued, some aspects of California's legal framework have changed. Others have not. California's SB 32 was signed into law, changing the mandate to CARB to ensure GHG emissions reductions continue, and increase, after 2020.<sup>11</sup> SB 32 did not change the reality that the cap-and-trade program sunsets in 2020. In addition, AB 197—companion legislation to SB 32—specifically requires CARB to prioritize “direct emission reductions” in achieving reductions beyond the 2020 limit.<sup>12</sup>

These new laws will result in major shifts across our state to meet the growing crisis of climate change. They are critical to the health of environmental justice communities, as shown by a report issued September 14, 2016, by researchers at UC Berkeley, USC, Occidental and SFSU.<sup>13</sup> Researchers reviewed cap and trade compliance data from CARB, looking at residential demographics of communities hosting regulated GHG facilities, along with trends in GHG and particulate emissions. The report, “A Preliminary Environmental Equity Assessment of California's Cap-And-Trade Program,” demonstrates that polluters using the cap and trade system are adversely impacting environmental justice communities. The system is not delivering public health or air quality benefits, it is not achieving local emissions reductions, and it is exporting climate benefits out of California's environmental justice communities and out of state.

Three primary conclusions from the report are:

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<sup>9</sup> Manuel Pastor, *et. al*, *Minding the Climate Gap* (2010), 9, Figure 2 available at <http://dornsife.usc.edu/pere/documents/mindingthegap.pdf>.

<sup>10</sup> E.M. Krieger *et al.* / *Energy Policy* 96 (2016) 302–313, 308.

<sup>11</sup> Health & Saf. Code § 38566.

<sup>12</sup> Health & Saf. Code § 38562.5.

<sup>13</sup> A PRELIMINARY ENVIRONMENTAL EQUITY ASSESSMENT OF CALIFORNIA'S CAP-AND-TRADE PROGRAM, Cushing *et al* (16 Sept. 2016) p. 6 (available at [http://dornsife.usc.edu/assets/sites/242/docs/Climate\\_Equity\\_Brief\\_CA\\_Cap\\_and\\_Trade\\_Sept2016\\_FINAL.pdf](http://dornsife.usc.edu/assets/sites/242/docs/Climate_Equity_Brief_CA_Cap_and_Trade_Sept2016_FINAL.pdf).) This report is further summarized in Environmental Justice Advocates' September 19, 2016 comments on the proposed cap and trade regulation, section “Cap and Trade Implementation Data Indicate Communities of Color are Adversely and Disproportionately Affected.”

*1. Emissions from cap-and-trade participant facilities in EJ communities are not substantially decreasing, even though overall GHG emissions have declined under the cap.*

As described above, when it comes to GHG emissions, location matters because co-pollutant benefits are a much-anticipated, and badly needed aspect of climate change regulation. On the local level under cap and trade, though, there is either no decline or actual increases in GHG emissions. Environmental justice communities have long been concerned that cap and trade will not deliver “local emission reductions” in GHG emissions. These types of reductions, which occur on-site at facilities and also reduce co-pollutants, are critical to communities on the frontlines of climate change.

Unfortunately, the analysis shows GHG increases in several sectors, including cement, hydrogen, and oil and gas production and suppliers. Most emission reductions have come from the out-of-state electricity sector, as California has reduced imports from sources with a greater carbon footprint, such as coal. Emissions from in-state electricity generation, by contrast, have actually increased by 4.5%.

According to the report: “While overall, greenhouse gas emissions in California have continued to drop from a peak in 2001, we find that, on average, many industry sectors covered under cap-and-trade report increases in localized in-state GHG emissions since the program came into effect in 2013.”<sup>14</sup>

*2. Environmental justice communities are disproportionately impacted by large greenhouse gas emitters, whose emissions are correlated with harmful air toxics.*

California’s cap and trade program is exacerbating a longstanding air pollution problem, whereby some communities have clean air and some have dirty air and related health issues. GHGs are not emitted in isolation; they are accompanied by co-pollutants. The state’s large emitters are releasing a range of pollutants, including particulate matter, which is known to negatively impact air quality and health. The emissions compound and potentially exacerbate already existing environmental impacts, since large GHG emitters are more likely to be in neighborhoods that have already high pollution burdens, as shown by CalEnviroScreen 2.0.

*3. Offsets have allowed polluters to avoid making local emission reductions.*

Offsets allow emitters to buy credits for projects run by another company. Theoretically, these projects reduce GHGs, and buyers get to include the saved GHGs as part of their legal requirement to reduce. Offsets are the cheapest way to meet required reductions under cap and trade. During the time period analyzed, over four times the total offset credits were used than the total reduction in allowable GHG emissions. To meet the GHG reduction requirements, many of the largest emitters, in particular energy companies and electric utilities, were buying offsets. It was primarily large climate polluters that were benefiting from use of cheap offsets; four companies accounted for nearly half (44%) of all

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<sup>14</sup> “A Preliminary Assessment,” p. 6.

offsets used: Chevron, Calpine Energy Services, Tesoro and Southern California Edison. The top 10 users of offsets accounted for about 36% of the total emissions and 65% of the offsets used, and include PG&E, San Diego Gas & Electric, NRG Power, and La Paloma Generating Station.<sup>15</sup>

### **C. CARB Outcomes Are not Capable of Being Affected by Public Input**

Third, while the Trading Plan for CPP explains several avenues in which it has and is seeking to engage environmental justice communities, these avenues are not succeeding, for various reason. Staff correctly points out that EPA identified California's Adaptive Management Plan as one example of how states could propose "ongoing assessments of the impacts of their state plans on overburdened communities."<sup>16</sup> When promulgating the Cap and Trade regulations, CARB asserted that it would assess and prevent adverse impacts through an Adaptive Management Plan. The Initial Statement of Reasons ("ISOR") for the Cap and Trade Regulation admits that the State Board has not finalized or implemented the Adaptive Management Plan.<sup>17</sup> The Trading Plan for CPP fails to acknowledge that despite several years of operating the trading scheme, CARB has not taken action to assess or prevent disproportionate emissions impacts.

Even more fundamentally, California appears to have pre-determined its compliance course prior to finalization of the CPP. Environmental justice representatives who have sought to secure meaningful regulation in communities do not feel enfranchised, to the contrary, there is a strong sense of futility in seeking a regulatory process that could result in anything other than the existing, flawed, cap and trade program. To comply with the federal public participation requirements, CARB should not adopt the Trading Plan for CPP proposal. It should instead engage with California's most impacted communities to develop a program of direct emissions reductions that will benefit the health and welfare of California communities.

## **II. CARB has no Authority to Extend Cap and Trade after 2020, and May Not Rely on Cap and Trade for Compliance with the Clean Power Plan.**

The Trading Plan for CPP seeks to use the post-2020 cap and trade program as the compliance demonstration for the Clean Power Plan.<sup>18</sup> Further, it proposes a state measures plan, which means that the cap and trade program would be used for compliance purposes but not itself be federally enforceable.<sup>19</sup> The Clean Power Plan allows states to submit a "state measures" plan, but that plan must meet the same integrity elements as federally enforceable measures.<sup>20</sup> California must demonstrate "adequate legal authority and funding

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<sup>15</sup> *Id.* p. 9.

<sup>16</sup> 80 Fed. Reg. at 64919.

<sup>17</sup> ISOR at 302.

<sup>18</sup> Trading Plan for CPP, e.g. p.1.

<sup>19</sup> *Id.* pp. 1-2, 13-17.

<sup>20</sup> 80 Fed. Reg. at 64836.

to implement the state plan and any associated measures.”<sup>21</sup>

CARB lacks authority to proceed with an extension of Cap and Trade. While CARB staff have offered amendments to various provisions of the Cap and Trade regulations to extend the program after the year 2020, agencies only have those powers delegated by the Legislature. Indeed, “...it is well established that the rulemaking power of an administrative agency does not permit the agency to exceed the scope of authority conferred on the agency by the Legislature. ‘A ministerial officer may not ... under the guise of a rule or regulation vary or enlarge the terms of a legislative enactment...’”<sup>22</sup> CARB’s authority to implement the Cap and Trade program expires on December 31, 2020 and the Board has no authority to adopt regulations to extend the program beyond that date.<sup>23</sup>

The temporal limitation on CARB’s authority to maintain a cap and trade program is not an accident; for two years the Legislature has refused to extend the program. During the 2015 legislative session, the version of Assembly Bill 1288 (Atkins) containing an extension of CARB’s authority beyond December 31, 2020 did not become law. During the 2016 legislative session, Senate Bill 32 passed, requiring the State Board to achieve a 40 percent reduction in greenhouse gas emissions below 1990 levels by 2030. No provision of Senate Bill 32 amended section 38562(c) or otherwise expressly authorized CARB to implement cap and trade after the year 2020. Accordingly, CARB lacks the authority to extend the cap and trade program. Without legal authority to implement its state measures plan, CARB may not propose it in lieu of a State Implementation Plan that would meet the CPP’s requirements.

### **III. The CEQA Analysis is Deeply Flawed**

CARB offers a single Draft Environmental Analysis (“DEA”) for both the Trading Plan for CPP and its proposed Cap and Trade regulation. The DEA purports to meet the CEQA requirements of CARB’s certified equivalent duties. The DEA fails to meet the most basic CEQA mandates, such as providing a stable project description and providing project objectives that are broad enough that they can be met with more than a single alternative. It fails to identify impacts of the project on environmental justice communities, and fails to propose meaningful alternatives. Due to these pervasive infirmities, Environmental Justice Advocates are providing only a high-level review of their objections to this CEQA treatment. We look forward to working with CARB on a CEQA analysis that genuinely considers California’s implementation of the Clean Power Plan.

#### **A. Project description**

Under CEQA, an “accurate, stable and finite” project description is the *sine qua non* of

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<sup>21</sup> *Id.*; see also 80 Fed. Reg. at 64848; 40 C.F.R. § 60.5745(a)(9).

<sup>22</sup> *Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 321 (citing *California Emp. Com. v. Kovacevich* (1946) 27 Cal.2d 546).

<sup>23</sup> See Health & Safety Code §§ 38562(c), 38570.



an environmental review.<sup>24</sup> CEQA requires a statement of the objectives of the project and a description of the Project in sufficient detail so that the impacts of the project can be assessed.<sup>25</sup> Only through an accurate depiction of a project may the public, interested parties, and public agencies balance the proposed project's benefits against its environmental cost, consider suitable mitigation measures, assess the advantages of rejecting the proposal, and appropriately weigh alternatives.<sup>26</sup> The importance of an accurate project description cannot be overstated.

Although the Trading Plan for CPP project is a broad programmatic undertaking, the DEA avoids providing any relevant details, such as historic performance of EGUs under the existing cap and trade system. As described above, EGUs located in environmental justice communities have not reduced their GHG (and co-pollutant) emissions under cap and trade. Indeed in-state electricity generation has increased, particularly in environmental justice communities.

Further, although it mentions expanded regional markets, it does not identify the detailed information from modeling conducted on an expanded regional balancing authority. Although modeling suggests that, under most scenarios use of California's natural gas-fired units would decrease by 2030 under a regionally expanded balancing authority, emissions could increase statewide, and in environmental justice communities, compared to a scenario without regionalization. These two pieces of information show the risks to environmental justice communities. They are important to understanding the project proposed, evaluating its goals and alternatives.

In addition, the DEA describes one project objective as compliance with the CPP in a way that can only be met through use of cap and trade program:

6. Comply with the Federal Clean Power Plan

The federal CPP is an action of the federal government to reduce GHG emissions. CPP facilitates the use of emissions trading markets for compliance, including markets that cover more entities than CPP-affected electric generating units (EGUs). California is in a good position to use existing state programs, specifically, the Cap-and-Trade Program, to comply with the federal CPP as part of a "State Measures" compliance plan design. Integrating CPP Compliance Plan into the Cap-and-Trade Program may also support a broader national carbon market as CPP, and other potential federal programs, mature. Therefore, the Proposed Project includes regulatory amendments to facilitate CPP compliance.<sup>27</sup>

Project objectives cannot be drafted so that no alternative could meet them. Indeed, if

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<sup>24</sup> *County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 199.

<sup>25</sup> 14 Cal. Code Regs. § 15124.

<sup>26</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 655.

<sup>27</sup> DEA, p. 20.

applicants could thwart consideration of all potentially feasible alternatives simply by adopting overly narrow objectives, CEQA would be rendered meaningless.<sup>28</sup>

## **B. Project Impacts**

The impacts of the Trading Plan for CPP are not adequately identified. CEQA requires environmental review to address all of a proposed project's anticipated environmental impacts.<sup>29</sup> "An EIR shall identify and focus on the significant environmental effects of the proposed project."<sup>30</sup> It must "identify and focus on the significant environmental effects of the proposed project," including providing an analysis of both short-term and long-term significant environmental impacts.<sup>31</sup> Agencies, moreover, should not approve projects if there are feasible mitigation measures or project alternatives available to reduce or avoid the significant environmental impacts contained in the project's EIR.<sup>32</sup>

The Trading Plan for CPP, which is the project as proposed, would provide that all affected EGUs in California will be required to participate in the cap and trade program. Based on the recent Preliminary Environmental Equity Assessment of the cap and trade program, it is foreseeable that the project's impacts would include increases, or at least failures to reduce, emissions in environmental justice communities. CARB has the list of affected units, and can correlate that list with CalEnviroScreen communities to identify the units that may trade, or purchase offsets, rather than reducing emissions. Instead, the DEA arbitrarily assumes that market operation makes it impossible to predict which units will reduce actual emissions, and which units are more likely to pay to pollute.

## **C. Alternatives analysis**

The DEA's alternatives analysis fails to consider realistic alternatives to the Trading Plan for CPP. It considers a No Project alternative, a Direct Regulation alternative, and a Carbon Fee alternative. Several feasible alternatives exist beyond these three alternatives, and should be considered.

First, as an initial matter, the No Project alternative assumes CARB would not develop any new programs to effectuate its new regulatory responsibilities. It is not realistic to assume that CARB would fail to act on its legislative mandates. One such mandate is the SB 32 requirement to plan for, and implement, increasing GHG emission reductions. Further, SB 32's companion bill, AB 197, expressly directs CARB to prioritize direct emissions reductions at large stationary sources. Beginning in January 2017, CARB must

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<sup>28</sup> See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 736-37 (holding that applicant's prior commitments could not foreclose analysis of alternatives.)

<sup>29</sup> Public Resource Code § 21100(b)(1); See also, *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App. 3d 185, 199.

<sup>30</sup> 14 Cal. Code Regulations § 15126.2(a).

<sup>31</sup> *Id.*

<sup>32</sup> Cal. Pub. Resources Code §§ 21002, 21002.1(a).

prioritize “emissions reduction rules and regulations that result in direct emission reductions at large stationary sources of greenhouse gas emissions[.]” Describing a No Project alternative as one in which California’s regulation of GHGs simply falls off a cliff in 2020 when cap and trade expires is not a No Project alternative. A true No Project alternative would consider that CARB would spend the next year or two developing regulations to meet its GHG emission reduction mandates without cap and trade.

Second, there are many feasible alternatives to cap and trade to comply with the Clean Power Plan. CARB could consider, as an alternative, a “cap and fee” system, to ensure that the requisite emission reductions occur, and provide an incentive to entities that reduce more aggressively. Although CARB would need still need legislative authorization for a cap and fee system, the DEA should consider one for CPP compliance. CARB should also consider removing the electricity sector from whatever regulatory system it applies to the rest of the state, and require, for all plants that were in operation in 2012, a 25% reduction from 2012 GHG emissions, and for all post-2012 plants, a 25% reduction from first full year of operation.<sup>33</sup> Another benchmark could be to connect mandatory reductions to AB 32 – reduction of approximately 30% by 2020 (program launches in 2022, so must demonstrate 30% reduction by 2024) and 40% by 2030.

#### IV. Conclusion

For several years, environmental justice communities nationwide have worked to secure a meaningful federal regulatory program to address GHG emissions and the frontline communities most impacted by co-pollutants emissions. These communities are the most vulnerable to the impacts of climate change as well. Upon finalization of the Clean Power Plan, it is said that President Obama instructed “If you care about low-income, minority communities, start protecting the air that they breathe.”<sup>34</sup> The Trading Plan for CPP does the opposite of protecting the air that California’s environmental justice communities breathe. Environmental Justice Advocates respectfully request that CARB instruct its staff to prepare a compliance plan that does not include pollution trading trading, but rather reduces emissions in environmental justice communities.

Sincerely,

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<sup>33</sup> 2012 benchmark year is logical for CPP compliance since 2012 is the year EPA used for its baseline emissions calculations. See EPA fact sheet “The Clean Power Plan: Key Topics and Issues” at 5.

<sup>34</sup> As described in <http://grist.org/climate-energy/heres-how-environmental-justice-advocates-improved-obamas-clean-power-plan/>