



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

March 8, 2013

VIA ELECTRONIC SUBMISSION

Ms. Shelby Livingston, Chief
Climate Change Program Planning and Management Branch
California Air Resources Board

Re: Cap-and-Trade-Auction Proceeds Investment Plan Draft Concept Paper

Dear Ms. Livingston:

California Rural Legal Assistance, Inc. (CRLA) submits the following comments on the Cap-and-Trade Auction Proceeds Investment Plan Draft Concept Paper issued by the California Department of Finance (DOF) pursuant to AB 1532 and SB 535. CRLA is a non-profit legal services organization that provides legal representation to low-income residents of rural California, including in many communities comprised primarily of farmworkers and their families.

The State of California, through implementation of the Cap and Trade Auction Proceeds Investment Plan (Investment Plan) must advance the goals laid out in AB 1532. These goals include not only the reduction of greenhouse gas (GHG) emissions, but also the stated aims of maximizing economic, environmental and public health benefits to the state; fostering job creation through green jobs; complementing efforts to improve air quality; and directing investment toward the most disadvantaged communities and households in the state. (Cal. Health and Safety Code Section 39712). We submit these comments to support the State's efforts to administer the Investment Plan to further all of the goals identified by the legislature.

At the outset, we strongly encourage the Investment Plan to focus maximum resources on disadvantaged communities to further the goals of 1532 and other GHG emission reduction programs. To that end, while SB 535 identified *a floor* for investment in and for the benefit of disadvantaged communities of 10% and 25%, respectively, these numbers should in no way constitute a ceiling for investment in disadvantaged communities. We believe that the State should invest more than the statutory minimum levels in and for the benefit of disadvantaged communities. Doing so will not only better achieve co-benefits of 1532, but also support the

reduction of GHG emissions and create a stronger and healthier California. Furthermore, those funds earmarked to comply with SB 535 must specifically address the high priority needs of one or more disadvantaged communities, achieve measurable benefits for them, and deliver benefits that significantly outweigh any burdens that will fall on those communities.

The remainder of our comments will focus on the potential exclusion of several disadvantaged – primarily rural - communities from Cap-and-Trade auction proceeds and provide suggestions for programs and activities that will extend the benefits of AB 1532 to all Californians.

Exclusion of Rural Communities from Cap-and-Trade Auction Proceeds

Deficiencies in the CalEnviroScreen Tool

Senate Bill 535 directs the California Environmental Protection Agency (Cal EPA) to identify disadvantaged communities for purposes of the Investment Plan. Cal EPA, through the CalEnviroScreen has identified such communities by analyzing several environmental and demographic indicators. The Investment Plan anticipates targeting investments earmarked for disadvantaged communities to those communities identified as among the top 10% of disadvantaged communities (technically ZIP Code Tabulation Area, or ZTCAs) according to the CalEnviroScreen.

While we support the use of the CalEnviroScreen to identify disadvantaged communities for the purpose of SB 535 and AB 1532 implementation, we are concerned that the tool, due to significant identifiable gaps in the data used to calculate community scores, underestimates the environmental and socioeconomic burdens on certain communities, particularly rural communities. Due to this underestimation, the CalEnviroScreen excludes from the top 10% certain highly impacted communities that, in the presence of more robust data and a better-developed tool, would likely be included within that critical top 10% of highly impacted communities statewide.

If DOF defines “disadvantaged community” to mean only those communities that fall within the top 10 percentiles of the existing draft of CalEnviroScreen, communities that are inappropriately excluded from this threshold due to deficiencies in the tool will be excluded from consideration for critical resources. In recognition of flaws in the existing draft of CalEnviroScreen, we urge DOF to expand the definition of “disadvantaged communities” to those rural communities that score in the top 15% or 20% on the current draft of the CalEnviroScreen. If permissible under the statute, we also urge DOF to include as disadvantaged those communities that have a mean household income below 60% of State Median Income.

Failure to Capture Environmental Characteristics in Rural Communities

CRLA raised several of our concerns with respect to deficiencies in the most recent draft of CalEnviroScreen in comments to the Office of Environmental Health Hazards Assessment (OEHHA) on February 1, 2013. We have attached those comments hereto for your consideration. In summary, we are concerned that significant data gaps make the CalEnviroScreen less reliable in measuring environmental and population characteristics in rural areas as compared to urban areas, where data are frequently more robust. In particular, we are concerned that the following indicators fail to reflect existing conditions in rural areas of California:

- Air Quality: Ozone – potentially underestimates burden on rural areas due to inadequate air monitoring in rural areas
- Air Quality: PM 2.5 – potentially underestimates burden on rural areas due to inadequate air monitoring in rural areas, particularly in agricultural areas that experience unique PM exposures
- Asthma – use of Asthma-Related Emergency Departments data potentially underrepresents asthma prevalence in rural areas, where residents may be reluctant to access ED care except in the most severe circumstances due to distance from EDs and/or unavailability of MediCal-accepting EDs.
- Lack of drinking water quality indicator in existing draft – fails to represent a significant environmental health hazard impacting rural communities, many of which rely on private wells or small water systems rather than on well-resources municipal water systems.
- Lack of infrastructure indicator in existing draft – fails to represent significant environmental health and safety hazards posed by inadequate wastewater treatment, and dilapidated housing.

As a result of these deficiencies, we are concerned that several highly disadvantaged communities will be excluded from Cap-and-Trade Auction proceeds. Despite exhibiting demographic indicators demonstrating disadvantage and vulnerability (e.g. poverty levels) several rural cities and towns do not score in the top 10% of disadvantaged communities according the CalEnviroScreen due , we believe, to data deficiencies in rural areas. Some examples include Huron (99th percentile among ZTCAs based on poverty indicators, CanEnviroScreen score of 16-20%), San Joaquin (99th percentile based on poverty indicator, CalEnvrioScreen score of 11-15%), Mendota (98th percentile based on poverty indicator, CalEnviroScreen score of 16-20%), Avenal (97th percentile based on poverty indicator, CalEnviroScreen score of 36-40%), Dos Palos (90th percentile based on poverty indicator, CalEnviroScreen score of 11-16%). None of these communities, and many like them, will qualify for Cap-and-Trade Auction proceeds targeting disadvantaged communities.

Failure to Capture Environmental Threats on Tribal Lands

We are also concerned that many of the databases used in the CalEnviroScreen completely fail to capture significant environmental threats on tribal lands which

are outside of the jurisdiction of California regulatory agencies but which abut, or even house, sizeable California communities comprised of non-tribal members who suffer the environmental health effects of threats such as hazardous waste treatment, tire recycling, closed-but-not-cleaned illegal dumps and untreated wastewater from mobilehome parks. This data deficiency is particularly relevant in the Eastern Coachella Valley, where small tracts of tribal lands are interspersed with non-tribal lands inhabited by California residents, mostly low-income farmworker families. The CalEnviroScreen's failure to account for environmental hazards on tribal lands results in significant underrepresentation of the pollution burden on the communities of Mecca, Thermal, and Coachella. The following indicators fail to account for environmental hazards on tribal lands that impact California communities:

- Cleanup Sites – EnviroStor database does not include hazards on tribal lands
- Solid Waste Sites and Facilities, and Hazardous Waste Facilities – EnviroStor and Solid Waste Information Systems databases do not include hazards on tribal lands
- Groundwater Threats – GeoTracker database does not include hazards on tribal lands

Deficiencies in Population Characteristics

The CalEnviroScreen relies on several demographic indicators as key factors in determining a community's "population characteristic," a component of its score for determining its eligibility as a disadvantaged community. These indicators include a poverty indicator, educational attainment, linguistic isolation and age of population. The CalEnviroScreen fails to fully and accurately capture demographic characteristics of rural communities due to data deficiencies, including significant Census undercounts (see CRLA comments to CalEnviroScreen, attached) and geographic units that fail to capture small, disadvantaged communities that are co-located in a ZIP Code Tabulation Area (ZTCA) with better resourced areas.

For example, ZTCA 95363 in Stanislaus County includes the incorporated city of Patterson along with several unincorporated communities including Grayson and Westley. Westley, according to Census data, has poverty levels of around 32%, compared to the ZTCA as a whole, with poverty rates of approximately 14%. Similar disparities exist for other CalEnviroScreen demographic indicators. As a result, the community of Westley exhibits an artificially low "population characteristic" on the CalEnviroScreen. The tool assigns the 95363 ZTCA to the 16-20% percentile, thus excluding Westley from Cap-and-Trade Auction proceeds targeted at disadvantaged communities. There are many other communities just like Westley.

In recognition of the risk of undercounting the vulnerability of communities such as Westley, the Office of Environmental Health Hazards Assessment (OEHHA) and the California Environmental Protection Agency (CalEPA) have committed to produce future iterations of the CalEnviroScreen at the much finer Census tract level, which

would more accurately reflect the actual demographics of small, severely low-income communities that share a ZTCA with wealthier communities. Since even OEHHA and CalEPA recognize the current draft's potential for underrepresenting the local conditions of small disadvantaged communities due to the use of ZTCA rather than Census tract, we urge DOF to broaden its definition of "disadvantaged communities" in order to avoid inappropriately excluding communities that would almost certainly fall within the top 10 percentile of the CalEnviroScreen but for their proximity to wealthier communities.

In order to allow for full inclusion of those communities that the legislature intended to benefit with passage of AB 1532 and SB 535, re reiterate that DOF in its Investment Plan should broaden the definition of disadvantaged communities to include those rural communities that do not score in the top 10% of disadvantaged communities on the CanEnviroScreen due to data deficiencies.

Proposed Programs and Activities to Promote the Intent of AB 1532

To ensure that the benefits of AB 1532 and SB 535 reach all Californians, including Californians in rural Communities we propose the following eligible uses and preferences for funds:

Proposed Eligible Activities Should Include, but not be Limited to the Following:

- 1.** Expand or improve public transit service, including transit and transportation programs for rural communities such as van pools, car share and carpool promotion programs, with significant funding for operations.
- 2.** Expand bicycle and pedestrian networks, facilities, infrastructure and programs to promote additional use and safety and provide access to transit, schools, colleges, health center, and other essential services.
- 3.** Provide discounted transit passes in low income communities.
- 4.** Invest in energy efficiency improvements for residential structures, including multifamily rental homes, owner-occupied homes and mobile homes affordable to lower-income households.
- 5.** Engage in planning and investment activities that promote mixed use development in low-income, rural communities, thereby reducing VMTs by increasing "access through proximity" to essential goods and services.
- 6.** Invest in sustainable, basic infrastructure and services, including drinking water and wastewater services, in existing communities.
- 7.** Support infill development in existing communities.
- 8.** Develop employment and training programs that prepare low income residents for green jobs.

Preferences Should be Given to Projects and Programs That:

- 1.** Avoid or mitigate the disproportionate impacts of environmental stressors on disadvantaged communities and households.
- 2.** Provide or support workforce development and long-term job and economic growth for low-income and disadvantaged communities and households.

3. Improve public health by decreasing air pollution, improving drinking water quality, improving the safety of housing or transportation systems, improving access to essential services, or increasing use of active transportation.
4. Invest in existing communities and affordable housing opportunities low income people throughout California, including farmworkers in rural communities who support California’s critical agricultural industry.
5. Reduce racial and/or economic segregation.

A note of caution on tying AB 1532 investments to SB 375 implementation

While we support the development of programs and practices that reduce greenhouse gas emissions through sustainable community development, SB 375 implementation and with it the development of Sustainable Communities Strategies (SCS) in the Southern California Association of Governments (SCAG) region and currently in the San Joaquin Valley has thus far excluded low income, and in particular rural, communities from the co benefits of SB 375. Metropolitan Planning Organizations have directed resources to urban cores and larger metro areas to the detriment of low income, rural communities. In the SCAG region and thus far in the San Joaquin Valley, SCSs – in various stages of development and adoption – do not project infill, transportation improvements, and defined growth in the counties’ most impoverished existing communities, yet residents of these communities support the region’s agricultural wealth and are in close proximity to agricultural jobs thereby contributing to low Vehicle Miles Traveled (VMT) targets for the regions. As such, prioritization should be given to projects that seek to develop and invest in sustainable planning for these communities to ensure that they benefit from smart growth and sustainable planning throughout the state despite their possible exclusion from Sustainable Communities Strategies. This would meet the State’s goals of reducing GHGs, promoting public health, investing in disadvantaged communities and improving air quality.

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Thank you for your kind consideration of these comments. Should you have any questions, please feel free to contact Phoebe Seaton at pseaton@crla.org.

Sincerely,



Phoebe Sarah Seaton
Attorney at Law