

May 13, 2016

California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: The Potential for Including International, Sector-based Offset Credits in the Cap-and-Trade Program

Dear Members of the California Air Resources Board:

On behalf of Food & Water Watch and our over 170,000 supporters in California, I write to express our organization's strong opposition to the California Air Resources Board's (ARB) continuing consideration of international, sector-based offset credits in the state's current Cap-and-Trade Program. Pollution offsets, whether in the domestic or international setting, exist simply as an irresponsible avoidance mechanism for California's carbon-emitting industries to continue with business as usual while our elected officials and regulators lack the will to implement real, tangible reduction standards.

As detailed below, California's domestic carbon offset program is a broken and ineffective approach to climate change that entails brokers scouring the country for possible offset suppliers, regardless of whether those offset sources are additional or result in any net decrease in carbon emissions. Now, the ARB seeks to take that troubling approach overseas with its sector-based offsets from jurisdictional reducing emissions from deforestation and degradation (REDD) programs. Demanding that economically struggling nations curtail their own development and take other steps to "offset" California's carbon polluters, enabling them to continue to poison our atmosphere and planet is not only irresponsible and ill-fated, but racist toward both forest-dependent communities abroad as well as people who live near greenhouse gas emitting industrial facilities in California. If the ARB is truly committed to reducing greenhouse gas (GHG) emissions, as we can only hope it is, it should be holding state industries responsible, not searching other nations for ways to enable those industries to continue polluting in California.

In its March 18, 2016 Technical Paper, the ARB claims to be contemplating international offsets with the application of the "same kind of rigorous quantification methodology as utilized in California's domestic offset program." The ARB's goal of matching its domestic offset "rigor" on an international scale is deeply troubling to Food & Water Watch. As only one example of the ARB's deficiencies in its domestic offsets approach, the agency regularly fails to adhere to state regulations that any offset reduction must be "additional" to current emissions. The ARB even took affirmative steps to undermine its own "additional" requirement when it enacted a policy to allow for offsets to be generated from existing GHG reductions going back as far as 2005.

In addition to this overall deficiency, the ARB ignores this additionality mandate on individual offset approvals. For example, one of the offset sources listed by the ARB on its website is the Pungo River Forest Conservation Project in North Carolina. That project was registered as an

offset provider in June of 2012 and, according to its last offset verification report, generated 15,733 tons of GHG offset allowances in 2014. That means that this forest in North Carolina is being used by industries in California as cover to emit nearly 16,000 tons of GHGs. However, the owners of the Pungo River Forest area had the forest declared a permanent conservation zone back in 2003 — it should never be the source of offset credits as it was already being permanently conserved long before California instituted its offset program. Industry's ability to use those offsets means a possible net increase of almost 16,000 tons of GHGs in 2014 alone.

This forestry project is just one example of offsets being misused by California industries. A recent article showcases a Pennsylvania factory farm that installed a methane digester on the 30,000-hog facility in 2011 to generate electricity for its own use. The project was funded, in large part, by a USDA grant and generates enough electricity to run the entire facility, saving the operation about \$70,000 per year. The fact that this operation installed a methane digester and had it up and running didn't stop California polluters from seeking it out as yet another source of offsets to allow them to keep emitting GHGs. Now this factory farm that installed a digester using a big chunk of taxpayer money in order to save itself electricity costs is also getting around 3,000 tons of GHG emission offset allowances per year, at about \$10 a ton. What about additionality? Even without offsets, the owner of the farm has gone on record as saying he would have installed the digester anyway because of his own energy savings.

If the domestic offset program is any indication of the "rigor" that is to be attached to the international sector, the ARB is, in effect, dooming our planet to the irreversible, destructive impacts of catastrophic climate change.

Claims that additional sector-based offsets are needed because of possible offset shortages remain perplexing. The goal of climate change regulation is to *lower* GHG emissions, not ensure that California's industries get to continue to discharge at current levels. The ARB's response to an alleged unavailability of offsets should not be to scramble to invent more questionable offset sources, but to force industry to comply with GHG emission goals without the use of offsets.

The ARB's claim of an offset deficiency is also unfounded in light of the significant allowance oversupply in the California cap-and-trade market and the fact that a majority of polluters covered under the market are also currently awarded a large percentage of their allowances for free. Therefore, any interest in developing further offset projects is not based on need, but rather on a desire to offer polluters a cheaper compliance mechanism.

The ARB's desperate search for additional offsets in the international forest market and in REDD initiatives is recognized as a fundamental misstep even by other carbon market adherents. Markets like the European Union Emissions Trading System (EU ETS) and the Clean Development Mechanism (CDM) do not accept REDD offsets, and the United Nations REDD program (UN-REDD) has even admitted to potential failings of REDD offsets. These include the likelihood of depriving indigenous and forest communities of their lands, marginalizing these communities, undoing significant progress in sustainable forest management practices and, most

importantly, creating opportunities for REDD programs to “lock-up forests by decoupling conservation from development.”¹

As is the case with California’s domestic offsets, it is clear that offsets generated from REDD projects cannot meet even the basic technical requirements like additionality and permanence. Such offsets would also adversely affect indigenous and rural populations by fueling land rights disputes and dispossession, while promoting the historic abuse of developing countries as outsourcing centers for the excess of developed countries.

Additionality and Permanence

Issues of additionality arise when considering the REDD program under development in Acre, Brazil, which is currently held up as the most prepared project for formal inclusion in the California market (slated for the third compliance period). If California still abides by its prescribed, regulatory definition of additionality², then it needs to account for the irreconcilable fact that the Acre program cannot possibly be “additional.” Brazil has had forest conservation laws on the books since 1965, Acre has had extractive reserves since the early 1990s and statewide deforestation reduction targets since the 2000s (before REDD was even conceived in 2005), and various other protections for preventing deforestation (and subsequent carbon dioxide emissions) have existed in Brazil prior to the existence of REDD. The Acre REDD program fails outright to meet the requirement for additionality.

The proposed REDD offset framework also fails to meet California’s prescribed, regulatory definition of permanence.³ First, the regulatory definition contradicts and invalidates itself by prohibiting and then allowing for offset reversals, remedying this by saying that so long as mechanisms to address reversals are in place, it’s OK. Reversals are a certainty with any kind of forestry mechanism since trees die, can be damaged by natural events, burned in wildfires, clear cut, or otherwise compromised in many other ways.

Second, the proposed “mechanisms” to be used in cases of offset invalidation introduce significant liability and risk, which is ironic given that these mechanisms are meant to mitigate risk. The proposed insurance buffer, if executed, would increase the overall level of emissions allowed into the atmosphere, representing more than just a reversal but a step backwards in emission reductions. Third, the proposal to subsume risk from offset reversal into the

¹ Gilbertson, Tamra and Oscar Reyes. Dag Hammarskjöld Foundation. “Carbon Trading: How it works and why it fails.” *Critical Currents*, no. 7. November 2009 at 60.

² The Cap-and-Trade regulation states that, in the context of offset credits, ‘additional’ means greenhouse gas emission reductions or removals that exceed any greenhouse gas reduction or removals otherwise required by law, regulation or legally binding mandate, and that exceed any greenhouse gas reductions or removals that would otherwise occur in a conservative business-as-usual scenario.

³ ‘Permanent’ means, in the context of offset projects, either that GHG reductions and GHG removal enhancements are not reversible, or when GHG reductions and GHG removal enhancements may be reversible, that mechanisms are in place to replace any reversed GHG emission reductions and GHG removal enhancements to ensure that all credited reductions endure for at least 100 years.

jurisdictional baseline is not a “solution” but rather a distorting and fraudulent manipulation of a very important measurement tool.

Moreover, the developing countries where REDD programs take place often do not have access to the necessary resources to implement, monitor and enforce such offsets.⁴ Establishing a baseline is a formidable challenge, and verification issues also arise due to the fact that each country has different legal frameworks.⁵ The measurement techniques are complex and cost prohibitive, documentation of emissions or avoided emissions can be inadequate and it is difficult to establish whether project developers have legal ownership of the land in use.⁶

Linking and Volatility

Further technical problems emerge from the requirement that these REDD programs would have to link with the California cap-and-trade market — the same way that California has linked with Quebec’s market — in order to incorporate the resulting offset credits.⁷ While proponents of linking markets claim benefits like market liquidity, increased efficiency and cost-effectiveness, these are empty claims. Linking can often introduce more risk since some markets are more volatile and unstable (REDD programs have consistently been controversial and fraught with abuse, fraud and corruption — sure signs of instability), not to mention that linking itself creates indirect offsets and subsequent emissions hot spots.

In addition, the price of credits can be different in each market, and until those prices equalize polluters will seek out the cheapest offset credits. As a result, a polluter in California will first purchase cheaper offsets from a jurisdictional REDD program before they purchase more expensive offset credits from, say, Arkansas. This means that pollution continues at the source in California and reductions will allegedly happen in another country where a jurisdiction is participating in a REDD offset program.

Linking markets and using offsets from REDD programs in developing countries also perpetuates the outsourcing of developed country excess and continued extraction of resources from developing countries. REDD offset programs may seek to conserve forests, but in reality they support the extraction of GHG emission reductions for cheap consumption by developed countries. REDD offsets allow polluters to pay lower prices for the reductions they do not want

⁴ Sheikh, Pervaze A. and Ross W. Gorte. Congressional Research Service. “International Forestry Issues in Climate Change Bills: Comparison of Provisions of S.1733 and H.R.2454.” (R40990). December 22, 2009 at 15.

⁵ Ibid. at 7 to 8; U.S. Government Accountability Office (GAO). “Climate Change Issues: Options for Addressing Challenges to Carbon Offset Quality.” (GAO-11-345). February 2011 at 15.

⁶ U.S. GAO. 2011 at 15.

⁷ Under California Government Code section 12894, this type of approval would constitute a “linking” of California’s Cap-and-Trade Program with the jurisdictional REDD program. Linking means an action taken by ARB by which emission reductions from another jurisdiction will be accepted as compliance instruments in California’s Cap-and-Trade Program. Linking two subnational jurisdictions’ climate policies would follow the precedent of California linking with Quebec’s program, which took place in 2013.

to make in country. It is a continuance of neocolonialism, globalization and entitlement. REDD offsets cannot provide social benefits when they fundamentally support and entrench decades-old inequality.

Impacts on Indigenous and Rural Populations

Still worse, the proposed “social safeguards” for REDD offsets suggest “tying emission reductions to land rights” to ensure that “those who have legal or customary title to the land where emission reductions take place receive the benefits of the sector-based REDD offset credits.” However, historically, indigenous and rural communities, especially those in Brazil, have been denied land rights despite having occupied the forest lands in question for generations upon generations — corrupt governments have instead favored the interests of wealthy land owners, industrial agriculture and those that can afford to buy up expansive tracts of land for cattle grazing, timber extraction, mining or monocultures of soy and sugar cane.

Members of these communities have been threatened, assaulted and murdered for fighting to maintain their land tenure. Unless REDD offset programs will simultaneously resolve the incredibly divisive and longstanding crisis of land tenure rights, equitably assign these rights and ensure that these communities maintain their access to forest lands, then REDD offsets will only further privatize, dispossess and marginalize these communities, not benefit them. The REDD “safeguards” also neglect the fact that the structure of these mechanisms perpetuate further exclusion of indigenous and rural communities from their lands, preventing them from reaping any of the previously mentioned “benefits” — that is not a social safeguard, it is a human rights violation.

Examples of the abuses resulting from REDD continue to surface. In October 2013, *The Atlantic* featured an extensive exposé on REDD and carbon markets. It told the deplorable tale of an offset developer who defrauded indigenous communities in the Amazon after conning them into signing over their forest rights for REDD offsets. The contracts for the forest rights ran for 200 years and the developer planned to harvest the timber and plant palm oil after the 25-year carbon plan in the contract ran out. In 2014, the Oakland Institute released the report “The darker side of green: Plantation forestry and carbon violence in Uganda,” which documents similar abuses from REDD and CDM projects both in Uganda and also in several other countries around the world.⁸

Indigenous groups continue to speak out against California’s plans to include offsets from REDD programs. In October 2012, several indigenous groups traveled to California to testify against REDD offsets and urged Governor Brown not to allow their use. These same indigenous groups have also sent several letters to the California Air Resources Board urging them not to allow REDD forest offsets. And *The Sacramento Bee* featured an article by Jeff Conant of Friends of the Earth condemning California for considering REDD offsets as part of its cap-and-trade market.

⁸ Lyons, Kristen, Dr. Carol Richards and Dr. Peter Westoby. The Oakland Institute. “The darker side of green: Plantation forestry and carbon violence in Uganda.” November 2014.

More recently, Fyनेface Dumnamene Fyनेface traveled from Kabangha Community in Nigeria to participate in a April 28, 2016 hearing during which he warned ARB staff against including REDD offsets in the state’s cap-and-trade program. Mr. Fyनेface’s recommendation was based on research he conducted on how REDD has affected forest-dependent communities in Nigeria’s Cross River State, where a task force now enforces a moratorium on indigenous forest practices in order to implement REDD. According to a report co-authored by Mr. Fyनेface for the Nigerian NGO SocialAction:

...[T]he task force has been harassing community members that have depended on the forest for generations. Movement and trade of products deemed to have been derived from the forest are confiscated... the task force routinely seizes agricultural products like kola nuts and fruits meant for the market on account that they are derived from forests earmarked for REDD⁹. The harvesting of Afang leaves, a local vegetable ... is now banned in affected forests. The hunting for bush meat, a main source of protein in the communities, as well as the tapping of palm wine ... have been stopped.

The implications of the activities of the task force have been devastating to the economies of communities.⁹

When Mr. Fyनेface outlined his concerns at the April 28 hearing, ARB staff replied by saying they hoped the Cross River State REDD program would come into compliance with the draft “safeguards” for California’s REDD offset program so that the state’s cap-and-trade program might link with the Cross River program. This response by ARB staff is troubling because the ARB has neither the capacity to monitor international programs to ensure compliance with safeguards, nor the jurisdiction to enforce such safeguards on any international program partner. Thus, linking with any international REDD program places California in the dangerous position of being a party to the undermining of indigenous forest economies and the displacement of the communities that rely on them.

Impacts on California Communities

Enabling industrial polluters to pay to emit greenhouse gases in California communities in exchange for purchasing an offset credit elsewhere exacerbates the ongoing negative health impacts borne by those — overwhelmingly those with low incomes and people of color — who live near facilities that emit greenhouse gases. For this reason, the ARB’s Environmental Justice Advisory Committee (EJAC) has explicitly urged the state to protect Californians by abandoning its consideration of including REDD offsets in California’s cap-and-trade program.¹⁰

While protecting the world’s tropical forests is an important priority for mitigating climate change, it is not the primary responsibility of the ARB to implement such programs. Rather, it is incumbent on ARB to enforce emission reductions in California in order to both achieve the

⁹ Henshaw, Ken and Fyनेface, Fyनेface D. SocialAction. “Seeing REDD: Communities, Forests and Carbon Trading in Nigeria.”

¹⁰ California Air Resources Board Environmental Justice Advisory Committee. “Comments on the Proposed AB 32 Scoping Plan.” April 11, 2014.

State's greenhouse gas emission targets and to protect the health and wellbeing of all Californians — especially members of the most over-burdened communities. Any offset program — international or domestic — is a misuse of state staff time and financial resources and a dangerous distraction from achieving necessary source-by-source emission reductions.

These concerns and many others are enumerated in comments submitted on this proposal on May 13, 2016 by a range of environmental justice leaders including California Environmental Justice Coalition and Communities for a Better Environment. Food & Water Watch agrees with the content of those comments and we incorporate them into this letter.

Reporting and Verification

The Air Board's Technical Paper also indicates that any offset program must require the use of "stringent measurement, monitoring, reporting and verification systems." Such rhetorical aspiration may sound good on paper, but the fact is that the ARB cannot even properly monitor and verify claimed domestic offsets, much less those that may (or may not) be generated internationally.

In the domestic realm, the ARB out-sources its monitoring and verification system to financially interested third parties who profit from the generation and sale of offsets. To say this kind of verification system is rife for fraud and abuse is a significant understatement. The danger of the ARB's faulty reliance on third parties when offsets are generated in North Carolina or Pennsylvania is dramatically magnified when those verification processes take place on the international scale. The Air Board itself seems to understand the impossibility of reliable monitoring and verification in REDD offset source jurisdictions when it states that it "might not define specifically how jurisdictions should conduct monitoring, reporting and verification activities," instead moving to an "acceptable error range" approach. Such acknowledgement underscores just how arbitrary and unreliable any REDD-generated offset will be. It also, again, underscores that ARB's consideration of REDD is not driven by any sincere desire to reduce GHG emissions and remedy climate change, but instead is a transparent quest to create offsets for the convenience of the state's own industries, at any cost to the environment and communities.

The environment, the public and especially indigenous and rural communities lose when it comes to REDD offsets. Polluters cannot be allowed to buy their way out of trashing our planet and simultaneously violating the rights of others all for the sake of their bottom line. REDD offsets put profits over people, and we at Food & Water Watch along with our over 170,000 supporters in California, demand that the California Air Resources Board does not allow REDD offsets in any capacity. Our forests, water and air are owned by no one and shared by everyone.

Sincerely,



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