TO: California Air Resources Board

FROM: Gordon Piper, 33 Hiller Drive, Oakland, CA 94618; (510) 843-3828

SUBJECT: Additional Comments, Discriminatory Proposed ARB Greenhouse Gas Reduction Fund Draft Funding Guidelines; Discriminatory Provisions in State Laws and Implementation of GGRF Programs

DATE: September 14, 2017

I am writing as a retired State of California civil rights agency administrator and employee who spent 31 years helping to investigate discrimination complaints involving public and private employers and to enforce State and Federal civil rights laws. I also have prior professional experience serving as a Contract Compliance Officer for the City of San Diego and helped to enforce nondiscrimination requirements in relation to government contracting practices involving private employers and their employment practices. In my professional career of over 30 years, and also in retirements during the last 11 years, I have been active in working to ensure nondiscrimination in employment and contracting involving governmental agencies at all levels as well as other recipients of state and or Federal funds such as public and private contractors.

By way of background, I wanted to note at the outset of comments that over 50 years ago legislators and elected officials both in Sacramento and in the halls of Congress and the White House in Washington, D.C. passed major legislation that were intended to ensure the “permanence of nondiscrimination policies” in relation to both access to benefits and the provision of benefits in government programs receiving assistance from either the State or the Federal government, in relation to government contracting, and to hiring, training and employment programs and practices in the public and private sectors.

California Legislators led the way in establishing major laws such as the California Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act (Unruh Act) that mandated nondiscrimination in employment, hiring and training programs under FEHA provisions as well as prohibiting discrimination in the provision of advantages, privileges or service by business establishments including both public agencies and private sector “business establishments of every kind whatsoever”.

Congress in passing the Civil Rights Act of 1964 five years later approved the Civil Rights Act of 1964 including Title VI and Title VI prohibitions of discrimination involving contracting, hiring programs, and the provision of benefits in any program receiving Federal assistance or funding. In calling for the enactment of the Civil rights Act of 1964, President John F. Kennedy pointedly noted:

Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, or results in racial discrimination. Direct discrimination by Federal, State or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious, and it should not be necessary to resort to the courts to prevent each individual violation.

Senator Hubert Humphrey, the Senate manager of the Civil Rights Act of 1964, noted that through Title VI of the Civil Rights Act of 1964 that Congress would “insure the uniformity and permanence of the nondiscrimination policy” in all programs and activities involving federal financial assistance.

Here in California, however, during the last ­­7+ years under the administration of California Governor Jerry Brown and many elected officials including members of the California Legislature “the permanence of nondiscrimination policy” or of the nondiscrimination mandates contained in the FEHA and the Unruh Act intended by the California Legislature’s actions in approving these two major civil rights laws nearly 50 years ago and the important California Constitutional and United States Constitution mandates for ensuring nondiscrimination and equal protection that “a person may not be denied equal protection of the laws” for every individual and group under our laws, have been undercut in relation to the provisions and requirements of:

1. **California Constitution - Article 1, Declaration of Rights SEC. 7. (a**) A person may not be denied equal protection of the laws;
2. **California Constitution – Article 1, Declaration of Rights SEC. 31. (a**) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting. This language was part of Proposition 209 passed by California voters in 1996 and embodied in Section 31 of the California Constitution.

Current California Governor Jerry Brown while serving California’s Attorney General 7 years ago in April, 2009 signaled his willingness to oppose the nondiscrimination requirements of these key California civil rights laws and the prohibition against discriminating against any individual or group on the basis of race, sex, color, ethnicity, or national origin approved by voters in 1996 and embodied in the California Constitution’s prohibition of preferential treatment or affirmative action in public employment or public contracting. Then Attorney General Brown in a brief requested by and filed with the California Supreme Court involving a legal challenge in a law suit involving a minority set-aside program of the City and County of San Francisco had taken the position that Proposition 209 ballot measure was unconstitutional because it banned affirmative action. Brown gave his position on Proposition 209’s constitutionality at the request of the court, which was considering a legal challenge to a City and County of San Francisco laws that promoted affirmative action in public contracting and gave minorities and women an advantage in bidding for public contracts.

The state high court unanimously ruled in 2000 that Proposition 209 prohibited a San Jose outreach program. That ruling cited a 1997 decision by the U.S. 9th Circuit Court of Appeals that found Proposition 209 constitutional. But Brown said the state court's decision was overly broad. His office argued in a letter to the court that Proposition 209, a state constitutional amendment, closes a door to race- and gender-conscious programs.” On August 2, 2010, the Supreme Court of California rejected Brown’s assertion in a brief filed in the case of “Coral Construction, Inc. vs. City and County of San Francisco” Cal.Sup.Ct. S152934 where California’s highest Court held Proposition 209 or Section 31 in the California Constitution was “constitutional” The ruling, by a 6-1 majority, followed a unanimous affirmation in 2000 of the constitutionality of Prop. 209 by the same court.

On April 2, 2012, the 9th U.S. Circuit Court of Appeals rejected the latest challenge to Proposition 209. The three-judge panel concluded that it was bound by a 9th Circuit ruling in 1997 upholding the constitutionality of the affirmative action ban. On April 2, 2012, the 9th U.S. Circuit Court of Appeals rejected the latest challenge to Proposition 209. The three-judge panel in its ruling in “Coalition to Defend Affirmative Action v. Brown” concluded that it was bound by a 9th Circuit ruling in 1997 upholding the constitutionality of the affirmative action ban. The 9th Circuit Court of Appeals decision upholding Proposition 209 and upholding the constitutionality of the affirmative action ban contained in California Section 31 in public contracting, public employment and public education noted:

We held in Wilson II that section 31 is constitutional under a conventional equal protection analysis because it “prohibits the State from classifying individuals by race or gender” and, therefore, it “a fortiori does not classify individuals” impermissibly. 122 F.3d at 702. Under a political-structure analysis, the question is whether a state action creates “a political structure that treats all individuals as equals . . . [but] place[s] special burdens on the ability of minority groups to achieve beneficial legislation.” Washington v. Seattle Sch. Dist. No. 1, 458 U.S. 457, 467 (1982) (citation and quotation marks omitted). Applying this analysis, we determined that section 31 was constitutional because the law “addresse[d] in neutral-fashion race-related and gender-related matters.” 122 F.3d at 707. Section 31 prohibited preferential treatment, we held, not “equal protection rights against political obstructions to equal treatment.” Id. at 708.

Here in California, however, during the last five years “the permanence of nondiscrimination policy” or of the nondiscrimination mandates contained in the FEHA and the Unruh Act intended by the Legislature’s actions in approving these two major civil rights laws nearly 50 years and important California Constitutional mandates for ensuring nondiscrimination have been undercut by the actions of Jerry Brown in the last 5 years during his term as California Governor in which he signed a series of bills approved by the State Legislature that were advocated by two coalitions of minority community organizations led by the Public Advocates law firm that largely granted preferences, privileges and advantages targeting various benefits, co-benefits and grant funding based substantially on discriminatory affirmative action considerations targeting to the maximum minority communities of color for most GGRF program benefits located in just 25% of California’s census tracts where minorities constituted nearly 90% of all residents and would receive the lion share of jobs and benefits, while nearly 11 million non-Hispanic Caucasian Californians located in approximately 6000 census tracts that were not classified as “disadvantaged communities” by CAL EPA or the California Air Resources Board I found were denied some important civil rights, privileges and advantages under a series of unconstitutional and discriminatory California GGRF-related laws, programs and implementing guidelines under the color of State law by State of California officials, agencies and staff members in many of the California GGRF funded programs. Millions of Californians in the last five years have denied access to the same preferences, privileges, advantages, and benefits or grants. The series of bills included many of those referenced in the California Air Resources Board (CARB) latest proposed Funding Guidelines as those approved by the California Legislature and signed by Governor Brown that were the basis for CARB’s developing and issuing its Interim and Final Guidelines for Agencies that Administer California Climate Investments, and the First and Second Set of Investment Guidelines for Greenhouse Gas Reduction Fund Investments, as well as the basis for the latest proposed Funding Guidelines.

The series of California Assembly and/or Senate bills that were referenced by CARB and that were passed by the State Legislature and signed into law by Governor Jerry Brown included:

**Senate Bill 535** – passed in 2012 California Global Warming Solutions Act of 2006: Greenhouse Gas Reduction Fund. The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program from the auction or sale of allowances as part of a market-based compliance mechanism to be deposited in the Greenhouse Gas Reduction Fund and to be available upon appropriation by the Legislature. It also required the California Environmental Protection Agency to identify disadvantaged communities for investment opportunities, as specified. The bill required the Department of Finance, when developing a specified 3-year investment plan, to allocate 25% of the available moneys in the Greenhouse Gas Reduction Fund to projects that provide benefits to disadvantaged communities, as specified, and to allocate a minimum of 10% of the available moneys in the Greenhouse Gas Reduction Fund to projects located within disadvantaged communities, as specified. The bill would require the Department of Finance, when developing funding guidelines, to include guidelines for how administering agencies should maximize benefits for disadvantaged communities. The bill required administering agencies to report to the Department of Finance, and the Department of Finance to include in a specified report to the Legislature, a description of how administering agencies have fulfilled specified requirements relating to projects providing benefits to, or located in, disadvantaged communities.

**Assembly Bill 1532** – passed in 2012 directing the state economic, environmental and public health benefits and directing investment the “most disadvantaged communities and households in the State” and requiring an Annual Report to the Legislature on the status and outcomes of all California Climate Investments projects

**Senate Bill 2018** – passed in 2012

**Senate Bill 1028** requiring administering agencies to prepare an Expenditure Record prior to expending monies from the Greenhouse Gas Reduction Fund;

**Senate Bill 862**, passed in 2014 by the Legislature and signed by the Governor that amended the Health and Safety Code to require the California Air Resources Board (CARB) that included a components for how administering agencies should maximize benefits for disadvantaged communities. CARB was required to develop Funding Guidelines for administering agencies, including guidance on reporting, quantification methodologies, and maximizing disadvantaged community benefits, including termed “co-benefits” that covered social, economic and environmental benefits;

**AB 32** – California Global Warming Solutions Act of 2006

**AB 1532** Chapter 807, Statutes of 2012, codified with SB 525 in Health and Safety Code

**Senate Bill 32**

**Assembly Bill 197** – approved in 2016 regarding revisions to AB 32 California Global Warming Solutions Act

**Assembly Bill 1550**

**Senate Bill 824** - Low Carbon Transit Operations Program

**Assembly Bill 272** – Transformative Climate Communities Program

**Senate Bill 2018**

I also found in my research that the California Environmental Protection Agency and the California Air Resources Board actions assisted in the implementation of some of these discriminatory GGRF-related laws and discriminatory recommendations for investments and for agencies that targeted many benefits, privileges, advantages, and services in a discriminatory manner that promoted preferential treatment and affirmative action I believe that were intended by advocates for preferential treatment for minority communities of color to target benefits that would get around the provisions of Section 31 of the California Constitution. These included:

Identification of disadvantaged communities, low-income communities, and low-income households: [www.calepa.ca.gov/EnvJustice/GHGInvest](http://www.calepa.ca.gov/EnvJustice/GHGInvest)

California Climate Investments Project Map and Data: www.arb.ca.gov/cclmap

Interim Guidance To Agencies Administering Greenhouse Gas Reduction Fund Monies issued by CARB;

Final Guidance to Agencies Administering Greenhouse Gas Reduction Fund Monies issued by CARB December 15, 2015;

Cap-and-Trade Auction proceeds Three-Year Investment Plan (www.arb.ca.gov/cci-investments)

Cap-and-Trade Auction Proceeds, Supplement for FY 201602017 Fund released December 30, 2016;

Draft Funding Guidelines issued by CARB August 4, 2017

Calling on my years of experience in over three decades of working for the State of California’s civil rights agency (the California Department of Fair Employment and Housing) and for the City of San Diego as a Contract Compliance Officer, I have spent substantial time during the last three years reviewing the different laws, investment guidelines, CARB-developed and provided written Guidance publications setting forth to State Agencies that Administer California Climate Investments on how the agencies were supposed to design and implement their programs, the actions of various government agencies administering various GGRF funded programs here in California, and of Federal agencies that have helped in funding some of the leveraged GGRF benefit and grant programs. I previously spoke at length to CARB’s Senior Attorney David Hulz in December 2015 about some of these various laws, CARB Funding Guidelines and the various General Guidance requirements/recommendation made to a lengthy series of administering State of California agencies in the transportation, energy, natural resources sectors that are administering California Climate Investments and have been involving in targeting in many cases benefits to residents of so-called disadvantaged communities, low-income communities, and low-income households. I also submitted previously written comments in the last 3 years to Governor Brown, the California Department of Fair Employment and Housing, CARB, the Environmental Protection Agency and its Deputy Secretary for Law and Enforcement and Counsel Alice Reynolds, and some of the State of California agencies administering GGRF funded programs such as CAL FIRE and the California Department of Community Services and Development listing my specific observations, research findings and/or recommendations. My most recent findings in reviewing your Draft Funding Guidelines are very similar to those I included in my written comments regarding your previously crafted Guidance publications and requirements and your recommendations in the several Investment Plans, in which we noted your Guidance and Guidelines were the equivalent of a “How To Discriminate” Guide for State agencies administering GGRF funded programs/investments in the last few years, and the latest Draft Funding Guidelines are severely flawed and discriminatory and would result in adding to the discriminatory utilization and investment of billions in State GGRF funding leveraged in many cases with billions of Federal funds in a manner that would target benefits largely to minority communities of color in a restricted number of census tracts and California counties that would encourage systemic discrimination unmatched in California and United States history against millions of Californians based on considerations of race, color, national origin, ancestry, geographic location, income, and other bases covered by the Unruh Civil Rights Act . These violations would include substantial violations of both important State and Federal civil rights laws and regulations, the equal protection requirements in the California and U.S. Constitutions, and the prohibition against preferential treatment and affirmative action contained in section 31 of the California Constitution.

1. **California Constitution – Article XX, Miscellaneous Subjects SEC. 3** Members of the Legislature, an all public officers and employees, executive, legislative, and judicial, …shall, before they enter upon the duties of their respective offices, take and subscribe the following oak or affirmation…I…do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will be true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, with any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties up which I am about to enter.

Employees, elected officials and legislators in California take an “Oath of Allegiance” and swear to uphold the Constitution of the United States and at the State level of the State of California. Part of this oath requires all of the government employees, elected officials and legislators to uphold the rights of all persons under our laws and our Constitutions. I have found in my research, however, that here in may not have fulfilled their obligations based on this oath in relation to upholding the Constitution and the Constitutional rights and civil rights of millions of Californians by their actions in relation to enacting or implementing in a discriminatory manner a series of State laws, guidelines, programs, and/or making grants with millions or billions in public dollars that discriminate based on considerations of factors such as race, color, national origin, ancestry, geographic location, income level, and other factors or bases covered by California’s comprehensive civil rights laws and the prohibitions contained in the California Constitution against preferential treatment and affirmative action in public contracting and public employment contained in Section 31 of the California Constitution. It appears from my research that some State legislators, elected officials, agency administrators, and agency staff members have little idea or insufficient training to understand fully and to uphold their obligation to uphold the Constitution on what this means or might require.

1. **United States Constitution – 14th Amendment. Section 1**. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state …deny to any person within its jurisdiction the equal protection of the laws.
2. **The Civil Rights Act of 1871, Section 1983 as amended by the Civil Rights Act of 1991**. This Federal civil rights law contains provisions in Section 1983 enacted 144 years ago by Congress that are very significant today in relation to mandating the protection of all of the civil and Constitutional rights of every person or all Americans from a deprivation of any rights or privileges “under color of any statute, ordinance, regulation, custom or usage of any State.” Section 1983 provides in part: “Every person who, under color of any statute,, ordinance, regulation, custom, or usage, of any State…subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges…secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.” Section 1983’s primary objective was to provide a means to enforce the provisions of the 14th Amendment to the Constitution. This law protects the rights of all citizens against state sponsored infringement of constitutional rights. This Federal civil rights statute I believe has substantial applicability in potential legal challenges that might be brought and potential court decisions that could be rendered after trial in actions to challenge on behalf of any person or persons for a violation of their civil or Constitutional rights by a person who believes that their civil or Constitutional rights have been violated or that they have been denied privileges, advantages or perhaps services and benefits or access to benefits “under the color state law” either by a State or local official. In the case of Hafer v. Melo, 501 U.S. 21, 112 S.Ct. 358 (1991) the Supreme Court held that state officers may be personally liable for damages under Section 193 based upon action taken in their official capacities. The Supreme Court also held that the state offer’s potential liability is not limited to acts under color of state that are outside their authority and not essential to operation of state government, but also extend to acts within their authority and necessary to performance of governmental functions and Eleventh Amendment immunity does not erect barriers against suits to impose individual and personal liability on state officers under Section 1983. It is significant that the courts have held that a personal capacity law suit could be filed against a governmental officer for actions taken under color of state laws. State and local officials here in California may be less likely to take actions in relation to discriminatory state laws or guidelines or regulations that result in a potential finding of “personal liability in a Section 1983 action, where it is enough to show that the official acting under color of state law or laws “caused the deprivation of a federal right” for a person or persons. Independent contractors and other individuals who willfully participate in a joint activity with a state or a local agency may meet the requirements of acting under color of state law plaintiffs to sue individuals for monetary damages if such individuals violated plaintiffs’ constitutional and statutory rights “under the color of state law” and could have a Section 1983 action brought against them, courts have ruled.

The amendment of the Civil Rights Act of 1871 that includes Section 1983 by Congress in passing the Civil Rights Act of 1991 significantly makes it possible for individuals to pursue remedies in court in Section 1983 actions that might include legal fees for the prevailing party or parties, along with potential compensatory and punitive damages that a court might award. One or more law suits brought under Section 1983 by individuals or a class of persons who believe they have been denied “any rights, privileges…secured by the Constitution and laws” could be a game changer in overturning the massive systemic discrimination in California that I have found and believe is occurring “under the color of state law” that causes a violation of a Federal right, and which might potentially involve millions of Californians denied rights or privileges “under the color of state law”, i.e., such as the apparently discriminatory California GGRF related laws, regulations, investment plans and special privileges granted to persons in so-called “disadvantaged communities”, certain “low-income communities”, or certain “low income households” that causes a violation of a Federal right for any citizen of the United States subjected to “the deprivation of any rights, privileges secured by the Constitution and laws” as per Section 1983. I have found in my research that there may be potentially millions of Californians located in 6000 of California’s census tracts and over half of California counties that might potentially feel that they have been denied rights and privileges secured by the Constitution of the United States that might believe they have been denied a Federal right and have a basis for considering an action at law or other proper proceeding for redress.

1. **The California Civil Rights Act or Civil Code Section 51**. This is another major California civil rights laws that I found has been violated in the last 5 years by California state agencies and many contractors/subcontractors receiving both billions in State funds and in many cases leveraged with millions or billions of Federal funding. This state civil rights law has been on the books for 58 years in California since approved by the Legislature and signed into law by the Governor in 1959 and it significantly bars arbitrary discrimination by public agencies including the State and State agencies and other governmental entities such as local government agencies and special districts and business establishments of every kind whatsoever in relation to the provision of services, privileges or advantages that might include the provision of benefits or access to benefit that might include the provision of co-benefits such as economic benefits or jobs. The coverage of the Unruh Civil Act as clarified by the California Supreme Court in multiple decision is extremely broad and not limited to just the named bases of race, color, national origin, ancestry, sex, regional disability, medical condition, genetic information, marital status or sexual orientation. The California Supreme Court has repeatedly “interpreted the (law) as protecting classes other than those listed on its face”. This would bar I believe discrimination on a continuing basis in government programs, including the targeting of benefits in later adopted State program and investments, which targeted investments to the maximum to so-called “disadvantaged communities” or to “disadvantaged communities, low-income communities, and low-income households” as in recently passed State law related to GGRF fund investments, which I have found was largely based to target to the maximum for benefits by for preferential treatment and affirmative action here in California by minority community advocates and several public interest law firms leading coalitions to primarily benefits minority communities of color located in just 25% of California census tracts. The coalitions I found in my research worked with minority community legislators here in California to help bring about the enactment of a series of discriminatory and unconstitutional laws by the Legislature and signed by California Governor Jerry Brown. The Unruh Civil Rights law was enacted back in 1959 by the California Legislature to ensure the permanence of non-discrimination policy along with the California Fair Employment and Housing Act. The Legislature intended these laws to ensure that government agencies and others such as business establishments and public and private contractors and subcontractors would not discriminate arbitrarily against any Californian. The Unruh Act states pointedly: “All persons within the jurisdiction of this states are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.” I found in my research and from 31 years working as an investigator, supervisor, and administrator with the California Department of Fair Employment and Housing that the GGRF related laws enacted by the California Legislature and signed into law by Governor Brown along with the implementing guidelines developed by the California Air Resources Board violated the provisions and requirements in the Unruh Civil Rights Act and California Civil Code Section 51 and were discriminatory and portions of these laws might be challenged and found to be unconstitutional for violating other existing State of California civil rights laws along with the requirements of Federal civil rights laws and regulations, and the requirements for equal protection under our State and Federal laws for all residents contained in the California Constitution and the United States Constitution, and the prohibition against preferential treatment and affirmative action contained in Section 31 of the California Constitution that was approved by California voters in 1996 related to considerations of race, color, national origin, and ancestry along with the broad prohibitions contained in California’s Unruh Civil Rights Act that covered the entitlements of “all persons within the jurisdiction of this state” to “the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.” The California Unruh Act meant to prohibit the arbitrary discrimination by government agencies here in California “under the color of state law” that we’ve seen in the last years in relation to the enacted State laws, regulations, investment guidelines, and guidelines for implementing GGRF programs that conferred special advantages, privileges, services, benefits, accommodations, co-benefits such as jobs, in a manner linked to suspect classifications and discriminatory considerations related to race, color, national origin, ancestry, geographic location, income level, and other factors such as I found in my research were involved including securing government funds for certain State and local programs related to the funding of certain programs such as High Speed Rail programs and contracts, environmental benefits, energy benefits, transportation benefits, housing benefits and other benefits targeting minority communities of color in a restricted number of California census tracts, geographic locations, and California counties that violated the civil rights and the Constitutional rights of millions of Californians.

I found that for all intents and purposes, the coalitions that supported many of the enacted discriminatory GGRF-related laws and helped to craft them and implementing regulations sought preferential treatment for communities color or low-income minority communities at the expense of fair treatment of all races and income levels in the implementation of a lengthy series of important GGRF funded programs and State of California laws, policies, grant programs and actions that were inconsistent with the requirements of major California and Federal civil rights laws such as the Unruh Civil Rights Act and the California Fair Employment and Housing Act, as well as California codified definition of Environmental Justice and the clear requirements in Government Code Section 11135 (a) and California Resources Code Section 71110 that the California Environmental Protection Agency and the State of California were charged with implementing in a nondiscriminatory manner that was fair to all races, cultures and incomes.

It appears from my research that the advocates for preferential treatment and affirmative action here in California led by Public Advocates and the Greenlining Institute working largely with coalitions of minority community organizations and minority legislators in Sacramento were successful in obtaining new State of California law containing set asides of 25% and 10% for disadvantaged communities/minority community investments in California SB535 felt that they had found a way to nullify the preferential treatment/affirmation prohibitions in public contracting and public employment set forth in Section 31 of the California Constitution or the very broad prohibitions in the Unruh Civil Rights Act that prohibited denial to any persons in California of full and equal accommodations, advantages, facilities, privileges, or services by government agencies and all business establishments of every kind whatsoever. I believe that the Constitutional prohibitions against preferential treatment and affirmative action contained in Section 31 of the California Constitution and the broad prohibitions of arbitrary discrimination under the California Unruh Civil Rights Act are not trumped by more recent California laws enacted by some members of the California Legislature and signed into law by California Governor Jerry Brown in the last 5 years related to GGRF programs and investments. The actions of the State Legislature, the Governor, and many State and local agencies, and many State and local staff members under the “color of State law” I believe violate the requirements of the Unruh Civil Rights Act and our State Civil Code Section 51 and constitute the biggest violation ever of the Unruh Civil Rights Act in California history in the last 58 years since the Unruh Act was first enacted here in California to protect the civil and Constitutional rights of all Californians from arbitrary discrimination by either government agencies or employees of government agencies or contractors/subcontractors acting under “the color of state law” in the arbitrary and discriminatory provisions of services, benefits, privileges, advantages, accommodations, and co-benefits. The actions of the State Legislature and many elected officials and staff members in relation to the discriminatory implementation of many State and Federally assisted programs undermines basic Constitutional rights such as those rights of 39 million Californians that are supposed to be protected by the California Unruh Civil Rights Act. State agencies/many staff members and many State of California elected officials and Legislators I believe are undermining enforcement of rights of millions of Californians that are supposed to be ensured by the Unruh Civil Rights Act and California Legislators, elected officials and State agency staff members and the Constitutions at the State and Federal level. This is resulting in undermining compliance with the requirements of the Unruh Civil Rights Act, and major portions of the discriminatory GGRF-related laws and guidelines actually encourage State and local agencies and their employees and contractors to arbitrarily discriminate and deny rights that are supposed to be assured under the Unruh Civil Rights Act. This constitutes an egregious violation of State law and the civil rights and Constitutional rights of millions of Californians, as well as a violation of the public trust of government employees and agencies and elected officials that are expected to uphold the Constitution and our civil rights laws such as the Unruh Civil Rights Act in any program receiving State assistance or that is administered by the State of California. State agencies can be sued in court or have administrative complaints filed against them and pursued in court for violations of the Unruh Civil Rights Act in relation to the improper and unconstitutional implementation of many GGRF-related laws, guidelines, grant programs, and actions in arbitrary discrimination that violates the requirements of the Unruh Civil Rights Act .

Violations of the California Unruh Civil Rights Act can be subject to a series of court-ordered remedies or damages either for individual complainants or a class action complaint or lawsuit that might involve potentially millions of Complainants. I found in reviewing online resources related to California Jury Instructions that courts or a Judge are allowed to decide if a plaintiff has proved a claimed against a defendant or defendants for what the court/judge decide will reasonably compensate the plaintiff(s) for the harms they have suffered. This compensation is called “damages”. The California Civil Jury Instructions also note that the court or jury where a claim has been proven of a violation of the Unruh Civil Rights Act against a defendant award “ up to three times the amount of damages that will provide reasonable compensation for the harms. The California Civil Jury Instructions also cite in relation to “Sources and Authority that:

Civil Code section 52(a) provides: "Whoever denies, aids or incites a denial, or makes any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable for each and every offense for the actual damages, and any amount that may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damage but in no case less than four thousand dollars ($4,000), and any attorney's fees that may be determined by the court in addition hereto, suffered by any person denied the rights provided in Section 51, 51.5, or 51.6."

The damages and penalty remedies that could result from an Unruh Civil Rights administrative complaint or law suit against a defendant such as a State agency or group of State of California agencies or against public or private contractors that might be found to have violated the Unruh Civil Rights could be huge or astronomical, depending on whether a class action is filed and if violations impacting a large class of plaintiffs are found by a court or jury here in California. I believe based on my research that there is a basis for multiple class action law suits to be filed and potential violations to be found that might require and/or result in substantial sums being awarded. There could be large sums in class action lawsuits, potentially in millions of dollars in damages for successful plaintiffs whose rights are found to have been violated and for court costs for attorney fees or actual expenses incurred in pursuing administrative complaints or court actions. The State of California, the Legislature, elected officials, and state agency staff members and administrators, along with government contractors/subcontractors need to consider the potential damages and awards that might be made by a court or jury here in California for violations of the Unruh Civil Rights Act, and to promptly end all of the discrimination and violation of the civil rights and Constitutional rights of millions of Californians that might be found in a class action complaint or complaints and civil actions that might result in a finding of violation of the Unruh Civil Rights Act, which could be filed or pursued through both administrative complaints filed with the California Department of Fair Employment and Housing or a civil action in court.

The California Air Resources Board and many other State agencies could have many administrative complaints or lawsuits filed against them potentially for violating the provisions of the Unruh Civil Rights Act and other State and/or Federal civil rights laws, and this should be one of the many important reasons to immediately end the substantial violations of this important law in relation to the discriminatory and unconstitutional requirements in portions of many GGRF laws, discriminatory and unconstitutional set asides in the laws, regulations, guidelines and programs; and the discriminatory sets of ARB and State of California investment plans and guidelines for agencies GGRF programs that encourage and/or require violations of the Unruh Civil Rights Act or of provisions found in the California Constitution and United States Constitution that appear to have been violated during the last five years. Further delays and discrimination can result in very costly damages and court costs and attorney fees that could be awarded by California courts, juries, or administrative agencies that find proven violations of the Unruh Civil Rights Act by a State and/or local agencies and contractors/subcontractors. I have found many State agencies and their representatives to be non-responsive to some written and/or verbal discrimination complaints and sets of comments that have been provided or made to State agencies and many staff members in the last 3 years regarding apparent massive and continuing violations of the Unruh Civil Rights Act and other State and Federal laws. I believe this might be considered this year and in the future as administrative agencies, the courts and/or juries evaluate potential or actual violations of the Unruh Civil Rights Act and what damages might be appropriate to compensate victims of discrimination for harms suffered, and where a violation has been proven or found.

7, 8 and 9) **The California Fair Employment and Housing Act of 1959 (FEHA) codified 12900-12996 in Government Code Section and implementing FEHA Regulations that tracked changes in some of amendments to the Regulations that became effective in 2016 as codified in the California Code of Regulations, Title 2 Administration, Division 4.1 Department of Fair Employment and Housing, and**  **California Government Code Section 12990 that sets forth some of the nondiscrimination requirements contained in State law applicable to government contractors and subcontractors**.

The California Fair Employment and Housing Act of 1959 and implementing Regulations adopted by the California Fair Employment and Housing Council interpreting the FEHA clarify the FEHA codified in California Government Code Section 12900-12996 prohibits discrimination based on considerations of race, color, national origin, ancestry, along with other bases such as: religious creed, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and military/and or veteran status of any person. The FEHA is a powerful California statute enacted by the California Legislature approximately 58 years ago, which has been utilized by the State of California and its citizens to fight unlawful discrimination in employment and housing, which was passed on September 18, 1959.

I have found in my research and review of various CARB investment plans and Guidelines For Agencies Administering GGRF programs and California Climate Investments that CARB staff and the Air Resources Board members by its discriminatory guidance encouraged and allowed a lengthy series of State agencies and State contractors/subcontractors receiving State and/or Federal funds for GGRF programs to targeted co-benefits such as jobs to the maximum extent possible to targeted minority communities of color as encouraged by Public Advocates and the Greenlining Institute and the multiple coalitions that they led who successfully urged the State and CARB to allow and include in your Investment Plans and implementing Guidelines for Agencies administering GGRF programs provisions or language that might result in or aid and abet violations of the California Fair Employment and Housing Act. This also has led to undercutting the enforcement of both the FEHA and Title VI of the Civil Rights Act of 1964 by State agencies and contractors in the use of both State of California funds and also leveraged Federal funds from multiple Federal agencies. This violates I find both a Federal right of millions of Californians under the Constitution and also a State right under the California Constitution to equal protection of the laws and further violates the Section 31 provisions of the California Constitution prohibiting preferential treatment and affirmative action based on considerations of race, color, national origin, and ancestry in public contracting and public employment.

I have also found that CARB’s and the State’s actions undercutting FEHA and enforcement of FEHA also impacts the Department of California Fair Employment and Housing in relation to DFEH’s mission and enforcement responsibilities when State agencies and the Governor allow and sanctions discrimination or discriminatory provisions contained in certain State laws in the last 5 years that appear to encourage or aid and abet violations of the FEHA and Title VI of the Civil Rights Act of 1964 that EEOC and the Federal government pays DFEH to enforce here in California by the case, and for which DFEH staff are obligated to respect their obligation to protect the civil rights and Constitutional rights of millions of Californians in relation to nondiscrimination in hiring, training and termination of employees. The DFEH in accepting millions in Federal dollars for investigating dual-filed Title VI complaints cannot discriminate, and would be violating the requirements of the Civil Rights Restoration Act of 1987 if it does allow State agencies or State contractors/subcontractors in relation to some provisions contained in GGRF programs to discriminate in violation of FEHA or Title VII of the Civil Rights Act of 1964. I found in my filing an Unruh Civil Rights Act complaint against CAL FIRE in 2014 that DFEH staff had a conflict of interest in relation and that DFEH staff didn’t follow the State agency’s own established procedures for investigating complaints and for enforcing both the Unruh Act and the FEHA when I challenged the actions of CAL FIRE and other contractors/subcontractors in discriminating in the implementation of a series of GGRF funded forestry programs in grants and contracts targeting 100% of benefits to so-called disadvantaged communities that targeted benefits, services, privileges, advantage, and co-benefits such as jobs to minority communities of color as advocated by advocates for preferential treatment and affirmative action led by Public Advocates and the Greenlining Institution. This aided and abetted violations of the Unruh Civil Rights Act and of FEHA and Title VI prohibitions against discrimination in employment, and allowed and encouraging preferential treatment for residents in minority communities of color and the targeting of privileges, advantages, benefits and co-benefits in a discriminatory manner based on considerations related to race, color, national origin, ancestry, geographic location, income level and other bases.

I found in my research that CARB itself was administering certain GGRF programs including the latest proposed Wood Smoke program that apparently would continue to target to the maximum extent benefits to disadvantaged communities targeting low-income minority communities of color, and this would also more violations of FEHA and Title VI. I offered my comments to CARB representatives and others at the August 28, 2017 meeting in which I noted that the CARB current and proposed Funding Guidelines and your past Guidelines for Agencies Administering GGRF programs encouraged and resulted in violations of the FEHA and Title VI.

I read an article in this week’s September 13 newspaper announcing that the Governor and top lawmakers in the Legislature had announced on September 11 an agreement on plans for the allocation of a total of $2.4 billion in GGRF funds that would continue some GGRF programs with discriminatory features that violate many State and Federal civil rights laws and Constitutional prohibitions along with plans for some new GGRF programs that would likely continue to violate these same State and Federal civil rights laws and the Civil Rights Act of 1871 Section 1983 as amended by the Civil Rights Act of 1991. I’m not sure how many State agency administrators or elected officials or government contractors/subcontractors are aware that individuals could be sued under the provisions of the Civil Rights Act of 1871 Section 1983 for violating a Federal right or how many State agencies/their employees are aware that the FEHA broadly prohibits employment discrimination by employers, and “any person or entity who aids, abets, incites, compels, or coerces the doing of a discriminatory act”. There are some discriminatory actions involved here that I believe violate the FEHA. The FEHA protections might also allow either administrative complaints or lawsuits to be filed against State agencies, local government agencies, and public and private contractors in implementation of discriminatory provisions contained in some GGRF-related laws, investment plans and implementing Guidelines for Agencies Administering GGRF programs that CARB now has or the discriminatory proposed Funding Guidelines CARB is considering adopting. The continuing and growing systemic discrimination involving the Legislature, the Governor, other elected officials, multiple State agencies, multiple discriminatory provisions in many GGRF laws and guidelines and investment plans, and the action of some individuals who appear to be violating the Civil Rights Act of 1871 Section 1983 and the prohibition in the FEHA against any person or entity who aids, abets, compels, or coerces the doing of a discriminatory act appears to be inviting administrative complaints or law suits to be filed for violation of FEHA provision, Title VI, the Civil Rights Act of 1871 Section 1983 and other State and Federal civil rights laws and regulations and Constitutional protections.

Wikipedia summarizes the various protections that are available to individuals or potentially classes of complainants whose rights under the FEHA or Title VII are violated. Wikipedia notes the FEHA offers protection that are similar and often more potent than those available under federal counterparts, like Title VI. It is noted: “These protections include, but are not limited to, attorney fee awards and reimbursement of certain case related expenses to prevailing plaintiffs... California law and the FEHA also allow for the imposition of punitive damages. When a corporate defendant’s officers, directors or managing agent engage…in discrimination.” The State of California and various state agencies and employees can potentially face major or very costly awards of damages if a violation was found of the FEHA in administrative complaint filed with the California Department of Fair Employment and Housing or in lawsuits that might be filed for FEHA violations. State employees including agency administrators, elected officials, and Legislators swear in their Oath of Allegiance to uphold the Constitution and this means among other things the rights of all Californians under the FEHA, which are now being violated in at least some GGRF programs. This discrimination and the massive violation of the Constitutional rights of millions of Californians must end promptly, and this requires action by CARB, other State agencies, elected officials, and State legislators. I have pointed these various violations to CARB and some members of CARB staff, many State agencies, some elected officials and State legislators, as well as some State contractors and subcontractors, and I have yet to see much in the way of corrective action or responsive actions to end the discrimination and violations of the Constitutional rights of millions of Californians. The California Department of Fair Employment and Housing could have its important Federal funding from the United States Equal Employment Opportunity Commission and the Federal government cut off or delayed because of its failure to effectively address the FEHA violations that are occurring and the violations of Federal rights involved in jointly filed complaints under Title VI. Simple justice, precedent court decision upholding the constitutionality of the Section 31 prohibitions in California’s Constitution against preferential treatment and affirmative action in public contracting and public employment, and the California and United States Constitution requirements require prompt action to end the growing systemic discrimination and to overturn discriminatory and unconstitutional provisions in GGRF-related laws and guidelines and investment plans of CARB and the State of California that aid, abet compel, or coerce violations of FEHA. Many of the special preferences and advantages mandated in GGRF-related laws and CARB’s discriminatory investment plans and Guidelines for State agencies implementing GGRF programs encourage violation of FEHA provisions and might be used to demonstrate violations of the FEHA involving disparate treatment and disparate impact on protected individuals and groups based on considerations of race, color, national origin, and ancestry impacting millions of Californians in thousands of California census tracts and over half of California counties and multiple classes of impacted potential complainants or plaintiffs.

10) Title VII of the Civil Rights Act of 1964. The CARB existing and proposed Funding Guidelines and its Guidelines for Agencies Administrating GGRF Programs, and many of the provisions in discriminatory GGRF-related laws enacted in the last five years by the California Legislature and signed into law by Governor Brown appear to violate the requirements of the Civil Rights Act of 1964 and are undercutting the enforcement of this Federal law and the Constitutional right to equal protection of millions of Californians under this major Federal civil rights law. Similar to FEHA protections, Title VII of the Civil Rights Act of 1964 bars discrimination in employment based on considerations of race, color, national origin and ancestry. The Federal government and EEOC as noted above pay the California Department of Fair Employment and Housing/the State of California to process and investigate dual-filed complaints involving employment discrimination, and this imposes a legal obligation to uphold its requirements fully and to enforce the provisions of Title VI and the FEHA in dual-filed complaints. A complaint could be filed with the Federal government about the State of California and State agencies and contractors/subcontractors being forced by some discriminatory and unconstitutional provisions in GGRF-related laws and CARB’s discriminatory Guidelines for State Agencies Administering GGRF Programs or California Climate Investments and this could lead to the potential suspension and termination of Federal funds to DFEH and a potential cancellation of the Memorandum of Understanding work sharing agreement between the Federal government/EEOC and the State of California/DFEH.

Title VII of the Civil Rights Act of 1964 like the FEHA forbids discrimination in every aspect of employment. The laws enforced by EEOC prohibit an employer or other covered entity from using neutral employment policies and practices that have a disproportionately negative effect on applicants or employees of a particular race, color, national origin or ancestry. I believe from my experience in working for 31 years for the California Department of Fair Employment and Housing and processing and investigating dual filed complaints under Title VII that the EEOC might find that some of the guidelines and requirements imposed by CARB and the State of California’s discriminatory GGRF-related laws and discriminatory provisions contained in some GGRF programs developed and administered by many California State agencies might be found to be prohibited as practices and be found to be more than just involving “neutral employment policies and practices” that they can be shown or found to have a disproportionately negative effect on applicants or employees of a particular race, color, national origin or ancestry. I found this to be the case in my research in relation to the special preferences and privileges granted to applicants or employees from just so-called “disadvantaged communities” in 2000 of California’s 8000 census tracts given or required by CARB and at least some of the various GGRF-related laws and Guidelines that supported the discriminatory maximizing of benefits to so-called “disadvantaged communities” or “low-income communities” or “low-income households” that resulted in differential treatment and disparate impact on a class of more than 11 million non-Hispanic Caucasians located in 75% of California census tracts and more than half of California counties. I previously shared with CARB and many State and Federal agencies my findings in relation to the disparate treatment and disparate impact evidence I found regarding the GGRF-related laws and the EPA definition of “disadvantaged communities” targeted for benefits and the discriminatory preferences and advantages mandated by CARB and State of California Guidelines and many GGRF grant programs, which violated I believe the requirements of Title VII, FEHA, and the requirements of other State and Federal civil rights laws and some Federal Executive Orders requiring nondiscrimination in contracting and employment practices.

**11 and 12) Title VI of the Civil Rights Act of 1964, Title VI Regulations, and the Civil Rights Restoration Act of 1987**. Title VI of the Civil Rights Act of 1964 has broad coverages that include those codified in 42 U.S.C. Title 42, Chapter 21, Subchapter V a prohibition in section 2000d against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin. Title VII specifically states and requires:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Congress in passing the Civil Rights Restoration Act of 1987 amended the Civil Rights Act of 1964 and expanded and delineated its broad scope of coverage (see <https://www.congress.gov/bill/100th/house-bill/1214>):

Define the phrase “program or activity” and the term “program to mean all of the operations of the following entities, any part of which is extended Federal financial assistance: (1) a department, agency, special purpose district, or other instrumentality of a State or local government; (2) a State of local government agency which distributes such assistance and the agency or department to which such assistance is extended… (5) a corporation, partnership, or other private organization.

This expanded coverage of Title VI of the Civil Rights Act of 1964 is significant in relation to the massive violations of various Federal agencies Title VI regulations involving multiple State agencies that receive Federal assistance and that I have found in my research are violating requirements of Title VI as amended by the Civil Rights Restoration Act of 1987. Title VI covers all of the operations of covered entities including many State agencies and their contracts with various contactors/subcontractors that receive Federal assistance. The coverage of all of the operations of covered entities without regard to whether specific portions of the covered program are activity are Federally funded means that for states that all of the covered programs of the State of California such as its GGRF-related programs and grant programs that might involve Federal funding or assistance are covered, and these State agencies and their contractor/subcontractors that might receive Federal funds linked with GGRF funds from the State must comply in all of their operations and programs with the very detailed nondiscrimination requirements contained in many Federal agency Title VI guidelines. I found in my research in the last four years that many State of California agencies received substantial sums of Federal funds and failed to comply in all of their operations with the detailed Title VI requirements of Federal agencies. This resulted in a lengthy series of violations of Title VI requirements that resulted in either disparate treatment or disparate impact of protected groups such as those impacting approximately 11 million non-Hispanic Caucasians here in California that appear to be denied important benefits, services, privileges or advantages based on provision of the GGRF-relate laws and CARB/State of California Guidelines for agencies administering GGRF funds and programs, and California Climate Investments covered in multiple CARB Investment Plans.

I found in reviewing a lengthy series of California State agency GGRF programs including most grant programs administered by California State agencies that the programs appeared to violate provisions of Title VI of the Civil Rights Act of 1964 as amended by the Civil Rights Restoration Act of 1987. This discrimination and denial of Federal rights I believe could be found to violate the provisions of the Civil Rights Act of 1871 Section 1983 as amended by the Civil Rights Act of 1991 and provide a person or persons denied their rights under Section 1983 protections to have a basis for bringing a lawsuit for violation of their Constitutional protected rights to equal protections under Federal laws.

I found in the last four years that the State of California has provided many millions of dollars to major State agencies such as CAL FIRE, California Department of Community Services and Development, the High Speed Rail agency, and the California Department of Transportation that were leveraged with many millions or billions of Federal funds from one or more Federal agency that appeared to violate in implementing guidelines for some GGRF-related investments and programs and CARB Guidelines programs that violated a lengthy series of Title VI Regulations of Federal agencies. This undermines the enforcement of multiple Federal laws and compliance with the requirements of Title VI of the Civil Rights Act of 1964 as amended by the Civil Rights Restoration Act of 1987 based on my research findings. I found this week that top State lawmakers and California Governor Jerry Brown announced they had reached a deal to spend $1.5 billion in the coming year on GGRF-related programs along with another $900 million the Legislature has already divvied up according to annual formulas in some discriminatory GGRF-related laws for a series of State administered programs that very likely may continue to result in violations of Title VI Regulations of Federal agencies and the requirements of Title VI of the Civil Rights Act of 1964.

Many of the involved State agencies that receive Federal funds are required in formal contracts to certify that they will comply with the detailed requirements of Title VI Regulations of the Federal agencies. I found in my research that it appeared that many of the involved State of California agencies that received significant sums of Federal funds with Title VI obligations were apparently in violation of their certifications of compliance with Title VI and some of their contractors/subcontractors appeared to be violating separate requirements for complying with Title VI requirements in relation to contracted services or benefits that were being targeted in a discriminatory manner to largely benefit targeted “minority communities of color” or selected “low income minority communities”, or selected “low-income households” where the benefits appeared to be targeted to discriminate in the provision of services, privileges, advantages, benefits, and co-benefits in a discriminatory manner that impacted millions of California residents located in 6000 census tracts and approximately more than half of California counties, based on considerations related to race, color, national origin, ancestry, geographic location, income level and some other factors that might result in the finding of a violation of requirements of Title VI regulations.

The State of California and California State agencies could be found to have violated Title VI Regulations I believe based on my research, and could be subject to a variety of potential actions that might delay or impact their ability to obtain or use Federal funds in the near future or future years. For example, Federal agencies in enforcing Title VI obligations can:

\*Temporarily withhold awards of funds;

\* Temporarily suspend funding

\* Disallow the Federal funding

\* Impose a denial of refunding

\* Terminate the funding;

\* Suspend and debarment proceedings

The State of California and many State agencies depend on some Federal funding in implementing GGRF programs and the potential loss of or delays in obtaining these important funds are significant and should be a basis for ending the ongoing violations of these major Federal civil that involve State of California agencies, many local government agencies, and contractors and subcontractors that are subject to Title VI and the Civil Rights Restoration Act requirements that mandate nondiscrimination and compliance with very detailed Title VI Regulations that prohibit differential treatment in many different areas.

While Federal agencies during the last 6 years were somewhat lax in the enforcement of Title VI and the Civil Rights Restoration Act of 1987 here in California, the State of California may face a much different situation under the current Administration led by President Donald Trump and Attorney General Jeff Sessions and in various Federal agencies that might overnight enhance enforcement of Title VI, Title VII, the Civil Rights Restoration Act, the Civil Rights Act of 1871 as amended by the Civil Rights Act of 1991, Constitutional protections for equal protection under our laws, and perhaps revisit the codified definition of “environmental justice” and what is needed to ensure that the environmental justice programs and policies at the Federal level and state levels are “fair to all races, cultures and incomes” as Congress intended in mandating “the permanence of nondiscrimination policies” in passing these various civil rights laws and implementing and monitoring compliance with these laws and Title VI and VII regulations. There are many individuals and organizations in California and the United States that support the proper enforcement of state and Federal civil rights laws and regulations and the proper enforcement by government agencies at all levels and in all locations in our country and for fully protecting the civil rights and Constitutional rights of all persons. This could result in the new administration of President Trump taking decisive action with its staff and the alternatives available to the Federal government to end the massive discrimination taking place here in California and other states around the county that I found in my research in the last three years.

12 and 13) **The codified definition of “Environmental Justice contained in California Government Code section 65040.12 and the United States Environmental Protection Agency’s Definition of “Environmental Justice”.**

My research revealed that there has been discriminatory development, administration and implementation of many Federal, State of California and local government and private sector so-called “environmental justice” programs during the last several decades dating back to the early 1990’s when private sector advocates for preferential treatment and affirmative action targeting benefits primarily for low-income minority communities were successful in influencing President Clinton in 1994 to issue Executive Order 12898 that appears to be unconstitutional and have departed from the permanence of the Federal government’s nondiscrimination policy that Congress mandated in passing the Civil Rights Act of 1964. I found in the last 21 years since Executive Order 12898 was issued by President Clinton that there have been substantial violations of the civil and Constitutional rights of millions of Americans in California and 50 states resulting from the actions of both public and private sector advocates for preferential treatment and affirmative action in public and private sector programs that departed substantially from the codified definition of “environmental justice” basically used at the State and Federal levels. Here in California the codified definition of “environmental justice” found in Government Code Section 65040.12 states and mandates clearly: “Environmental justice means the fair treatment of all people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies”. I found here in California where the California Government Code section 65050.12 assigned responsibility in the California Governor’s Office to the Governor’s Office of Planning and Research for coordinating with other State and Federal agencies in implementing “environmental justice” programs that the State of California, many State legislators, elected officials, and agency administrators and staff appears appear to have ignored the codified definition of “environmental justice” in the Government Code’s requirement that all of the environmental justice programs in the “development, adoption, implementation and enforcement of environmental laws, regulations and policies” had to ensure “fair treatment of all races, cultures, and incomes”. Some of the State of California GGRF grant programs followed CARB’s discriminatory Guidelines for Agencies Administering California Climates Investments or for GGRF Programs and provided special advantages for so-called “environmental justice communities” targeting a combination of privileges, advantages, services, and benefits in a restricted manner that I found violated multiple State and Federal civil rights laws and the requirements of the California Constitution prohibiting preferential treatment and affirmative action contained in Section 31 of the California Constitution.

As noted above, the laws enforced by EEOC prohibit an employer or other covered entity from using neutral employment policies and practices that have a disproportionately negative effect on applicants or employees of a particular race, color, national origin or ancestry. From my experience in working for 31 years investigating dual filed complaints of employment discrimination involving the FEHA and Title VII, I found many of CARB’s recommendations for agencies administering California Climate Investments or GGRF programs went beyond being “neutral employment policies and practices” and seemingly were intended to promote preferential treatment and affirmative action encouraging differential treatment in the provision of benefits, privileges, advantages, services, and certain requirements essentially targeting minority communities of color for the maximum amounts of benefits up to 100% in a manner that disproportionately have a negative effect on applicants or employees or a particular race, color, national origin, ancestry regarding employment decisions and practices that would result in discrimination and a violation of rights protected under our laws. There appeared to be a deliberate attempt and actions taken to get around the clear prohibitions under Section 31 of the California Constitution against preferential treatment and affirmative action in some of the State’s implementation of GGRF programs as advocated by Public Advocates and other advocates for preferential treatment and affirmative action targeting SB535 and other GGRF-related benefits to maximize benefits in a discriminatory manner.

**There is a substantial amount of evidence (direct and anecdotal) that reveals a “nightmare” series of violations of State/Federal laws, and of the civil and constitutional rights of millions of California residents involving hundreds of Federal, state, regional, local governmental agencies and private sector organizations, along with violation of the non-discrimination obligations of many government contractors/subcontractors pursuant to the requirements of EO 11246. The key violations include, but are not limited to**:

* **Maximizing benefits in a discriminatory manner**: Targeting advantages in many cases at the 100% level to benefit ethnic minorities or minority communities of color disguised in the “suspect classification” of so-called “disadvantaged communities” is a pretext for discrimination based on considerations of race, color, national origin, ancestry, income level, and geographic location. This violates the Constitutional safeguards for equal protection and the civil rights laws at the State and Federal levels, as well as court interpretations of civil rights laws and the constitution. There also appear to be systemic violations by many Government contractors/subcontractors that violate non-discrimination requirements of EO11246 and Title VII, and potentially California laws such as the California Fair Employment and Housing Act, Government Code Section 11135 (a), and the California Unruh Civil Rights Act. These are evident in the extremely high discriminatory goals and resulting grant or fund awards included in State/Federally-supported programs such as the Low Income Weatherization Program (LIWP), the Urban Forestry grants, High Speed Rail contracts, transportation program grants and funding streams for this year and future years for State, regional and local programs, housing programs, as well as a lengthy series of environmental programs and grants, including many where the involved State agencies this year allocated between 60% to 100% of awards to so-called “disadvantaged communities”. One might say that because of these actions the so-called disadvantaged communities have become the “advantaged communities” in receiving many billions of targeted funds and important benefits. More recent grant funding by a series of State of California programs such as High Speed Rail and Transportation and Housing appear to have been targeted to the max to discriminate in favor of ethnic minorities and low-income residents in restricted geographic locations that violate Title VI.

Some of the State guidelines and mandates for agencies administering GGRF funds include language for goals “at a minimum”. With use of discriminatory screening criteria the same percentage goals have been stretched to even higher percentage levels, resulting in grants going up to 100% to disadvantaged communities. That often disparately treats and disparately impacts other applicants, groups, or potential/actual recipients of funds in a long series of program areas for funding or grants as described above. The intentional and deliberate effort by State of California agencies and elected officials to discriminate in maximizing the benefits was evident in a October 31, 2014 press release issued by State representatives including Governor Jerry Brown in which it was noted: “*The Brown Administration views the set asides under SB535 as a minimum”*, or as the floor and not the ceiling, for the stretching of arbitrary quota or set asides targeting benefits largely to benefit the minority communities of color and those with low incomes. This discriminatory set-aside program was very similar to the Governor’s previous position when he served as California’s Attorney General and tried unsuccessfully to get the California Supreme Court to overturn the 1996 voter-approved Proposition 209 ban on affirmative action and preferential treatment related to race, national origin and ancestry. Proposition 209 was upheld by the California Supreme Court and is still an important feature in California’s Constitution that is supposed to protect all Californians from the systemic discrimination that is now being engaged in by California’s Governor, cabinet secretaries, and many State staff members that have stretched the so-called “set asides” to the maximum extent possible. This set-aside program was manipulated by advocates for preferential treatment and affirmative action in enacting several recent State environmental laws to target benefits in a discriminatory manner to benefit “minority communities of color”, while largely excluding a huge class of nearly 12.5 non-Hispanic Caucasians or whites from most benefits.

The extent of the systemic discrimination engaged in by State staff and agencies was reflected in the difference between the original estimate that “at least one third of the 2014-2015 appropriation or $272 million will be spent on projects to benefit disadvantaged communities” and the report by the California Air Resources Board issued in March 2015 to the California Legislature that noted that State agencies had estimated that approximately 60% of the project funding during the first year of $540 million would go to projects benefiting so-called “disadvantaged communities”, or nearly twice the original estimate. The discriminatory “maximizing of benefits” to benefit “minority communities of color” not only undercuts important Equal Protection provisions of the California and United States Constitution, but discriminates in undermining and violating Title VI and VII non-discrimination requirements applicable to public contracts and employment by denying protections of many important State and Federal laws and regulations to approximately 28 million Californians located in 75% or 6000 of the 8000 California census tracts and half of California counties.

* **Undercutting the Equal Protection Clause in the California and United States Constitutions and the Prohibition Against Affirmative Action/Preferential Treatment in the California Constitution**: (see the California Supreme Court case finding in the “*Coral Construction vs. City and County of San Francisco*” precedent decision concerning violation of the Federal equal protection clause under the “political structure doctrine” of the U.S. Supreme Court’s Hunter/Seattle line of cases and its separate precedential decision upholding the ban on affirmative action/preferential treatment linked to race in the California Constitution program targeting benefits to minority contractors requiring documentation of participation and documentation of outreach; and other precedent court cases);
* **Violation of Title VI and VII**: The flood of billions of dollars for training and thousands of jobs and apprenticeships to only disadvantaged communities and communities of color violates the nondiscrimination requirements of State and Federal Civil Rights laws and regulations and the equal protection guarantee of the benefits of these laws to a huge class of almost 12.5 million non-Hispanic Caucasians or whites in California because of their race and color, and an even larger class of 28 million Californians who live in the 75% of the census tracts, who are being denied benefits that conflict with the California Unruh Act. It denies billions of short-term and even long-term potential benefits, and can create huge liabilities for the different levels of governmental and non-governmental agencies that could be sued by the victims of discrimination;
* **Violation of the Civil Rights Restoration Act of 1987/Broader Scope of Title VI (see** [**https://www.congress.gov/bill/100th-congress/house-bill/1214**](https://www.congress.gov/bill/100th-congress/house-bill/1214)**)**: It is important to note that the discriminatory actions now being engaged in by the State of California as a Federal contractor, (or by many regional, local government entities, corporations/partnerships, or private organizations as Federal contractors or subcontracting organizations and the similar actions of many regional, local government entities and other subcontracting organizations such as a corporation, partnership or other private organization) are subject to having their compliance with Title VI scrutinized in investigations, compliance review and potentially to have sanctions and remedies imposed if in their total operations they are found to have violated Title VI and/or the detailed Title VI regulations of a Federal agency. The Civil Rights Restoration Act of 1987 was and continues to be a game changer for Title VI enforcement, investigations and compliance reviews which clarifies the broad, institution-wide application of Title VI of the Civil Rights of 1964. This law makes clear that Title VI covers all of the operations of covered entities without regard to whether specific portions of the covered program or activity are Federally-funded. The term “program or activity” means all of the operations of a department, agency, special purpose district, or government; or the entity of such State or local government that distributes such assistance and each such department or agency to which the assistance is extended, in the case of assistance to a State or local government. The scope of the Title VI violations that are now taking place in California and growing exponentially is made much clearer by the Civil Rights Restoration Act of 1987 and by Federal agencies that recognize and take into consideration this broad coverage of Title VI in their Title VI investigations and compliance reviews. This means that both State of California and Federal civil rights agencies and others should be examining “all of the operations” of the many involved State and local government entities including both the entity of such State or local government that distributes such assistance” and “each such department or agency to which the assistance is extended”, and this scrutiny should be “without regard to whether specific portions of the covered program or activity are Federally funded.”

I found that the U.S. DOT’s written publication “Title VI Requirements and Guidelines for Federal Transit Administrations” issued in October 2012 contained an excellent discussion and explanatory chart that helped in analyzing the differences between Title VI requirements and its “Environmental Justice” policy guidance from DOT for recipients of Federal funds, which helped clarify in a narrative and chart form that the coverage of Title VI was broader than that of so-called “Environmental Justice” and has to be carefully taken into consideration. (<http://www.fta.dot.gov/civilrights/12879.html>)

Pursuant to the Civil Rights Restoration Act of 1987, compliance reviews by government agencies and others agencies should be examining the systemic discrimination by State of California agencies and other agencies or entities “to which the assistance is being extended”. Many State and local government entities I found in my research are violating Title VI and the Civil Rights Restoration Act of 1987 requirements in a rapidly growing number of programs funded with a flood of billions of Federal, and/or State, and/or local public funds in their total operations. For example:

* The State of California is discriminating in its total operations in receiving many millions of dollars from multiple Federal agencies in a series of programs, and then combining this with millions/billions of both GGRF auction proceed dollars along with some other State funding (covering things such as staff salaries, benefits, other expenses in developing, administering and implementing a rapidly growing group of programs). It appears in many cases to be ignoring the certifications of compliance with Title VI that have been made by State agencies/department/recipients of Federal funds in specific contracts along with State funds involved “in their total operations”. State of California and Federal Title VI compliance reviews and investigations in the coming year or two should be looking at the bigger picture and broader coverage under the Civil Rights Restoration Act that reveals that these State agencies are discriminating not only in their use of Federal and/or State funds with a focus restricted just to maximizing benefits to so-called “disadvantaged communities” or “low-income communities” or “low-income households” targeting “minority communities of color”, but also restricting the benefits largely just to 25% or 35% of California census tracts, which clearly violates requirements of Title VI and Title VII that mandate no person may be denied access to a program receiving Federal assistance. This similarly violates the State’s counterpart to Title VI contained in Government Code Section 11135 (a) that indicates that no person in the State of California may be denied access to a program that receives State assistance;
* The State of California is also aiding and abetting or encouraging many regional and local government entities in receiving funding either from the State of California for GGRF funded programs and/or Federal agencies that may be utilized as part of monetary match requirements considered or often included in the grant guidelines for a long and growing number of investment programs receiving State GGRF program investment funds to discriminate as subcontractors or ongoing recipients of other regular State funding (i.e., in transportation funding that is being distributed by the State through the Department of Transportation, State Controller’s Office, and State Department of Finance);
* Many of the contractors and subcontractors now receiving State and/or Federal funds subject to Title VI requirements are mandated by the State agency Guidelines for implementing GGRF fund investments to target co-benefits jobs and training program opportunities for employees to just primarily ethnic minorities in so-called disadvantaged communities. These mandates violate non-discrimination requirements of Title VI and VII, and State or Federal agency investigations and compliance reviews might be able to find documentation and evidence of this discrimination in hiring and training program positions in the records that the contractors/subcontractors are required to keep. There are reports the subcontractors are required to provide relative to their implementation of Title VI compliance plans and presumably regarding who was employed and who was trained in their total operations as evidence of their compliance with requirements built into the discriminatory State investment plans and into contracts/subcontracts pursuant to discriminatory Guidelines developed and adopted by the State agencies for implementing GGRF investments. The discriminatory Guidelines developed in the last few years often established goals for providing co-benefits that targeted benefits primarily for minority communities of color and low-income persons that are discriminatory and resulted in State agencies forcing many of their contractors/subcontractors in use of State and/or Federal fund to potentially or actually violate VI, VII obligations in the use of public funds and grants in their total operations.
* **Violation of the California Fair Employment and Housing Act and Unruh Civil Rights Act:** EEOC provides approximately $2 million per year or $650 per case to the California Department of Fair Employment and Housing (DFEH) to handle the processing of more than 3000 cases a year. But it appears to have failed to ensure proper enforcement of the rights of many Californians by the State and its civil rights agency in contracting for the investigation of employment discrimination complaints, such as complaints involving public agencies. DFEH is charged with upholding the Unruh Act and preventing public agencies from denying any person services, privileges or advantages. The contract between EEOC and DFEH did not seem to reference obligations to ensure compliance with the requirements of Title VI and Title VII. In recent years DFEH has failed to properly investigate and enforce many employment discrimination complaints involving public agencies due to a “secret” policy. The 2013 State Senate Oversight Committee investigation revealed that for seven years this “secret policy” discouraged at DFEH investigations and needed corrective actions/litigation in meritorious complaints against public agencies. After I encountered discrimination from the California Department of Forestry and Fire Protection (CAL FIRE) concerning the Urban and Community Forestry Grant Programs for tree planting, I filed an Unruh Civil Rights Act complaint with DFEH. They failed to follow their own procedures and did not provide opportunities for me to name witnesses, did not interview any witnesses and refused to answer questions about the handling of the complaint.

There are a huge number of state and local agencies as well as business establishments and contractors that are receiving State and Federal funds, and yet with this conflict of interest, it is highly unlikely that DFEH will meet its obligations to ensure that the Unruh Act is properly enforced and complaints properly investigated and violations properly remedied. There appears to be a continuation of this problem that is likely to expand exponentially in relation to the systemic race and income discrimination involving public agencies at all levels in California that restricts most benefits in a manner that targets advantages to only 9 million Californians, mostly ethnic minorities, located in so-called disadvantaged communities, while excluding a large class of approximately 12.5 million non-Hispanics Caucasians or white and as many as 28 million Californians located in the 6000 California census tracts that were not designated as “disadvantaged communities” by California state agencies involved in the discriminatory government-funded investments of Federal, State and local funds.

* **Violation of U.S. Department of Transportation Title VI Regulations**: A table outlines the differences between requirements of Title VI and Environmental Justice (Chapter I- to I-10, U.S. DOT Title VI Requirements and Guidelines for Federal Transit Administration Recipients) and makes clear that Title VI is broader in its protections than Environmental Justice and demands non-discrimination. “*Any action or inaction, whether or intentional or unintentional, in any program or activity of a Federal recipient or contractor that results in disparate treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color or national origin”* violates Title VI. Our research shows that the definition of disadvantaged communities/methodology developed by the State of California and its Environmental Protection Agency for allocating many program benefits and funding (targeted to minority and low income communities in 25% of the State’s census tracts) revealed it had a disparate impact on a huge class of non-Hispanic Caucasians which we documented our research and found that they were adversely impacted and denied a proportionate percentage or share of benefits in 75% of census tracts comparable to their share or percentage of the population in these census tracts not designated as so-called “disadvantaged communities”, and that less discriminatory options were not being considered and utilized in the allocation of many benefits by many recipients of Federal DOT funding assistance related to transportation program investments as required by DOT Title VI Regulations. For example, non-Hispanic Caucasians or whites constitute 39% of the statewide California population but are disproportionately impacted in the State of California’s implementation of many transportation programs that target maximizing benefits to so-called “disadvantaged communities” and that have been estimated to limit the benefits to non-Hispanic Caucasians or white to approximately10% of the anticipated benefits of California’s GGRF funds, possibly combined in some of these program investments with the use of Federal funds.

The DOT and its subsidiary agencies, such as the Federal Rail Administration and the Federal Highway Administration, provide Federal grants and financial assistance through contracts that are supposed to ensure compliance with Title VI (and presumably Title VII) of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987 that expanded Title VI protections, and the Equal Protection clause in the U.S. Constitution. But in reality our research reveals huge sums of DOT and Federal Transit Administration agency grants involving billions of dollars are being made now to contractors/subcontractors, such as State, regional, local transportation agencies and the California’s High Speed Rail Authority and its subcontractor, that include many corporations, partnerships or other private-agency subcontractors that appear are violating or may soon result in violations of requirements of Title VI, VII and other applicable requirements of State and Federal laws, regulations and the Constitution. There is evidence of many billions in State and Federal transportation grants and contracts that contain provisions leading to violations either in the last few years or will do so in future years. There seems to be a presumption that the contracts were being crafted with a provision that was supporting the concept of “Environmental Justice” but was, in fact, just the opposite. The agencies, subcontractors and nonprofits certify that they are complying with Title VI when they distribute and accept these funds, but in fact, the State developed detailed regulations forcing recipients to discriminate in meeting arbitrarily high goals or “quotas” in hiring and training programs to benefit primarily targeted minority communities of color and low-income persons. In the High Speed Rail grant program, for example, a contractor has to comply or to potentially face a $10,000 a day fine, if it did not comply with certifications to meet goals related to providing benefits that included but were not limited to job benefits targeted toward so-called “disadvantaged communities”. The DOT, based on compliance reviews and the review of contract, should have known that billions of dollars in funding by the Federal Rail Administration and the State of California High Speed Rail Authority are being utilized now and may be utilized in the future in a manner that can violate Title VI and VII, the Equal Protection Clauses in the California and United States Constitutions, and requirements of other Federal and state civil rights laws. The State of California allocated $250 million in FY2014-2015 in GGRF funding for High Speed Rail investments targeted 100% to benefit disadvantaged communities according to an ARB table/report, and raised the planned level of funding for FY2015-2016 to $500 million, and legislatively allocated 25% of future State GGRF auction proceeds to support High Speed Rail funding that have been linked to date or in the future are intended to be linked to grants of Federal funds, which may be utilized in a manner that violates the Civil Rights Act of 1964 (including Title VI and VII) along with requirements of State laws, regulations and constitutional Equal Protection provisions.

* **False and Misleading Certification of Title VI Compliance**: Some of the money provided by Federal funds to state agencies to support staff work and programs where they certified compliance with Title VI, funded staff here in California who actually helped to develop, administer and implement grant benefit programs that continue to violate the actual requirements of Title VI Regulations. We found evidence of attempts to mislead Federal agencies, sometimes in sworn affidavits, such as indicating that there weren’t any Title VI violation or that government funds had not been used in this manner in the recipient’s grant program or total operations to support discriminatory program investments, yet funds were repeatedly utilized used in a discriminatory manner, and actually expanded. For example, this might have included actions such as: passing funding through in discriminatory subcontracts; providing disparate treatment in things such as allocation of program benefits in a discriminatory manner, granting special preferences in screening of grant applications, supporting staff doing discriminatory screening of applications or who help develop/implement discriminatory grant programs, provision of technical assistance, or match funding requirement reductions to potential applicants for grants in disadvantaged communities in 25% of California census tracts that were not provided to potential applicants for grant funding in nearly 75% of California census tracts and half of California’s 58 counties . I consider this aiding and abetting a violation of Title VI Regulations of a Federal agency and Title VII (relative to mandated co-benefits for jobs and training primarily targeted to benefit “minority communities of color” in disadvantaged communities in 25% of California census tracts) and these actions should be investigated and remedied, so that it doesn’t continue to lead to violations of certifications of Title VI compliance by contractors/subcontractors, constitutional Equal Protection requirements, and important provisions and requirements set forth in DOJ’s Title VI Legal Manual and/or Title VI Enforcement Manual requirements;
* **Violation of Fair Housing** **Laws**: California’s Portable Housing and Sustainable Communities Program (administered by the newly formed Strategic Growth Council mandated in SB 862) appears to be taking into consideration and utilizing in many grant program investments leveraging Federal funds and using other funding of applicants and State GGRF funds that primarily target benefits to ethnic minorities and low income residents in a manner that violates the Environmental Justice codified definitions that require that benefits be fair to all races and incomes. Investigations might determine what Federal and other public funds are leveraged in making discriminatory program investments in certain housing projects restricted largely to 25% of California census tracts and half of California counties. Seventy-seven percent of the grants made in June 2015 benefited disadvantaged communities, above the 50% standard mandated in SB 862. Like some of these other programs, the Strategic Growth Council that includes a high number of state agency secretaries interpreted the 50% standard as a minimum and proceeded to maximize the benefits in spite of state laws prohibiting preferential treatment. California’s Unruh Civil Rights Act says a business establishment, including public agencies, cannot deny to any person services, benefits or privileges and advantages. It could help to have the California Department of Fair Employment and Housing and the United Stated Department of Housing and Urban Development and other agencies review these housing program investments for compliance with Title VI and other applicable laws at the State and Federal level.
* **Violation of U.S. Department of Energy Title VI Regulations**: The United States Department of Energy and the U.S. Department of Health and Human Services on an annual basis has provided funding in recent years to the California Department of Community Services and Development (CSD) to help in administering programs and paying for staff or the work of contractors/subcontractors that I found in the last few years have developed multiple sets of guidelines for the Low Income Weatherization Programs (LIWP) that targeted $75 million in State of California GGRF funding leveraged in 2015 with Federal funding from DOE and two other Federal agencies. In its 2015 State Plan contract with the U.S. Department of Energy it applied for $5,244,959 for its LIWP in Federal funds The LIWP’s GGRF from the States in 2015 targeted 100% of $75 million primarily to eligible low-income applicants primarily in “minority communities of color” and just 5,000 eligible low income residents located in 25% of the State’s census tracts while excluding eligible low-income residents in the remaining 75% of California’s census tracts or half of California’s 58 counties. The latest information this week included in Senate Bill 93 and SB 119 indicate that the deal that was struck between Governor Brown and top State legislators will provide another $44 million in the coming fiscal year for CSD programs that likely will continue CSD’s practice of violating the requirements of State and Federal civil right laws and Constitutional requirements to ensure equal protections under our laws. I have repeatedly offered written comments to CSD representatives outlining the discriminatory actions that violate the requirements of both State and Federal civil rights laws and CSD’s failure to comply with certifications of compliance with Title VI Regulations of multiple Federal agencies in accepting Federal funds from the U.S. Department of Energy, the U.S. Department of Health and Human Services for CSD’s LIWP programs leveraged with millions of Federal funds. I have found CSD continues to discriminate in its provisions of services in violation of the requirements of both State and Federal laws. CSD completed the annual certification of compliance requirements that apply to Title VI, but it appears the LIWP blatantly violates the certification of compliance with Title VI and Title VI Regulations of DOE to not deny access to benefits to any person in a program receiving Federal assistance. If you are a potentially eligible low-income person and don’t reside in a so-called “disadvantaged community census tract”, I learned from a CSD attorney that you might be denied benefits from someone just across the street who does reside in a so-called “disadvantaged community census tract”, which target benefits I found to benefit “low income minority communities of color”. CSD indicated in its First Set of LIWP Guidelines approved and issued in January 2015 for its “LIWP Single-Family and Small Multi-Family Weatherization; Single Family Solar Photovoltaics” program and also in its more recently adopted guidelines for its $24 million “Final Large Multi-Family Energy Efficiency and Renewables” out of $79 million proposed for funding in FY 2015-16 Program that it leveraged Federal funds from three Federal agencies in its LIWP programs and was only going to serve the eligible applicants in so-called “disadvantaged communities”. I believe that CSD is jeopardizing the funding it receives from Federal agencies or perhaps even from the State of California in GGRF fund for programs such as DOE’s Weatherization Assistance Program by continuing to violate Title VI requirements in its two discriminatory LIWP programs. I have submitted written comments to CSD on both of its current sets of Guidelines for the LIWP that appear to discriminate, and talked personally with CSD’s lead attorney and a top Deputy overseeing the LIWP programs outlining my concerns regarding the discriminatory LIWP program guidelines and programs, and find the CSD is intentionally discriminating based on the provisions referenced in the SB535 environmental laws adopted in 2012 by Legislature and signed by Governor Brown. I submitted comments at a recent CSD hearing before a joint committee of the State Legislature considering its application for a State Plan related to applying for Federal block grant funds from the U.S. Department of Health and Human Services, and I felt that both CSD representatives and some of the State legislators failed to address the continuing violations of State and Federal civil rights laws in their implementation of all programs covered by the requirements of Title VI and the Civil Rights Restoration Act of 1987.
* **Violation of Department of Agriculture Title VI Regulations**: I found substantial evidence of intentional discrimination by multiple State of California agencies, in violation of both Title VI Regulations of the USDA and Title VII and substantial evidence of disparate treatment and disparate impact based on considerations of race, color, national origin, ancestry, geographic location, and income. My initial Title VI complaint filed with the USDA several years ago focused more on the action of CAL FIRE staff that discouraged me from applying for one of the five CAL FIRE urban forestry grant programs that in this State of California affiliate of the USDA received annual contract funding through the U.S. Forest Service from the USDA as well as from State of California GGRF funds that focused in a discriminatory manner on providing 100% of benefits to projects located in or directly benefiting so-called “disadvantaged communities in 25% of California census tracts, which targeted benefits to the maximum extent possible to benefit low-income, minority communities of color. Research subsequently revealed broader systemic discrimination involving multiple agencies at the State and Federal levels in violations of USDA Title VI Regulations in 2014 and 2015. This included $585,000 in pass through funding by CAL FIRE as a Federal contractor to subcontractors at California ReLeaf and the California Urban Forest Council for outreach to disadvantaged communities and “added workload due to Cap and Trade funding”. The discrimination in violation of Title VI targeted toward providing benefits primarily to disadvantaged communities involved approximately $42 million in State funds and additional USDA Forest Service funds. The latest information this week noted in the coming year that Governor Brown and top State legislators intend to provide another $61 million in State GGRF fund money to CAL FIRE that has been maximizing benefits in a discriminatory manner in making State urban forestry grants to a level of either 75% or 100% to benefits targeted “disadvantaged communities” targeting largely “minority communities of color for all or most benefits and special privileges or advantages in having grant applications considered as advocated by advocates for preferential treatment and affirmative action that violated Section 31 in the California Constitution requirements prohibiting preferential treatment in public contracting and public employment. ARB’s discriminatory Investment Plans and Guidelines for Agencies Administering California Climate Investments I believe have encouraged CAL FIRE to continue violating the requirements of State and Federal laws until a government agency or court forces CAL FIRE to end this discrimination and the violation of the civil rights and the Constitutional rights of millions of Californians. It impacts the health of Californians in the 75% of California census tracts that aren’t being targeted to the maximum like minority community census tract for the vast majority of the millions of dollars in urban forestry funding and grant programs for tree planting when you don’t plant trees all over California and its 8000 census tracts.

Assistance to states for tree planting is specifically covered by the USDA’s Title VI Regulations for the Effectuation of Title VI (see section 15.3), and the tree planting programs in California involved at least $18 million in FY 2014-15 funding for five discriminatory urban and community forestry programs administered by CAL FIRE, and the Arbor Day Planting Grant Program and the Social Equity Tree Planting Grant jointly supported by CAL FIRE and California ReLeaf. Over $2 million of 29 discriminatory grant awards announced in July 2015 by CAL FIRE on July 7, 2015. The vast majority of CAL FIRE’s GGRF program grants in this past year again appeared to be made in a discriminatory manner targeting to the maximum the benefits for so-called disadvantaged community projects, targeting minority communities of color located primarily in 2000 of 8000 California census tracts.

The discrimination is continuing in the forestry programs at CAL FIRE and projects of contractors/

subcontractors supported by State and Federal funds this year and likely more funding will be allocated and targeted in 2017 in a discriminatory manner by involved agencies at the State and Federal levels unless corrective action is taken to revise CARB’s discriminatory Funding Guidelines and Guidelines for Agencies Administering California Climate Investments and end the violations of both State and Federal civil rights laws and Constitutional requirements for equal protections under our laws. A great disservice has done to grassroots tree groups located in the 6000 redlined census tracts by largely restricting State and Federal funding for tree planting and care largely to targeted minority communities of color and so-called ”disadvantaged communities” in just 2000 of California’s 8000 census tracts.

**Unintended Adverse Impact Harms Those Excluded from the Definition of Disadvantaged Communities**

There are numerous economic, health, environmental and welfare harms resulting from the limits in access to program benefits of those excluded from the definition of disadvantaged communities. These include:

* Problems in early tree care and maintaining healthy urban forests and failing to replace trees/some plants in aging urban forests, which can result in huge future expenses for residents and communities not receiving the same tree planting and tree maintenance funding and benefits
* Significant economic consequences in reducing or denying jobs or employment and training opportunities with huge numbers of government funded program with public dollars including some of the largest public works and transportation programs
* Discrimination in the provision of housing benefits
* Discrimination in the provision of many transportation benefits
* Discrimination in the provision of greenhouse gas reduction benefits to half of California counties and approximately 75% of California census tracts that has environmental, health and economic consequence
* Negative environmental impacts including increasing air and water pollution impacts on public health Increasing fire risks in many forested areas in California not identified as disadvantaged, such as half of California counties and thousands of California census tracts, where approximately 28 million Californians reside
* Serious economic, health and environmental impacts that result from not planting or maintaining many thousands or millions of trees in all parts of California and California communities, which also denies billions in dollars in potential benefits to communities and residents in 75% of California census tracts
* Encouraging State and Federal agencies to continue allocating many millions of dollars in GGRF and other funding in a discriminatory manner undercutting equal protection requirements, civil right laws/regulations, environmental justice efforts and the California Constitution prohibition of preferential treatment in public contracts and programs by promoting a new agenda of environmental racism.
* Effectively discouraging many applicants for State GGRF grant programs from organizations or individuals not located in so-called “disadvantaged communities” because they can see or experience “discrimination” when all of the majority of awards are targeted to so-called “disadvantaged communities,” or selected “low-income communities” , or selected “low-income households”. Why bother in applying for grants or program benefits if you know the government agencies are going to discriminate in their selection criteria in evaluating grant application and/or making awards.

Our research has revealed there has been discriminatory development, administration, and implementation of many Federal, State, and local government so-called “Environmental Justice” programs that has led to violations of civil rights laws and regulations of State and Federal agencies. These programs undercut the constitutional protections in the California Constitution and United States Constitution by the targeting of preferential treatment by public agencies in the provision of funding and benefits in a manner that largely excludes 75% of California census tracts and has targeted most benefits in recent awards to the maximum extent possible in a manipulative manner to benefit just ethnic minorities and low-income minority communities of color in 2000 California census tracts. Furthermore, our experience has been that the Title VI enforcement in compliance reviews has been very lax. There seems to be a conflict of interest caused in the implementation of State and Federal “Environmental Justice” program efforts to target benefits that was not “fair to all races, cultures, and incomes” as mandated by State and Federal definitions of “environmental justice”, but was used to maximize benefits for low-income residents or ethnic minorities in a restricted percent of California census tracts.

**Following the Trail of “Maximizing Benefits”**

This situation is like a multi-tiered wedding cake of intentional and systemic discrimination. It took seven years in the baking, with recently enacted environmental laws and guidelines established that conflict with Constitutional equal protection requirements and major State and Federal Civil Rights laws and regulations. Meanwhile the cake expanded with additional legislation and guidelines, stretching the discriminatory policies and requirements from just a few state agencies to many state agencies and hundreds of regional and local agencies, a growing number of Federal agencies, as well as private sector organizations and contractors/subcontractors receiving substantial funding subject to EO 11246. So, now we have an “Environmental Racism” cake inconsistent with the Environmental Justice definition of State and Federal agencies that undermines enforcement of State and Federal civil rights laws/regulation, contract compliance enforcement of EO 11246 for many contractors and subcontractor, the civil and Constitutional rights of 29 million Californians in 6000 census tracts, or half of California’s counties and a huge class of approximately 12.5 million of non-Hispanic Caucasians or Whites who live outside of the 25% of the targeted census tract, who do not benefit from most of these discriminatory environmental program investments by many State agencies and some of the Federal agency investments because they were outside of the targets. The entire process intentionally took away fundamental benefits that are supposed to be assured under Title VI and Title VII, the Equal Protection clauses in the California and U.S. Constitution, EO 11246, and other State civil rights and environmental laws to these affected residents in half of California counties and 75% of California census tracts that, for all intents and purposes, are now the new “disadvantaged communities” in the State of California being denied huge number of benefits in billions of dollars in publicly funded investments each year.

*“Low-income and communities of color, who are the majority of California, can be the catalyst for the culture shift needed to ensure the success of our State’s climate programs. California investment in their climate solutions is key to this shift, and many of these efforts will require investments that may require further shaping of existing programs and new programs to meet these needs.”* *March 8, 2013 letter to California ARB Chairman Mary Nichols, signed by representatives of the SB 535 Coalition including Public Advocates Managing Attorney Richard Marcantonio, Greenlining Legal Counsel Ryan Young, Asian Pacific Environmental Network Director Mari Tarux, and California Black Chamber of Commerce President Aubry Stone.*

* The concept of “maximizing benefits” seems to have come from the involvement of advocates for affirmative action and preferential treatment for ethnic minorities/minority communities of color. There is direct and anecdotal evidence of discriminatory intent on behalf of Public Advocates, the Greenlining Institute and the affirmative action coalition/multiple coalitions led by Public Advocates that greatly influenced the California Legislature and the Governor in the passage of SB 535 and SB 862, the identification of disadvantaged communities, the discriminatory funding of GGRF investment programs, and the preferential treatment and arbitrary discrimination linked to considerations of income and race in the provision of services, privileges and advantages. These were far from “race-and income-neutral” in the factors related to the purpose of the legislation such as SB 535, SB 862 and AB 1532, and the maximizing of benefits approaching the 100% level toward low-income minority communities of color and low income minorities. This program was intended to primarily benefit “communities of color” based on considerations of race, color, national origin, ancestry and geographic location in 2000 census tracts in a program that redlined primarily 6000 California census tracts with larger percentages of Caucasian residents. (See previously sent April report and attachment.)
* The advocates for preferential treatment and affirmative action began working together in approximately 2009. One of their objectives was to get around voter-approved California Proposition 209 which prohibited discrimination or preferential treatment of any individual or group on the basis of race, color, ethnicity or national origin in the operation of public employment, public education or public contracting. A challenge to Prop 209 and the language that was included in Article 1 Section 1 of the California Constitution was upheld by the California Supreme Court in 2010. It is significant that then Attorney General Jerry Brown, now Governor of the State of California, opposed Prop 209 and has been closely allied to Coalition leader Robert Gnaizda, who at one time was California's Health Director and Chief Deputy Secretary for Health, Welfare and Prisons under Governor Brown. The Court upheld that the voter-approved ban on affirmative action and preferential treatment ruling it violated the Federal Equal Protection Clause and required specific raced-based affirmative action. Governor Brown appointed Robert Gnaizda, Executive Director of Public Advocates, which has been a major proponent of affirmative action since the 1970s, to his cabinet.

The policy of maximizing benefits has been one of the key elements to the ever growing increases in funds going to disadvantaged communities in a discriminatory manner that violates Title VI and Title VII. The “suspect classification” for benefits to disadvantaged communities went from the original goal of 25% in AB 32 in 2009 to at a minimum of 25% in 2012 (SB 535) to approaching 100% in June of 2014 when SB 862 was approved. Subsequent contracts in major State grant programs in Fiscal Year 2014-2015 in major GGRF funded programs went from 74% to 100% to benefit so-called disadvantaged communities in the 25% of California census tracts. It appears advocates for preferential treatment and affirmative action will continue to advocate for legislators to increase the benefits allocated with billions of State and Federal funding to the maximum to target so-called “disadvantaged communities” targeting minority communities of color as those to be given the privileges, advantages, and benefit. For example:

* **77% of the $121.9 million in 28 grants announced in June 15. 2015 made in the Affordable Housing and Sustainable Communities Program** for a series of eligible housing and transit infrastructure-related projects administered by the State’ Department of Housing and Community Development in coordination with the California Air Resources Board (ARB) and the State’s new Strategic Growth Council that included many high-level State agency secretaries that voted unanimous approval for these allocations;
* **71.5% or 68 of the 95 grants in the Low Carbon Transit Operations Program (LCTOP) grants that are part of the Transit, Affordable Housing and Sustainable Communities Program** that was administered by the California Department of Transportation and coordinated with the State Controller’s Office and ARB went to benefit so-called disadvantaged communities. The LCTOP was created to provide operating and capital assistance for transit agencies with a priority on serving disadvantaged communities. Final Guidelines for the LCTOP were finalized in December 2015 and are shown at [http://www.dot.ca.gov/hq/MassTrans/lctop.html](http://www.dot.ca.gov/hq/MassTrans/lctop.html%20) and contain many requirements that appear to discriminate in violation of State civil rights laws such as the Unruh Civil Rights Act and California Government Code Section 11135 (a).
* **93% of the 14 grants totaling $244 million announced June 30, 2015 for the State’s Transit and Inner City Rail Program** administered by California Department of Transportation went to projects that benefited disadvantaged communities; this substantially exceeded the 50% goal or mandate in SB862 approved in June 2014 by the California Legislature for benefits to disadvantaged communities in this grant program, showing how benefits and screening procedures developed by Caltrans that emphasized preferential treatment influenced the final awards. These projects reportedly leveraged a total of $720 million in these investments which may have included other Federal funds that are supposed to comply with Title VI but might potentially violate Title VI and VII or the California Fair Employment and Housing Act and Unruh Civil Rights Act requirements by requiring co-benefits such as jobs just to benefit so-called disadvantaged communities that focuses on benefits of minority communities of color and low-income residents. Caltrans and the California Air Resources Board issued final Guidelines for the 2015 Inner City Rail Program in February 2015 shown at <http://calsta.ca.gov/res/docs/pdfs/2015/Agency/Adopted2015TIRCPGuidelinesFeb2015.pdf>, which appear to discriminate against potential project locations in locations that are not designated as so-called disadvantaged communities in half of California counties and 75% of California census tracts. A review of these guidelines and the screening criteria appears to shed significant light on why such a high percentage of grants were awarded in a manner that appear to violate requirements the target established for goals in SB862 and the requirements of the cited State and Federal civil rights laws and equal protection clauses.

Both SB 535 and SB 862 mandated that the EPA and ARB develop guidance to maximize benefits to disadvantaged communities. This was not ensuring compliance to all races and incomes as required with the codified requirement of both State and Federal definitions of Environmental Justice which emphasized being fair to all races and incomes.

* In 2014 the nonprofits were pushing for 35%, but when SB 862 was passed it mandated in a series of programs and new agencies (like the new Strategic Growth Council) a minimum of 50% of investments going to disadvantaged communities and up to 100% on some programs. It also incorporated the guidelines for the investment plan regulations would be required to maximize the benefits to disadvantages communities. Those agencies interpreted this as taking it to the 100% level, or in actual awards 77% to 93% of the allocations awarded in grants to projects benefiting disadvantaged communities. The Strategic Growth Council involved a number of high level state agency officials and state secretaries, who as a result of this faulty legislation, were put in a position of violating state and federal laws, regulations and Constitutional equal protection requirements.
* Furthermore, the concept of maximizing benefits went from being applied to two or three programs, to a much longer list of programs where discrimination to benefit ethnic minorities in 25% of California census tracts that violated Unruh, Title VI and VII and established co-benefits creating quotas for jobs and training for ethnic minorities in disadvantaged communities. The California Department of Transportation developed detailed guidelines for those applying for grants in the Low Carbon Transit Operation Program that were based on the State ARB discriminatory written guidelines that mandated preferential treatment and maximizing of benefits. The California Department of Transportation guidelines forced regional and local transportation agencies and those applying for these grants to grant preferential treatment to disadvantaged communities in their proposed projects. It also established an ongoing annual funding stream that would allocated 5% of the State’s GGRF auction proceeds to be utilized for more discriminatory grants and programs years into the future. That stretched violations of Title VI and the equal protection clause in the State and Federal Constitution and involved the State Comptroller and the State Department of Finance in monitoring and ensuring compliance with the discriminatory focus on providing maximum benefits to disadvantaged communities. This is problematic because many of the local and regional agencies are already recipients of Title VI funds from the DOT, and complying with the State’s mandates could jeopardize current and future Federal Title VI funding.
* Guidance for Administrating GGRF funds developed for administering agencies and the guidelines they subsequently adopted mandated that recipients had to report on what they did to comply with the co-benefits to help the disadvantaged communities. Multiple agencies are involved: the California Air Resources Board, the California Environmental Protection Agency, the California Department of Finance, the State Comptroller, the California Department of Justice, DFEH, the Governor’s Office, the Governor’s Office of Planning and Research, and multiple agency department heads that serve on the Strategic Growth Council. Additional state agencies are submitting proposed programs and projects for funding using these same discriminatory guidelines providing preferential treatment. Competing proposals were rated on these efforts and those that maximized benefits to the highest level ranked the highest, despite the fact that they were discriminating against race, ethnicity, and income. California agencies are not only mandating discrimination, but also abetting it in the monitoring and reporting requirements. Aiding and abetting is actionable under the Unruh Civil Rights Act.

When you follow the trail of promotional material from Public Advocates, the Greenlining Institute, the National Asian American Coalition and other agencies Gnaizda was affiliated with, it is clear that there was a direct input from these organizations in the wording of recent Environmental Justice bills such as SB 535, AB 862, and the development of guidelines for administering the GGRF investments, including the identification of priority investment opportunities in communities burdened by pollution and poverty. They advocated for requiring agencies to maximize GGRF program benefits going to disadvantaged communities to the maximum extent feasible.

*“Public Advocates and our allies successfully advocated for the inclusion of a set of key programs in the first three year investment plan developed by the California Air Resources Board and the Department of Finance: State Transit Assistance Program, HCD’s Transit-oriented Development Affordable Housing Program, Multi-family Affordable Solar Housing/Single Family Affordable Housing Programs, weatherization and energy savings assistance programs for low-income households and urban forestry. A Quick Primer on the Greenhouse Gas Reduction Fund, David Zisser, Public Advocates, April 16, 2014 Blog article on Public Advocates website* [*http://www.publicadvocates.org/2014-06-16/greenhouse-gas-reduction-fund-q-and-a*](http://www.publicadvocates.org/2014-06-16/greenhouse-gas-reduction-fund-q-and-a)

*“Over the past few months, Public Advocates and our SB535 Coalition partners” had made huge strides in influencing the California ARB and draft “Interim Guidance, .. At ARB-hosted public workshops in Fresno, Los Angeles and Oakland, the 535 Coalition turned out to urge the agency to make key improvements to the Draft.”* *On September 18, we won several commitments from ARB that will help make SB 535’s promise a reality.*

* *Prioritize projects that provide multiple, cumulative benefits.*
* *Direct all agencies to avoid displacement of low-income residents.*
* *Require agencies to maximize benefits “to the maximum extent feasible” rather than simply, “whenever feasible.”*

*Making SB 535 Promise a Reality,* *California’s Underserved Communities Shape Climate Investment Policy, Marybell Nzegwu, October 17, 2014,* [*http://www.publicadvocates.org/2014-10-17/making-sb-535-promise-a-reality*](http://www.publicadvocates.org/2014-10-17/making-sb-535-promise-a-reality)

**For all intents and purposes, these coalitions seek preferential treatment for communities of color at the expense of fair treatment of all races and incomes in the implementation of environmental laws, policies and programs as mandated by the Government Code definition of Environmental Justice and in Public Resources Code 7110. Both the coalition members and state agencies seem to be overlooking this fact**.

I found in some of my research in the last few years that State agencies following the mandates of the GGRF related laws and the discriminatory ARB guidelines of the ARB and State of California for administering GGRF programs appeared to substantially violate the requirements of the Civil Rights Act of 1964 and of Title VI regulations issued by Federal agencies for ensuring nondiscrimination and access to benefits for all potential recipients of a combination of State and Federally funded programs, such as those for urban forestry programs and energy programs where the State and ARB and funding agencies mandated that the maximizing benefits for just so-called “disadvantaged communities” targeting low-income minorities of color located in just 2000 of California’s 8000 census tracts and denied access to benefits to millions of residents located in 100% of 6000 other California’s census tracts that were redlined or excluded in some GGRF programs such as Low Income Weatherization Programs.

My goals in filing these comments with the California Air Resources Board and with other government agencies and interested, involved or impacted parties are to ensure that the discrimination here in California ends promptly and that appropriate corrective and remedial actions and changes in State and Federal laws, regulations, Executive Orders, policies, programs, and funding practices are made to ensure compliance with the above cited laws and regulations and Constitutional requirements. The discrimination must end promptly and remedial and corrective actions be taken to address unconstitutional provisions in certain GGRF laws and provisions of laws or regulations that deny rights to California residents that are supposed to be guaranteed by State and Federal Constitutions and civil rights laws and applicable implementing regulations. State and Federal government agencies and elected officials and other public and private sector individuals, elected officials, leaders and organizations need to promptly end discrimination under the color or State law and to ensure nondiscrimination and equal protection of the rights to all citizens of their rights under both State of California and Federal laws and the State and Federal Constitution in all State and Federal programs receiving funding or assistance or administered by the State and Federal government. This includes getting all levels of government involved in returning to the permanence of nondiscrimination policies and protecting the rights of all persons under our State and Federal laws as provided by the United States and California constitutions.

I have found in my research and also documented many actions in the last 5 years of the Governor of California, the Attorney Generals in California, many California agency and department administrators, attorneys, and employees, and other elected officials including many members of the California Legislature, and some State employees that violated the Constitutional prohibition contained in the 14th Amendment, Section 1 of the United States Constitution prohibiting any and all States from making or enforcing laws which abridge privileges of citizens of the United States such as their right to equal protection of the laws and to the permanence of nondiscrimination policy embodied in State and Federal civil rights laws. I have found in my research regarding State of California Greenhouse Gas Reduction Fund programs and laws and guidelines related to these programs and the provision of GGRF program benefits by California State agencies and staff that there have been rapidly growing, “systemic” violations of the civil rights and privileges of nearly 29 million Californians located in 75% of California’s 8000 census tracts during the last five years, including violations in and more than half of California’s 58 counties, denying important civil rights and many privileges, advantages, services, and benefits to a large class of almost 11 million non-Hispanic Caucasian and many millions more Californians in 6000 California census tracts that were and are supposed to be protected based on the long established requirements for nondiscrimination and equal protection under our State and Federal civil rights civil rights laws and major Federal agency Title VI regulations, and the prohibitions against arbitrary discrimination in the provision of privileges, advantages and services by public agencies and business establishments of whatever kind contained in California’s Unruh Civil Rights Act.

* The current, past and the proposed California Air Resources Board (CARB) Funding Guidelines and also its current and past Guidelines for agencies administering California Climate Investments and the investment of Cap-and-Trade Auction Revenues related to California’s Greenhouse Gas Reduction Fund (GGRF) and the legislation creating it appear to violate the requirements of both State and Federal civil rights laws and the requirements of the California Constitution and the United States Constitution.
* The State of California laws and various State guidelines cited by the California Air Resources Board as the basis for its proposed Funding Guidelines also appear to be in violation of the civil rights and Constitutional rights of over 39 million Californians, and to violate the requirements of multiple State of California civil rights laws and Federal civil rights laws and of the clear requirements contained in the California Constitution and United States Constitution for ensuring the equal protection of all people under the laws at the State and Federal level.
* State of California legislators and Congress more than 50 years ago passed laws intended to establish the permanence of nondiscrimination policy at both the state level and applicable at the Federal level, and it is likely that the discriminatory provisions in many GGRF laws, guidelines and actions related to California’s unconstitutional and discriminatory implementation of new laws, guidelines and programs involving a growing and lengthy series of State funded programs with GGRF dollars each year, which are leveraged in many cases with billions in both Federal funding and funding by other government agencies here in California, will be subject to administrative and legal challenges that are required to end the violations of the civil rights and legal rights of over 39 million Californians that has been taking place in 2017 and approximately the last five years in California.
* Most State of California agencies have been forced by the passage of discriminatory and unconstitutional laws passed in the last five years by the California Legislature that were signed into law by California Governor Jerry Brown to implement programs that violated the civil and Constitutional rights of many millions California residents using both billions in State of California GGRF funds and billions of leveraged Federal dollars. The receipt of and use of the Federal funds by the State of California and State agencies made the State and State agencies liable to comply fully with the very detailed requirements of multiple Federal civil rights laws and related implementing regulations such as: the Civil Rights Act of 1871; the Civil Rights Act of 1964 and the Title VI and Title VII Regulations issued by Federal agencies; the Civil Rights Restoration Act of 1987, and he Civil Rights Act of 1991 that amended the Civil Rights Act of 1871, the Civil Rights Act of 1964, and apparently the Civil Rights Restoration Act of 1987’s requirements that are applicable to all of the programs of a contractor or recipient of Federal funds.
* The California Air Resources Board and its parent agency the California Environmental Protection Agency are among the many State of California agencies that in the last 5 years in implementing new laws related to GGRF programs enacted by the California Legislature and signed into law by Governor Brown that had unconstitutional provisions or requirements and violated the civil rights and Constitutional rights of millions of Californians, and denied many important rights and privileges and discriminated based on considerations related to race, color, national origin, ancestry, geographic location, income level, and other covered bases under California laws that were previously enacted to protect the rights of all Californians and to ensure that no person was subjected to arbitrary discrimination by a government agency or business establishment in the provision of services, privileges, advantages, of benefits of any program receiving State funds or administered by the State of California.
* I have found in my research and investigation that the California Environmental Protection Agency and its sub agency the California Air Resource Board appeared to substantially violate or not fulfill their longstanding obligation under California Resources Code Section 71110 (a) as set forth in the Act to: “In designing its mission for programs, policies and standards, shall do all of the following: (a) Conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensure the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state”. The EPA and CARB agencies and many staff in these agencies have failed to ensure compliance I believe, for example, in the development of standards for program that affect human health and the environment in California such as the Investment Guidelines and Guidelines for Agencies administering California Climate Investments or GGRF programs and their benefits, including ensuring full compliance with our civil rights laws requirements and those contained in the important California Government Code Section 111351 (a). California Government Code Section 11351 (a) states and requires: “No person in the State of California on the basis of race, national origin, ethnic group identification…color…shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or any state agency is funded directly by the state, or receives any financial assistance from the state”. I have found that California EPA and CARB staff have done just the opposite of what is required by these laws and our State and Federal Civil Rights laws and has been focused to a large degree on promoting in its guidelines and many State of California agency administered or supported programs that restricted arbitrarily the granting of certain privileges and advantages or services and important benefits, and that targeted many privileges and advantages to a restricted number of geographic locations such as targeting important benefits and co-benefits such as economic or job benefits, energy benefits, transportation benefits, housing, and other benefits to “low-income minority communities” or so-called “environmental Justice communities” in a manner that did not ensure that “no person in the State of California” was “unlawfully subjected to discrimination” under “any program or activity that is conducted, operated, or administered by the state or by any state agency is funded directly by the state, or receives any financial assistance from the state”. The CARB’s past and current Investment Plans and its Guidelines for Agencies Administering California Climate Investments or GGRF programs read like a “How to Discriminate” manual and egregiously violate the requirements of both State and Federal civil rights laws and regulations, and is undercutting the enforcement of our civil rights laws here in California and resulting in millions of Californians being denied important benefits and/or services and civil and Constitutional rights.

found in our extensive research during the last 4 years that several organizations, including Public Advocates and the Greenlining Institute, that were the primary sponsors working to enact SB535 and other new State of California laws mandating special privileges and advantages in the development and implementation of GGRF programs and California Climate Investments by State agencies had an agenda to get around the prohibition against preferential treatment and affirmative action based on race, color, national origin, and ancestry contained in Proposition 209/California Constitution Section 31 and were largely successful in influencing California Legislators and California Governor Jerry Brown and many California state agencies and employees to ignore their obligation to uphold the clear requirements in the California Constitution for upholding the rights of all Californians under our State and Federal laws to nondiscrimination in relation to the provision of services, privileges, advantages and benefits.

* I found in my research a substantial amount of evidence (direct and anecdotal), as well as evidence of an intent to target benefits in a discriminatory manner primarily to benefit low-income communities of color. I found that several coalitions of advocates for affirmative action and preferential treatment were largely successful in an 8-year campaign starting in 2009 and continuing to date here in California that linked the affirmative action coalitions with minority legislators each year introducing bills to target benefits to so-called “disadvantaged communities” that primarily targeted low-income minority communities of color for a lengthy series of benefits in a discriminatory manner violating State and Federal laws, including economic benefits such as jobs, environmental benefits, along with important energy, urban forestry, transportation and housing benefits. The advocates for preferential treatment and affirmative action were successful in influencing California legislators to approve laws and investment that violated Constitutional provisions and requirements contained in State and Federal civil rights laws and regulations and contracts that prohibited discrimination against any person in relation to a State or Federally funded or assisted or administered program. The same coalitions openly bragged in online blogs and written articles about their success in influencing State legislators and State agency representatives at the California Air resources Board in the development and implementation of State agency guidelines and contractual provisions that would target benefits to the maximum in GGRF programs to “benefit low-income communities of color”.
* Our research revealed that there has been discriminatory development, administration and implementation of many Federal, State of California and local government and private sector so-called “environmental justice” programs during the last several decades dating back to the early 1990’s when private sector advocates for preferential treatment and affirmative action targeting benefits primarily for low-income minority communities were successful in influencing President Clinton in 1994 to issue Executive Order 12898 that appears to be unconstitutional and have departed from the permanence of the Federal government’s nondiscrimination policy that Congress mandated in passing the Civil Rights Act of 1964. We found in the last 21 years since Executive Order 12898 was issued by President Clinton that there have been substantial violations of the civil and Constitutional rights of millions of Americans in California and 50 states resulting from the actions of both public and private sector advocates for preferential treatment and affirmative action in public and private sector programs that departed substantially from the codified definition of “environmental justice” basically used at the State and Federal levels.
* I have found in my research and personal experience during the last three years that the State of California and many State agencies and staff members, elected officials and legislators have been and are continuing in their “treatment of people” to not be “fair to all races, cultures, and incomes in the development and adoption, and implementation, and enforcement of environmental laws, regulations and policies” as well as the funding of GGRF programs with the used of both State and Federal funds. Instead of ensuring “environmental justice” as mandated by California Government Code Section 65040.12, California has engaged in the last five years in funding and developing and implementing and imposing many discriminatory laws, programs, policies, and requirements that are unfair to the majority of California residents and that discriminate based on considerations of race, color, national origin, ancestry, geographic location, income level, and other bases and deny a length series of benefits and services along with many civil rights and Constitutional rights to millions of California residents.
* I have concluded after spending almost three years in researching the discrimination here in California that 39 million Californians are now facing a “massive disaster of systemic discrimination” that involves Federal, State, regional government agencies, counties, cities, other local agencies, private sector organization, and many contractors and subcontractors in huge systemic violations of State and Federal civil rights laws and regulations and requirements along with Constitutional requirements and Federal and State contractual requirements for ensuring nondiscrimination and the fair treatment of all Californians and of all races, cultures, and incomes. To put this in perspective, I believe nearly 39 million Californians are facing a huge tidal wave of discrimination unprecedented in California and United States history that is perhaps the greatest violation of civil rights and Constitutional “ever” in our history. It might be considered as analogous to the impacts of combining Hurricanes Katrina, Harvey and Irma in its economic impacts and it is also denying significant number of important benefits to millions of Californians in thousands of California census tracts and communities. The massive systemic discrimination is also undercutting the civil rights and Constitutional rights of millions of Californians, and is effectively undercutting the enforcement of our important State and Federal civil right laws and regulations and the proper implementation of important environmental, energy, housing, transportation, health, and other government programs.
* The massive systemic discrimination by government agencies, contractors, staff members, elected officials and legislators involves billions of dollars in public funds that are already starting to flood locations and are leading to significant losses and discrimination that undercut enforcement of civil and Constitutional rights and the rights of 39 million California residents to equal protection under our laws which are supposed to be guaranteed by the California Constitution and United States Constitution and nondiscrimination provisions in local, State and Federal contracts for billions of dollars of government contracts and for all of the government contractors’ programs. California is not the only state in which this systemic discrimination is present and rapidly growing. It can be found in many states around our country. Unless prompt corrective action further strengthening of compliance, monitoring and enforcement actions are taken at Federal and State levels, we will face a mega-flood that will undermine civil rights laws, regulations, Constitutional protections, and Executive Order 11246 and Executive Order 12250 requirements for ensuring nondiscrimination in government funded programs and contracts that will impact all Californians and all Americans.
* We have had a massive flood of discriminatory laws, regulations, investment plans, and guidelines developed, implemented and enacted in the last 5 years in California that is a clear violation of the public trust and legal responsibilities to ensure nondiscrimination and uphold the Constitution and the civil rights of all California under our civil rights and other laws, that are shared by various State of California legislators, elected officials at the state and local levels, public agency administrators and staff, and public and private contractors receiving funding from the State and other involved government agencies. State and government agencies at all levels here in California have an obligation to promptly end this discrimination and to fully protect the civil and Constitutional rights of all Californians. This requires ending the preferential treatment and preferential treatment in public contracting and public employment based on considerations such as race, color, national origin, ancestry, geographic location, income level, and other potentially covered bases under California law/or laws and regulations at other levels of government.
* No State of California agency, employee, elected official, or Legislator is above the requirements of the California Constitutional that mandate that they ensure equal protection of the laws here in California and the applicable laws of the United States, including the civil rights laws and the prohibition against preferential treatment in public contracting and public employment contained in Section 31 of the California Constitution. I have found in my research however that many California state agencies, elected officials, and employees have in the last 5 years engaged in actions in recent years in the implementation of GGRF related laws, guidelines, programs, and the provision of benefits and grants that violated the important requirements of existing State of California and Federal civil rights laws and regulations and clear requirements of the California Constitution and United States Constitution and that discriminate against millions of Californians denying important privileges, advantages, services, benefits, and important access to many benefits that are supposed to be available to all persons in any program receiving either State funds or Federal funds.
* While the State of California and some State agencies, legislators, elected officials, and staff members over a series of years in the past may have been able to successfully ignore or violate the requirements under certain State and Federal civil rights laws and the California Constitution and the United States, in relation to the implementation of many GGRF programs and the development and issuance of Funding Guidelines and Guidelines for agencies administering GGRF programs, this could change substantially in 2017 and future years as there are substantial changes now taking place in Washington, D.C. where we have a new Administration under President Donald Trump and his appointees to key positions in the United States Justice Department and other Federal agencies that may take a substantially different path in the enforcement of the requirements under the United State Constitution to ensure that all Americans receive the full protection under our laws that they are entitled to.
* President Trump has been active since taking office in January 2017 in issuing a series of new Executive Orders and charting some new directions in relation to the implementation of Federal laws, regulation and for ensuring compliance with the requirements of our Constitution and applicable laws in contrast to some of his predecessors in the White House. In appointing Attorney General Jeff Sessions, the President has shown an interest in protecting both the Constitutional and civil rights of all Americans and perhaps might act soon to lessen the emphasis on preferential treatment in all Federal programs, policies, and actions that has been growing in the last two decades in Washington, D.C. The new Administration and changes in both personnel and policies and policy implementation and the full implementation of the requirements of civil rights laws and their requirements can have substantial consequences for states, state agencies, state agency staff, and contractors at all levels that are recipients of Federal funds, such as the State of California and many State of California agencies that receive Federal funds. One of the major changes that could take place starting this year and in future years under the administration of President Trump could be a return to the “permanence of nondiscrimination policy” in all Federal programs, policies, and actions, including the fuller and effective enforcement of Federal civil rights laws and regulations applicable to the billions of dollars in Federal public funds that come each year to the State of California and State of California agencies in the form of grants and block grants and Federal contracts and assistance.

NEXT STEPS

The ARB Board and CAL EPA administrators and staff need to immediately address the problems with their Interim Guidelines and these proposed GGRF Guidelines and the Supplement to the Draft Funding Guidelines that violate a public trust and obligation to ensure compliance with the legal requirements of State and Federal Civil rights laws and constitutional requirements as described above. The State and Federal Constitutions and equal protection and other clauses prohibit preferential treatment and discrimination by public agencies, and no one in State service is above the requirements of State and Federal civil rights laws and obligations to ensure equal treatment and non-discrimination for all persons in all California census tracts. The ARB Interim Guidelines and proposed GGRF Guidelines and the Supplement to the Draft Guidelines do not meet the legal requirement and mandated contractual obligations for State agencies to ensure non-discrimination and to bar preferential treatment and affirmative in public contracting. The ARB and CAL EPA need to start afresh in drafting GGRF Guidelines and also to replace the CalEnviroScreen 2.0 methodology and approach to ensuring the fair treatment of all races, cultures and incomes in relation to the requirements of the Unruh Civil Rights Act, Government Code Section 11135 (a) ,California Resource Code Section 71110, Section 31 of the California Constitution, the Equal Protection clauses in the State and U.S. Constitution barring discrimination by State government and public agencies, the requirement of Title VI and Federal agency Title VI regulations for the effectuation of Title VI, and the requirements of the California Fair Employment and Housing Act and Title VII of the Civil Rights Act of 1964.

As part of the corrective action, I would like to see:

* Take all steps needed and recommended to end the discrimination including the replacement of the discriminatory CalEnviroScreen3.0 system used in making discriminatory allocations of benefits and privileges and advantages in GGRF programs
* Training of civil rights staff, program staff and legislators of the requirements of state and federal civil laws and prohibition of affirmative action and preferential treatment in public contracting so that programs don’t discriminate.
* Appoint a very experienced and balanced panel of experts in relation to Constitutional law and requirements of State of California and Federal civil rights laws and their compliance and enforcement, along with a compliance officer to review the guidelines and to help make all changes needed to end the current systemic discrimination and violation of State and Federal civil rights laws and the Constitutional provisions referenced in these comments, and to develop appropriate recommendations for ending the discrimination and developing constitutional requirements and for removing discriminatory provisions in the various GGRF laws and to develop Funding Guidelines that are nondiscriminatory and address the concerns raised, and to make sure that they are in compliance with civil rights laws and all Constitutional requirements.
* Meet with federal agencies to understand and comply with the requirements for non discrimination and mandated equal treatment under Title VI and to apply them whenever implementing programs fully or partially funded with federal monies.
* Develop a new screening system to replace CalEnviroScreen 3.0 and the current definition of disadvantaged communities that does not discriminate as the current one does nor disparately impact Caucasians and the residents in the 75% of the census tracts now unable to participate in the program or many benefits.
* Establish a complaint and investigation procedure to enforce these requirements.
* Training and information for recipients of these grant funds so that they can also be in compliance with the state and federal civil rights laws.

Thank you for considering my comments and research findings and recommendations growing out of approximately three years of research for ending systemic discrimination that is growing here in California. I support restoring the permanence of nondiscrimination policy and protecting more fully and effectively the civil rights and Constitutional rights of all 39 million Californians to the equal protections of our laws including both State and Federal civil rights laws.