



Indigenous Environmental Network

Comments to the California Air Resources Board by the Indigenous Environmental Network

22 October 2018

The Indigenous Environmental Network (IEN) joins with the Center for Biological Diversity (CBD) comments on the failure of the Draft Environmental Analysis (EA) included in the California Tropical Forest Standard (CTFS). The EA does not meet the requirement of the California Environmental Quality Act. On this ground alone we would recommend to the California Air Resources Board (the Board) not approve the CTFS.

The recent Intergovernmental Panel on Climate Change (IPCC) emphasized that emission of greenhouse gases (GHG) must fall by 45% from 2010 levels by 2030 and reach “net zero” by 2040. Otherwise our Mother Earth will only get hotter faster.¹ Uncontrolled forest fires will become more frequent and more destructive at a faster rate. Throughout the world, extreme heat waves and drought will only worsen. Violent storms will grow more frequent and more intense. Coral reefs, fundamental to the ocean’s food chain, will entirely disappear. As the IPCC states, the world’s environment and its life sustaining capacity must be protected from fossil fuels. The world needs real and immediate emissions reductions as the only true solution to climate change if global warming, catastrophic to humanity, is to be survived. Yet California’s Cap-and Trade and the proposed CTFS create a carbon lock-in and ensures continuing carbon emissions.

Worse, the CTFS imposes this proven false solution to climate change on forest-dwelling Indigenous Peoples, our major concern. We all believe and hope that the world’s forests, both tropical and boreal, must be strengthened and allowed to thrive, and that the governance of forests should be left in the hands of those most able to achieve that end, Indigenous Peoples. But even though carbon markets do not work to reduce emissions, the CTFS invites hundreds-of-millions- or even billion-dollar carbon-trading schemes that will displace and/or coerce Indigenous Peoples to give up their self-determination and their control over their forests, with only the promise of their survival as peoples.

Profound and sufficient grounds exist for a denial of approval of the CTFS by the Board:

Carbon Pricing Has Never Worked and Only Prolongs Dependence on Fossil Fuels

In an effort to reduce emissions, carbon-pricing systems continue to be flagship mitigation schemes to address climate change. However, carbon pricing, including cap-and-trade, offsets and other forms of carbon pricing have repeatedly failed. Carbon credits, offsets, and carbon pricing have *never* worked in reducing carbon emissions in any part of the world.² In fact, emissions have increased in Europe since the adoption of the European Union’s Emissions Trading

¹ http://www.ipcc.ch/pdf/session48/pr_181008_P48_spm_en.pdf

² <https://www.alternet.org/environment/why-pollution-trading-will-never-be-climate-solution-california-or-anywhere-else>.

Scheme (EU-ETS).³ Perversely, carbon pricing is an incentive for oil production and use, as polluters can offset carbon pollution with relatively cheap credits and pass the cost on to the consumers--fourteen cents of every gallon of gasoline sold in California pays for carbon credits. Upwards of 40% of the emissions reduction objectives outlined in the 2017 Scoping Plan are slated to come from the carbon market, while in fact emissions from the refinery sector and transportation in the state have either stayed exactly the same or actually risen.

The prestigious Nature Magazine, as early as 2017, warned that carbon markets should not be linked with markets in other jurisdictions,⁴ precisely what the California Tropical Forest Standard intends. This article examines the failure of the European Union's Emissions Trading System (EU-ETS) as well as California's shared market with Quebec. The same failures apply to both: low demand and too many credits and plummeting prices.

The EU-ETS price fell from €25 to less than €10 per ton even after barring CDM credits in order to raise the price. Worse, as the Nature article points out:

“The most significant was a credit for destruction of the potent greenhouse gas HFC-23, a by-product in the manufacture of the refrigerant HCFC-22. The CDM had already unwittingly created a perverse incentive [fn. Omitted]: companies had been generating more HCFC-22 to capture offset credits from destroying HFC-23. Worse, when these credits were banned, they flooded the market as firms rushed to sell them before they became worthless. Businesses banked their other allowances, lowering demand further.”

California's cap-and-trade fared no better. Originally priced at around \$22 per ton, credits in 2017 were priced at \$13, last priced at \$15 per ton of GHG emissions. In February of 2017 only 18% of available credits were sold. More recently, in the Los Angeles Times reported that since May of 2017, every allowance had been “snapped up,” noting that the hoarding of credits now would subvert reductions of emissions in the future.⁵

It is no wonder that the Los Angeles South Coast Air Quality Management District (SCAQMD) decided to phase out RECLAIM, a carbon trading program that contributed to a rise of carbon emissions in Los Angeles County.

“Now, Angelenos can breathe a sigh of relief as the South Coast Air Quality Management District (SCAQMD) has decided to sunset a decades-old pollution credit-trading program that most everyone agrees is not working. Recently, the SCAQMD board of directors voted 7 to 6, to phase out a cap-and-trade program, known as the Regional Clean Air Incentives Market (RECLAIM) as part of its 15-year smog reduction plan. For two and a half decades, RECLAIM has allowed polluters to purchase credits swaps from communities with little pollution, instead of actually reducing emissions from polluting plants. It is not clear how quickly SCAQMD will scrap RECLAIM, but it will replace it with mandated cuts to pollution, which have been proven to work.”⁶

³ https://ec.europa.eu/clima/sites/clima/files/docs/0017/unregistered/the_corner_2_en.pdf

⁴ <https://www.nature.com/news/don-t-link-carbon-markets-1.21663>

⁵ <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-captrade-20180111-story.html>

⁶ <https://www.laprogressive.com/reclaim-program-failed/>

It should be noted that RECLAIM was a closed market system, not linked to any market outside the jurisdiction. Not linking carbon markets produces the same results of growing emissions regardless of price; and carbon taxes fare no better even at \$573 a metric ton.⁷

Allowing polluters to continue to pollute in order to reduce their emissions makes no rational sense even in Southern California. Further, California is now linking its carbon market to other jurisdictions where prices will be undoubtedly cheaper. The price floor will eventually be undercut by cheaper credits.

Governor Brown's executive order concerning the protection of California's forests and this proposed Tropical Forest Standard will do little to curb the uncontrolled conflagrations in California and other Western states that are now part of our new "reality." Sequestered carbon has been and will be released in megatons. The solution offered by cap-and-trade is free credits so as not to affect the carbon market. In fact, these conflagrations only incentivize more forest offsets, more credits, and more pollution. Carbon pricing does not count wildfire-released carbon in carbon budgets. Those that live in those forests, public funds, and global warming are left holding the bag, as is humanity. But the hundreds of millions of dollars invested in Reducing Emissions from Deforestation and Forest Degradation (REDD+) are safe and fire free.

Carbon Pricing Creates Perverse Incentives for Continued Fossil Fuel Production and Use

In California, crude oil production, throughput, and real emissions have increased in the refinery sector under cap-and-trade. The amount of crude oil entering into the refineries and their subsequent greenhouse gas emissions have increased as a result of carbon pricing. In 2017, California set a new record for foreign crude oil imports, sourcing crude extracted from endangered landscapes like Arctic Alaska. Last year, 1 in 6 barrels of oil refined in California came from the Western Amazon.

California's failure to regulate fracking and its cancer-causing, groundwater-polluting extraction is well known. The failure to regulate fracking not only ruins precious groundwater permanently, fracking is detrimental to human health and continues to lock us into a fossil-fuel economy. California is now one of the largest producers of dirty oil in the United States. This emissions-producing, dirty oil poisons the poor and people of color in nearby communities, both in the extraction and in the refinery processes.

Some say that carbon pricing, notwithstanding its failures, is a "start" to emission reductions. Given its perverse result of permitting even more carbon pollution in the face of a real and growing climate crisis, California should focus its efforts on emissions reductions and a transition to a fossil-fuel-free economy. A just and speedy transition will cost a great deal of money and impose hardship on many. But the climate catastrophes now cost a great deal of money and impose hardships on many. Billions have already been spent on hurricanes, hundreds of millions on the west's forest fires this year alone. We pay for climate change at the wrong end. As the IPCC and others have emphasized, we must face the necessary economic hardships now to avoid or at least ameliorate future catastrophic losses. Drought, forest fires, floods, rising sea levels, incredible losses of ocean and land biodiversity, ever-increasing violent storms and forest fires are as predictable now as oil spills. And carbon pricing, by allowing the GHG polluters to continue to pollute, can only worsen this "new reality."

Given cap-and-trade, in 2017, banks increased their investments in extreme fossil fuel infrastructure and production. Tar sands financing grew by 111 percent from 2016 to 2017, totaling \$98 billion. Arctic oil investments totaled \$5 billion

⁷ <https://foreignpolicy.com/2018/09/12/why-growth-cant-be-green/#> (also found at: <https://www.resilience.org/stories/2018-09-19/why-growth-cant-be-green>). See, also, <http://www.ienearth.org/wp-content/uploads/2017/11/Carbon-Pricing-A-Critical-Perspective-for-Community-Resistance-Online-Version.pdf>

from 2015 to 2017, led by BNP Paribas, Deutsche Bank, and CIBC. Ultra-deep-water oil investments totaled \$52 billion, led by JPMorgan Chase, HSBC, and Bank of America.⁸ JP Morgan Chase and Blackrock are heavily invested in Amazon oil; JP Morgan Chase alone has almost \$133 million in combined debt and equity investments in GeoPark, Frontera, and the two parent companies of Andes Petroleum, thus supporting these companies' destructive oil activities in the Amazon rainforest.⁹

California should end its relationship with oil and cap-and-trade. As a *leader* in the struggle against global warming, real and immediate emissions reductions are required to ameliorate an already catastrophic future. California must, in keeping with prevailing science, take immediate steps to keep oil in the ground if saving and restoring tropical forests is really the aim.¹⁰

Carbon Measurements Are Problematic and Fraudulent

Carbon emissions, carbon offset projects, REDD+ and the resulting schemes to commodify nature defy accurate accounting. There are inherent problems with attempting to measure and decide the many intangible facets of such enterprises, including the costs and damages of climate change and carbon offset project baselines, additionality, and leakage.

"Carbon emissions accounting fraud" has now entered the language of the accounting field,¹¹ acknowledging the problem. Even saying that there can be accurate and overarching carbon accounting standards for the industry is so far off the mark that it could be considered a form of fraud.¹²

A Just and Thorough Environmental Assessment (ES) Should First be Done on California's Refinery Communities Before Any REDD+ Standard is Accepted

It is clear that REDD+ and cap-and-trade directly affect California communities even more directly than those that take place outside the United States. CARB and San Francisco Bay Area communities are well acquainted with the refineries in the East Bay and the struggle of local communities in Richmond, Martinez, and other affected communities to protect their health and well-being. Massive oil refineries for generations have profoundly affected the health and well-being of their elders and children, many of whom are condemned to early deaths, cancers, lifelong asthma, and other debilitating diseases. According to the latest data, Chevron facilities in California emitted more than 11 million metric tons of GHG emissions, making it the largest corporate climate polluter in the state. California communities' struggle now extends

⁸ http://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/19540/attachments/original/1525099181/Banking_on_Climate_Change_2018_vW_EB.pdf?1525099181

⁹ <https://amazonwatch.org/assets/files/2017-investing-in-amazon-destruction.pdf>.

¹⁰ Lorne Stockman, "IEA Acknowledges Fossil Fuel Reserves Climate Crunch," Oil Change International (November 12, 2012): <http://priceofoil.org/2012/11/12/iea-acknowledges-fossil-fuel-reserves-climate-crunch>.

¹¹ Shamima Haque and Muhammad Azizul Islam, "Carbon Emission Accounting Fraud," in *Corporate Carbon and Climate Accounting*, ed. Stefan Schaltegger, Dimitar Zvezdov, Igor Alvarez Etxeberria, Maria Csutora, and Edeltraud Günther (Switzerland: Springer International Publishing, 2015), 243-257, papers.ssrn.com/sol3/papers.cfm?abstract_id=2771580.

¹² Luan F. Makes Marks, 2016, "Trading on Thin Air: Fictive REDD+ Carbon Chaos in the World's Forests," <https://no-redd.com/trading-on-thin-air-fictive-redd-carbon-chaos-in-the-worlds-forests/>. See also: Frédéric Mousseau and Shannon Biggs, "The Darker Side of Green: Plantation Forestry and Carbon Violence in Uganda: The Case of Green Resources' Forestry-Based Carbon Markets," (Oakland, CA: The Oakland Institute, 2014), 3, <https://www.oaklandinstitute.org/darker-side-green>.

against oil giants like Phillips 66 and their plans for more than doubling the number of oil tankers delivering crude to serve the expansion of their refinery to process tar sands oil, even more deadly to the climate and to people. Canadian Indigenous Peoples continue to struggle against the Enbridge pipeline, the feeder of this dirtiest of oil. These communities not only defend their rights and well-being, they defend against climate change. Communities in other states and places like Houston, Texas and Louisiana’s “cancer alley,” as they defend their communities also contribute greatly to the struggle against global warming.

There is a growing solidarity with the Indigenous Peoples in the U.S. and Canada that maintain their defense of Sacred Water and Sacred Places. The defense of water at Standing Rock, North Dakota, and against the Dakota Access Pipeline did not die. Neither has the struggle against Enbridge. Solidarity has continued to be strengthened even after death of Berta Caceres, Goldman-prize winning, Indigenous Honduran leader, who was violently silenced to protect the interests of methane polluters. Indigenous Peoples are engaged in earnest defense of water and the Earth’s lifegiving capacity throughout the world, including the U.S. and Canada. People, including forest-dwelling Indigenous Peoples, have rights, and they rise in defense of those individual and collective rights against oil and against global warming.

The failure of the Kyoto Protocol of 1997 has only delayed an adequate response to global warming. The details of the Paris Agreement, relying on voluntary “contributions” of emissions reductions are still mired in negotiations on the details of reporting. These “contributions,” announced prior to the Conference of Parties of the UNFCCC in their Paris meeting of 2015, are only half of the emissions reductions necessary to keep global warming under 1.5° centigrade. The IPCC’s most recent report indicates that without drastic reductions, we’ll likely burn through the rest of the 1.5°C carbon budget within the next three to 10 years.¹³

All of these false starts only endanger our refineries’ communities even more. Refinery emissions will not travel to Acre or Kalimantan. They will be right there in Richmond, Martinez, and Long Beach, poisoning the health and well-being of our own communities.

On this ground alone, the Board should deny approval of the CTFs.

Safeguards and Reality

Yet, in spite of the evidence that carbon pricing does not work, carbon-market schemes like the Reducing Emissions from Deforestation and Forest Degradation (REDD+) consider the world’s forests as carbon sinks and put a price on the carbon sequestered by trees. Not only has this drawn the attention of governments and financial institutions, it has led to forest land grabs and the violation of Indigenous rights.¹⁴ REDD+ has also diverted attention away from the real causes of deforestation such as oil production, legal and illegal logging, palm oil and soya plantations, and cattle ranching. Many Indigenous Peoples, their organizations, and their supporters continue to maintain that REDD+ is a primary cause of delays in Indigenous land titling throughout the world.

In spite of the fact that natural forests, managed by Indigenous Peoples, regenerate on their own and that old growth is best at carbon sequestration, political and economic forces focus on their lands and territories for profit. As an example, the proposed CTFs cites the International Coalition for Sustainable Aviation (ICAO) plan for “reducing” the aviation industry’s GHG emissions by investing in a global market-based carbon reduction scheme. ICAO plans to cap their emissions at 2020 levels by 2030 by investing in more efficient aircraft and technologies, as well as carbon trading. It is

¹³ <http://www.ipcc.ch/report/sr15/>

¹⁴ <https://www.business-humanrights.org/en/lack-of-action-plans-to-protect-indigenous-peoples%E2%80%99-rights-revealed-in-report-on-13-govt-commitments-to-reduce-forest-emissions>.

not known what the level of emissions will be in 2020. Some estimate that the ICAO's plan could limit emissions by as much as 2.5 billion tons of carbon in the first 15 years.¹⁵ Even if technologies could serve to reduce some emissions, even 1 billion tons of credits, at the current price of California credits, would amount to an over US \$13 Billion Dollar global market.

The stark reality for Indigenous Peoples is that for over 500 years, they have endured harsh and unfair treatment. The playing field is not level nor are they equals in negotiations with the powerful.

Governmental as well as business enterprises (such as carbon traders, banks, and oil companies) are given great leeway in determining from whom to seek and receive consent. Neighboring Indigenous Peoples share forests, their plants and medicines, their sacred areas, their wildlife and fish. Consent by those least affected is taken to mean consent by all. Consultations are, for many Indigenous Peoples faced with REDD+, equivalent to coercion and intimidation. Corruption is widespread; promises of benefit sharing rarely materialize and never compensate for what they have been forced to surrender. And an initial "no" is never binding. Colonialists have always been persistent. They keep coming back until they get what they want.

There is an ongoing power imbalance that Indigenous Peoples have endured since colonialism began. The way in which colonial and empirical power is enacted through REDD+ schemes becomes clear during the so-called consultation periods. Our Indigenous Peoples, faced with a REDD+ project, are subjected to economic and physical coercion, militarization, arrests, disappearances, and threats of death in order to secure their "consent."

REDD + continues to divide communities. Peace and harmony between communities, within communities and within families is being broken by promises; neighbors and relatives are now at odds. Thousands, even millions of dollars are dangled in front of people's eyes, and, as is common in all of humanity, greed and jealousy many times cloud reason. The reality is that the safeguards are just another hoop that needs be jumped through in order for business to prevail. And there are ways to avoid them entirely.

The UN Special Rapporteur on the rights of Indigenous Peoples, Victoria Tauli Corpuz, published a report¹⁶ on so-called protected or conservation areas, a device used by governments to avoid Indigenous safeguards:

"Widespread allegations exist of human-rights abuses in protected areas [Fn. Omitted] and of the obstruction of justice by governments. And little has been done to retribute Indigenous Peoples and local communities for past human-rights violations, decriminalize customary practices in protected areas, or direct a greater share of conservation and climate financing (such as for reduced deforestation and forest degradation in developing countries—REDD+) to support the essential stewardship role of Indigenous Peoples and local communities."

In an article in Foreign Policy Magazine, Alexander Zaitchik describes the situation of the Cofán peoples living on their ancestral lands now a "protected area."¹⁷ Relegated to guard the protected area, with their way of life, food security, and traditional practices prohibited by the state "owners,"

"... the Cofán are victims of a sort of green colonialism. Cayambe Coca and parks like it may have been founded with the best of intentions: to safeguard endangered biospheres. But the way these protected areas have been established and maintained has damaged the lives of the Indigenous Peoples who live within their borders,

¹⁵ <https://www.edf.org/climate/aviation>

¹⁶ https://rightsandresources.org/en/publication/cornered-by-protected-areas/#.W8eGI_mP8cA

¹⁷ <https://foreignpolicy.com/2018/07/16/how-conservation-became-colonialism-environment-indigenous-people-ecuador-mining/>

forcing them into what is effectively a landlord-tenant relationship with the state that deprives them of control over their land. Because the local governments often lack the will or resources to prevent industry encroachment, many such arrangements also end up undermining their creators' explicit goal: conservation. This double failure is part of the complicated legacy of the modern conservation movement."

The economic and social pressures on Indigenous Peoples, forced to give up their traditional lifeways and livelihoods, and forced to join those who view the forest as a "collection of economic commodities ripe for economic gain" is described by Zaitchik as "Green Colonialism."

Zaitchik points out that international environmental NGOs are many times complicit. Citing the support of the World Wildlife Fund's (WWF) support of the Cameroons and state park where Forest Peoples (Pygmies) are persecuted by park guards for hunting and gathering on their ancestral lands, when reached for comment, WWF responded that they take these allegations seriously and "work[s] with formal and informal actors to raise any substantiated instances with relevant authorities"-- even though the relevant authorities are the source of the Forest Peoples' distress.

A key word in the CTFS proposed safeguard is "equivalent." Are mass meetings, cited by the Environmental Defense Fund (EDF) with apparent approval, equivalent to "consultations" such as those held in Acre, in the implementation of Acre's state forestry law? Is a definition of forests purely as "environmental assets" providing "environmental services" equivalent to respect for Indigenous lifeways and traditions? Is this not "conservation colonialism"?¹⁸

The search for "equivalents" by proponents of REDD+ will surely take on many forms and rationalizations. And unfortunately, the road to full acceptance of linkages and safeguards promised by the CTFS will be long and torturous and subject to great amounts of money politics.

Conclusion

California's Global Climate Action Summit (GCAS) resulted in more of the same oil and growth business as usual. It proposed "new industries" for Acre¹⁹ that will serve only to draw development, roads, settlers, and condom factories that will affect the pristine forests necessary for safe and secure Indigenous Peoples and their custody and care of their forests. Ten Amazonian governors issued their "San Francisco Declaration, the Commitment of Amazonian Governors to Implement Robust Actions against Climate Change and Deforestation in their Jurisdictions"²⁰ that promises only more "protected" conservation areas leading to this same result.

Worse, so-called "global business, government and agricultural leaders" announced plans "embracing land as a climate solution,"²¹ promising land use and land use change that would entirely remove Indigenous Peoples from their historical and millenniums-old control of their habitat, their forests, their lifeways, their food security and sovereignty, as well as their spiritual and material relationship to their land. We would call this a "land grab." Others, like Foreign Policy Magazine, would describe it as "green colonialism." It is a desperate attempt at an even greater geographic scale promoting development with geo-engineering as a solution to global warming, all meant to allow polluters to pollute.

¹⁸ https://www.edf.org/sites/default/files/Acre_Ready_for_REDD_EDF.pdf

¹⁹ <https://earthinnovation.org/publications/part-i-description-of-the-new-industries-and-cooperative-of-acre-state/>

²⁰ <https://earthinnovation.org/wp-content/uploads/2014/09/Declaracion-de-San-Francisco.pdf>

²¹ <https://climatelandchallenge.org/>

What is needed is not more emissions business as usual, pretending emissions are hidden away in some far off Amazonian or Boreal forest while emitters are permitted to emit. Many are now calling for a paradigm shift, away from a false belief that the oil-dependent economies of the developed world can continue to prosper and continue to warm the earth while “reducing” emissions.

Jason Hickel, in Foreign Policy Magazine, poses the inherent contradictions in promoting growth and extraction and calls for a new way of thinking, a new paradigm that is required to avoid catastrophic climate change:

“Preventing that outcome will require a whole new paradigm. High taxes and technological innovation will help, but they’re not going to be enough. The only realistic shot humanity has at averting ecological collapse is to impose hard caps on resource use, as the economist Daniel O’Neill recently proposed. Such caps, enforced by national governments or by international treaties, could ensure that we do not extract more from the land and the seas than the Earth can safely regenerate. We could also ditch GDP as an indicator of economic success and adopt a more balanced measure like the genuine progress indicator (GPI), which accounts for pollution and natural asset depletion. Using GPI would help us maximize socially good outcomes while minimizing ecologically bad ones.

“But there’s no escaping the obvious conclusion. Ultimately, bringing our civilization back within planetary boundaries is going to require that we liberate ourselves from our dependence on economic growth—starting with rich nations. This might sound scarier than it really is. Ending growth doesn’t mean shutting down economic activity—it simply means that next year we can’t produce and consume more than we are doing this year. It might also mean shrinking certain sectors that are particularly damaging to our ecology and that are unnecessary for human flourishing.”²²

Given the “catastrophic and ongoing failure of market economics to address climate change,” others have also called for a rejection of a market capitalism that has not worked or will never work to address global warming.²³

Indigenous Peoples and their forests should not be subjected to vast, political, coercive, economic forces that fail to address the real causes of global warming. For that, California and the rest of the developed world desperately needs to re-examine its own economic priorities and totally unsustainable consumption. At stake is humanity’s survival, as well as the well-being of tropical forest dwelling Indigenous Peoples.

For the above stated reasons, the Tropical Forest Standards should be rejected by the California Air Resources Board.

Respectfully submitted,



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²² Ibid, fn. 7, Foreign Policy Magazine, “Why Growth Can’t be Green.”

²³ <http://kevinanderson.info/blog/wp-content/uploads/2012/08/Pre-edited-version-A-new-paradigm-for-climate-change-2012-.pdf>, published by Nature Magazine.