

October 29, 2018

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

Re: Reject Draft California Tropical Forest Standard

Dear Chair Mary Nichols and Members of the California Air Resources Board:

On behalf of the 29 undersigned organizations, we write to express our opposition to the proposed “Criteria for Assessing Jurisdiction-Scale Programs that Reduce Emissions from Tropical Deforestation” (hereinafter “Draft Standard”). Our organizations’ leadership from low-income Latino, Asian American and Pacific Islanders, African American and immigrant communities have decades of experience reducing pollution in our neighborhoods and are fierce advocates for climate solutions. This Draft Standard is a fundamentally flawed approach that will not ensure a reduction in greenhouse gas emissions and is likely to perpetuate environmental injustices abroad and in California. Many environmental justice communities in California have family in tropical forest regions of Mexico, Central and South America, and Asia and fully understand the conditions that cause deforestation, displacement and political repression.

We urge the California Air Resources Board (“CARB”) to reject the Draft Standard, and we further urge CARB to halt developing any international, sector-based offset program for the cap and trade program. CARB should instead focus on other potential policies that can help protect tropical rain forests while not perpetuating injustices abroad and in California.

1. Offsets Can Exacerbate Environmental Justice Issues in California.

Although CARB is not proposing to link the Draft Standard to California’s cap and trade program at this time, CARB appears to anticipate proposing this program as an offset program in the future. There seems to be little other reason to create a “standard.” Indeed, CARB states one of the objectives of the Draft Standard is to: “[e]stablish robust criteria for emissions trading to assess, and potentially include, jurisdiction-scale programs that reduce GHG emissions from tropical deforestation.”¹ There are several problems with CARB linking this Draft Standard to California and providing additional offsets in the cap and trade program.

Exacerbating Environmental Injustice in California

Proposing a new international offset program will likely exacerbate environmental justice issues in California by requiring less in-state reductions. It is firmly established that California has some of the worst air quality in the country. The American Lung Association’s State of the Air 2018 report found that California cities include eight of the top-ten worst cities for ozone, the seven worst cities for year-round particle pollution, and seven of the top-ten worst cities for

¹ Final Draft Environmental Assessment, p. 58.

short-term particle pollution.² No other state has as many polluted cities. Consequently, each ton of pollution matters, especially in communities that breath some of the worst air in the country.

Offsets Reduce In-State Emissions Reductions and Worsen Air Quality

Allowing additional offsets, which reduces in-state reductions, can exacerbate the already-poor air quality in disadvantaged communities. The July 20, 2018 research article entitled: “Carbon trading, co-pollutants, and environmental equity: Evidence from California’s cap-and-trade program (2011-2015)” written by Lara Cushing, Dan Blaustein-Rejto, Madeline Wanter, Manual Pastor, James Sadd, Allen Zhu, and Rachel Morello-Frosch illustrates the importance of real GHG reductions for the state’s most disadvantaged communities.³ This peer-reviewed journal article makes the following key findings:

- Facilities regulated under California’s cap-and-trade program are disproportionately located in disadvantaged neighborhoods.⁴
- Most regulated facilities increased their local GHG emissions after implementation of cap-and-trade. A majority of facilities also increased their annual average PM2.5, VOC, and air toxics emissions during this time period.⁵
- GHGs and hazardous co-pollutants emitted by facilities regulated under California’s cap-and-trade program were positively correlated when comparing across facilities.⁶
- Since California’s cap-and-trade program began, neighborhoods that experienced increases in annual average GHG and co-pollutant emissions from regulated facilities nearby had higher proportions of people of color and poor, less educated, and linguistically isolated residents, compared to neighborhoods that experienced decreases in GHGs.⁷

As highlighted in this peer-reviewed research, low-income communities and communities of color are disproportionately located near the state’s largest GHG sources. Thus, our state’s ability to curb GHGs and slow climate change has a direct impact on the state’s disadvantaged communities. Sources need to actually reduce GHGs to mitigate these impacts and ensure that cap and trade does not disproportionately hurt the state’s most disadvantaged communities.

This July 20, 2018 peer-reviewed research article also found that offsets can undercut emission reduction efforts and environmental equity goals. In particular, it found that:

Facilities owned by companies that used offsets emitted significantly higher levels of GHGs than those owned by companies that did not use offsets. For example, the 10

² American Lung Association, State of the Air 2018, http://www.lung.org/local-content/california/documents/state-of-the-air/2018/sota-2018_ca__most-polluted.pdf

³ L. Cushing, et. al, *Carbon Trading, Co-Pollutants, and Environmental Equity: Evidence from California’s Cap-and-Trade Program (2011-2015)*, <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002604#sec016>

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

companies using the most offset credits during the first compliance period were responsible for 82% of offsets surrendered and 43% of total covered GHG emissions.⁸

Inconsistency with Existing Law

Proposing a new international offset program is also inconsistent with AB 398's required reduction of the use of offsets and requirement that CARB increase the offsets tied to in-state direct environmental benefits. Specifically, AB 398 reduces the amount of allowable offsets from the previous amount of 8% of an entity's compliance burden to no more than 4% from 2021-2025 and no more than 6% from 2026-2030.⁹ AB 398 further requires that at least half of the offsets must provide direct environmental benefits in the state.¹⁰ AB 398 also establishes a task force with the propose of "increasing offset projects with direct environmental benefits in the state while prioritizing disadvantaged communities, Native American or tribal lands, and rural and agricultural regions."¹¹

New offsets are also inconsistent with AB 197, which requires CARB to prioritize direct emissions reductions. Specifically, section 38562.5 requires CARB to prioritize both of the following:

- (a) Emission reduction rules and regulations that result in direct emission reductions at large stationary sources of greenhouse gas emissions sources and direct emission reductions from mobile sources.
- (b) Emission reduction rules and regulations that result in direct emission reductions from sources other than those specified in subdivision (a).¹²

Creating a new international offset program is thus also inconsistent with AB 197's requirement to prioritize direct emission reductions.

2. The Draft Standard Creates an Unnecessary Risk of Human Rights Abuses for Forest Dwelling People Around the World.

Although the Draft Standard claims to include social and environmental safeguards,¹³ the provisions not only fail to protect against the potential for human rights abuses that can occur and have occurred as a result of tropical forest offset programs, but create social and environmental dangers themselves. Tropical forest offset programs have a history of contributing to illegal actions, coercion, violence, and land grabs for indigenous peoples, forest dwelling communities, and citizens around the globe.¹⁴

⁸ *Id.*

⁹ Cal. Health & Safety Code § 38562(c)(2)(E).

¹⁰ Cal. Health & Safety Code § 38562(c)(2)(E).

¹¹ Cal. Health & Safety Code § 38591.1(a).

¹² Cal. Health & Safety Code § 38562.5.

¹³ CARB states that one of the objectives of the project is to "[e]nsure rigorous social and environmental safeguards." Draft Final Environmental Assessment, p. 58.

¹⁴ See, e.g., Friends of the Earth, REDD+, *The Carbon Market and California-Acre-Chiapas Cooperation: Legalizing Mechanisms of Dispossession* (June 2017), <https://www.foei.org/wp->

Placing Harm on Forest Dwelling Communities

The Draft Standard's proposed social and environmental safeguards fail to protect against the risk to forest dwelling communities for several reasons. First, the vague requirement for consultation does not appear to provide any more protection than the previously problematic REDD requirements. Simply consulting with indigenous communities in the process and allowing participation in the design does not mean that indigenous communities will ultimately be protected nor does it ensure that their input will even be considered in the development of a program.¹⁵ Consultation is a minimum requirement that ensures mere notice and some level of dialogue.

Indigenous communities have been forced from their homelands, as forests have been privatized.¹⁶ Experiences with international forest offset programs on the ground illustrates a consistent failure to secure communities' rights to their homelands.¹⁷ This type of forced eviction impacts all aspects of life. An indigenous forest dwelling community in Kenya called the Sengwer, which was forced from their land in the name of conservation of the forest, "reported that they live in constant fear of repeated forced evictions through home burnings, and arrests."¹⁸ An indigenous community from a tropical forest in Indonesia reported similar types of fears.¹⁹ Members of the Sengwer community who did leave faced "economically precarious conditions, having been evicted but not having received compensation."²⁰ Similarly, members of an indigenous community in Indonesia who left face harsh realities including the loss of their livelihood and homes.²¹ The forced evictions also impacted cultural practices and caused an

content/uploads/2018/01/REDD_The-carbon-market-and-the-California-Acre-Chiapas-cooperation.pdf; see also World Rainforest Movement, *REDD: A Collection of Conflicts, Contradictions and Lies* (Feb. 2015), https://wrm.org.uy/wp-content/uploads/2014/12/REDD-A-Collection-of-Conflict_Contradictions_Lies_expanded.pdf

¹⁵ See Draft Standard, Chapter 10, pp. 18-19.

¹⁶ https://www.foodandwaterwatch.org/sites/default/files/bad_trade_ib_apr_2013.pdf (citing sources).

¹⁷ See World Rainforest Movement, *REDD: A Collection of Conflicts, Contradictions and Lies* (Feb. 2015), https://wrm.org.uy/wp-content/uploads/2014/12/REDD-A-Collection-of-Conflict_Contradictions_Lies_expanded.pdf at p. 5-6.

¹⁸ Amnesty International, *Families Torn Apart Forced Evictions of Indigenous People in Embobut Forest, Kenya*, p. 8,

<https://www.amnesty.org/download/Documents/AFR3283402018ENGLISH.PDF>

¹⁹ Human Rights Abuses and Land Conflicts in the PT Asiatic Persada Concession in Jambi, <http://www.forestpeoples.org/sites/default/files/publication/2011/11/final-report-pt-ap-nov-2011-low-res-1.pdf>

²⁰ Amnesty International, *Families Torn Apart Forced Evictions of Indigenous People in Embobut Forest, Kenya*, p. 8,

<https://www.amnesty.org/download/Documents/AFR3283402018ENGLISH.PDF>

²¹ Human Rights Abuses and Land Conflicts in the PT Asiatic Persada Concession in Jambi, <http://www.forestpeoples.org/sites/default/files/publication/2011/11/final-report-pt-ap-nov-2011-low-res-1.pdf>

erosion of financial autonomy of women.²² Other indigenous communities throughout the world have also been forced from their homelands in the name of conserving the forests through forest offsets.²³ This displacement carries enormous housing, security, and health consequences.²⁴ The vague consultation requirement in the Draft Standard does not prevent these types of human rights abuses from occurring, and it can instead be used as a guise to provide the semblance that the rights of indigenous communities were respected.

Weak Human Rights Protections

In addition, the Draft Standard provides that a jurisdiction “may” consult the Green Climate Fund Indigenous People’s Policy.²⁵ This criterion is meaningless. Merely stating that it is permissive to “consult” the policy does little to respect or protect human rights. The policy itself requires more than consultation—it requires incorporation of the interests of indigenous peoples’ rights as well as respect and enhancement of the rights of indigenous peoples to their lands, territories and resources.²⁶ Following a policy like the Green Climate Fund Indigenous People’s Policy is an essential first step to ensure that human rights abuses do not continue to occur.

Problematically, the Draft Standard also fails to require concrete substantive protections beyond the previously proposed REDD provisions. Without any clear protections for communities, it is unclear how the Draft Standard will ensure any additional protections for forest-dwelling communities to prevent human rights abuses. Publishing reports on a website,²⁷ for example, is not helpful if there is no requirement to protect the human rights of indigenous communities in the first place.

Vague and Unclear Verification Protocols

Furthermore, although the Draft Standard appropriately requires third-party verification of the social and environmental safeguards,²⁸ it says nothing about the safeguards themselves, again begging the question. Neither does it provide that the verification include community input or that the verification process determine whether a community is being negatively impacted by the

²² Amnesty International, *Families Torn Apart Forced Evictions of Indigenous People in Embobut Forest, Kenya*, p. 8,

<https://www.amnesty.org/download/Documents/AFR3283402018ENGLISH.PDF>

²³ World Rainforest Movement, *REDD: A Collection of Conflicts, Contradictions and Lies* (Feb. 2015), https://wrm.org.uy/wp-content/uploads/2014/12/REDD-A-Collection-of-Conflict_Contradictions_Lies_expanded.pdf

²⁴ See, e.g., Friends of the Earth, REDD+, *The Carbon Market and California-Acre-Chiapas Cooperation: Legalizing Mechanisms of Dispossession* (June 2017), https://www.foei.org/wp-content/uploads/2018/01/REDD_The-carbon-market-and-the-California-Acre-Chiapas-cooperation.pdf; World Rainforest Movement, *REDD: A Collection of Conflicts, Contradictions and Lies* (Feb. 2015), https://wrm.org.uy/wp-content/uploads/2014/12/REDD-A-Collection-of-Conflict_Contradictions_Lies_expanded.pdf

²⁵ Draft Standard, Chapter 10(a), p. 18.

²⁶ https://www.greenclimate.fund/documents/20182/574763/GCF_policy_-_Indigenous_Peoples_Policy.pdf/6af04791-f88e-4c8a-8115-32315a3e4042

²⁷ See Draft Standard, Chapter 10(c), p. 19.

²⁸ Draft Standard, Chapter 10(e), p. 19.

program. Many forest offset projects certified as providing social benefits or even awarded silver or gold distinctions have had devastating impacts on forest-dwelling communities.²⁹ Without concrete substantive requirements, the verification process cannot protect forest-dwelling communities impacted by this Draft Standard.

Finally, the Draft Standard fails to consider how an implementing jurisdiction could enforce or monitor social and environmental safeguards. Clearly, safeguards matter only if they can be enforced and if there are consequences for violations. Due to the remote location of potential projects, verification, monitoring, and enforcement of projects will be extremely difficult to succeed. The Draft Standard even fails to require reporting of social and environmental protections in the annual report,³⁰ or, as described above, require that the verification process examine what is happening on the ground. Given this, even if a proposed project claims to meet all of the social and environmental safeguards, the Draft Standard fails to provide a way to ensure that human rights abuses are not continuing to occur.

In light of the risk of devastating human rights abuses created by international forest offset programs, the State of California has a heavy duty to ensure that any such “standard” ensure real, meaningful social and environmental safeguards. Instead, however, the Draft Standard includes elements that only thinly cloak it with positive language. The standard’s vague and procedural language, without substantive protections, rings hollow. Given these issues with the Draft Standard, we believe that it creates a reasonably foreseeable risk of human rights abuses to indigenous communities. CARB should not move forward with this problematic approach.

3. The Draft Standard Should Be Rejected Because There Are Better Alternatives to Protect Tropical Rainforests.

The Final Draft Environmental Assessment states that the Draft Standard is “intended to generate environmental benefits pertaining to agriculture and forestry resources (through improved forest management) and GHG emission reductions.”³¹ We share CARB’s desire to ensure tropical forests are protected as a key strategy to reduce climate change. However, the Draft Standard does not provide a mechanism to accomplish this goal. Alarming, CARB has not evaluated other potential alternatives for protecting tropical forests that can protect communities while reducing GHGs.

Optimize California’s Purchasing Power

CARB should examine other ways to reduce deforestation by limiting the purchase of material from the Amazon. In particular, CARB can examine the following:

²⁹ World Rainforest Movement, *REDD: A Collection of Conflicts, Contradictions and Lies* (Feb. 2015), https://wrm.org.uy/wp-content/uploads/2014/12/REDD-A-Collection-of-Conflict_Contradictions_Lies_expanded.pdf

³⁰ See Draft Standard, Chapter 10(d), p. 19 (stating that the annual report “may” include an update of social and environmental safeguards).

³¹ Final Draft Environmental Assessment, p. 1.

- Banning imports of crude oil from the Amazon and other sensitive and globally important tropical forest areas. Oil production in the Amazon is a driver of deforestation in the Amazon.
- Minimize California's consumption of commodities whose production are drivers of tropical deforestation. This includes tropical hardwoods, paper, pulp, minerals, fossil fuels, and other commodities produced and extracted from tropical rainforest areas.

Fully Exhaust In-State Options First

Other feasible alternatives exist that can meet the primary purpose and objective of the project of benefiting agriculture and forestry resources and GHG emission reductions. In fact, the State recently took a positive step to protecting tropical forests when it added material risks from deforestation as part of the evaluation for investment for its employee retirement account. The California Public Employee's Retirement System adopted language that recognizes that deforestation and ecosystem degradation pose material risks and includes a direct acknowledgement of "free, prior and informed consent as a standard in relation to Indigenous People's rights."³² This is an example of the type of alternatives that CARB should be examining as a better way to help protect tropical forests.

In addition, CARB should examine potential actions to improve the stewardship of its own forests. Some examples of actions it could examine include reigning in clear-cutting and monoculture tree plantations and other destructive forest management practices, and assuring the long-term sustainability and effectiveness of existing protected areas on private, state, tribal and federal lands.

Furthermore, CARB should also examine other models that have been developed to protect indigenous communities. As described above, the Green Climate Fund Indigenous People's Policy requires incorporation of the interests of indigenous peoples' rights as well as respect and enhancement of the rights of indigenous peoples to their lands, territories and resources.³³ In addition, CARB should consider the "Joint Mitigation and Adaptation Mechanism for the Integral and Sustainable Management of Forests and Mother Earth."³⁴ This approach, which was developed by Bolivia, does not rely on offsets but rather seeks better land use practices and prevention of biodiversity loss, deforestation and degradation. This approach should be examined as a potential way to both protect indigenous communities and prevent deforestation.

³² CalPERs, *Governance and Sustainability Principles*, <https://www.calpers.ca.gov/docs/forms-publications/governance-and-sustainability-principles.pdf>

³³ Green Climate Fund, *Indigenous Peoples Policy*, https://www.greenclimate.fund/documents/20182/574763/GCF_policy_-_Indigenous_Peoples_Policy.pdf/6af04791-f88e-4c8a-8115-32315a3e4042

³⁴ See *Joint Mitigation and Adaptation Mechanism for the Integral and Sustainable Management of Forests and Mother Earth*, https://unfccc.int/files/cooperation_and_support/financial_mechanism/standing_committee/application/pdf/annex_2._implementation_joint_mitigation.pdf

4. CARB Should Meaningfully Engage International Community Leaders and the California Environmental Justice Community To Develop an Alternative Proposal.

Any proposal to consider tropical forests is likely to significantly impact indigenous and environmental justice communities abroad and in California. As such, we request CARB to meaningfully consult with indigenous and environmental justice communities when developing an alternative proposal.

The Green Climate Fund's Indigenous People's Policy defines meaningful consultation as:

a two-way process, that: (a) begins early in the project planning process to gather initial views on the project proposal and inform project design; (b) encourages stakeholder feedback, particularly as a way of informing project design and engagement by stakeholders in the identification and mitigation of environmental and social risks and impacts; (c) continues on an ongoing basis, as risks and impacts arise; (d) is based on the prior disclosure and dissemination of relevant, transparent, objective, meaningful and easily accessible information in a timeframe that enables meaningful consultations with stakeholders in a culturally appropriate format, in relevant local language(s) and is understandable to stakeholders; (e) considers and responds to feedback; (f) supports active and inclusive engagement with project affected parties; (g) is free of external manipulation, interference, coercion, discrimination, and intimidation; and (h) is documented and disclosed.³⁵

We request that CARB should model meaningful consultation during the development of an alternative standard that protects environmental justice and indigenous communities and document how it integrates the input of impacted communities in the design of this alternative.

CONCLUSION

For all of these reasons, we urge CARB to not move forward with the Draft Standard, and we further urge CARB to not develop any international, sector-based offset programs for the cap and trade program. CARB should focus on other potential policies that can help protect tropical rain forests while not perpetuating injustices abroad and in California.

Sincerely,

Gladys Limón, Executive Director
California Environmental Justice Alliance

Parin Shah, Senior Strategist
Asian Pacific Environmental Network

³⁵ Green Climate Fund, *Indigenous Peoples Policy*,
https://www.greenclimate.fund/documents/20182/574763/GCF_policy_-_Indigenous_Peoples_Policy.pdf/6af04791-f88e-4c8a-8115-32315a3e4042

Tom Frantz, President
Association of Irrigated Residents

Allen Hernandez, Executive Director
Center for Community Action and Environmental Justice

Caroline Farrell, Executive Director
Center on Race, Poverty & the Environment

Kevin D. Hamilton, RRT, Chief Executive Officer
Central California Asthma Collaborative

Maricela Morales MA, Executive Director
Central Coast Alliance United for a Sustainable Economy (CAUSE)

Pamela Tau Lee, Chairperson
Chinese Progressive Association

RL Miller, Co-chair
Climate Hawks Vote

Bill Magavern, Policy Director
Coalition for Clean Air

Alex Solis, Policy Coordinator
Comite Civico del Valle

Bahram Fazeli, Director of Research & Policy
Communities for a Better Environment

Mari Rose Taruc, Board Chair
Filipino/American Coalition for Environmental Solidarity (FACES)

Deborah Silvey, Board Chair
Fossil Free California

Christie Keith, International Coordinator
Global Alliance for Incinerator Alternatives (GAIA)

Al Weinrub, Coordinator
Local Clean Energy Alliance

Colin Miller, Coordinator
Oakland Climate Action Coalition

Antonio Díaz, Organizational Director
PODER (People Organizing to Demand Environmental & Economic Rights)

Martha Dina Argüello, Executive Director
Physicians for Social Responsibility - Los Angeles (PSR-LA)

Guillermo Mayer, President and CEO
Public Advocates Inc.

Joyce Lane, Co-Chair, Public Policy Team
SanDiego350

Jack Eidt, Co-Founder
SoCal 350 Climate Action

Matt Krogh, Extreme Oil Campaign Director
Stand.earth

Colin Bailey, Executive Director & Managing Attorney
The Environmental Justice Coalition for Water

Orson Aguilar, President
The Greenlining Institute

Kemba Shakur, Director
Urban Releaf

Paloma Aguirre, MMBC, Coastal and Marine Director
WILDCOAST

RL Miller and Alan Weiner, Co-chairs
350 Conejo

Nicole Kemeny, President
350 Silicon Valley

Cc:
Diane Takvorian
Dean Florez
Hector de la Torre
John Gioia
Dr. John Balmes
Dr. Alex Sherriffs
Assemblymember Eduardo Garcia
Senator Ricardo Lara

Phil Serna
Judy Mitchell
Sandra Berg
Daniel Sperling
Barbara Riordan
Ron Roberts
John Eisenhut
Richard Corey
Veronica Eady
Jason Gray