



May 9, 2011

Governor Jerry Brown
State Capitol
Sacramento, CA 95814

Re: Need to Re-Evaluate AB 32 Cap-and-Trade Rule

Dear Governor Brown:

Sierra Club California was an early and active supporter of the California Global Warming Solutions Act of 2006 (AB 32), and we have participated frequently in its implementation process. We also strongly opposed Proposition 23, which would have suspended the law and obstructed the development of our clean energy economy. We thank you for your strong commitment to clean energy, as demonstrated by your opposition to that initiative and your signing of the 33% Renewable Portfolio Standard into law.

We recommend that your administration re-evaluate the cap-and-trade rule adopted by the Air Resources Board at the end of last year. With your strong environmental record going back to the 1970s, and your experience with enforcing California's greenhouse gas laws as Attorney General, you are well-suited to the task of scrutinizing and revising the cap-and-trade rule adopted by the previous administration.

The rule has some serious flaws that will limit its effectiveness in reducing emissions and generating green jobs, and call into question its compliance with the environmental justice requirements of AB 32.

Excessive reliance on offsets could open up loopholes that undermine the very purposes of California's AB 32 cap on emissions. Curbing global warming will require a fundamental transformation of our energy economy, a task that cannot be outsourced to other countries. Requiring California's largest polluters to reduce their *own* emissions will spur technological advances that can be exported to the rest of the world, bringing green jobs to the Golden State. If polluters are allowed to outsource their emission reductions to other sectors and jurisdictions, the clean-energy revolution will be delayed. Research shows that out-of-state offsets will increase criteria pollution. (David Roland-Holst, "Carbon Emission Offsets and Criteria Pollutants: A California Assessment," March, 2009, University of California, Berkeley.) Air pollution is worst in low-income communities and communities of color, such as the neighborhoods downwind from oil refineries.

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AB 32 mandates that the ARB must:

“Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities...

Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions...

Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.”

Furthermore, we are especially concerned about weaknesses in the protocols for forestry offsets. Forest clearcutting and the conversion of native forests to tree plantations pose great risk to the climate, while simultaneously degrading forest ecosystems, water quality, and wildlife habitat, and impairing the forest’s resilience to the impacts of climate change. Offset credits for even-aged management could become an incentive for the conversion of native forests to tree plantations.

As experienced environmental prosecutors for the state have noted, “the cap-and-trade market poses significant enforcement challenges,” and “offsets pose multiple additional enforcement problems, including jurisdiction, verification, and certainty.” (Ken Alex and Will Brieger, “Combating Global Warming: The Role of Local Prosecutors in Implementing California’s AB 32,” *The Journal of the Institute for the Advancement of Criminal Justice*, 2010/2011.)

In addition, the cap-and-trade rule makes unwarranted gifts of emission allowances to industries. ARB’s own Economic and Allocations Advisory Committee found that the need for free allowances to address leakage is small. The biggest recipients of these free allowances in the rule are the oil extraction and refining industries, which actually have a low susceptibility to leakage. Allowance value should be used to benefit the public interest, not the interests of large polluters.

The time has come for a fresh look at how best to achieve the emission reductions required by AB 32.

Respectfully Submitted,

Bill Magavern
Director