

## **AB 32 Environmental Justice Advisory Committee (EJAC) Meeting**

**Date: February 27<sup>th</sup>**

**Time: 9am – 3PM**

**Attendees (in person):** Sharifa Taylor, Dr. Catherine Garoupa, Martha Dina Argüello, Matt Holmes, Kevin Jefferson, Thomas Helme, Kevin Hamilton, Dr. Steve Cliff, Ellen Peter, Chanell Fletcher, Trish Johnson, Sierra Maciorowski

**Attendees (virtual):** Luis Olmedo, John Harriel, Jr., Juan Flores, Mayor Rey Leon, Jill Sherman-Warne, Ambreen Afshan, Gideon Kracov, Marc Gutiérrez

**EJAC Members not in attendance:** Angel Garcia

*Disclaimer: Notes are intended to be high-level and may not capture every detail. Live notes will be taken during the meeting where possible, and will be revised afterwards to ensure clarity.*

### **Action Items:**

**EJAC:**

- **EJAC members** to submit written comments on the draft charter by email to Trish Johnson and CC the Co-Chairs by March 7<sup>th</sup>
- **Next EJAC Meeting:** Hybrid meeting held at Bay Area Metro at 375 Beale Street in San Francisco. The finalized agenda and Bagley-Keene notice will be posted by Friday March 3<sup>rd</sup>.

**CARB:**

#### *Administrative*

- **CARB** will send out the notes from this EJAC meeting and will send out a reminder to EJAC members with the Co-Chairs' deadline of March 7<sup>th</sup> and instructions for submission of written comments
- **CARB** will schedule the next meeting with Ad Hoc sub quorum to discuss written comments and revise the draft of the charter.
- **CARB** will schedule a meeting between March 15 and March 23 with the Ad Hoc sub quorum to prepare for the March 23 Board meeting

#### *Charter*

- **CARB** will assess whether the EJAC must have specific seats dedicated to certain interests (i.e. labor)
- **Board Member Gideon Kracov** may follow up with the Chair regarding the EJAC charter

#### *Follow up from Feb 27 EJAC meeting*

- **CARB** will follow up regarding the Scoping Plan Resolution, and share the specific language as it relates to social cost of carbon and climate vulnerability metric in hopes this addresses the question regarding added public health analysis language.

- **CARB** will share a written update regarding the Scoping Plan presentation.
- **CARB** may prepare additional guidance for transparency requirements

#### *Prep for March 15 EJAC meeting*

- **CARB**, to the extent possible, will share Scoping Plan implementation activities with proposed timelines, staff contacts, and listservs for the next EJAC meeting

### Notes:

#### **EJAC Governance**

##### *Introductory Remarks*

- **CARB**: From the start, the Chair has expressed a desire for active engagement and dialogue with the EJAC beyond the Scoping Plan development process. CARB has aligned its resources and staff to engage in this effort. This is our first opportunity to think through what that dialogue and commitment looks like with the EJAC.
- **EJAC Co-Chair**: The charter is an important living document that we don't want to get stuck on. We want to make sure there's time to surface areas and discussion today, but we also want to give space for people to submit written comments to Trish by email and cc the co-chairs. This draft drew from existing guiding principles and information from previous environmental justice advisory committees. We started with two separate drafts from CARB and EJAC Co-Chairs, and pulled them together. The overarching goal includes setting a baseline for things like meeting frequency and membership at the request of CARB, though many of the charters that we reviewed didn't include these. We want to take time today to focus on spaces where people have a lot of questions or concerns. We will share a revised charter at the next EJAC meeting on March 15<sup>th</sup>, then the CARB Board will adopt the charter at their March 23<sup>rd</sup> meeting.
- **CARB**: This document was drafted by the Ad Hoc sub quorum; there are some sections that were noted for further discussion of language with a yellow highlight. Language is shown for transparency around what was changed (e.g. strikeouts), and there are comments from the Ad Hoc sub quorum within the document.
- **EJAC Co-Chair**: I will be fleshing out the background section further, and am interested in hearing thoughts there, as well as on section 9 (membership).

##### *EJAC Scope*

- **EJAC Member**: When the Board authorized the creation of an ongoing EJAC, is the ongoing EJAC still subject to the statutory criteria of AB 32, or does the Board have authority to expand the EJAC scope outside of that statute?
- **Chief Counsel**: This is based on the restrictions of the legislature.
- **EJAC Member**: There have been a number of instances where we felt constrained by the legislation. We hoped that this EJAC would be able to go further than what legislation established in 2006.
- **Board Member**: My job on this has been to be the messenger of the Chair; she wants to see it be successful. Regarding statute, the Chair thinks that the ongoing EJAC must link to AB 32 in terms of climate programs. The Chair sees that as a huge mandate and she will read this expansively

(covering topics including cap and trade, Low Carbon Fuel Standard (LCFS), and carbon capture and storage (CCS)). We want EJAC to be a part of the conversation.

- EJAC Member: We continually ran into problems with feeling treated as if we were an interest group, rather than as representatives of communities that are being harmed. We were unable to have regular dialogue from Board Members who could have helped EJAC make decisions more quickly.
- EJAC Co-Chair: I agree that AB 32 is the foundation for our authority, and that this gives us an extraordinarily wide view on all the agencies the Scoping Plan touches. Having that work in front of us is almost overwhelming. Over time, if we see that evolve or legislation creates some other opportunities, the scope of work might change.
- Board Member: Even LCFS will require a lot of work – it is a challenge to see what EJAC will be able to accomplish. Things were accomplished last year, 4-5 of the top recommendations. We have set the stage for how this can work, and now we have to make it effective.
- EJAC Co-Chair: Regarding the governance structure, the Ad Hoc discussed making sure that we recognize that CARB's established goal is to clean the air, not just AB 32. The commitments that are made must match the resources that CARB is able to provide. For example, every community tour has been unpaid and working groups are unpaid. As a result, the cap and trade working group in the past year had to work on an Ad Hoc basis because there was not enough time to dedicate to unpaid labor. We can use the committee forum to bring in experts and have deep discussions, and be aspirational and inclusive, but also want it to be clear that resources are not sufficient. For example, in the Goals, working cooperatively with all relevant bodies is too much as an unpaid body. Let's figure out what we can do with the resources we have, and work collaboratively to figure out what more resources we can get access to.

## **Membership**

### Numbers and Terms

- EJAC Member: There was a number given at the meeting in November for maximum number of members; wondering why that is still there at 11, and why the term is for 36 months.
- CARB: CARB kept the charter document the same to preserve integrity and transparency for Ad Hoc sub quorum members. A revised draft will share that all 13 EJAC members will be appointed in March and will serve a 3-year term. There are no term limits, and EJAC members can always go through the process to get reappointed. We've also committed to an 18-month check-in to revisit the charter and structure to see if there are places for improvement.
- EJAC Member: Since we have 13 members now and there is the opportunity for reappointment, would the size of the EJAC drop down to 11 members after the first term?
  - CARB: Yes.
- EJAC Member: What is the process to decide which members are not reappointed? Can we include language that addresses this?
- CARB: Reappointment is done on the basis of the selection criteria; we are happy to have the conversation with co-chairs and the EJAC on how to transition from 13 to 11 members.
- EJAC Member: Will there be clarity in the document about why someone is or is not going to be automatically reappointed? Does this have to do with conduct or what you bring to the committee? The explanation of how terms work makes sense.

- Board Member: Since November, we changed the proposed governance structure to not include term limits. No one on the Board or on EJAC has guaranteed reappointments. The Chair does promise to check in after 18 months to assess how the governance structure is working and if improvements are needed
- EJAC Co-Chair: I want to provide information about why we're seeking at least 5 years per term. AB 197 established CARB's Boards and membership, and there was also SB 32 which was a precursor to AB 32. There was a lot of back and forth on whether it should be 3 years or not. We should be starting membership on date of signing, and terms should be 5 years because we're dealing with a 5-year Scoping Plan. CARB Board Members have 6-year terms, so please consider 13 members, 5 years.
- EJAC Member: It's important to recognize that what is on the table regarding term limits has been widely discussed. I want to give credit to the Chair for seriously considering what we were asking and for delivering. A big win is that the starting point is going to be a full term starting on the effective date of the new Charter, rather than with a backdated starting point to the previous appointment date for the 2021-2022 EJAC. Having a check-in at 18 months puts us in a strong position.
- EJAC Co-Chair: I appreciate that we have removed term limits in recognition of the importance of elders in the movement and their institutional knowledge. 11 members is still too low – this is not adequate to represent the complexity of the state and the movement, which is not a monolith. I want to know if there are going to be requirements in terms of what categories members need to fall into (e.g. labor representatives). That happened in the last cycle, and I'm not taking a position on whether labor representatives should be here, but just that we need to know now to know how many people will be needed.
- Board Member: We expect some attrition. I don't think there is flexibility from the Chair on numbers of members.
- EJAC Co-Chair: Did CARB consider AB 197 when considering 3 years versus more? I served as co-chair of the Bay Area Air Quality Management District (BAAQMD) which is 9 counties and 17 members. If we are expected to do more/have greater scope of work, why would we consider having less members? Let's consider AB 197 in the decision-making process.
- Board Member: The Chair has considered this and she is aware of it.
- EJAC Member: It sounds like we're at 13 members now, and this would continue for 3 years before it turns to 11. That doesn't seem like enough, especially since the group is already decreased in size due to attrition. On term limits, we're finishing a term now, and we'll start a new term? Why can't EJAC members serve longer than CARB Board Members? Equity looks like saying that folks that haven't been listened to should perhaps be given more opportunities. Who exactly decides reappointments? Does the existing EJAC have a role in that or is it purely a decision made by CARB staff? Is that equitable? Legally, maybe this must be based in the authority of AB 32, can we still focus on things like criteria air pollutants rather than being a climate-focused group? Are we able to work on everything that touches environmental justice (EJ) here at CARB, or are we being boxed in?
- EJAC Co-Chair: Will follow up with EJAC member in 1:1 discussion.

### Alternates

- EJAC Co-Chair: Alternates should not be required to be employed by the same organization – this hurts small organizations like the Central Valley Air Quality Coalition (CVAQ). We are told as EJAC members that we're here as individuals, but someone was not eligible last cycle as a community member who was not a member of an organization. CARB should make a commitment to accept community members as EJAC members regardless of organizational affiliation.
- EJAC Member: There is an opportunity with flexibility in alternates to fill in some pollution genre gaps or geographical gaps (e.g. should have a pesticide representative). This can help address the fact that 11 members is inadequate. Nomination from a recognized EJ organization should be sufficient.
- EJAC Member: It seems like if someone is appointed, that person should be able to decide who the alternate is. Meeting 8 times a year doesn't seem sufficient – why are we taking a step back from what was already established in terms of the efficiency of what the group can achieve?
- EJAC Co-Chair: In the absence of a broader environmental justice advisory body in CalEPA, this EJAC has become the sole space for EJ work. Maybe we can talk about the other spaces in which we can do this work. There was an EJ advisory committee for CalEPA that got work done but no longer exists. Maybe we can check in with the Legislature and meet with the new Secretary of CalEPA to check the status of existing requirements for EJ plans within these organizations.
- EJAC Co-Chair: Are we still putting together section 9 (membership) or is section 9 (membership) complete?
- CARB: This is a draft.

### **Community Tours**

- EJAC Member: During our last cycle, we found a lot of benefit from doing community tours. I am wondering how those tours fit into the meeting frequency section of this document, and if tours would be applied to 8(b), particularly so that Board Members can attend them. It would be helpful to add minimum requirements for 8(a) about tours as well.
- EJAC Co-Chair: We had a lot of discussion about tours. We don't want to write into the charter to make sure the focus is on the work that needs to get done. If there's a tour that would be really helpful for understanding a particular topic, it would be more useful to include.
- EJAC Member: That makes sense.
- Board Member: Community tours are great, especially ones that are meaningful and tethered to the work we're doing. They must be planned thoroughly.

### **Action:**

- CARB is taking live notes and will send them out, including these comments.
- CARB will schedule the next meeting with Ad Hoc sub quorum and talk through comments and next steps for charter.
- March 15<sup>th</sup> is the next EJAC meeting. We will present a revised charter from the Ad Hoc sub quorum based on sub quorum conversations.
- EJAC members can send written comments both in and beyond what has been described in this meeting, to provide the focal point for the sub quorum.

EJAC Co-Chair: Co-chairs would like written comments on the draft charter by March 7<sup>th</sup> and would encourage people to be on the early end, ideally by close of day on Tuesday, March 7<sup>th</sup> so there is time for review from the Ad Hoc sub quorum.

### **Transparency Requirements for Advisory Committees**

Chief Counsel: These are requirements that cover all committees convened under Bagley-Keene advisory committee laws. CARB has 4 advisory committees. This presentation will outline statute requirements. In October 2022, we released a document explaining transparency requirements for Bagley-Keene advisory committees—we are happy to resend this memo if needed.

- Gov. Code 87104 - Conflict of Interest
  - Compliance is mandatory, and there is no discretion for CARB to decide it does not apply to CARB or to its advisory bodies. CARB does not enforce legal consequences for violations; this is enforced by the courts, District Attorneys, and the FPPC (Fair Political Practices Commission).
  - This applies to public officials, and a public official includes any member of an advisory committee. The idea is to avoid conflicts of interest and the appearance of conflicts.
  - This law was enacted in the 1990s due to public outrage at a loan default on a state law program which cost the state millions of dollars, based on the influence of an advisory committee member.
  - Going forward, CARB will not execute any grants where there is a prohibited communication or appearance to avoid conflicts of interest. Examples of prohibited communications include: being a co-principal investigator on a grant application or contract, an informal communication like an email or text; a letter of support for a grant application, verbal or written comment at a Board meeting or a comment submitted to the docket.
  - On these issues, EJAC members are prohibited from communicating with: the chair, the board members, the executive committee members, the executive officers, the deputies, and anyone working for CARB. This applies to any communication about a grant or contract regardless of the subject matter.
  - This applies to people who are or were advisory committee members at the time a violation occurred. Other members of their organization can engage in communication, but there cannot be discussion from EJAC members with the members of the organization.
  - Potential consequences include a misdemeanor, fines, the contract or grant voided, and other consequences from courts, district attorneys, the Attorney General, and the FPPC.
  - The organization can still apply for grants or contracts, but the application must not be submitted after any communications that could influence CARB's decision on that particular agreement. The organization can still engage in general advocacy for general policies, just not for a specific license, grant, loan, or other entitlement. The prohibition is limited to appearances or communications relevant to a specific contract, grant, loan, license, permit, or other entitlement for use being offered by CARB.
  - The organization would need to identify someone other than the EJAC member to sign or be the administrator for contracts and grants, and the EJAC member cannot exert influence by being mentioned in the grant application except for to show their role in

the organization in an organizational chart. The grant or contract must not be after any communications to influence CARB's decision by the advisory committee member on that particular agreement.

- Gov Code 11120 et seq - Bagley-Keene Open Meeting Act
  - When the legislature set up EJAC with statute, this puts it under the jurisdiction of the Bagley-Keene Open Meeting Act. This requires 10 day notice of agendas, public access to meetings, and opportunities for public comment.
  - Public Records Act. Someone from the public can ask the members or committee to present records. This may require information from personal phones and computers. CARB will help EJAC members addressing this if needed. Consider limiting information provided in emails to make this easier.
- Questions and discussion:
  - EJAC Member: We are not able to be named on a contract, but how does it work if an EJAC member will still end up doing work that is funded by the grant?
    - The EJAC member provided additional details which may be incorporated into a frequently asked questions or hypothetical document that CARB may develop for all its advisory committees.
  - EJAC Member: One problem is the lack of interaction with board members because of Bagley-Keene. It sounds like the legislature could have been more specific and allowed for further interaction, but they didn't. We could talk to legislators and get EJAC access; there may be potential to amend Bagley-Keene.
  - Chief Counsel: It can be amended. Another relevant amendment under consideration is further changes to remote access as the exception allowing hybrid meetings expires soon.
  - EJAC Co-Chair: I should not be listed on scope of work and should not be signatory. Can a person who is subject to this lead the work write the grant application? I also heard the call for a legislative fix. It would be good if we could collaborate between CARB and EJAC on that. It is important to be transparent to the public, and there are also different constraints on EJAC.
  - CARB: We are keeping track of these questions, and feel free to send emails with more questions. We will consider the process to respond, which may include a frequently asked questions document.
  - EJAC Member: As soon as someone becomes an official alternate, Bagley-Keene and these restrictions become applicable, if the Board approves them. You can see the issue that arises for small organizations.
  - Board Member: I don't think these rules have much flexibility but I do think that you are entitled to answers. Not sure what the issue is with constraints on Board Member communications regarding Bagley-Keene but we can talk about it.
  - EJAC Member: We do get to talk to one Board Member and the Chair, but we have heard that we can't exchange wordsmithing with the rest of the Board. We made a lot of progress when we met in the Joint EJAC-CARB Board Meeting, but that was 14 months into the process of the 2022 Scoping Plan Update. There needs to be a system or process whereby we can float scenarios and ask questions of a knowledgeable Board

- and have them addressed in real time, instead of wasting resources and time without understanding issues. It feels like getting into dialogue should be easier.
- EJAC Member: When should we expect a response on FAQ for 87104?
  - CARB: We will provide an update soon.

### **Overview of Board Commitments and Scoping Plan Resolution**

- Presentation from Stephanie Kato, Industrial Strategies Division (ISD), lead staff from development of 2022 Scoping Plan
  - Many other divisions are covered by this scoping plan (e.g. buildings and vehicles) – updates today will be primarily focused on activities that ISD is participating in
  - Staff will be bringing forth many regulations for the Board’s consideration to help implement the plan. Teams that worked on the Scoping Plan will now work on updates to programs and development of new programs.
  - Staff will be working throughout the year on providing information to the public.
  - CARB and the California Public Utilities Commission (CPUC) are aligned on SB 350 (electricity sector integrated research targets for 2030), Natural and Working Lands (NWL) AB 1757 Expert Advisory Committee established by CARB and the California Natural Resources Agency (CNRA) – held their first meeting, and have requested committee feedback on setting targets by the end of this year.
    - Recording of that Advisory Committee meeting is available on the CNRA website, and the Committee is recruiting tribal representatives
    - Had a formal AB 757 consultation with the Hoopa Valley tribe in January
  - We are looking to improve the Climate Vulnerability Metric (CVM) by incorporating new components like the economic impacts of wildfire.
    - We held a workshop on the comprehensive strategy for net zero emissions for the cement sector (per SB 596) and are working on a strategy for that due later this year
    - We are continuing to implement programs from the 2017 Scoping Plan Update, such as regulation for sulfur hexafluoride emissions, gas insulated switch gears, mandatory reporting of greenhouse gas (GHG) emissions, and GHG emissions for crude oil and natural gas facilities.
    - We are holding workshops on proposed changes to Advanced Clean Fleets (ACFs) and LCFS, among other regulations, coordinating with the Research Division at CARB on pesticide and GHG research, and working with the Department of Finance to ensure there are resources to implement programs such as SB 905, AB 1757, SB 1075, as well as coordinating with sister agencies on the Methane Task Force.
  - Questions and Comments:
    - EJAC Co-Chair: I would appreciate hearing more about the conversation in December about adding language to the resolution on further public health analysis.



- CARB: Maybe that referred to the social cost of carbon or the Climate Vulnerability Metric. We would like to circle back on anything that was changed because we are not clear on what this refers to.
- EJAC Co-Chair: We also requested a rulemaking calendar – recognizing that EJAC has limited time and scope, we want to make sure that we have information on what we are advising on.
- EJAC Co-Chair: If you could share the info from this presentation in written form so it can be seen, that would be appreciated.

*Break for lunch*

### **Public Comment**

- Edgar Evans, CA Compost Association
  - Represent organic composters in the state and support EJAC involvement on NWL and stand with EJAC regarding zero-emission vehicle (ZEV) lifecycle assessment. AB 1912 calls for new battery electric vehicles to get carbon-intensity assessments, and expressing support for AB 1912, as well as for end-of-life recycling for batteries (SB 615).
  - The fact that batteries are produced by mining in other countries with harmful labor conditions is a problem. Have provided credible papers on these harms.
  - The European Union adopted the European Battery Directive and want that to be incorporated in California.
- Mike Bullock
  - San Diego was given an initial reduction target of 19%. The Scoping Plan said 25% by 2030, so this is going in the right direction.
  - We must electrify fast but that is insufficient because we must reduce driving significantly as well.
  - For EJ, we need to seek justice for people living in apartments. In Appendix D – there is a discussion of road use charges and parking fees. Parking is expensive, and we pretend it doesn't increase rent, but it does. This is a social inequity. Rent needs to be unbundled from parking (in terms of assignment of parking). Rewards-based unbundled parking: for car storage, give a price break and when the car is gone, still must pay for the parking spot.
- Rafael
  - On draft language, I want to support idea of increasing membership of EJAC and timeframe for appointments.
  - Sounded like the Board Member was saying the issue is moot, I want to agree with expanding from 11 so that it is easier to get a quorum and to get work done.

### **Draft March 15<sup>th</sup> Meeting Agenda**

- EJAC Co-Chair: I want to request that the Ad Hoc and presenters for March 23<sup>rd</sup> have time to meet between the EJAC meeting on March 15<sup>th</sup> and the Board meeting.
- EJAC Co-Chair: When we talk about per diem for a permanent EJAC, is that the same as other meetings where Board members are reimbursed? Or has that not been defined for EJAC yet?

- CARB: It's the same as it has been. Per diem for EJAC members is \$500 per EJAC meeting day or for attendance at a CARB public meeting where EJAC is on the agenda. AB 32 calls for the EJAC to receive a "reasonable per diem." The rate is specific to the EJAC & not the same for Board members or other CARB committees.
- EJAC Co-Chair: I want to make sure there is time to do pre-work with CARB and Co-Chairs on understanding rulemaking information and timelines, so that Co-Chairs have enough information to be able to help guide the discussion. Also want to make sure that EJAC is given information on CARB listservs to join, as well as on relevant staff.
- EJAC Member: In the early 2000s, there was a meeting on EJ engagement with the state. We've come a long way since then. There are seven different climate regions in the state; a 15 member EJAC might be good. More tribal representation would be good. I would like to understand the tangible impacts of our work through some sort of index (maybe the human development index), so that we and people on the ground can know if our efforts are working.
- CARB: We talked with co-chairs about updates on rulemaking related to Scoping Plan implementation. We believe this will help EJAC know what to work on.
- EJAC Member: The rulemaking discussion should include coverage of Greenhouse Gas Reduction Funds (GGRF) projects. GGRF funds are a part of the AB 32 funding and should be part of the purview of EJAC. That could be delayed to a future meeting, though.
- EJAC Member: What is happening for the March 23<sup>rd</sup> CARB Board Meeting?
- CARB: The March Board meeting is to appoint the EJAC members and alternates, and adopt the charter.
- EJAC Co-Chair: Focusing on rulemaking activities and getting a sense of what is immediately ahead of us will be useful. I want to encourage us to think about what else is within the scope of AB 32, especially while we're early in the process. It would be good to have a comprehensive understanding of everything before we dive in and prioritize.
- EJAC Co-Chair: The fact that alternates are needed by March 23<sup>rd</sup> is new information – if we're still editing the language, what happens if members can't pick alternates in time?
- CARB: We would like to think through the process for alternates with the Ad Hoc sub quorum, and have an additional Ad Hoc sub quorum between the 15<sup>th</sup> and 23<sup>rd</sup>.
- CARB: Next meeting will be a hybrid meeting held at Bay Area Metro at 375 Beale Street in San Francisco. The finalized agenda and Bagley-Keene notice will be posted by Friday March 3<sup>rd</sup>.
- EJAC Co-Chair: We should make a sub quorum group for tribal inclusion.