

August 29, 2019

Chair Mary Nichols
California Air Resources Board
1001 I St., Sacramento, CA 95814

Submitted electronically via
https://www.arb.ca.gov/lispub/comm/bcsubform.php?listname=tfs2019&comm_period=N

Re: Deficient Review of California Tropical Forest Standard Under California Environmental Quality Act Requires Rejection of Endorsement of Standard

Honorable Chair Nichols:

This letter is provided as comment on the revised version of the California Tropical Forest Standard (<https://www3.arb.ca.gov/cc/ghgsectors/tropicalforests.htm>) (CTFS) as developed by the California Air Resources Board (ARB); on the Environmental Analysis (EA) of the standard; and on related documentation made available under the framework of the California Environmental Quality Act (CEQA).

Our organization Biofuelwatch has a long history of working to address the environmental and social harms associated with emissions trading schemes, and in particular we have engaged on the CTFS issue because of the explicit intent of the ARB to see the CTFS utilized by the International Civil Aviation Organization's (ICAO) Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). It is with the experience and knowledge gained from our long history of engagement on these issues that we provide this letter, and importantly, provide the accompanying documentation for inclusion on the public record for this matter.

The irregularities surrounding the development and review of this proposed standard are numerous and are cause for alarm. In fact, the mere existence of the proposed CTFS is irregular in that there is no mention of the development of a protocol of this nature included in the 2017 Scoping Plan, and there is no existing legal legislative mandate for the ARB to develop a tropical forest-based carbon credit scheme.

Concerns from the environmental justice community have also been rudely dismissed. Remarkably, in ARB staff efforts to suggest that this scheme adheres to the values of environmental justice, the ARB made direct reference in the "International Sector-Based Offsets" White Paper of October 2015 to the importance of engaging with the ARB Environmental Justice Advisory Committee (EJAC) in developing a REDD-based offset credit for the California carbon market.

Public statements from the ARB about listening to the EJAC aside, the ARB has totally and completely ignored **the final recommendations of the EJAC to not pursue a tropical forest-based offset scheme.**

On this basis alone the directors of the ARB must reject endorsement of the CTFS.

Failure to adhere to the recommendation of the EJAC on this matter would be a profound gesture of the ARB only listening to the EJ community when it is convenient to do so – a defining characteristic of institutional environmental racism, and the type of institutional failing that the ARB was mandated to address with the passage of the landmark AB 32 Global Warming Solutions Act.

Another serious concern is that the process since the heated November 16, 2018 ARB hearing on the CTFS matter has been opaque and anti-democratic. Contrary to the description posted on the ARB webpage for CTFS regarding how “CARB continued to assess issues raised by stakeholders and received additional input from members of the Assembly” the process was neither public nor inclusive. No public record of this process exists, and concerned members of the public have no means to access or review the process that was pursued. Yet the ARB refers to this process as justifying a staff recommendation to the directors to endorse the standard. This is irregular at best.

Though the resolution passed last November at the ARB board meeting made specific mention of the Joint Legislative Committee on Climate Change Policies (see transcript in accompanying materials), a legitimate, formal, transparent and publicly noticed hearing on this matter never occurred, as requested by many parties concerned about the standard. Instead the matter was relegated to an irregular “stakeholder process” that placed severely deficient and narrow handrails on the discussion of the matter.

Directors of the ARB should be concerned and alarmed about the manner in which this matter was shuttled through a “faux-review process” under the auspices of an exclusive group of Members of the Assembly who failed to engage other informed members of the legislature on these matters.

Such was the difference of opinion and level of concern about the inadequacies of the discussion regarding the deficiencies of the CTFS that a California State Senator was compelled to compose and send his own letter to the ARB communicating opposition to endorsement of the CTFS.¹

¹ This letter from the Senator opposing endorsement of the CTFS is included in the package of material submitted with this letter for inclusion on the public record on the CTFS proposal, as are many more documents related to the irregular “stakeholder process.”

The obvious conclusion for board members in now having to wrestle with this highly charged controversy is that the CTFS matter should have been more thoroughly vetted by the legislature, affected populations and the concerned public, **as intended by the resolution passed at the close of the hearing on this matter last November.**

This letter from the Senator opposing endorsement of the CTFS cited here is included in the package of material submitted herewith for inclusion on the public record on the CTFS proposal, as are many more documents related to the irregular “stakeholder process.”

As though this series of events would be sufficient for directors to not endorse the CTFS at this time, there are now important questions being raised regarding verified reports of an ARB board director, Hector de La Torre, and ARB staff, scheduling and attending private meetings with legislators to garner support for the standard, and lobby for the CTFS by responding to the documented concerns and criticism of the standard by the opposition. This appearance by a board director with ARB staff in private meetings with legislators regarding a matter currently before the board is highly irregular. This dynamic is noted in this letter as a development of factual interest for directors to fully understand the ongoing irregularities of the process surrounding the CTFS.

In this vein, it is worth reiterating in detail that the CEQA review of the CTFS is deficient. Directors of the board should be forewarned that the EA fails to inform the decision-making responsibility of the board of directors in that much relevant and crucial information which has been made available to the ARB has not been included in materials provided for directors to familiarize themselves with the complexities, historical precedents and evidence based assessments of the policy proposal. Thus the directors do not have the frank and transparent assessment of the standard that is necessary for making an informed decision. That is a fatal failing of the CEQA review of this matter.

For the sake of brevity, the following points provide examples of the failures of the environmental review of the CTFS to address important topics:

- Failure of the EA to address climate impacts from aviation nor the proposed aviation industry plan for climate, while implicitly describing that utilization of the CTFS by ICAO CORSIA as a desirable outcome from the endorsement of the CTFS. Endorsing CTFS thus becomes an implicit endorsement of CORSIA. The EA fully ignores CORSIA, without providing the most fundamental description of the scientifically dubious plan nor the probable impacts resulting from endorsement of CTFS, including a foreseen explosion in demand for palm oil-based aviation biofuels.

- Failure of the EA to provide adequate analysis of cumulative impacts. The EA analysis of cumulative impacts fails to provide any evidence to support assertions regarding the insignificance of impacts of endorsing the standard.
- Failure of the EA to provide an adequate “alternatives analysis.” The alternatives analysis fully fails to provide a meaningful discussion of alternatives, and fails to provide any basis for the assumptions contained in the statements regarding a “no project” alternative.
- Failure of the EA, and thus the responsible agency, to take responsibility for the action and for the impacts of the action. The ARB quest for exemption from CEQA is ultimately the full expression of the agency willful denial and obfuscation of the evidence that demonstrates the harms that are to be associated with the CTFS scheme, and the incapacity of the standard to prevent harm, or offer any significant redress when harm occurs, which is inevitable due to the conceptual basis of the scheme.

Taking these points regarding the irregularities of the process and the deficiencies of the environmental review process into consideration with the other evidence exposing the risks and dangers embedded in this proposed action will provide directors the insight they need to reject endorsement of the CTFS.

Please note that this letter has been submitted in a package that includes more than 30 documents that are relevant to this letter, and to the arguments against endorsing CTFS.

Thank you for your attention to this letter.

Sincerely,

A handwritten signature in black ink, reading "Gary Graham Hughes". The signature is written in a cursive, flowing style.

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**List of Documents Submitted for Public Record on
California Tropical Forest Standard**

Subject Matter: Transcript of Nov 16, 2018 Air Resources Board public meeting on consideration of endorsement of CTFS, including irregular resolution

ARBmeetingtranscript_111618.pdf

Subject Matter: Documents related to irregular “stakeholders process” facilitated by Assemblymember E. Garcia et al.

KM talking points handout_Jan2019.pdf

Memo - Environmental Integrity_BarbaraHaya_Jan2019.pdf

Safeguards Limits_Feb 1.pdf

Notes from TFS Meeting Sac Jan 29.pdf

ARB EO Richard Corey Comments.pdf

TFS_suggestions_clean_03-27 (3).docx

6.3.2019 TFS Stakeholder Meeting Agenda.pdf

CTFS Stakeholder letter 2019 May31.pdf

Subject matter: Correspondence between legislators and ARB and CalEPA

2019-05-08 offsets letter to CalEPA & ARB.pdf

2019-06-03_Dukeoffsetsletter.pdf

2019-06-13_ARBCalEPAltr_offsets.pdf

2019-06-17 E Garcia TFS letter to ARB 2.pdf

2019-08-13 Offsets Wieckowski ltr ARB.pdf

Subject matter: communication from indigenous groups in Acre concerned about process and lack of benefits sharing related to REDD projects

Acre indigenous letter to CA Germany 5 15 19.pdf

Indigenous-letter-May-2019-Acre-Amazonas.pdf

Subject matter: Media coverage and investigative journalism reports regarding CTFS/REDD and related offsets issues

California split over carbon trading plan for tropical forests - Reuters.pdf

An (Even More) Inconvenient Truth_ProPublica.pdf

These 4 Arguments Can't Overcome the Facts About Carbon Offsets for Forest Preservation — ProPublica.pdf

California Legislators Urge Caution, but Greenlight a Plan That Could Lead to the Widespread Use of Forestry Offsets — ProPublica.pdf

If Carbon Offsets Require Forests to Stay Standing, What Happens When the Amazon Is on Fire_ProPublica.pdf

Carbon Pulse August-14-2019 WieckowskiltrtoARBreTFS.pdf

CarbonPulse_EULawmakersUrgeCaliforniaToRejectREDDFearingWiderUseByAirlinesUnderCORSIA.pdf

Landowners are earning millions for carbon cuts that may not occur - MIT Technology Review.pdf

Whoops! California's carbon offsets program could extend the life of coal mines. - MIT Technology Review.pdf

Managing-Uncertainty-in-Carbon-Offsets-SLS-Working-Paper.pdf

United Airlines Expands Commitment to Biofuels.pdf

Subject Matter: Misc letters related to CTFS and Indigenous Rights Report Documenting Abuses of REDD+

MRG-Key-Trends-Report-2019-FINAL.pdf

Open Letter by Swift Foundation – Swift Foundation.pdf

Open-letter-on-the-Tropical-Forest-Standard-EU-Parliament.pdf

Sacred America Letter to Governor Newsom.pdf

OaklandInstitute_evicted-carbon-credits_report.pdf

2019.08.29 CARB CEJA TFS PRA .pdf