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11
12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF LOS ANGELES

14 COMMUNITIES FOR A BETTER
ENVIRONMENT, a California nonprofit
15 corporation,

16 Petitioner,

17 v.

18 CALIFORNIA AIR RESOURCES BOARD;
19 STEVEN S. CLIFF, in his official capacity as
Executive Officer of the California Air Resources
20 Board; and DOES 1-20,

21 Respondents.

Case No. **26STCP02498**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Code Civ. Proc., §§ 1085; 525; 1060;
Pub. Resources Code, § 21168.5

**CALIFORNIA ENVIRONMENTAL
QUALITY ACT CASE**

1 **INTRODUCTION**

2 1. California’s low-income communities and communities of color are disproportionately
3 impacted by exposure to air pollution and the impacts of climate change. These communities face a
4 triple burden of rising temperatures, air pollution, and health effects from extreme heat and poor air
5 quality.

6 2. Since 2006, California has aimed to gradually reduce greenhouse gas emissions below
7 1990 levels, in part by auctioning pollution allowances with a decreasing overall cap on total
8 allowances. In recognition that low-income communities and communities of color are particularly
9 impacted by climate change and air pollution, the Legislature has developed programs to utilize the
10 proceeds of the allowance auction to fund environmentally beneficial projects in these disadvantaged
11 communities.

12 3. On May 29, 2026, Respondent the California Air Resources Board (“CARB”) approved
13 “Regulatory Amendments to the Cap-and-Invest Program” (“Amendments” or “Project”) that
14 significantly threaten both California’s ability to achieve its emissions reductions targets as well as the
15 state’s ability to continue providing the environmentally beneficial programs it has funded through its
16 allowance auctions. The Amendments lock in decades of subsidies for polluting industries, without
17 CARB having performed the required analysis of their wide-ranging environmental harms that would
18 empower decisionmakers to make a fully informed determination about the wisdom of these significant
19 changes. CARB’s approval of the Amendments and certification of an inadequate Final Environmental
20 Impact Assessment (“Final EIA”) along with the adoption of related findings and a statement of
21 overriding considerations violated the California Environmental Quality Act (“CEQA”), Public
22 Resources Code section 21000 et seq., and the CEQA Guidelines, 14 California Code of Regulations
23 section 15000 et seq.

24 4. While CARB notified the public on January 20, 2026, about potential revisions to the
25 Cap-and-Invest program, the Amendments CARB adopted on May 29 were significantly altered by so-
26 called 15-day changes on April 14, 2026, just a little over a month prior to the May 28 hearing. The
27 Draft EIA was not revised to address these significant changes, and the Final EIA was not posted on
28 CARB’s website until May 26, 2026, just two days before the hearing began. Significant aspects of the

1 Amendments that create the environmental impacts that Petitioner Communities for a Better
2 Environment (“CBE” or “Petitioner”) objects to were not included among the initial revisions
3 announced in January.

4 5. For instance, industries that already receive significant assistance from the State to
5 insulate them from having to fully reduce greenhouse gas emissions or purchase allowances to cover
6 their emissions are afforded the opportunity to obtain even more free allowance credits as a result of
7 these late changes. Indeed, an academic reviewing the proposal observed that certain industries could
8 receive so much free assistance through these programs that they might not have to reduce their
9 emissions further or purchase additional allowances. Yet CARB failed to fully analyze the
10 environmental impacts of this significant change in policy, and its environmental document did not even
11 fully disclose the extent of this new assistance program.

12 6. In adopting the Amendments, CARB recognized that it lacked complete information
13 about the environmental impacts of the regulatory changes, and brushed aside evidence submitted by
14 impacted community members, academics, scientists, advocates, and air district staff on the significant
15 environmental impacts that the proposed changes would have throughout the state.

16 7. CARB’s findings and statement of overriding considerations, adopted in connection with
17 the Amendments, are also invalid both because they unlawfully purport to override impacts that can and
18 should have been analyzed and mitigated more fully and because they are not based on substantial
19 evidence supporting either the purported benefits of the Project or the environmental effects being
20 outweighed.

21 8. CARB also failed to properly respond to numerous public comments on the Draft EIA; its
22 responses were conclusory, evasive, confusing or otherwise non-responsive, contrary to the
23 requirements of CEQA. CARB further violated CEQA by failing to recirculate a new EIA for public
24 comment even after significant new information was presented in comments and after CARB made
25 significant changes to the Project that were not analyzed in the Final EIA.

26 9. For these reasons, Petitioner requests a writ of mandate directing CARB to vacate and set
27 aside its approval of the Project, its certification of the Final EIA, and its adoption of related findings
28 and statement of overriding considerations.

PARTIES

1
2 10. Petitioner COMMUNITIES FOR A BETTER ENVIRONMENT (“CBE” or “Petitioner”)
3 is a community-based California non-profit environmental health and justice organization. CBE’s
4 mission is to build people’s power in California’s communities of color and low-income communities to
5 achieve environmental health and justice by preventing and reducing toxics and air and water pollution
6 and building healthy and sustainable communities. CBE’s members live fence-line to refineries,
7 industry, and transportation corridors. The communities where CBE organizes suffer disproportionately
8 high rates of asthma and respiratory illnesses, heart problems, cancer, low birthrates, and miscarriages.
9 The fence-line communities where CBE members live, work, and play are projected to experience
10 heightened negative impacts from climate change, including extreme weather resulting in heightened
11 mortality risk. As a result, CBE has engaged with the Community Emission Reduction Plan processes,
12 one of the many vital processes that are funded by the proceeds from the allowance auctions.

13 11. By this action, CBE seeks to protect the health and welfare interests of its members and
14 the general public, and to enforce a public duty owed to them by CARB. CBE’s members have an
15 interest in their health and well-being, as well as an interest in the conservation, environmental,
16 aesthetic, and economic interests of California. CBE’s members who live, work, and recreate near the
17 major greenhouse gas emission sources, including refineries, power plants, and transportation corridors,
18 and have engaged on their own and on CBE’s behalf in programs funded by the proceeds from
19 allowance auctions. As such, CBE’s members have a right to and a beneficial interest in CARB’s
20 compliance with CEQA. These interests in a clean environment have been, and continue to be,
21 threatened by CARB’s decision to approve the Amendment, certify the Final EIA, and adopt a
22 Statement of Overriding Considerations in violation of CEQA and, unless the relief requested in this
23 case is granted, will continue to be adversely affected and irreparably injured by CARB’s failure to
24 comply with the law.

25 12. Respondent and Defendant CALIFORNIA AIR RESOURCES BOARD is the State
26 agency responsible for protecting the public from the harmful effects of air pollution and developing
27 programs and actions to fight climate change, with certain powers and duties under the California Health
28 and Safety Code.

1 by concurrently filing a notice of its election to prepare the administrative record for this action.

2 21. Within 10 days of this filing, Petitioner will notify the California Attorney General that it
3 has filed this Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief, thereby
4 complying with the requirements of Public Resources Code section 21167.7.

5 22. Petitioner has performed any and all conditions precedent to filing this instant action and
6 has exhausted any and all available administrative remedies to the extent required by law.

7 23. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law unless
8 this Court grants the requested writ of mandate to require Respondents to set aside their approval of the
9 Amendments and the Final EIA. In the absence of such remedies, Respondents' approvals will remain in
10 effect in violation of state law.

11 24. Petitioner has exhausted all administrative remedies by submitting written comments on
12 the Project to Respondents to request compliance with CEQA and the completion of full and adequate
13 environmental review. All issues raised in this petition were raised before Respondents by CBE, other
14 members of the public, or public agencies prior to approval of the Project.

15 25. The maintenance of this action is for the purpose of enforcing important public policies
16 of the State of California with respect to the protection of the environment under CEQA. The
17 maintenance and prosecution of this action will confer a substantial benefit upon the public by
18 protecting the public from environmental and public health harms alleged in this Petition. Petitioner is
19 acting as a private attorney general to enforce these public policies and prevent such harm.

20 **CEQA LEGAL BACKGROUND**

21 26. CARB's adoption of the Amendments is subject to CEQA. CEQA is a comprehensive
22 statute designed to provide long-term protection of the environment. (Cal. Pub. Res. Code §§ 21000–
23 21189.) CEQA review informs decisionmakers and the public about the potential significant
24 environmental effects of a project. (CEQA Guidelines, § 15002(a)(1).) Such disclosure ensures that
25 “long-term protection of the environment . . . shall be the guiding criterion in public decisions.” (Cal.
26 Pub. Res. Code § 21001(d).) The Environmental Impact Report (“EIR”) is the “heart” of this
27 requirement. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.) The EIR has been described
28 as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to

1 environmental changes before they have reached ecological points of no return.” (*County of Inyo v.*
2 *Yorty* (1973) 32 Cal.App.3d 795, 810.)

3 27. While CARB acts pursuant to a certified regulatory program which exempts the agency
4 from preparing an EIR, the environmental analysis that CARB is required to undertake (i.e. an EIA) is
5 deemed the functional equivalent of an EIR. (17 Cal. Code. Regs. §§ 60000-60007; *POET, LLC v. State*
6 *Air Resources Bd.* (2013) 218 Cal.App.4th 681, 710.) CARB’s actions are subject to the other applicable
7 provisions of CEQA. (14 Cal. Code Regs. § 15250; *POET, LLC*, 218 Cal.App.4th at 710.)

8 28. An EIR must identify and describe “[d]irect and indirect significant effects of the project
9 on the environment.” (CEQA Guidelines, § 15126.2(a).) This includes environmental effects that cause
10 adverse effects on human beings as well as physical changes to the environment caused by economic or
11 social effects of a project. (Cal. Pub. Res. Code § 21083(b); CEQA Guidelines, § 15131(a).) An EIR
12 must also identify and analyze cumulative effects when the “incremental effects of an individual project
13 are significant when viewed in connection with the effects of past projects, the effects of other current
14 projects, and the effects of probable future projects.” (CEQA Guidelines, § 15065(a)(3); *id.* § 15130(a).)
15 In addition, “a sufficient discussion of significant impacts requires not merely a determination of
16 whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”
17 (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519.)

18 29. A program EIR is an EIR which may be prepared on a series of actions that can be
19 characterized as one large project and are related to individual activities carried out under the same
20 authorizing statutory or regulatory authority and having generally similar environmental effects which
21 can be mitigated in similar ways. “[D]esignating an EIR as a program EIR . . . does not by itself
22 decrease the level of analysis otherwise required in an EIR. All EIRs must cover the same general
23 content. The level of specificity of an EIR is determined by the nature of the project and the ‘rule of
24 reason,’ rather than any semantic label accorded to the EIR.” (*San Franciscans for Livable*
25 *Neighborhoods v. City and County of San Francisco* (2018) 26 Cal.App.5th 596, 608, internal citations
26 omitted.)

27 30. To measure the environmental damages of a project and provide adequate mitigation,
28 CEQA and its implementing guidelines require that an EIR “include a description of the physical

1 environmental conditions in the vicinity of the project” that generally reflect conditions “as they exist at
2 the time the notice of preparation is published.” (CEQA Guidelines, § 15125(a), (a)(1).) This baseline is
3 a key component in identifying and quantifying a project’s environmental effects and the starting point
4 from which a lead agency measures whether an impact may be environmentally significant. (*Ibid.*)

5 31. CEQA requires public agencies to avoid or reduce environmental damage whenever
6 feasible by considering changes in projects through project alternatives or enforceable mitigation
7 measures. (*See* CEQA Guidelines, §§ 15002(a)(2)–(3), 15126.4(a)(1)–(2); *see also* *Citizens of Goleta*
8 *Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564–65.) A public agency should not approve a
9 project as proposed if there are feasible alternatives available that would substantially lessen any
10 significant effects that the project would have on the environment. (Cal. Pub. Res. Code, § 21002;
11 CEQA Guidelines, §§ 15002(a)(3), 15021(a)(2), 15126(f); *Citizens for Quality Growth v. City of Mount*
12 *Shasta* (1988) 198 Cal.App.3d 433, 443–45.)

13 32. After releasing a draft EIR for public comment, the lead agency must evaluate comments
14 received and offer a good faith, reasoned analysis in response. (CEQA Guidelines, § 15088(a), (c).)
15 Major environmental issues raised when the lead agency’s position differs with recommendations and
16 objections raised in the comments must be addressed in detail. (*Id.* § 15088(c).)

17 33. A lead agency is required to recirculate an EIR where significant new information is
18 added to the EIR after public notice is given on the availability of the draft EIR, including changes to the
19 project as well as additional data or other information. (CEQA Guidelines, § 15088.5.)

20 34. When the lead agency approves a project which will result in significant and unavoidable
21 effects, the agency must provide reasons, supported by substantial evidence, to support its approval.
22 (CEQA Guidelines, § 15093(b).)

23 STATEMENT OF FACTS

24 I. The Cap-and-Invest Program

25 35. Adopted by CARB in 2011 pursuant to Assembly Bill (“AB”) 32 (the Global Warming
26 Solutions Act of 2006), the Cap-and-Invest program (originally known as “Cap-and-Trade”) is part of
27 California’s effort to cut greenhouse gas (“GHG”) emissions such as carbon dioxide and methane to
28 address climate change. In adopting AB 32, the Legislature recognized that action must be taken to

1 address the serious threat that climate change poses to the economic well-being, public health, natural
2 resources, and the environment of California. The impacts of climate change include more frequent and
3 extreme wildfires, extreme heat waves, and drought, amongst other impacts directly and indirectly
4 harming human health and well-being. The impacts of climate change currently fall and will continue to
5 fall disproportionately on vulnerable environmental justice communities, the same communities that
6 already face the highest levels of air pollution.

7 36. Since the adoption of AB 32, Cap-and-Invest has been reauthorized by the Legislature on
8 two occasions, first in 2017 (AB 398) and more recently in 2025 (AB 1207 and Senate Bill (“SB”) 840).
9 Both legislative reauthorization processes extended the program with directives to CARB regarding its
10 implementation, as well as expressions of intent regarding the expenditure of the program’s revenue, the
11 Greenhouse Gas Reduction Fund (“GGRF”).

12 37. Together, AB 32, AB 398, and AB 1279, established a series of emissions targets that
13 decline over time to guide the Cap-and-Invest program. California’s next goal is to reduce emissions to
14 40% below 1990 levels by 2030, with a further long-term goal of reducing emissions 85% below 1990
15 levels by 2045.

16 38. AB 1279 requires CARB to develop a Scoping Plan every 5 years that outlines how
17 California will reach its climate targets. The last Scoping Plan was completed in 2022 and found that
18 California should aim to reduce GHG emissions to 48% below 1990 levels by 2030 to be on track to
19 achieve the 2045 target of 85% below 1990 levels by 2045.

20 39. AB 32 requires CARB to convene an Environmental Justice Advisory Committee
21 (“EJAC”) to advise the board in developing the scoping plan and pertinent matters to the
22 implementation of AB 32, including the Cap-and-Invest program. On August 14, 2025, the EJAC
23 approved an amended version of the “EJAC Cap and Trade Program Resolution.” The EJAC has not
24 been convened since its last meeting on October 16, 2025.

25 **A. Market Design**

26 40. Under the authority of AB 32, Cap-and-Invest operates as a “market-based compliance
27 mechanism” with “declining annual aggregate emissions limitations for sources or categories of sources
28 that emit greenhouse gas emissions.” (Cal. Health and Safety Code, §38505 (k).)

1 41. Cap-and-Invest applies to large industrial facilities that emit 25,000 metric tons or more
2 of carbon dioxide equivalent (“CO₂e”) per year. Covered entities include petroleum refiners, electricity
3 generators, and petroleum and natural gas suppliers amongst others.

4 42. Since its inception, the program has had two main compliance mechanisms available to
5 covered entities for purchase to demonstrate compliance: “allowances” and “offsets.” An “allowance” is
6 an authorization to emit up to one metric ton of carbon dioxide equivalent. Allowances are issued via a
7 quarterly auction, although some are given for free to certain industries and electric utilities. The number
8 of allowances issued by CARB is determined by the declining “cap” of the program which is set by
9 CARB. Allowances are intended to achieve California’s emissions targets, therefore the declining cap is
10 targeted to achieve those goals. Over time, as fewer allowances enter the market, allowance scarcity is
11 expected to drive up the costs of allowances and the cost of compliance, by design.

12 43. Allowances are given to select industries for free as industrial assistance to reduce
13 “leakage.” Leakage refers to covered entities moving outside of the state to reduce regulatory burden.
14 AB 1207 calls for CARB to study leakage risk. Academics have noted doubts that increasing industrial
15 assistance could further reduce leakage—this assistance may just transfer more value to producers
16 without materially changing production decisions. (Fowlie, Meredith, “A Stress Test for California
17 Carbon Pricing,” *Energy Institute Blog*, April 27, 2026,
18 <https://energyathaas.wordpress.com/2026/04/27/a-stress-test-for-california-carbon-pricing/>.)

19 44. “Offset projects” (commonly referred to as “offsets”) are efforts that CARB has deemed
20 to reduce GHG emissions. The vast majority of offsets are forestry projects that maintain or plant trees
21 to hold carbon. Offset projects must be operated by certified entities and documented through “offset
22 protocols” listed within the regulation. (See Cal. Code. Regulation, § 95802.) The operator of an offset
23 project can then sell value of emissions reductions to covered entities who can rely on the reductions by
24 the offset project to comply with their required emission reductions. Offset protocols have been the
25 subject of much discussion, scrutiny, and debate in the public, academia, and the Legislature. (E.g.,
26 Haya, Barbara K & Lezak, Stephen, “California sends millions of dollars out of state for carbon offsets
27 of dubious quality,” August 6, 2025, [https://gspp.berkeley.edu/archived/files/page/California-sends-
28 money-out-of-state-for-carbon-offsets--May-2025--BCTP-Policy-Brief.pdf](https://gspp.berkeley.edu/archived/files/page/California-sends-money-out-of-state-for-carbon-offsets--May-2025--BCTP-Policy-Brief.pdf); EJAC Cap and Trade

1 Program Resolution, approved August 14, 2025, [https://ww2.arb.ca.gov/sites/default/files/2025-](https://ww2.arb.ca.gov/sites/default/files/2025-08/EJAC%20Cap-and-Trade%20Program%20Recommendations_1.pdf)
2 [08/EJAC%20Cap-and-Trade%20Program%20Recommendations_1.pdf](https://ww2.arb.ca.gov/sites/default/files/2025-08/EJAC%20Cap-and-Trade%20Program%20Recommendations_1.pdf), Recommendation #2.)

3 45. Allowances and offsets may be purchased, held, and/or sold by covered entities outside
4 of their first auction or initial purchase. Such banking and resale has been referred to as a key
5 consideration of the program’s “market” design and distinguishes it from direct regulation. Whereas
6 direct regulation results in more immediate emissions reductions, it also requires more immediate
7 investment. The cost of compliance under Cap-and-Invest is the motivation to reduce emissions. As the
8 cost of compliance increases, covered entities are expected to choose the most cost-effective emissions
9 reduction path forward.

10 **B. The Greenhouse Gas Reduction Fund (“GGRF”)**

11 46. Allowance auctions happen on a quarterly basis, and the revenue gained from the sale of
12 allowances at auction is held by the state in the Greenhouse Gas Reduction Fund (“GGRF”). Over the
13 past few years, the GGRF has netted an average of \$4 billion annually.

14 47. AB 1532 requires Cap-and-Invest auction revenue be directed toward the most
15 disadvantaged communities and households in the state, wherever applicable and to the extent feasible.
16 SB 535 and AB 1550 require that a minimum of 35% of GGRF investments benefit priority populations,
17 which include disadvantaged communities and low-income communities and households. CARB and the
18 Department of Finance have collaborated on annual reports analyzing GGRF expenditure since at least
19 2015. CARB’s reports track GGRF expenditures and the metric tons of GHG emissions reduced
20 resulting from GGRF investments. CARB reports that 73% of GGRF investments benefit priority
21 populations, greatly exceeding the statutory requirement. Cumulatively, GGRF investments have
22 resulted in over 1.6 million metric tons of GHG reductions and 122,000 jobs, over 13,600 affordable
23 housing units and expanded transit services.

24 48. Since 2017, under AB 398, a majority of the GGRF has been allocated by the Legislature
25 to priority programs through “continuous appropriations” for programs such as community clean air
26 programs, transit, safe drinking water, and affordable and sustainable housing. AB 398 also expressed
27 intent for unappropriated GGRF to be put towards addressing air toxics and criteria air pollutants,
28 transportation, urban greening, and climate adaption amidst other priorities.

1 49. In the 2025 reauthorization of the program, the Legislature adopted SB 840, which
2 adjusted the allocation of the GGRF, largely retaining the historic mix of funds prioritized and adding or
3 extending “continuous appropriations” for community clean air programs, safe drinking water, low-
4 carbon transit, and affordable and sustainable housing.

5 **C. The California Climate Credit**

6 50. Revenue from the sale of allowances also funds a bill credit for ratepayers of investor-
7 owned utilities known as the “California Climate Credit.” This credit alleviates high energy costs in
8 California and offsets the costs of the program for Californians, particularly as electrification is an
9 important part of decarbonization. The Legislature underscored this in AB 1207 by requiring CARB to
10 transition funds from the gas credit to the electric credit and expand the credits issuance from twice
11 annually to four high billed months a year to “maximize customer electric bill affordability.”

12 **D. Emissions and Emissions Reductions in Environmental Justice Communities**

13 51. Large scale industrial polluters, covered entities under Cap-and-Invest, are three times
14 more likely to be located in or near disadvantaged communities and communities of color. The office of
15 Environmental Health and Hazard Assessment and CARB’s own reporting have acknowledged that
16 disadvantaged communities and communities of color continue to be disproportionately burdened by
17 pollution.

18 52. In 2017, while reauthorizing the program under AB 398, the Legislature concurrently
19 passed AB 617, which creates the “Community Air Protection Program” to address the persistent
20 concentration of toxic air pollution in California’s most vulnerable communities. The Community Air
21 Protection Program is implemented by CARB, which selects communities to develop Community
22 Emissions Reductions Plans (“CERP”) in collaboration with local air districts, community members, and
23 community-based organizations that address local air pollution and related health impacts. AB 617
24 programs across the state in various forms of development and implementation are funded by the GGRF.

25 53. Petitioner and its members have participated in the development and/or implementation
26 of CERPs in Wilmington, Southeast Los Angeles, East Oakland and Richmond. Each of these CERPs
27 were developed over the course of several years, and have action, strategies and focus areas that require
28 multiyear implementation plans and long-term funding. For example, East Oakland CERP strategies

1 include actions and strategies to reduce air pollution such as requiring an Air District rulemaking to
2 reduce fugitive dust, and harm reduction strategies such as outreach and distribution of air filtration for
3 East Oakland homes.

4 54. Under each successive authorization, AB 32, AB 398, and then AB 1207, CARB has
5 been tasked with designing the Cap-and-Invest regulation in a manner that is equitable.

6 **II. CARB’s Rulemaking and Environmental Review Process**

7 **A. Pre-Rulemaking Period — Standardized Regulatory Impact Assessment**

8 55. On June 29, 2023, CARB issued a memorandum noting the commencement of the
9 administrative record for the “2024 Amendments” to the program then known as Cap-and-Trade on
10 February 13, 2023. A CARB staff presentation to the Board on May 28, 2026, refers to the period of
11 2023-2025 as “pre-rulemaking.” During this period, CARB held several workshops on the Cap-and-
12 Invest program and proposed multiple scenarios for program allowance budgets.

13 56. On April 9, 2024, CARB shared an economic analysis called the Standardized Regulatory
14 Impact Assessment (“SRIA”) with the California Department of Finance. The SRIA included a proposal
15 for changes to Cap-and-Invest regulation based on staff workshops that took place during 2023. The
16 2024 SRIA analysis found that a reduction of 264 million allowances from 2025-2030 program balanced
17 economic needs with necessary emissions reductions to achieve California’s 2030 and 2045 target.

18 **B. September 2025 Legislative Reauthorization of the Cap-and-Invest Program**

19 57. On September 19, 2025, Governor Newsom signed into law AB 1207 and SB 840. Taken
20 together, these two bills re-authorized the Cap-and-Invest program through 2045 and adjusted GGRF
21 allocation. AB 1207 also included several legislative directives, such as removing a proportionate
22 amount of allowances from the program to claimed offsets and evaluating and addressing concerns
23 relating to overallocation of allowances for years 2021-2030. AB 1207 reiterated the Legislature’s
24 directives to CARB to ensure that the GHG emissions reductions achieved are real, permanent,
25 quantifiable, verifiable, and enforceable by the state board. The Legislature further mandated that CARB
26 adopt emissions limits and regulation measures in order to achieve the State’s 2030 and 2045 emissions
27 targets.

28 58. SB 840 adjusted allocations of the GGRF to programs in alignment with historic

1 appropriation of the GGRF by the Legislature. SB 840 also directed CARB to study and report on the
2 use of offsets and update offset protocols.

3 **C. January 2026 Initial Statement of Reasons, Draft EIA, and Public Comments**

4 59. On January 20, 2026, CARB introduced an initial package of changes to the Cap-and-
5 Invest regulation. The public was given 45 days to comment on these changes. Along with the proposed
6 rule changes, CARB released a Draft Environmental Impact Analysis dated January 20, 2026, and the
7 SRIA dated from April 2024. A public hearing on the changes was set for May 28, 2026.

8 60. The January Proposal included changes such as: removing allowances proportionate to
9 offset use, and extending a 100% assistance factor for calculating free allowances to industry. Further, to
10 meet California’s 2030 emissions target, the January proposal removed 118 million allowances from the
11 program between 2027 and 2030.

12 61. The January Proposal also included an entirely new compliance mechanism known as the
13 “Manufacturing Decarbonization Incentive” (“MDI”). The MDI established a new subsidy for industrial
14 facilities such as food, cement, glass, metal and turbine manufacturers to purchase biofuels, low-carbon
15 hydrogen, and thermal energy and for the cost of electrified equipment and thermal energy equipment.
16 While numerous, these industries have historically accounted for a small relative proportion of the
17 recipients of industrial assistance. The January MDI Proposal specifically excluded major polluters such
18 as oil and gas related manufacturing and processing, which already receive a majority of industrial
19 assistance. Under the January proposal, the MDI allowances came from future years within the cap and
20 the Initial Statement of Reasons (“ISOR”) estimated that the MDI “could exceed a total of 40 million
21 allowances over the proposed 12-year period” that the MDI would be in effect.

22 62. The proposal did not include program recommendations put forward by the EJAC such as
23 eliminating free allowances for the industrial sector, auditing and restricting allowance trading in
24 disadvantaged communities, prohibiting crediting for Carbon Capture or Direct air Capture.

25 63. The Draft EIA analyzed a reduction of 118 million allowances in the program from 2027-
26 2030. The SRIA called for a significantly more ambitious reduction of 264 million allowances from
27 2025-2030. The Draft EIA alternatives analysis did not include removal of 264 allowances from 2025-
28 2030 as an alternative.

1 64. On or about March 9, 2026, Petitioner submitted comments on the ISOR, the Draft EIA,
2 and the accompanying documents. These comments included but were not limited to the following
3 concerns:

4 Reducing the Cap

5 65. Petitioner raised concerns regarding the inconsistent analysis between the Proposal and
6 SRIA relating to the number of allowances removed from the program and the ambition of the program
7 to meet California’s 2030 and 2045 emissions targets. Petitioner further called for clear analysis
8 regarding the capacity to meet near-term goals.

9 Concerns regarding industrial allocation

10 66. Petitioner raised concerns regarding the unjustified allocation of a 100% industrial
11 assistance factor through 2035 for industries such as refining at the expense of environmental justice
12 communities. Petitioner raised that the Office of Environmental Health Hazard Assessment’s
13 CalEnviroScreen mapping of disadvantaged communities indicates that industrial activities, refining,
14 and extraction are overrepresented in disadvantaged communities.

15 Concerns regarding MDI

16 67. Petitioner and other commenters raised concerns about providing investments for fuels
17 and infrastructure that lacks adequate oversight and/or contributes to air pollution and GHG emissions.
18 Petitioner raised concerns regarding duplicative investments in polluting industries that already receive
19 generous incentives from other programs, such as the Low Carbon Fuel Standard and others. Further,
20 Petitioner raised concerns regarding the harms of emissions from crop-based biofuels’ production and
21 combustion in environmental justice communities as well as indirect land use change implications.

22 68. Other commenters raised concerns regarding the impact of additional incentives for dairy
23 methane and livestock pollution having detrimental impacts for communities near dairies.

24 69. Petitioner further objected to the inclusion of incentives for carbon capture and
25 sequestration in the MDI.

26 Failure to satisfy CEQA requirements

27 70. Petitioner noted deficiencies in the Draft EIA’s description of baseline, alternatives
28 analysis, impacts, and cumulative impacts analysis, and mitigations. Petitioner underscored that the lack

1 of analysis and factual support for conclusions in the Draft EIA failed to satisfy the requirements of
2 CEQA and would leave the Board without vital information when deciding whether to adopt the
3 proposal.

4 71. Petitioner also raised concerns that linkage with other market mechanism programs, such
5 as Washington’s Cap-and-Invest program, was a motivating factor in this rulemaking but was not
6 analyzed in the Draft EIA.

7 **D. 15-Day Changes, and Public Comments**

8 72. On April 14, 2026, CARB released an additional set of changes, with a 15-day comment
9 deadline (“15-Day Changes”). The public was initially given until April 29, 2026, to comment on the
10 proposal. On April 28, 2026, in response to a joint request from the Chair of the Senate Environmental
11 Quality Committee and the Chair of the Senate Budget Subcommittee No. 2 on Resources,
12 Environmental Protection and Energy, the comment period was extended to May 4, 2026. No additional
13 environmental review documents were released at or during this period.

14 73. The 15-Day Changes included several significant changes from the initial January
15 Proposal, detailed below:

16 Industrial Assistance Increased

17 74. The 15-Day Changes changed the baseline formula for issuing free allowances to
18 industry, which resulted in an increase in industrial assistance free allowances by 26 million, increasing
19 the allocation from 111 million in the January Proposal to 137 million under the 15-Day Changes.

20 The Manufacturing Decarbonization Incentive

21 75. The number of allowances available for the MDI increased dramatically from an
22 expected 40 million to 118.3 million. The 15-Day Changes also created the “Build Up California
23 Reserve Account” which will be 118.3 million new allowances created for the purpose of the MDI.
24 These allowances are being newly introduced into the program through the MDI “above the cap” of
25 overall emissions allowed in the program, whereas the prior version of the MDI was borrowing from
26 future allowances that were under the cap. Additionally, the eligible period for use was reduced by four
27 years from 2027-2038 in the January Proposal to 2027-2035 in the 15-Day Changes. Overall, the
28 shortened timeframe for a larger number of additional allowances under the MDI will increase the

1 near-term impact of the MDI.

2 76. Facilities eligible for the MDI were expanded in the 15-Day Changes to include
3 previously ineligible facilities: petroleum refining, petroleum and coal products manufacturing,
4 industrial gas manufacturing, basic organic chemical manufacturing, and ethyl alcohol manufacturing.
5 The oil and gas industry already receives the vast majority of free allowances; the MDI allowances
6 would be in addition to free allowances received for industrial assistance.

7 77. The covered activities that eligible facilities can claim MDI allowances for was expanded
8 to include: covering capital costs for project permitting, design, and build out and equipment installation
9 for biofuels, thermal energy and facility methane reductions; as well as altogether new applications such
10 as for sequestered or utilized captured carbon dioxide and the use of alternative materials.

11 Impact on Program Ambition

12 78. In the January Proposal, 118 million allowances were removed from the program
13 between 2027-2030 in addition to allowances removed in proportion to claimed offsets. In the 15-Day
14 Changes, the Build Up California Reserve Account introduces 118.3 million new allowances back into
15 the program via the MDI between 2027-2035. The ambition of the program is dictated by the number of
16 available allowances in the program therefore reintroducing 118 million allowances into the program
17 after removing 118 million allowances reduces the program's ambition. As California's main climate
18 program, a less ambitious Cap-and-Invest program will reduce California's ability to reach its ambitious
19 climate targets for 2030 and 2045.

20 Cost to GGRF and Ratepayer Assistance

21 79. According to Doctor Kyle Meng at the University of California, Santa Barbara, "during
22 the 2027-2030 period, fully utilized MDI would lower GGRF funds by \$2.3 billion and California
23 Climate Credit funds by \$1.7 billion – a 17% reduction for each." (Kyle Meng, et al., "Potential Lost
24 Cap-and-Invest Revenue Under the Manufacturing Decarbonization Incentive," *Environmental Markets*
25 *Lab*, April 2026,
26 [https://emlab.ucsb.edu/sites/default/files/documents/2026_capinvest_manufacturing_decarbonization_in](https://emlab.ucsb.edu/sites/default/files/documents/2026_capinvest_manufacturing_decarbonization_incentive.pdf)
27 [centive.pdf](https://emlab.ucsb.edu/sites/default/files/documents/2026_capinvest_manufacturing_decarbonization_incentive.pdf).)

28 80. The 15-Day Changes increased allocation of free allowances to industry by 26 million to

1 137 million, equivalent amounts to at least \$780 million shifted and \$4.11 billion overall in revenue
2 directed towards industrial assistance. Free allowances to industry could otherwise be sold at auction to
3 create revenue for the GGRF or for utility allocation towards the California Climate Credit.

4 **E. Comments on the 15-Day Changes**

5 81. On or around May 4, 2026, Petitioner and other commenters submitted comments on the
6 15-Day Changes. A number of comments noted that the 15-Day Changes did not address many of the
7 concerns raised in prior comments, including those on the Draft EIA. They called CARB’s attention to
8 numerous deficiencies in the proposed changes, and rulemaking process including but not limited to the
9 following:

10 Substantial Adverse Impacts of the MDI

11 82. Petitioner raised concerns regarding MDI investment in infrastructure and acquisition of
12 polluting fuels such as biomethane, biomass-derived fuels, low-carbon hydrogen, and carbon
13 sequestration. Petitioner further raised concerns that in doing so, the MDI diverts funds from pathways
14 that result in much needed emissions reductions through electrification.

15 83. Commenters raised concerns that the novel MDI mechanism is untested and comes with
16 few guardrails or guarantees, including insufficient eligibility requirements and a lack of meaningful
17 accountability mechanisms.

18 84. Petitioner and other commenters raised that these incentives along with increased
19 industrial assistance would hinder progress towards California’s climate targets.

20 85. Petitioner emphasized that industrial assistance free allowances had not historically
21 prevented refinery closures (known as “leakage”), because oil refineries operate on the global
22 marketplace and the long-term decline in California production and refining capacity is a trend that
23 predates state climate policies and market shifts to electric vehicles and hybrids. Petitioners questioned
24 the 15-Day Changes increase of industrial free allowances and whether the addition of refineries to MDI
25 eligibility to prevent leakage was therefore unjustified. Petitioner’s comments also noted that despite
26 generous free allowances to the oil and gas industry since 2017, gas prices have remained high, resulting
27 in large profits for the oil and gas industry.

28 86. Petitioner also raised that Doctor Meredith Fowlie of Energy Institute at Haas at

1 University of California, Berkeley found that the MDI and additional industrial assistance free
2 allowances could result in refineries receiving free allowances well in excess of their GHG emissions.

3 87. Petitioner emphasized that CARB’s generous industrial assistance through free allowance
4 allocation and the MDI would deter emissions reductions in environmental justice communities.
5 Petitioner further raised that investing in biofuels, biomethane, hydrogen, and carbon sequestration –
6 polluting technologies – would delay and distract from real emissions reductions. Petitioner raised the
7 findings of Doctor Kyle Meng at the University of California, Santa Barbara that a fully utilized MDI
8 would lower GGRF funds by \$2.3 billion and Climate Credit funds by \$1.7 billion – a 17% reduction for
9 each would eliminate funding for community air protection programs (AB 617), safe drinking water,
10 transit, and affordable and sustainable housing as allocated under SB 840. Petitioner raised that these
11 programs directly benefit Californians and address affordability concerns.

12 Failures of the Rulemaking Process

13 88. Petitioner and other commenters reasserted concerns made in comments on the Draft EIA
14 that CARB failed to adequately analyze the proposed amendments. Petitioner observed that the 15-Day
15 Changes were not analyzed in the environmental review documents. Petitioner raised that the EIA failed
16 to describe the project in full or adequately analyze its impacts because CARB substantially changed the
17 program without further review.

18 **F. May 2026 Joint Senate Hearing on the Cap-and-Invest Rulemaking**

19 89. On April 27, 2026, 28 legislators submitted comments on the 15-Day Changes that raised
20 numerous concerns regarding the ability of the program to meet California’s climate goals with the 15-
21 Day Changes, the lack of oversight over the MDI, and the impact of the 15-Day Changes on GGRF
22 revenue and funded programs. On May 4, 2026, Senators Eloise Gomez Reyes and Catherine
23 Blakespear submitted a list of questions and concerns to be addressed by CARB Chair Sanchez at a May
24 6, 2026, joint hearing of the Senate Environmental Quality Committee and the Senate Budget and Fiscal
25 Review Subcommittee Number Two on Resources, Environmental Protection, and Energy. Senator
26 Reyes and Blakespear’s comment letter listed 23 questions about (1) whether the Legislature’s intent
27 and direction were being executed; (2) concerns that the amendments reduce California’s ability to
28 achieve its climate goals and preserve the cap; and (3) concerns that the proposed amendments make

1 significant changes to investments funded by the GGRF without legislative direction.

2 90. On May 6, 2026, after the close of the comment period, the joint-information hearing on
3 the Cap-and-Invest Rulemaking to answer the Senate’s questions on the 15-Day Changes took place.
4 CARB Chair Sanchez and Deputy Executive Officer Rajinder Sahota, Helen Kirstein of the Legislative
5 Analyst’s Office (“LAO”), and Andrew March from the Department of Finance testified regarding the
6 changes. Various information specifically pertaining to the 15-Day Changes was presented that is not
7 included in the Draft EIA, ISOR, and SRIA. For example, at this hearing, the LAO presented a report
8 finding that the proposed amendments represent significant modifications to the program that could
9 affect the likelihood of the State reaching its climate goals, would reduce the California Climate Credit,
10 and could significantly reduce the GGRF by up to \$2 billion a year.

11 91. On May 19, 2026, an additional hearing on the 15-Day Changes was held by the
12 Assembly Budget Subcommittee Number 4 on Climate Crisis, Resources, Energy, and Transportation.
13 The LAO also presented their report to the Assembly Budget Sub Subcommittee Number 4.

14 **G. Final EIA, and CARB’s Response to Comments**

15 92. On May 26, 2026, two days prior to CARB’s scheduled voting meeting on the proposed
16 amendments, CARB posted the Final EIA along with a response to public comments. The Final EIA
17 included a number of changes to the project description, in particular adding more detail to the
18 description of the MDI, however, no substantive changes were made to the analysis.

19 93. An updated proposed resolution for the Cap-and-Invest program was posted on May 28,
20 2026, at 8:00am.

21 **H. Board Voting Meeting: May 28, 2026**

22 94. On May 28-29, 2026, CARB held a two-day public voting meeting on the Cap-and-Invest
23 proposal, which included both the January 45-Day Changes and the 15-Day Changes. The May 28,
24 2026, meeting included comments from over 200 members of the public. Many commenters called for
25 the elimination of the MDI and raised significant concerns regarding MDI subsidies and free allocation
26 cutting into GGRF revenue dedicated to programs that fund community led clean air strategies, safe
27 drinking water, public transit, and affordable sustainable housing. In particular, comments raised
28 concerns regarding the following matters:

1 Damage and risk resulting from adoption of the 15-Day Changes

2 95. Petitioner and other commenters raised concerns regarding insufficient oversight of the
3 MDI resulting in illusory, on paper only emissions reductions. Petitioner also raised concerns that the
4 MDI proposal has no additionality requirements, no binding verification, is tied to the incentive itself,
5 and has no enforceable mechanisms to prove that allowances issued result in real emissions reductions
6 beyond business as usual.

7 96. At least one commenter raised that the 2022 State OEHHA report found that under Cap-
8 and-Invest, refinery communities have already seen an increase in both PM2.5 and greenhouse gas
9 emissions, calling into question the efficacy of additional industrial assistance free allowances and MDI
10 assistance.

11 CARB Process and Timing

12 97. Petitioner and many other commenters raised concerns that the proposal had been rushed,
13 that the 15-Day Changes were out of sync with the ISOR, that insufficient environmental review had
14 been completed regarding the proposed changes, and that this rushed process had denied the EJAC and
15 the public a transparent, accountable and fair rulemaking process. Multiple commenters echoed the
16 statement that MDI is an untested, first-of-its-kind program and approving it would have massive
17 consequences for public health, which demands more meaningful public participation and more
18 thorough environmental analysis than was provided.

19 98. Commenters also raised specific concerns regarding a lack of evidence and answers to
20 discrete questions posed specifically about MDI and its potential impacts.

21 99. Multiple commenters raised concerns regarding the release of the Final Environmental
22 Impact Analysis, which occurred just two days before the hearing with no opportunity for comment or
23 review. Additionally, one commenter raised concerns regarding the many potential zoom commenters
24 who were lost in the comment process due to CARB’s comment process and potential online
25 incompatibilities. It is unclear where written comments from the day of the hearing were accepted as
26 they are not publicly available on CARB’s Board Meeting Comment Logs for all years or related
27 webpages.

1 Failure to Convene EJAC on the Proposal

2 100. The comments of former EJAC chairs Martha Dina Arguello and Catherine Garoupa
3 highlighted that EJAC recommendations were not represented in the proposal or related analysis and
4 that in fact the EJAC had no opportunity to weigh in on the proposed changes as EJAC has not been
5 convened since the January Proposal was released.

6 **I. Board Voting Meeting: May 29, 2026**

7 101. On May 29, 2026, CARB reconvened and continued the meeting on the Cap-and-Invest
8 proposal. The May 29, 2026, meeting included over 8 hours of Board discussion on the matter. Board
9 member discussion included the following topics and concerns:

10 102. Board members asked and raised questions regarding protocols and guardrails for the
11 MDI and expressed concerns that the MDI would not lead to emissions reductions.

12 103. Board members raised concerns regarding the lack of data on the MDI and comparative
13 analysis between the benefits of GGRF expenditure and MDI allocation.

14 104. Board members expressed a desire to remove the MDI from the proposal before them,
15 including a motion to remove the MDI from the proposal. In response to discussion on the motion,
16 CARB staff and CARB counsel recounted various, sometimes differing, accounts of whether and how
17 making further changes to roll back or adjust the MDI would require additional CEQA review.

18 105. Prior to voting on the final resolution, Board members moved to amend the resolution to
19 require CARB staff to hold public workshops to answer outstanding questions regarding the MDI and
20 report back to the Board on said analysis prior to MDI allowances being approved. Board Members,
21 including Chair Sanchez, stated that the proposal before them “admittedly needs additional analysis” and
22 advocated for additional public workshops to evaluate design features of the program, project
23 application criteria, and environmental impacts and benefits.

24 106. Despite concerns expressed by Petitioner, Board members, community advocates,
25 academics, and other members of the public, CARB certified the Final EIA, approved the Project, and
26 adopted related findings and a statement of overriding considerations in a vote of 10 in favor to 3
27 opposed.

1 112. The Final EIA fails to accurately describe the environmental setting for the Project, thus
2 hindering a proper analysis of Project impacts and preventing the public from understanding its potential
3 impacts. In particular, by focusing solely on the 2023 environmental setting, without disclosing the
4 increasing impacts of climate change and air pollution, nor disclosing the failings of the current
5 regulatory approach (a particularly notable omission in an environmental analysis of regulatory
6 amendments), the Final EIA fails to provide an adequate baseline against which to assess the impacts of
7 the Amendments, a critical component of a CEQA assessment.

8 113. The Final EIA fails to adequately disclose or analyze the Project’s impacts on the
9 environment, including but not limited to, the Project’s impacts on human health, greenhouse gases, air
10 quality, utilities and service systems, and energy use. Much of the Final EIA’s analysis is highly
11 generalized. Yet in discussions of certain impacts, such as Air Quality and Greenhouse Gas Emissions,
12 the Final EIA makes numeric predictions and assessments – without any revision addressing the changes
13 to the MDI. The MDI program applies to specific, identified industries, which operate known facilities
14 and have calculable emissions. Yet the Final EIA makes no effort to determine whether providing these
15 specific industries the opportunity to utilize 118 million free allowances through the MDI will increase
16 air pollution or greenhouse gas emissions beyond what was analyzed in the Draft EIA’s analysis of the
17 January Proposal. Nor does the Final EIA make an effort to determine whether construction of the
18 facilities encouraged by the MDI will increase the short-term construction impacts otherwise analyzed in
19 the Draft EIA.

20 114. Indeed, the lack of information about the impacts of the changes to the MDI was
21 concerning to CARB’s Board, who asked staff numerous questions about the likely environmental
22 impacts of the changes to the MDI. Staff was unable to provide sufficient responses to these queries,
23 revealing the fundamental lack of environmental analysis in the Final EIA.

24 115. The Final EIA also lacks analysis of the way in which the Amendments (including the
25 additional MDI allowances) will impact projects funded by the GGRF, which is an environmental
26 concern. GGRF projects have reduced greenhouse gas emissions directly by over 1.6 million metric
27 tons. CARB made no effort to ascertain a nexus between funding of the GGRF and emissions
28

1 reductions, nor to assess how declines in auction revenues that will predictably result from the MDI's
2 118 million free allowance increase will impact the performance of these GGRF projects.

3 116. The Final EIA fails to meet CEQA's informational mandates and reflect a good faith
4 effort at full disclosure. Even though the Final EIA claims to address the full scope of the Amendments,
5 it was not adequately revised to address the significant changes to the scope and operation of the MDI in
6 the 15-Day Changes.

7 117. The Final EIA fails to adequately analyze the cumulative impacts of the Project. For
8 instance, CARB staff discussed an intent to link California's Cap-and-Invest system with Washington
9 State's program, as it already has with Quebec's program. Yet the Final EIA makes no mention of the
10 environmental impacts of linking the two programs.

11 118. The Final EIA fails to adequately mitigate Project impacts. The Final EIA claims that
12 "CARB's implementation of the identified mitigation measures is infeasible," because "CARB lacks the
13 legal authority and jurisdiction to permit these projects, which inherently prevents CARB from legally
14 imposing enforceable mitigation measures." However, mitigation measures within CARB's control are
15 not discussed, including more stringent measures and more targeted and less generous industrial
16 assistance free allowances. Failing to consider such feasible mitigation measures does not comply with
17 CEQA's objectives to employ feasible mitigation measures to reduce or eliminate significant
18 environmental impacts.

19 119. The Final EIA fails to consider and adequately analyze a reasonable range of alternatives.
20 CEQA requires that an agency assess "feasible alternatives to the proposed action that would
21 substantially reduce any significant adverse impact" of the project. The Final EIA analyzes three
22 alternatives: No project, a facility-based limitation for selection facilities, and a less stringent reduction
23 in allowances than proposed in the Amendments. The Final EIA rejects consideration of more stringent
24 alternatives, even though a more stringent alternative was proposed as part of the 2022 Scoping Plan
25 Update, and CARB's analysis in the SRIA favored the balance of economic interests and GHG
26 reductions outcomes in a more stringent program than the proposal. The Final EIA rejected studying a
27 more stringent alternatives because it "may produce negative economic consequences." The failure to
28 consider a more stringent alternative was not in compliance with CEQA.

1 120. Petitioner’s review of the administrative record is on-going. To the extent that
2 Petitioner’s review identifies additional errors and non-compliance not discussed herein, Petitioner will
3 seek leave to amend the Petition and Complaint to encompass such errors and non-compliance.

4 **Inadequate Response to Comments**

5 121. Respondents failed to respond adequately to comments submitted by Petitioner and other
6 members of the public. Instead, the responses given to numerous comments on the Project’s impacts and
7 regarding the adequacy of the EIA’s treatment of mitigation measures and alternatives are conclusory,
8 evasive, confusing or otherwise non-responsive and contrary to the requirements of CEQA.

9 122. For example, in Respondents’ Master Response 4, Respondents acknowledged receiving
10 “[n]umerous comments” during the 15-day comment period that “expressed concerns that the
11 Manufacturing Decarbonization Incentive (MDI) allocation proposal would undermine California’s
12 progress toward the 2030 GHG reduction target and decrease quarterly auction revenues for ratepayer
13 benefit and the Greenhouse Gas Reduction Fund (GGRF).” Yet the response to these comments did not
14 address the MDI’s effect on the GGRF and the carbon-cutting projects it funds. Respondents referred to
15 Master Response 4’s non-answer when responding to the numerous comments urging CARB to examine
16 the declining revenue to the GGRF as an impact of the MDI Amendments. This non-response is
17 conclusory, evasive, and non-responsive to the multiple commenters’ concerns regarding the lack of
18 analysis concerning MDI’s effect on the GGRF, a program with a proven track record of lowering
19 emissions.

20 **Failure of CARB’s Findings of Fact and Statement of Overriding Considerations to**
21 **Comply with CEQA**

22 123. Respondents also violated CEQA and the CEQA Guidelines by adopting findings of fact
23 and a statement of overriding considerations in connection with the Project that are invalid. Because
24 CARB’s analysis of impacts and feasible mitigation is flawed, and it improperly declined to implement
25 mitigation that could have reduced the identified significant environmental impacts, including, but not
26 limited to, impacts to human health, greenhouse gases, air quality, utilities and service systems, and
27 energy use, its findings and statement of overriding considerations are necessarily flawed as well. CARB
28 cannot simply “override” impacts where it has failed to adopt feasible mitigation measures. Moreover,

1 the findings are conclusory and unsupported by substantial evidence in that they, inter alia, fail to
2 provide the reasoning, or analytic route from facts to conclusions, fail to describe the actual impacts of
3 the Project on the environment, fail to quantify the cost and magnitude of impacts being overridden, and
4 are grounded in demonstrably flawed and deficient data and analysis.

5 **Failure to Recirculate EIA**

6 124. Respondents contended that it “released minor modifications to the proposed regulatory
7 text for a 15-day comment period” on April 14, 2026. The characterization of modifications as “minor”
8 is significantly misleading, as revealed by the number of commenters raising “significant environmental
9 issues.” While staff found that only roughly 4 percent of comments on the January Proposal raised
10 significant issues, nearly 30 percent of comments on the 15-Day Changes raised such issues. While the
11 Final EIA contends that it fully analyzed the impact of the Amendments, the lack of modifications in the
12 Final EIA is not because the 15-Day Changes will not have significant environmental impacts. The lack
13 of modifications in the Final EIA simply reflects CARB’s failure to analyze the impacts of these
14 changes.

15 125. The lack of analysis was made clear by the questions of CARB’s Board members. Board
16 Members, including Chair Sanchez, stated that the proposal before them “admittedly needs additional
17 analysis” and advocated for additional public workshops to evaluate design features of the program,
18 project application criteria, and environmental impacts and benefits.

19 126. The 15-Day Changes should have been comprehensively analyzed in a revised Draft EIA,
20 which should have been recirculated because, due to the significant changes in the MDI, “[t]he draft
21 EI[A] was so fundamentally and basically inadequate and conclusory in nature that meaningful public
22 review and comment were precluded.” (CEQA Guidelines, § 15088.5(a)(4).) Moreover, if the MDI’s
23 changes and other regulatory changes were analyzed, there would likely have been substantial increase
24 in the severity of unmitigated environmental impacts, or new significant environmental impacts would
25 have been determined to result. Because of the conclusory treatment of the significant changes to the
26 MDI, the EIA fundamentally falls short of disclosure and must be re-drafted and re-circulated.

27 127. As a result of these actions, Respondents prejudicially abused their discretion by failing
28 to proceed in the manner required by law and by failing to act on the basis of substantial evidence.

1 Accordingly, Respondents' certification of the Final EIA and approval of the Project must be set aside.

2 128. Petitioner has a direct and beneficial interest in the action herein and has exhausted all
3 other available remedies.

4 129. Petitioner has a beneficial right to Respondents' performance of its duties based on
5 Petitioner's interest in improving the environmental and health conditions of its members and their
6 communities across the state.

7 130. Respondents' actions in approving the Project have caused and threatens to cause
8 Petitioner irreparable and substantial harm.

9 131. Petitioner has no plain, speedy, and adequate remedy at law, in that unless this Court
10 enjoins the operation and implementation of the Amendments, Petitioner and its members, along with
11 disadvantaged communities across California, will suffer from continued and increasing exposure to air
12 pollutants, including risks to health and well-being. No amount of monetary damages or other legal
13 remedy can adequately compensate Petitioner for the irreparable harm that Petitioner, its members, and
14 the residents of California will suffer from the violations of law described herein.

15 **SECOND CAUSE OF ACTION**
16 **Declaratory Relief**
17 **(Code of Civ. Proc., § 1060)**

18 132. Petitioner incorporates by reference all of the allegations of the previous paragraphs, as
19 though fully set forth herein.

20 133. A dispute has arisen between Petitioner and Respondents, in that Petitioner believes and
21 contends, for the reasons set forth above, that Respondents' actions as set forth above were unlawful and
22 invalid. Petitioner is informed and believes, and on that basis contend, that Respondents contend in all
23 respects to the contrary.

24 134. Petitioner contends that the approval of the Project did not comply with CEQA, because
25 the EIR failed to comply with CEQA's requirements for analysis, including all reasonable project
26 alternatives and mitigation of the Project's environmental impacts. Petitioner is informed and believes
27 that in response to Petitioner having identified these issues for Respondents, Respondents have
28 disagreed with Petitioner's contentions.

1 Date: July 1, 2026

Respectfully submitted,

2 STRUMWASSER & WOOCHER LLP
3 Beverly Grossman Palmer
4 Julia Michel

5 

6

Beverly Grossman Palmer

7 COMMUNITIES FOR A BETTER
8 ENVIRONMENT
9 Shana Lazerow
10 Lauren Gallagher

11 

12

Shana Lazerow

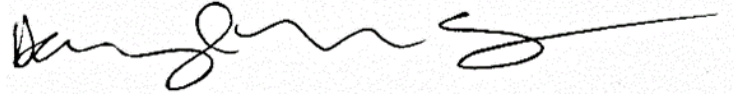
13 *Attorneys for Petitioner Communities for a*
14 *Better Environment*

1 **VERIFICATION**

2 I, Darryl Molina Sarmiento, hereby declare:

3 I am the Executive Director of Petitioner Communities for a Better Environment. I am
4 authorized to execute this verification on Petitioner's behalf. The facts alleged in the above
5 Petition and Complaint are true to my personal knowledge and belief.

6 I declare under penalty of perjury under the laws of the State of California that the above
7 is true and correct and that this verification is executed on this 1st day of July 2026 at Rancho
8 Cucamonga, California.

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13 Darryl Molina Sarmiento
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EXHIBIT A

Michael J. Strumwasser
Beverly Grossman Palmer
Dale Larson
Salvador E. Pérez
Julia Michel †
Tessa Baizer
Samantha McNichols

Senior Counsel:
Fredric D. Woocher
Bryce Gee
Andrea Sheridan Ordin

† Also admitted to practice
in Washington

July 1, 2026

Sent via email to cotb@arb.ca.gov

Clerk of the Board
California Air Resources Board
1001 I Street
Sacramento, CA 95814

RE: Notice of Intent to Commence CEQA Action
Communities for a Better Environment v. California Air Resources Board et al.,

Dear Clerk of the California Air Resources Board:

This firm writes on behalf of Communities for a Better Environment (CBE).

Please take notice under section 21167.5 of the Public Resources Code, that CBE intends to file a lawsuit under the California Environmental Quality Act (CEQA) in Los Angeles County Superior Court. The lawsuit will name as Respondents and Defendants Steven S. Cliff (in his official capacity as Executive Officer of CARB) and the California Air Resources Board (CARB), and will contend that CARB's May 29, 2026 approval of "Regulatory Amendments to the Cap-and-Invest Program," including certification of the Final Environmental Impact Assessment, the adoption of related findings and a statement of overriding considerations, and approval of the Amendments, did not comply with the requirements of CEQA. The Notice of Determination was posted on June 3, 2026.

Sincerely,



Beverly Grossman Palmer
STRUMWASSER & WOOCHEER LLP

[Signatures continued on next page]



A handwritten signature in black ink, appearing to read 'Shana Lazerow', enclosed in a thin black rectangular border.

Shana Lazerow
COMMUNITIES FOR A BETTER
ENVIRONMENT

*Counsel for Petitioner Communities for a Better
Environment*

CC: Chief Counsel Shannon Dilley, shannon.dilley@arb.ca.gov

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA
3 COUNTY OF LOS ANGELES

4 Re: *Communities for a Better Environment v. California Air Resources Board et al.*,

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
6 not a party to the within action. My business address is 1250 Sixth Street, Suite 205, Santa Monica,
7 California 90401. My electronic mail address is jmichel@strumwooch.com.

8 On **July 1, 2026**, I served the foregoing document(s) described as **NOTICE OF INTENT TO**
9 **COMMENCE CEQA ACTION** on all appropriate parties in this action, as listed on the attached
10 Service List, by the method stated:

11 If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s)
12 with the Clerk of the Court by causing the documents to be sent to One Legal, the Court's Electronic
13 Filing Services Provider for electronic filing and service. Electronic service will be effected by One
14 Legal's case-filing system at the electronic mail addresses indicated on the attached Service List.

15 If electronic-mail service is indicated, by causing a true copy to be sent via
16 electronic transmission from Strumwasser & Woocher LLP's computer network in Portable
17 Document Format (PDF) this date to the email address(es) stated, to the attention of the
18 person(s) named.

19 If U.S. Mail service is indicated, by placing this date for collection for mailing true
20 copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant
21 to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection
22 and processing correspondence for mailing. Under that practice, it would be deposited with the U.S.
23 Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the
24 ordinary course of business. I am aware that on motion of the party served, service is presumed invalid
25 if postal cancellation date or postage meter date is more than one day after date of deposit for mailing
26 contained in the affidavit. I am a resident or employed in the count where the mailing occurred. The
27 envelope or package was placed in the mail at Los Angeles, California.

28 I declare under penalty of perjury under the laws of the State of California that the above is true
and correct and that this is executed on **July 1, 2026**, at Los Angeles, California.

Julia Michel
Julia Michel

SERVICE LIST

Communities for a Better Environment v. California Air Resources Board et al.,

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<u>Via Email</u> Clerk of the Board California Air Resources Board 1001 I Street Sacramento, CA 95814 Email: cotb@arb.ca.gov	<u>Via Email</u> Shannon Dilley, Chief Counsel California Air Resources Board 1001 I Street Sacramento, CA 95814 E-Mail: shannon.dilley@arb.ca.gov
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