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Racing climate change: Collaboration and conflict in California's global climate change policy arena

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Abstract

Media accounts routinely refer to California's Assembly Bill 32 (AB 32), the Global Warming Solutions Act of 2006, as "landmark" climate change legislation. On its surface, this label is an accurate reflection of the state's forward-thinking stance across many environmental issues including pesticides, toxic substances, solid waste, and air quality. For all its promise, however, AB 32 can also be considered a low point in the landscape of conflict between state environmental regulators and California's environmental justice movement. While the legislation included several provisions to address the procedural and distributive dimensions of environmental justice, the implementation of AB 32 has been marked by heated conflict. The most intense conflicts over AB 32 revolve around the primacy of market mechanisms such as "cap and trade." This article examines the drivers and the manifestations of these dynamics of collaboration and conflict between environmental justice advocates and state regulators, and pays particular attention to the scalar and racialized quality of the neoliberal discourse. The contentiousness of climate change politics in California offers scholars and practitioners around the world a cautionary tale of how the best intentions for

integrating environmental justice principles into climate change policy do not necessarily translate into implementation and how underlying racialized fractures can upend collaboration between state and social movement actors.

Key Words: climate change policy, environmental justice, racialization

1.0 Introduction

Media accounts routinely refer to California's Assembly Bill 32 (AB 32), the Global Warming Solutions Act of 2006, as "landmark" climate change legislation. On its surface, this label is an accurate reflection of the state's forward-thinking stance across many environmental issues such as pesticides, toxic substances, solid waste, and air quality. The ambitious goals set in the bill -- to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020 and then to 80% of this baseline level by 2050 - - went far beyond any other state or the nation at the time of its passage (Hanemann 2008, Kaswan 2008). For all its promise, AB 32 can also be considered a low point in the landscape of conflict between the state's environmental regulators and its environmental justice movement. While its original passage was considered a success in state-social movement relations (Sze et al. 2009a), the implementation of AB 32 has become a source of discord between environmental justice organizations, mainstream environmental organizations, and public agencies.

In June 2009, culminating a year of increasingly tense interactions between the state agency tasked with implementing the law, the California Air Resources Board (CARB), and the members of CARB's own Environmental Justice Advisory Committee (EJAC),

seven of eleven members of the EJAC signed onto a lawsuit against the state for violating substantive aspects of the legislation relating to environmental justice and procedural requirements of the California Environmental Quality Act (CEQA). For its part, CARB pointed to what it considers extensive public participation during the creation of the Scoping Plan (its proposed framework for achieving AB 32's targets), its innovations in public health assessments, the positive potential for health improvements with reductions in both GHGs and co-pollutants through its proposed market mechanisms and the protections against "backsliding" on air quality provided by other policies such as the federal and California Clean Air acts.

This conflict between public agencies and environmental justice groups in the domain of climate change is by no means unique. Despite the recent efforts of some California and federal agencies there have been significant and unresolved conflicts over how to integrate environmental justice into state environmental policy (Liévanos 2012; London et al. 2008) including toxic and hazardous waste management (Cole and Foster 2001), water policy (Shilling et al. 2009, Sze et al. 2009b), air quality, and pesticide management (Liévanos et al. 2010, Harrison 2011). However, the climate change case is unique because of the vast divide between the high expectations for environmental justice values in the drafting of AB 32 and its implementation. What can account for this contentious disconnect between stated intentions and implementation realities of AB 32?

This article seeks to illuminate why a policy with unprecedented attention to environmental justice principles failed to satisfy the environmental justice movement and

has instead culminated in a seemingly intractable conflict between environmental justice advocates and state agencies. We argue that the discord over AB 32 has arisen through divergent frames of scale, the market, and race on the part of state and social movement actors. We examine how environmental policy implementation is racialized, that is, how divergent meanings associated with race, ethnicity, and class shape and are shaped through the policy process and the implications of these meanings for dynamics of conflict and collaboration between the key parties. We conclude with reflections on how this California case study can yield valuable insights for scholars and practitioners interested in environmental policy conflicts around the world.

2.0 Theorizing Climate Justice in An Extreme State

Environmental justice struggles over climate change policy implementation position California at epicenter of the social, cultural, economic, political, and ideological fault lines reflecting deep underlying fractures in analytical and normative world views. The systemic patterns of perception, cognition, emotion, and communication mobilized to confront social problems have been described as “social movement frames” (Benford and Snow 2000). The alignment or misalignment of social movement frames can influence dynamics of solidarity, mobilization, and resistance. Three types of framing are particularly relevant to conflicts over climate change policy: scale, the market, and race.

First, Kurtz (2002, 2003) describes the politics of environmental injustice as being rooted in frames and counter-frames of geographic scale that offer competing visions of the proper spatial level at which to define and confront environmental justice problems. This

spatial dimension of framing environmental justice is central to many environmental struggles (Swyngedouw and Heynen 2003, Sze et al. 2009b) and is manifest in conflicts over the scope and scale of AB 32. We will examine how environmental justice activists have sought to circumscribe a local scale for policy to address the impacts of climate change and the (perhaps unintended) consequences of climate change policy while regulators and many mainstream environmental organizations held that a global spatial frame for climate change was more appropriate. While not necessarily mutually exclusive, these spatial frames were positioned in opposition to each other in conflicts over AB 32.

Second, California represents a battleground over the processes of neoliberalization within the domain of environmental governance. Private and public-sector proponents supporting market-based systems of environmental regulation face off with social movements contesting the rollback of strong state regulation of environmental quality and health. Environmental justice scholarship and social movements have launched critiques of the retrenchment of state regulation and the ascendancy of market-based public policy as perpetuating unjust distributions of environmental hazards (Heynen et al. 2007, Holifield 2004, 2007, Martinez-Alier et al. 1998, Farber, 2008). Harrison (2011) describes activism over pesticide exposures to farmworker and nearby communities in California's Central Valley as a response to "abandoned bodies and spaces of sacrifice" produced by such neoliberal approaches to pesticide regulation. She poses pesticide drift activism as an important, if not complete, alternative to mainstream environmental and agro-food movements, which tend to accommodate and even embrace the neoliberal

approach to environmental governance. We will explore this split between mainstream environmental organizations and environmental justice activists in conflicts over the market-based mechanism of cap and trade.

Third, scholarship on broader intersections of environmental and racial justice and climate change (Dorsey 2007, Shepard and Corbin-Mark 2009, White-Newsome et al. 2009, Roberts and Parks 2007, Checker 2008) provides a critical “climate justice” frame. Synthesizing many of these critiques, Dorsey (2007:14) describes “climate injustice [as] the idea that harm from the deleterious effects of climate change and the production and materialist processes associated with it is unevenly distributed and deliberately falls disproportionately on the marginalized and the disadvantaged.” Consistent with this frame, we will apply a racialization lens to climate justice. Because this term is less frequently applied to analyses of climate change policy, the concept of racialization demands some additional definition and explanation.

Racialization, as deployed in this article, draws from critical race scholars (Barot and Bird 2001, Pulido 2000) and the terminology of “racial formation” (Omi and Winant 1986, Winant 1994). Unlike static notions of “race” as set of biological characteristics, or “racism” as individual or group bias based on such characteristics, racialization and racial formation denote fluid social processes. In other words, race is not a biological fact; rather, racialization is a contested process by which racial categories are given social meaning and material impact through conflicts and hierarchies, culture, and/or public policy. Race and racialization exist simultaneously at both micro (individual) and macro

(social structural) levels. Racialization also serves as a lens through which to interpret how populations affixed with certain racial identities are positioned differently in relation to the environment; in particular, how historical legacies of segregation, racial divisions of labor, and unequal political power produce a racialized “risk-scape” in which certain populations experience disproportionately high exposure to environmental hazards (Morello-Frosch et al., 2001). According to Teelucksingh (2007:649), “Environmental racialization describes environmental injustices that include the attribution of racial meanings resulting from both agents’ subjective and objective intent..... (and) considers the layering of different forms of racialization and the ways that racialization and space are material and tied to ideological formations and systems of power.” Environmental racialization recognizes that environmental policies are implemented within and through “institutional, ideological and cultural practices that continue to be reproduced as part of the dominant social order that creates racialized restrictions” (Teelucksingh, 2007:649). To say that the discourse and practices associated with the implementation of AB 32 are racialized does not implicate public agency leaders as racist. Instead, it understands that the actors in these social and political processes (both agencies and advocates) are operating in a context shaped by hierarchical racial categories that are not entirely of their own creation. This racialized system profoundly influences their own positionality relative to the market, the state, and other institutions and therefore also pervades and shapes their interactions with each other.

By constructing a conceptual framework that integrates theories of scale, neo-liberalism, and racialization, we seek to enrich the scholarship about climate change policy, climate

justice, and state-social movement conflict. We apply this framework to help solve the puzzle of why legislation in which environmental justice principles and actors were deeply incorporated generated heated and intractable conflicts between state and social movement actors that presumably would have a common interest in combatting climate change.

We offer this case study of the conflicts over the implementation of California's AB 32 to make several broader contributions to the scholarship and practices of climate justice and environmental justice. In particular, this case highlights the factors that cause slippage between the intended purpose and the actual outcomes of public policy implementation (Pressman and Widavsky 1984); the political limitations on environmental policy that restrict critical attention to structural drivers of environmental injustices (Holifield 2004, 2007); and the tension between procedural inclusion of environmental justice principles and actors on the one hand and addressing the actual impacts of environmental injustices on the other (Schlosberg 2007). Finally, we explore how climate justice advocacy in California represents a vanguard in the growing power of the climate justice movement to shape climate change policy formation and implementation within and between nation states. Better understanding the case of AB 32 can help scholars, policy makers and advocates concerned with climate change design policy implementation processes that are both more effective and more aligned with the principles of environmental and climate justice. In particular, we seek to deepen scholarship on climate change by illustrating how a misalignment of frames regarding climate change and climate justice

has undermined opportunities for state-social movement collaboration and highlighting promising and novel directions for frame alignment.

3.0 Sowing the Seeds of Discord

We argue that the disjuncture between the explicit attention to environmental justice principles in the AB 32 statute and the fierce opposition of many environmental justice advocates to the implementation of the law is rooted in discordant social movement frames of racialized and neoliberal environmental governance. In particular, we examine three bases for these conflicts:

1. Conflicts over scope and scale
2. Conflict over the virtues and vices of the market
3. Conflicts over race and place.

To explore these three conflicts we draw on a mixed method qualitative methodology. This includes an extensive review of relevant policy and legal documents and media accounts produced during AB 32 implementation and subsequent litigation, observation of key public meetings and hearings, and a dozen in-depth and semi-structured interviews conducted between October, 2008 and March, 2009 with AB 32 key stakeholders. Interviewees included CARB staff and board members with responsibility for climate change policy, employees at mainstream environmental organizations such as Environmental Defense Fund and environmental justice advocates involved in the AB 32 EJAC. Interviews included questions regarding the integration of environmental justice

groups into AB 32 implementation, the resources provided to advisory committees, communication between groups, and the involvement of stakeholders from outside of the formal AB 32 process. The research team offered the interviewees (and they in turn requested) the option to remain anonymous in the publication resulting from the research, owing to the controversial on-going nature of the litigation and advocacy activities. Attributions to individuals or organizations from published sources are provided.

Before turning to the three faces of the conflicts over AB 32, we first briefly summarize the prominent role of environmental justice principles and actors in the drafting and passage of the bill as California's "landmark" climate change law.

3.1 Constructing AB 32 as an Environmental Justice Landmark

Environmental justice advocates have identified climate change as a major factor in exacerbating conditions for already vulnerable populations and places in the United States and around the world. "Climate justice" movements are increasingly on the forefront of efforts to combat and mitigate climate change at local and global scales (Roberts and Parks 2006). Reflecting the growing profile of environmental justice movements in the formation of state environmental policy throughout the 1990s and into the 2000s (Rinquist and Clark 2002, Liévanos 2012, London et al. 2008), AB 32 included a range of provisions aligned with environmental justice principles and positions (Sze et al. 2009a).

These provisions included the following: (1) the chartering of an EJAC comprising

representatives from communities heavily affected by air pollution to advise CARB on Scoping Plan development and other issues related to AB 32 implementation; (2) the requirement that public workshops be held in “in regions of the state that have the most significant exposure to air pollutants, including, but not limited to, communities with minority populations, communities with low-income populations, or both”; (3) a requirement that CARB must “ensure that activities undertaken comply with the regulations do not disproportionately impact low-income communities”; and (4) a Community Empowerment Amendment designed to allow low-income communities to directly participate in and benefit from the GHG reductions regulatory plan created as a result of AB32. In addition, the legislation directs CARB to “consider the potential for direct, indirect, and cumulative emissions impacts from these mechanisms, including localized impacts in communities that are already impacted by air pollution” and “prevent any increase in the emissions of toxic air contaminants of criteria air pollutants” before employing market-based compliance mechanisms.

As one example of the importance of EJ constituencies in drafting the bill, late in the negotiations on AB 32, Assembly Speaker Fabian Nuñez asked the sponsoring organizations if they would support AB 32 if it were amended to *require* (as opposed to merely *allow for*) the use of market mechanisms. One advocate representing both the environmental justice and mainstream environmental interests responded, “If we took this amendment we’d lose the support of half of the environmental community, including the entire environmental justice community” (EDF 2006; Unpublished report, in possession of authors). As a result, the Speaker dropped the amendment, and despite a veto threat

from the Governor, the legislature maintained the “may” as opposed to the “shall” language on market mechanisms in the bill’s final language. When the locus of action shifted from the legislature to the Governor and CARB however, environmental justice activists experienced an increasing misalignment of their social movement frames (Benford and Snow 2000) and those that guided the agency.

3.2 Conflicts over scope and scale

Over the course of 16 formal committee meetings and multiple informal communications between March 2007 through April 2009, CARB and the EJAC sparred over the scope of AB 32 and policy measures to implement it. Significant discord between EJAC members and CARB was signaled during one of the first major CARB actions related to AB 32: adoption of “early action” measures ready that would be ready for implementation by January 1, 2010. CARB staff’s presentation to the Board in June, 2007, suggested only three such measures. During the same Board meeting, EJAC co-chair, Angela Johnson-Meszaros, indicated her committee’s desire to see additional items added to the early action list and two removed due to potential environmental justice impacts (CARB 2007a:69-70). Responding to additional comments from environmental professionals and other environmental groups calling for a larger number of measures, staff produced a revised proposal that brought the total to nine (including only three proposed by the EJAC), while either rejecting or promising future analysis or implementation of 30 additional measures proposed by the EJAC (CARB 2007b). The two measures proposed for rejection by the EJAC were retained in the final list.

Another early indicator of conflict came in January 2008, when the EJAC presented a list of “potential AB32 statutory violations” that accused CARB of not obeying the environmental justice provisions of the law. A December 10, 2008 letter sent by the EJAC to CARB Chairman Mary Nichols and Executive Officer James Goldstene regarding the agency’s AB 32 Scoping Plan puts the conflict in stark terms: “The Scoping Plan does not reflect the advice and recommendations of the EJAC regarding environmental justice issues.” The EJAC felt strongly that key environmental justice issues had “...NOT been addressed or even fairly presented and discussed in the document. Further, we were disappointed to see that ARB declined to incorporate any meaningful consideration or response to our comments and recommendations” (capitals in original; Johnson-Meszaros and Williams 2008:1).

These initial conflicts between the EJAC and CARB centered on the appropriate scope of the policy, that is, the range of issues and values it ought to cover. Throughout the process, the EJAC generally tried to expand the scope of their deliberations and the decision space to include a broad movement for climate justice while CARB sought to limit it to the specifics of climate change. Environmental justice leaders have consistently sought to place climate change in the expanded context of inequitable burdens of criteria pollutants such as particulate matter and ozone precursors. They argue that the intention of AB 32 is to address both GHGs and these co-pollutants; a position supported by language in the bill that restricts air pollution “backsliding” and a requirement that communities most impacted by air pollution be represented on the EJAC (Health & Safety Code 2 38591(a)). As part of this expansive topical scope, many environmental

justice advocates pushed CARB to more aggressively regulate agricultural and industrial sources as part of their GHG reduction strategies (Johnson-Meszaros and Williams 2008).

In contrast to this expansive scope, many public agency leaders described the environmental justice advocates' self-defined mission as beyond that intended for AB 32 and a detriment to the central goal of GHG reduction. For example, Dan Skopec, who in 2006 was an undersecretary of the California Environmental Protection Agency, stated at a cap and trade development conference that "using the umbrella of global warming to satisfy other agendas is really going to distract from the solution and create inefficiency" (quoted in Kaswan 2009a:51). One CARB staff person took a nuanced view of the environmental justice advocates' position: "I think the problem is... the environmental justice community really sees AB32 as a vehicle for doing a lot of things It's not the greenhouse gas emissions, it's all the other stuff they want: which, I don't blame them, I would want them too. I'd want to see all the refineries shut down in my community" (Interview with authors October 27, 2008). This CARB staffer also described frustration in the agency with the perceived mismatch in scale between the legislative intent of AB 32 and the positions of the environmental justice advocates. "If you talk about transitioning to a lower fossil fuel economy, then you'd think that they would be supportive of greenhouse gas emission reductions and it theoretically doesn't matter where those emissions reductions come from in the state as long as we're getting reductions, but ...they want to see reductions in their communities and they're concerned that AB32 doesn't really focus on localized reductions"(Interview with authors October 27, 2008).

3.3 Conflict over the virtues and vices of the market

The most intense conflicts over AB 32 involve the proposed market mechanisms such as “cap and trade.” Cap and trade is a market-based system that sets a ceiling for GHG emissions (the cap) and a mechanism for allocating and exchanging GHG emission allowances (the trade). The policy options under debate in the implementation of AB 32 are illustrated in Figure 1.

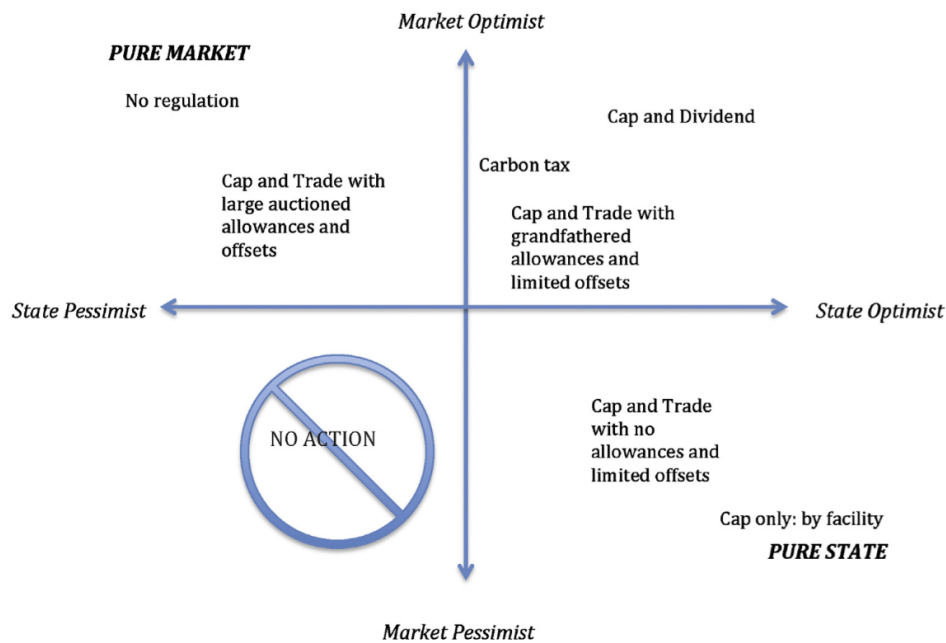


Fig. 1. Distribution of climate change policies by levels of state and market optimism and pessimism.

In Figure 1, the X axis measures the degree of pessimism or optimism for state-based mechanisms, and the Y axis measures the degree of pessimism or optimism for market-based mechanisms. This creates a space divided into four quadrants with “pure market” at the upper left (exemplified by no regulation) and “pure state” at lower right extremes (exemplified by a complete command and control GHG cap for each facility or emissions

source). The other policy alternatives under debate to implement AB 32 are located according to their relative orientations to a state and market frames. In general, policies that rely more on market mechanisms (e.g., auctions of allowances for existing emissions and large offsets for purchasing carbon emission reductions off-site, a carbon tax) are located in or near the market optimism/ state pessimism quadrant. Conversely, policies that rely more on state mechanisms (no allowances and limited offsets) are located in or near the state optimism/ market pessimism quadrant. Finally, hybrid approaches that employ a mix of state and market mechanisms such as a carbon tax or a progressive cap and dividend system are located in the high market optimism/ high state optimism quadrant.

With some internal variability described below, public agencies and many mainstream environmental organizations tend to align with a market optimist frame while environmental justice advocates tend to align with the state optimist/ market pessimist frame. Market optimists view the market as a powerful self-correcting and efficient price/cost allocating mechanism that is well-suited to achieve environmental protection. Market optimists also tend to view state intervention as causing needlessly high costs (Stavins 2008, Burtraw 2005, Ellerman and Buchner 2008, Fowlie et al. 2009, Betz and Sato 2006). Conversely, state optimists and market pessimists tend to view government-managed systems based on stringent regulatory standards as the optimal mechanism for achieving social and environmental goals and view market solutions as fundamentally undemocratic and inequitable (Heynen et al. 2007, Holifield 2004, 2007, Martinez-Alier et al. 1998). A preference for public over private sector solutions by many environmental

justice advocates derives from a relatively positive generational history of civil rights legislation and litigation on the one hand and the experience of being “dumped on” by corporations operating according to market logics on the other (Cole and Foster 2001, Sze and London 2008).

Looking closely at this categorization of frame alignment and misalignment around the market vs. state centrism reveals a more complex picture. For example, although many pro-business groups support a cap and trade system that grandfathers in current emissions for existing facilities and provides for significant “offsets”, grandfathering is a less “pure” market policy, requiring the state’s intervention in determining the grandfathering system in addition to setting the cap. In contrast, a version of cap and trade that doesn’t include offsets and relies on auctioned allowances instead of grandfathering is closer aligned to a market orientation, but is also more consistent with environmental justice values related to localized co-pollutant reductions and a clean energy transition in California.

While a neoliberal ideology on the primacy of the market increasingly pervades the government in California as elsewhere, it is worth stating the obvious that CARB is operating from within the state and therefore arguably is defined by some degree of state optimism. CARB’s strategies also included both a market-based trading mechanism and significant direct regulations and adherence to existing air quality laws. Conversely, the frames associated with environmental justice also critique state commitment to racial, ethnic, and class equity. Advocates emphasize the importance of social movement

pressure on the state apparatus to ensure alignment with environmental justice values and to regulate the market to reduce its structural inequities. The carbon tax supported by many environmental justice activists is itself a market mechanism, albeit one structured by the state. Indeed, several of our interviewees observed that the environmental justice activists' support for a carbon tax was pragmatic, not ideological. That is, while many if not all EJ activists would have preferred a strict command and control approach, they also recognized that in the neoliberal political climate (personified by famously business-friendly Governor Schwarzenegger) a carbon tax was as close as they could come to an alignment with their values.

This frame alignment could get even closer if the revenues from such a tax were used as for progressive investments that mitigate the health and well-being disparities associated with climate change and to provide access for low income communities and communities of color to green sector employment (Environmental Justice Forum on Climate Change 2008). Some observers from within the broader environmental and public health movements interviewed for this article expressed sympathy for both CARB and environmental justice activists and therefore frustration that the conflict between the two parties prevented a more nuanced conversation about how market and state mechanisms might be best combined to harness the market's potency in ways that served the health and well-being of the most vulnerable communities.

The potential for frame alignment between environmental justice advocates and the state apparatus was significantly undercut by the immediate state actions upon passage of AB

32. Despite language in AB 32 that permitted, but did not mandate, cap and trade as a component of California's climate change policy, Governor Schwarzenegger quickly signed an Executive Order prioritizing cap and trade and chartering a Market Advisory Committee (MAC) to advise on design principles (Schwarzenegger 2006). These initial moves by the Schwarzenegger administration were perceived by many of the environmental justice representatives as an insult and even betrayal that set AB 32 implementation on a collision course with EJ principles.

One CARB leader acknowledged the conflict over cap and trade as an early cause of tension between the EJAC and the agency. “[T]here was a view from the EJAC that it had expressed all along that cap and trade was just a non-starter, and obviously the Air Board has been seriously considering cap and trade the whole time... and I think folks in the EJAC didn’t like that” (Interview with authors October 27, 2009). This perception of having their input go unheeded was a consistent theme heard throughout AB 32 implementation from environmental justice advocates on and outside the EJAC. Such perceptions of “tokenism” were exacerbated by the legacy effects of many of the EJAC members’ service on other environmental justice advisory committees that, at best accomplished little and at worst degraded relationships between advocates and agencies (Liévanos 2012, London et al. 2008, Shilling et al. 2009). Beyond formal incorporation within the state regulatory apparatus, EJ activists also sought recognition and legitimation of their values and worldviews, or what Schlosberg (2007) calls “cognitive” or “recognition” justice. A cognitive justice frame for AB 32 would have recognized EJ activists’ concerns about local health impacts of cap and trade squarely within the policy

debate, not at its margins. This experience of marginalization, even (and especially) in the context of formal participation through the EJAC, began a slow burn of anger and resentment that would burst in the filing of the lawsuit by many of these same activists.

An unconditional rejection of cap and trade is seen in “The California Environmental Justice Movement’s Declaration on Use of Carbon Trading Schemes to Address Climate Change” (February 19, 2008) which presents 21 “Whereas” statements that encompass the perceived failure of the European Union Emissions Trading Scheme and other carbon trading systems, the exploitative relationships of both humans and environment involved in global economic systems, and the need to shift away from -- not just reform -- fossil fuel economies (EJ Matters 2009). The late Luke Cole, a prominent environmental justice attorney and EJAC member, likewise couched his opposition to cap and trade in a profound mistrust of markets and economic elites.

Markets aren’t magic. The choices we make today helping businesses and utilities continue business-as-usual and allowing millions to be diverted to questionable offset projects across the globe, will shape every generation to come. If you’re not outraged about carbon trading, you’re not paying attention. We should be focusing on building clean, renewable energy instead. (California Environmental Rights Alliance 2009.)

3.4 Conflicts over Race and Place

Environmental justice opposition to the unfolding of AB 32 focused on the politics of race and place in important ways, including the projected impacts of climate change

policy on low-income communities and communities of color in the state and elsewhere in the world. One environmental justice advocate described the racialization of the conflict over cap and trade, as akin to debates over the morality of slavery and that cap and trade “is an abomination...that must be resisted every turn” (Interview with authors October 26, 2009). The concerns over the racialized consequences of cap and trade center on the potential health effects in communities of color caused by the co-pollutants emitted by industrial processes (Cifuentes et al. 2001, Aaheim et al 1999) and the potential shift of the spatial distribution of dirty industries towards communities with less economic and political resources to resist (Kaswan 2008). Shonkoff et al. (2009: 174) lay out the unease of environmental justice organizations with cap and trade in practical terms, “Some environmental justice advocates are concerned that some market-based strategies, such as cap-and-trade, may lead to a situation where low-SES and minority communities would bear a continued—or potentially exacerbated—disproportionate burden of co-pollutant hotspots at the local community level” (for treatment of the growing climate justice movement see Lejano and Hirose 2005, Drury et al. 1999, Karner et al. 2009, Lohman 2008, Dorsey and Gambirazzio 2012). The EJAC’s “Recommendations and Comments on the Proposed Scoping Plan” provided a powerful articulation of the interactive structures of race, place, and the market.

It is market-based decisions, within a framework of structural racism in planning and zoning decisions, which has created the disparate impact of pollution that exists today; relying on that same mechanism as the ‘solution’ will only deepen the disparate impact. (Johnson-Meszaros and Williams 2008.)

The EJAC's criticism of CARB's Scoping process also touched on the racialized quality of the public participation associated with the plan. One episode raised in multiple interviews with advocates, and included as part of the rationale for their lawsuit against CARB, was a key public meeting in November, 2008 in which CARB was set to approve the AB 32 Scoping Plan. As part of their mobilization against cap and trade, advocates had arranged the transportation of 76 community members from the San Joaquin Valley - - most of whom were low-income people of color -- to a November, 2008 meeting in Sacramento. Of the 61 who submitted comment cards, only 10 were given the opportunity to speak, and those 10 were asked to combine their testimony. In their letter of complaint to CARB, the Center for Race Poverty and the Environment objected that this condensing of public comment, "not only misses the point of individual public participation, but misunderstands the diversity and breadth of opinion from Valley residents." On top of this, the topic that the excluded advocates most wished to discuss, air quality impacts of agriculture, was placed last on the agenda. Since the Valley residents were unable to stay until the end of the meeting (due to the need to drive 3-5 hours home from Sacramento), their concerns were not heard. While CARB leadership reasonably sought to place some limits on the public comments, this procedure was perceived to be in direct conflict with a core principle of environmental justice, "we speak for ourselves." To environmental justice advocates primed to view their interactions with the state as highly racialized, this episode represented a further disenfranchisement of low-income populations and communities of color and a devaluation of their knowledge and concerns.

3.5 Scale, race, place and the market on trial

The discord over the framing of scope and scale, the market, race, and place described above all collided in June, 2009, when environmental justice advocates filed a lawsuit against CARB over the implementation of AB 32. Less than two years into the policy implementation process, the conflict between environmental justice advocates and CARB had convinced the EJAC members that collaborative activity through the advisory group was no longer possible. The Center on Race, Poverty, and the Environment and Communities for a Better Environment sued on behalf of 13 plaintiffs, collectively referred to by the organization of the lead plaintiff, the Association of Irrigated Residents (AIR) in California Superior Court before Judge Ernest H. Goldsmith (AIR v. CARB, Case No. 09-509562). Seven of the eleven members of the EJAC were parties to this suit. In a comment to an on-line article about the law suit (Hecht 2009), CARB Chair Mary Nichols commented noted that “Our process for developing the Scoping Plan was unprecedented in its openness and transparency, including many opportunities for substantive comment and interaction.... Ironically, some of the plaintiffs sit on ARB’s Environmental Justice Advisory Committee (created by AB 32) and enjoyed unparalleled access to ARB staff and board members throughout plan preparation.” Set alongside environmental justice advocates’ complaints about having their input not integrated into the AB 32 Scoping Plan, Chair Nichols’s statement indicates that while the advocates’ access to the process may have been “unparalleled”, this did not translate into an experience of their participation being substantive or valued. This “ironic” disconnect between formal structures of participation and the meanings and outcomes associated

with such participation have been insightfully analyzed by Liévanos (2012) as a problem of “state resonance” or institutionalization of environmental justice according to state, as opposed to social movement frames.

In their complaint, petitioners alleged that CARB was misaligned with the legislative intent of AB 32 and its protective language for environmental justice communities. As a result, the plaintiffs claimed that they and the general public as a whole would “be harmed by ARB’s failure to address the impacts suffered by those regions of the state with the most significant exposure to air pollutants unless this Court compels ARB to comply with its statutory duties.” Furthermore, plaintiffs alleged that in developing its Scoping Plan, CARB failed to comply with the procedural requirements of the California Environmental Quality Act (CEQA). In particular, the plaintiffs alleged that CARB took steps to implement its Scoping Plan before the Functional Equivalent Document (FED) was certified, thus arguably violating CEQA’s requirement that an environmental document be certified before the underlying project is implemented. The complaint highlights allegations that CARB provided an incomplete analysis of impacts, all of which figured prominently in the EJAC’s earlier critiques from within the formal policy implementation process.

The environmental justice plaintiffs’ ability to prevail in all but the last claim was severely hampered by the court’s early ruling that the case would not address the question of the legality of CARB’s action and that CARB had not acted in an arbitrary and capricious manner in developing the Scoping Plan. CARB argued, and the court agreed,

that detailed environmental impacts of projects and policies associated with AB 32 implementation (for example, the potential influence of the low carbon fuel standard on air quality and health impacts from potential increased construction of corn ethanol plants in the San Joaquin Valley) would be properly undertaken later at the project-level, not as part of the Scoping Plan's program-level review. Similarly, CARB argued successfully that their discussion of alternative policies could be mostly "schematic" because of the uncertainty involved in predicting the geographic and sectorial nature of emissions changes under cap and trade. Therefore, the FED was required only to provide a schematic analysis.

Plaintiffs took solace in the court's affirmation of their claim of the inadequacy of the CEQA analysis of the Scoping Plan and the development of the FED. In particular, the court found that CARB had not provided sufficient detail on the policy alternatives in the Scoping Plan. The court held that each alternative under discussion must receive a similarly detailed analysis, something CARB had not done in its FED. In declaring that the alternatives analysis did not meet the standards necessary for an informed public review, the court found that CARB sought "to create a *fait accompli* by premature establishment of a cap and trade program before alternatives [could] be exposed to public comment and properly evaluated by the ARB itself." The court also ruled that CARB had improperly approved the Scoping Plan before responding to public comments it received on the FED thus subverting the public participation process prescribed by CEQA. The court therefore ordered that CARB set aside its approval of the FED and cease implementation of the Scoping Plan until the CEQA violations could be resolved. Many

observers of the case compared the success of the environmental justice plaintiffs to a “David” and “Goliath” struggle (Scott 2011).

In response to the court order, CARB produced a supplement to the FED which contained a much more detailed discussion of the proposed alternatives (CARB 2011), while still maintaining that its selection of cap and trade was a legitimate policy direction developed through a rigorous consideration of alternatives. CARB’s compliance with the letter, if not the spirit of the court’s judgment in the production of the FED supplement did not succeed in reshaping the relationships between CARB and environmental justice advocates from conflict to collaboration. This was primarily because, by CARB’s own account, its “staff made minor modifications to the Supplement based on responses to comments and other updates....None of the modifications alter any of the conclusions reached in the Supplement or provide new information of substantial importance relative to the Supplement.” CARB’s official response to comments on the Supplemental FED was primarily composed of justifications as to why the agency did not need to change its plan. CARB’s response to a detailed letter from law professor Alice Kaswan that critiqued of the legal and technical basis of the agency’s selection of a cap and trade by calling attention to the likely impacts of co-pollutants on certain populations and places is telling. Its terse response reads, “ARB has reviewed this comment, and determined that it neither applies nor raises any substantial issues regarding the adequacy of the environmental analysis of the alternatives in the Supplement... [therefore] no revision or further written response is required ... however, this comment is included in the public record for review by other interested parties and decision-makers” (CARB 2011:46).

The response to the Supplemental FED by environmental justice advocates was unequivocally harsh. The Center for Race, Poverty, and the Environment, the lead litigant for the environmental justice suit against cap and trade stated, “The Supplement is nothing more than a *post hoc* rationalization of the Board’s 2008 decision to adopt a cap and trade regulation, rather than a true exercise in public participation and informed decision-making. ARB has squandered another opportunity to make an honest, good-faith analysis of greenhouse gas reduction strategies that work for all Californians – including our most vulnerable and overburdened population.”

4.0 Reframing Climate Justice in California

Parallel to the litigation pathway but with a much lower public profile, a progressive vision of state involvement in shaping markets to respond to social and environmental justice values is developing. This vision recasts the frames of scale, race and place and the market in a new master frame in which values of economic prosperity, environmental quality, and social equity interact in synergistic, rather a zero-sum fashion. Much of this reframing activity focuses on the notion of “cap and dividend” strategies. Unlike a return to individual investors, this version of a dividend would direct revenues to low-income communities of color -- including but not limited to those most affected by air pollution (Boyce and Riddle 2007). As one example, California’s AB 1405 (De Leon, V. Pérez) “Community Benefits Fund” passed the legislature but was vetoed by then-Governor Schwarzenegger. This bill would have directed 30% of the revenues generated through the implementation of AB 32 to help Californians least able to confront the expected

impacts of the climate crisis at the local level. More recently, environmental justice advocates sponsored a similar bill (AB 535) that was signed into law by Governor Jerry Brown.

With the impending implementation of cap and trade, networks such as the California Environmental Justice Alliance are launching initiatives to prioritize the allocation of auction revenues to environmental justice communities. However, many environmental justice advocates remain skeptical of even these dividend-based strategies. One of the plaintiffs in the litigation against CARB laid out a rationale as based on a moral economy that does not appear to offer much ground for compromise.

We don't want that money to come from pollution trading. That's like saying as long as you give our communities some money, you can go ahead and create pollution hotspots. But, if it came from a carbon tax or carbon fee or carbon fine that would be okay. You may be able to price carbon you can't price peoples lives." (Scott 2011).

On the part of the state agencies, several climate change policy approaches suggest a possible alignment with the goals and values of the environmental justice movement. Most notably, CARB's Economic and Allocation Advisory Committee (EAAC) tasked with advising CARB on the economic analysis of the Scoping Plan and on allowance allocation methods wrote a 2008 joint letter with the EJAC to Chairman Nichols encouraging an action plan of strict performance standards, setting a fair price on carbon, and developing targeted incentives for compliance. In its 2009 Draft Allocation Recommendations, the EAAC

recommends several mechanisms for directing revenue and benefits to disadvantaged communities, reflecting the influence of progressive market design approaches (EAAC 2009).

Some comments from CARB leadership seem to indicate an interest in continued engagement with environmental justice issues and constituents, albeit with restrictions due to financial and political resources. For example, one CARB staff member described the informal influences of the environmental justice movement on the agency, “[B]ecause the EJ folks really *do* have a significant influence on what we do and how we do it ... much more so than they think because it’s just been my experience people gather in the hallway and go, ‘What do we do about this? Well, this was their complaint... we’re going to have to deal with this’” (Interview with authors October 27, 2008). Whether this “significant influence” is perceived by the advocates themselves and whether such influence can achieve meaningful results are questions still to be resolved.

One promising sign for the future of environmental justice within environmental politics in California was the mobilization to defeat Proposition 23 on the 2010 ballot (Lerza 2011). In the name of protecting California jobs, Proposition 23 would have effectively suspended the implementation AB 32. In response to this threat, many state-wide and national mainstream environmental organizations organized an opposition campaign and reached out to environmental justice organizations to join them. Still stung by the mainstream environmental organizations’ support for cap and trade, environmental justice activists rejected this overture, and instead organized their own coalition,

Communities United Against the Dirty Energy Proposition. While organized in parallel, the two movements maintained a united public front to prevent the proposition's industrial backers from using a "jobs vs. environment" frame to siphon off votes from low income people and people of color. This strategy was successful as the proposition was soundly defeated (62% to 38%), helped in large part by voters of color who represented 37% of the electorate and voted overwhelmingly (73%) against the measure. This compared to only 57% of white voters who opposed the measure (Lerza 2011). These voting trends suggest that an environmental justice constituency will continue to build its political voice and influence in years to come.

5.0 Discussion and Conclusions

AB 32 represents another in a long series of California policy efforts to integrate environmental justice issues and constituencies with promising beginnings and problematic conclusions. For both public agency and advocacy leaders in these conflicts, the impasses encountered in translating the environmental justice principles in this landmark climate change legislation into the strategies for agency practice have been sorely disappointing and deeply distressing. By provoking questions about the normative basis for governance of the environment, the environmental justice movement's clash with California's regulatory apparatus over climate change exposes the racialized fault lines that underlay the state. The case of AB 32 can be understood as bound up in conflicts over race and place, a particularly salient example of how environmental policy becomes racialized and given social meaning in competing visions of the public good. Unpacking the racialized discourses embedded within the contest between market-

optimism versus state-optimism frames can assist in understanding why the conflict over the use of market mechanisms such as cap and trade became so heated. The continua of optimism to pessimism towards the market and the state can serve to visualize the divergent analytic and normative positions of environmental activists, mainstream environmentalists, and government regulators, as well as point to zones of possible convergence.

Although this narrative of collaboration to conflict in environmental justice policy is a quintessential California story, it can also be read closely for meaning in other policy and geographic settings around the country and world. This case contributes to scholarship on environmental and climate justice by focusing critical attention to multifaceted quality of conflicts over climate change policy, linking analyses of racialization, neo-liberalization, and social movement-state interaction. In particular, this study can help scholars and practitioners elsewhere understand (and, ideally, work to reduce) the gap between the goals and the results of formalization of environmental justice principles in public policy and agency practice. The California case also highlights the embeddedness of environmental policy within complex social, political, economic, and historical patterns, including legacies of internal colonialism, racial and class stratification, capital concentration, and environmental transformation. Understanding the divergent positions of agencies and advocates on cap and trade as grounded in a contentious politics of scale, the market and race helps interpret why these parties seem to repeatedly talk past each other; indeed, they are speaking from structural locations that are worlds apart.

The politics of climate change policy in California offers a cautionary tale of how the best presumed intentions on integrating environmental justice into climate change policy do not necessarily translate evenly into the implementation process and how underlying racialized fractures can upend collaboration between state and social movement actors. At the same time, new alliances between environmental justice activists and mainstream environmentalists to defend AB 32 and to ensure that revenues are used in ways that benefit the most vulnerable communities represent spaces of hope for California and jurisdictions around the world as they confront the existential crises of climate change.

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