

**Testimony of UCLA Law Professor Ann Carlson before the Joint Legislative Committee on  
Climate Change Policies**  
May 24, 2018

Chairman Garcia and Members of the Committee,

My name is Ann Carlson and I am the faculty co-director of the Emmett Institute on Climate Change and the Environment at the UCLA School of Law. I am also the Shirley Shapiro Professor of Environmental Law. Thank you for inviting me to testify.

I'd like to begin by making clear that I am not an economist and so I'm not going to spend time commenting today on some of the highly technical issues that economists like Dr. Cullenward have more expertise about. Instead, I am interested, as a legal scholar, in the relationship between the legislature and the Air Resources Board (ARB) and commend the committee for the oversight role it is playing in implementing climate policies. So my aim today is to help think about the ways in which this committee might exercise oversight over the question of the potential overallocation of allowances and how that might guide the kinds of information the committee seeks from the ARB. More specifically, I want to help provide a framework for thinking about various tradeoffs we might make in choosing an option about how to address the overallocation issue. The technical questions of how to design the option or the extent of the overallocation problem are beyond the scope of my testimony today.

Instead, the central point I want to make is that in addressing the question of the overallocation of allowances, we have a number of different goals we are likely to want to achieve. These goals can sometimes conflict with one another. I'd like to explicate those goals and urge ARB, the Joint Committee and stakeholders to keep them in mind as we move forward in deciding the appropriate course to follow in addressing the overallocation issue.

I should also add that the overallocation problem is, in the words of Resources for the Future economist Dallas Burtraw, a good problem to have. It means that emissions during the 2012-2020 period dropped faster than anticipated at a very reasonable and manageable cost. If we were here addressing a shortage of allowances and very high allowance prices, we'd be in a much different boat. Nevertheless, moving forward, the overallocation problem, if unaddressed, could make it more difficult for the state to accomplish its overall emissions goals through cap-and-trade. So how might we think about the goals we want to accomplish in addressing the overallocation issue?

Here are what I view to be the goals of the cap-and-trade program (and I am happy to have others add to this list):

Our first (and perhaps foremost) goal is to achieve the statutory 2030 target of cutting greenhouse gas emissions by 40 percent below 1990 levels. Relatedly, we might also add that this is an interim goal on the way to an 80 to 100 percent cut by mid-century. Thus, we could restate the goal to say that we want to be well on the pathway to decarbonizing the California economy by 2050. We should keep in mind that 2030 is unlikely to be the end of the regulatory program in deciding how serious the overallocation problem is – depending on how the regulations are revised, parties may want to continue to hold onto some allowances past 2030, making the 2030 goal more likely to be achieved.

A second goal is to keep the costs of cutting those emissions manageable and equitable for consumers and for the regulated community (and relatedly, to maintain a healthy economy). In particular, we want to ensure that low income consumers of products affected by cap-and-trade, like electricity and gasoline, are not heavily burdened by increases in price as a result of our greenhouse gas policies.

A third goal may be to maintain a predictable, reliable revenue stream from the auction of allowances. Although revenue raising is not a central goal of cap and trade, maintaining a revenue stream that is predictable for planning and budgeting purposes is highly beneficial to the state. And, of course, the revenue has and is funding many important programs, including replacing high polluting diesel buses and cars, which will provide huge health benefits to disadvantaged communities, and promoting the sequestration of carbon in farms through the California Healthy Soils Initiative.

A fourth goal, in my view, is to maintain political support for California's aggressive climate policies. This may seem like an odd consideration, but one of the reasons that California climate policies have remained so popular is that we have been able to cut emissions at low cost while growing the economy. This is true among the general public, but has also been true among at least some regulated parties who supported extending climate goals and the cap-and-trade program; this support was in part because costs to date have been manageable and, in part, I believe, because the regulatory process to date has been largely transparent and provided reasonable regulatory certainty. It may also be because regulated parties who have banked allowances own a commodity that is more valuable now that cap-and-trade has been extended.

It's important to recognize that different approaches to the overallocation problem can create tension among these goals. For example, if the overallocation problem proves to be on the larger end of the estimates and we do nothing about it, we will not meet the 2030 target and could miss it by 10, 20 or even 30 percent. But compliance will be relatively cheap. By the same token, if we immediately lower the cap and remove a large number of excess allowances in a short amount of time, we will help ensure that we meet California's 2030 goal. But we will also likely drive up allowance prices and add to price volatility and if prices increase too dramatically, consumers may pay more for commodities like gasoline. Whether prices will be driven up to a politically unacceptable point or gasoline prices will spike or we will miss the cap by 10 or 20 or 30 percent are hard empirical questions. My only point is that we ought to be asking the questions about what goals are paramount and how to trade them off when we make these regulatory choices. We should also be doing our best to try to estimate these tradeoffs in order to make fully informed choices. The point here is not that there are obviously correct answers but that the answers to the question about overallocation have the potential to require tradeoffs among the different goals and that asking the right questions and getting answers to those questions strike me as quintessential questions for a legislative oversight committee.

Let me also turn quickly to the question of offsets and whether they must produce "direct environmental benefits" in addition to reducing greenhouse gases. I agree with the testimony of others that "direct environmental benefits" means producing air or water pollution reduction benefits and not just greenhouse gas reductions.

I would also be remiss as a law professor if I did not raise the question of whether the offset language about in-state environmental benefits raises constitutional questions under the Commerce Clause. I don't know that it does and the Ninth Circuit opinion upholding the Low Carbon Fuel Standard is a very helpful precedent for the state. But I think it would be helpful to have an in-depth analysis of the question as we move forward.

Thank you very much.