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February 13, 2014

By Email and U.S. Mail

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
Email: CEQA.Guidelines@ceres.ca.gov

Re: 2014 CEQA Guidelines Update

Dear Mr. Calfee:

On behalf of California Unions for Reliable Energy ("CURE"), we respectfully submit these comments on OPR's preliminary list of topics to be addressed in the 2014 CEQA Guidelines Update. We appreciate OPR's early solicitation for input and the work that staff has put into developing the preliminary list of topics. While some of the preliminary topics appear suitable for proposed amendments to the guidelines,[1] others are in advance of the Legislature and, thus, not suitable for inclusion. In continuing this work and considering the input from all stakeholders, we recommend that OPR reject attempts to legislate through the Guidelines where the Legislature has considered a topic and not made the requested changes. Instead, we recommend that OPR address topics where the Legislature and the courts have provided guidance on the implementation of CEQA and where the Guidelines could be clarified or updated to reflect recent legislation or case law.

As you know, the Legislature recently grappled with proposed changes to CEQA, some of which were rejected but now appear to be repeated in OPR's preliminary list of topics. For example, in August 2012, Senate Bill ("SB") 317 was amended with language that would preclude challenges to a CEQA document if a lead agency discloses that a project complies with "a standard applicable to a topic area requiring analysis and mitigation under CEQA."[2] Specifically, the amendment

[1] Pub. Resources Code §21083(f).
[2] Amendments to Senate Bill No. 317 As Amended in Assembly August 26, 2011 (8/21/12), Div. 13.6 § 21201(a)(1) and § 21203.

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defined a "standard" and an "applicable environmental law."[3] It also explained when a standard may be relied upon to preclude a challenge to an environmental document. Ultimately, SB 317 was not introduced. As you also know, the "standards approach" was proposed to be included in SB 731, but was never amended into the bills and was not included in last year's CEQA legislation, SB 743. Yet, OPR in its preliminary list of topics lists "add[ing] a definition of regulatory standard, and explain[ing] when a standard may be used appropriately in determining the significance of an impact under CEQA."[4] The Legislature already rejected this change to CEQA.

There is no confusion regarding what threshold of significance an agency may use to determine the significance of an impact under CEQA. OPR's guidelines already include "criteria for public agencies to follow in determining whether or not a proposed project may have a 'significant effect on the environment.'"[5] OPR's Guidelines explain:

> The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.[6]

OPR's Guidelines define a "threshold of significance" as "an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant."[7] A lead agency may even consider "thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to

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[3] *Id.* at § 21201.
[4] OPR, Possible Topics to be Addressed in the 2014 CEQA Guidelines Update, Sec. III, Section 15064 (Determining the Significance of Environmental Effects Caused by a Project).
[5] Pub. Resources Code § 21083(b).
[6] CEQA Guidelines §15064(b).
[7] CEQA Guidelines §15064.7(a).

adopt such thresholds is supported by substantial evidence."[8] Finally, the courts have consistently stated that lead agencies have discretion to decide what thresholds of significance they will apply to a project.[9]

We recommend that OPR reject attempts to incorporate the "standards approach" in the Guidelines, along with other changes recently rejected by the Legislature. Instead, we recommend that OPR address topics where the Legislature and the courts have provided guidance on the implementation of CEQA and where the Guidelines could be clarified or updated to reflect recent legislation or case law.

Sincerely,

Tanya A. Gulesserian

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[8] CEQA Guidelines §15064.7(b).

[9] *See, i.e., Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1067.