



Western States Petroleum Association  
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**Catherine H. Reheis-Boyd**  
Executive Vice-President and Chief Operating Officer

January 30, 2009

Cynthia Bryant  
Director, Governor's Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

**Re: Governor's Office of Planning and Research Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions**

Dear Ms. Bryant:

On January 8, 2009, the California Office of Planning and Research ("OPR") issued "Draft CEQA Guidelines Amendments for Greenhouse Gas Emissions" ("Draft Guidelines") for public review and comment. The Draft Guidelines were issued in accordance with the directive contained in California Public Resources Code § 21083.05, added to CEQA<sup>1</sup> by Senate Bill 97 ("SB 97") in 2007.

This bill provides that OPR "shall prepare, develop and transmit to the Resources Agency guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions as required by this division, including, but not limited to, effects associated with transportation or energy consumption." Pub. Res. Code § 21083.05(a). This letter provides the comments of the Western States Petroleum Association ("WSPA") on the Draft Guidelines.

WSPA is a non-profit trade organization representing twenty-eight companies that explore for, produce, refine, distribute and market petroleum, petroleum products, natural gas and other energy products in California and five other western states.

Our organization is dedicated to working toward ensuring that consumers continue to have reliable access to petroleum and petroleum products through policies that are socially, economically and environmentally responsible.

WSPA has a significant interest in the implementation of California's Global Warming Solutions Act of 2006 ("AB 32"). Our interest, as relevant to the Draft Guidelines, is related to the manner

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<sup>1</sup> The California Environmental Quality Act, Pub. Res. Code § 21,000 et. Seq, as implemented by the State CEQA Guidelines ("CEQA Guidelines"), 14 Cal. Code Regs. § 15,000 et seq.

in which the Draft Guidelines propose to evaluate and mitigate impacts from GHG emissions pursuant to CEQA.

Generally, WSPA believes OPR has done a good job of preparing the Draft Guidelines for use by lead agencies when analyzing impacts on global climate change from GHG emissions. The unique nature of climate change dictates that the manner in which project-specific impacts from GHG emissions are evaluated pursuant to CEQA be somewhat distinct from, and inherently more flexible than, the evaluation of other environmental effects.

Unlike impacts from criteria pollutant emissions, there does not appear to be a scientific basis linking GHG emissions from a particular project to specific physical, localized environmental effects.

The analysis of impacts from GHG emissions must be evaluated in a significantly larger context than most environmental impacts under CEQA. To evaluate accurately an individual project's impacts on climate change, the project must be viewed in the context of the statewide reductions targeted under AB 32, as well as statewide, or at least, sector-wide GHG emissions. As proposed, the Draft Guidelines mostly reflect this unique reality.

In particular, proposed Sections 15064(h) (3) and 15064.4 of the Draft Guidelines recognize that lead agencies need discretion when evaluating impacts from GHG emissions. They also recognize lead agencies should be able to rely upon important qualitative criteria that might demonstrate that a project's GHG emissions do not result in a significant effect pursuant to CEQA.

We believe that such a qualitative evaluation should include consideration of whether a project will result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or the state's overall carbon footprint.

Importantly, WSPA appreciates OPR recognizing that lead agencies should have the discretion to conclude that a project's asserted incremental contribution to a cumulative effect is not cumulatively considerable if the project will meet the requirements of a previously approved plan or mitigation program. In particular, WSPA believes that any CEQA Guidelines governing GHG emissions should recognize the importance of the AB 32 Scoping Plan adopted by the California Air Resources Board.

The Scoping Plan provides a blueprint for how the state will achieve the GHG reductions needed to meet the AB 32 mandate. Therefore, projects for sources within sectors covered by the GHG measures and reductions referenced in the Scoping Plan should be able to rely on those mandated measures and reductions when determining whether the projects result in a significant environmental impact pursuant to CEQA.

WSPA is also pleased the Draft Guidelines acknowledge, in draft Section 15093(d), that, given the unique nature of global climate change, lead agencies should have discretion to consider asserted local effects in the context of region-wide or statewide benefits.

We note that, when evaluating project-specific GHG emissions in such broader context, local agencies must still base any determination of significant effects on substantial evidence. They do not have the discretion to burden individual projects with mitigation measures or conditions designed to achieve reductions greater than those required to mitigate such projects' asserted cumulative contribution to climate change.

While generally supportive of the Draft Guidelines, WSPA believes there are certain areas in which the Draft Guidelines can be improved. For example, for purposes of determining significance, lead agencies should have discretion to evaluate reductions in GHG emissions achieved via compliance with non-AB 32 state and federal mandates (e.g., Clean Air Act programs), as well as overall GHG emission reductions achieved from equipment upgrades and/or replacement, even if the upgrade might result in slight CO2 emission increases, in the context of statewide, or at least sector-wide, GHG emissions.

WSPA suggests the following revisions be made to Sections 15064(h) (3) and 15064.4 to reflect this necessity<sup>2</sup>:

Section 15064(h) (3):

A lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program (e.g., water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, city or county general plan or specific plan, regional housing allocation plan, habitat conservation plan, natural community conservation plan, climate action plan, regional transportation plan, regional blueprint plan, sustainable community strategy, statewide plan of mitigation for greenhouse gas emissions) which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g., water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located; or other state and/or federal mandates, in addition to the Global Warming Solutions Act of 2006, that, when implemented result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or the state's overall carbon footprint. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.

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<sup>2</sup> WSPA's suggested revisions are shown in **bold, double underscore** for insertions, and ~~strikethrough~~ for deletions.

Section 15064.4:

(a) A lead agency should consider the following, where applicable, in assessing the significance of impacts from greenhouse gas emissions, if any, on the environment:

(1) The extent to which the project could help or hinder attainment of the state's goals of reducing greenhouse gas emissions to 1990 levels by the year 2020 as stated in the Global Warming Solutions Act of 2006. A project may be considered to help attainment of the state's goals by being consistent with an adopted statewide 2020 greenhouse gas emissions limit or the plans, programs, and regulations adopted to implement the Global Warming Solutions Act of 2006;

(2) The extent to which the project may increase the consumption of fuels or other energy resources, especially fossil fuels that contribute to greenhouse gas emissions when consumed;

(3) The extent to which the project may result in increased energy efficiency of and a reduction in overall greenhouse gas emissions from an existing facility;

**(4) The extent to which a project's compliance with state and/or federal mandates, in addition to the Global Warming Solutions Act of 2006, results in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or the state's overall carbon footprint.**

**(5) The extent to which a project is required to comply with other environmental regulations or permit conditions, even if this does result in a net GHG emission increase.**

~~(6)~~-(4) The extent to which **qualitative factors indicate** that the project impacts or emissions exceed any threshold of significance that applies to the project.

(b) A lead agency should make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions associated with a project, including emissions associated with energy consumption and vehicular traffic. Because the methodologies for performing this assessment are anticipated to evolve over time, a lead agency shall have discretion to determine, in the context of a particular project, whether to:

(1) Use a model or methodology to quantify greenhouse gas emissions associated with a project, and which of any available model or methodology to use. The lead agency may include a qualitative discussion or analysis regarding the limitations of the particular model or methodology selected for use.

(2) Rely on qualitative or other performance based standards for estimating the significance of greenhouse gas emissions.

These same issues are relevant to the consideration of mitigation measures. What constitutes feasible mitigation for purposes of determining whether a project's GHG emissions should be required to go through the CEQA review process should be evaluated based on the totality of the circumstances related to a particular project's or facility's or the State's overall increase in energy efficiency, or decrease in the carbon intensity of the underlying economic activity, or the state's overall carbon footprint.

Further, with regard to Section 15126.4(c)(2), WSPA is concerned that by categorizing project features, project design and other measures that are incorporated into a project as feasible mitigation, the Draft Guidelines imply a project that includes such features or measures is considered significant by default.

WSPA believes the opposite presumption should be true: a project that incorporates project features, project design and other measures that are incorporated into the project to substantially reduce energy consumption or GHG emissions should be presumed to be insignificant for purposes of CEQA. WSPA suggests that proposed Section 15126.4(c) be revised as follows to address these concerns:

(c) Mitigation Measures Related to Greenhouse Gas Emissions

(1) Lead agencies should consider all feasible means of mitigating greenhouse gas emissions including but not limited to emissions associated with the project's energy consumption, including fossil fuel consumption.

(2) Mitigation measures may include project features, project design, or other measures which are incorporated into the project to substantially reduce energy consumption or greenhouse gas emissions. **Inclusion of such project features, project design, or other measures as a component of the project does not create a presumption that the project would result in significant environmental effects.**

(3) Mitigation measures may include, where relevant, compliance with the requirements in a previously approved plan or mitigation program for the reduction or sequestration of greenhouse gas emissions, which plan or program provides specific requirements that will avoid or substantially lessen the potential impacts of the project, **or compliance with state and/or federal mandates, in addition to the Global Warming Solutions Act of 2006, that result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or the state's overall carbon footprint.**

(4) Mitigation measures may include measures that sequester carbon or carbon-equivalent emissions.

(5) Where mitigation measures are proposed for reduction of greenhouse gas emissions through off-site measures or purchase of carbon offsets, these mitigation

measures must be part of a reasonable plan of mitigation that the relevant agency commits itself to implementing.

Finally, in Section VII(a) of Appendix G, the Draft Guidelines currently propose to evaluate a project's impacts based in part on whether the project would "[g]enerate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, based on any applicable threshold of significance". The use of the word "any" in this criterion could potentially be read to undermine a lead agency's ability to rely on qualitative factors to determine significance.

WSPA believes this is fundamental to an accurate evaluation of a project's impacts to climate change. We suggest that this criterion be amended as follows in order to preserve lead agency discretion:

VII. GREENHOUSE GAS EMISSIONS -- Would the project:

~~a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, based on any applicable threshold of significance?~~

**(a) Result in a net increase in energy efficiency or decrease in carbon intensity of the underlying economic activity or the state's overall carbon footprint?**

b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?

WSPA appreciates the opportunity to comment on the Preliminary Draft CEQA Guideline Amendments for Greenhouse Gas Emissions. Please feel free to contact me at this office or Michaeleen Mason of my staff at (916) 498-7753.

Sincerely,



cc: Terry Roberts, State Clearinghouse Director, Governor's Office of  
Planning and Research  
Michaeleen Mason, Director, Statewide Regulatory Issues, WSPA